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ISSUES ON FINANCIAL MARKET REGULATION, BUSINESS DEVELOPMENT AND GOVERNMENT'S POLICIES ON GLOBALIZATION

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FOCUS ON GLOBAL PERSPECTIVES

ETHICS AND FINANCE IN THE TRUMPIAN STORM

Francesco Capriglione*

ABSTRACT: *This article examines the climate of uncertainty and the transformations currently reshaping the global geopolitical order in the wake of the Trumpian disruption. It analyses the weakening of the "universal values of the inviolable and inalienable rights of the person, freedom, democracy, equality and the rule of law", arguing that reflection on the relationship between ethics and the market can no longer be confined to a merely deontological perspective. The prevailing political and cultural paradigm increasingly reflects the instrumental use of public power for market-oriented purposes, alongside the deliberate destabilisation of markets as a negotiating tool. This scenario calls for a responsible re-commitment to ordering principles capable of fostering new forms of institutional coordination among States, through a redefinition of the relationship between human beings, law and the economy.*

One year after Donald Trump's inauguration, his objective of altering the established order has become evident, giving rise to conduct that conflicts with ethical precepts and generates systemic disorder. Recent developments at the 2026 World Economic Forum in Davos corroborate this assessment. The transatlantic alliance, historically grounded in a balance between power asymmetry and value convergence, is eroded. The resulting instability affects financial markets, where compliance with rules gives way to coercive practices, including threats such as the imposition of exceptionally high tariffs. In this context, ethics is progressively marginalised as a reference framework for reconciling economic efficiency, financial

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stability and social cohesion.

This article argues for the recovery of a shared value framework centred on equality, fairness and solidarity. These principles require a purposive approach to both political decision-making and economic activity, capable of restoring "the ideal of a life founded on respect for others". Only along this path ethics -commonly conceived as a regulatory principle- can retake its role in guiding appropriate conduct within market operations.

1. In the current time, the reference to ethics and its principles – as guiding criteria of human conduct – has become particularly difficult. We are facing with a socio-economic reality characterised by the increasing frequency with which the assumptions enabling a form of coexistence consistent with natural law and with respect for a necessary *"ought to be"* of men of good will are altered. A climate of uncertainty, caused above all by the changes currently taking place in the planet's geopolitical order, induces reflection, generates perplexity and raises questions which, even more than in the past, prompt us to invoke ethics as an inescapable point of reference for those who wish to combine balance and equity, on the one hand, with correctness and coherence, on the other.[1]

(*) Text of the presentation, with some amendments and the addition of reference, presented at the seminar "Mercati finanziari ed economia reale", organized at the Department of Economics, Management and Institutions, Advanced Training Course on Ethical Finance (University of Naples, Federico II, 23 January 2026).

[1] It should be noted that historical-philosophical reflection, in seeking the ideological foundation of ethics, has highlighted its limits, stemming from the relativism implicit in any construction

We are living through a complex phase in which the possibility of reconciling opposing political tendencies is increasingly remote, as is the identification of the technical forms required to overcome the recessionary process observed in the cultural sphere. Consequently, indignation, discontent and concern for the future fate of populations are spreading across ever wider areas of the globe, in the face of the prospect of fanciful programmes of change founded on the illusory construction of a system centred on mechanisms of *"autocratic absolutism"*, underpinned by the affirmation of techno-plutocratic systems.

In such a context, the reference to ethics induces reflection on the legal rules and economic principles that make it possible to identify the content and specificity of human behaviour inspired by correctness, indicating the ways in which the means at people's disposal should be used.

More specifically, in view of the hegemonic role assumed by the US presidency, there is evidence of a weakening of the *"universal values of the inviolable and inalienable rights of the person, freedom, democracy, equality and the rule of law"* recalled in the preamble to the TEU. As a consequence, widespread disillusionment is spreading regarding the actual validity of the alliance programme pursued by Europe for more than half a century. Hence the need to ascertain whether the conditions still exist to maintain this programme in the face of the behaviour of the United States, which flaunts its strength in order to impose its dominion with a view to achieving the submission of the countries with which it maintains relations.[2]

undermined by the difficulty of historicising the contents of morality; see, inter alia, PERRONE et al., *Storia del pensiero filosofico*, Turin, 1980.

[2] It is necessary to acknowledge that, in the long run, a behavioural pattern such as that represented by the unpredictability of Donald Trump - and thus by his often disconcerting attitude of continuous decision-making back and forth, which renders him 'coherent in his incoherence' - undermines the credibility not only of the head of government, but of the United States itself, as can be inferred from the recent downgrading of the US sovereign rating by the well-known agency Moody's.

A scenario thus emerges that makes it necessary to seek guiding principles capable of countering a possible socio-political drift destined inevitably to affect market dynamics as well. The systemic framework within which financial activity takes place is viewed with apprehension, and from this arises the conviction that, if law regulates such activity while economics gives substance to the object of legal action, geopolitics - through the analysis of power relations between States - significantly affects the relationship established among them.[3]

It follows that reflection on the theme of ethics and the market can no longer be addressed in purely deontological terms. The current historical phase is marked by a structural fracture between politics and economics, in which the former no longer performs a function of guidance and mediation of the general interest, but tends instead to assume an entrepreneurial character itself, according to an openly business-oriented logic. Within this framework lies Trumpism, understood not only as a governmental experience but as a political-cultural paradigm. It represents the emergence of orientations that were previously only latent: the use of public power for market purposes, selective deregulation, and the intentional destabilisation of markets as a negotiating lever.[4]

See the editorial entitled *Moody's declassa il rating degli Usa*, of 16 May 2025, available at *https://www.ilsole24ore.com/art/moody-s-declassa-rating-usa-AHvxx7n,* which specifies that this downgrade was decided «due to concerns raised by 36 trillion dollars of public debt and by the Trump administration's plans for new tax cuts only partially offset by spending on healthcare, ecological transition and welfare».

[3] Reference is made here to the scientific specificity of geopolitics, which is encapsulated in the multidisciplinary relationship between law, economics and politics, aimed at studying the interaction between geographical space, resources, the physical environment and political action, through an analysis that makes it possible to understand how geography influences international relations, State strategies and power dynamics. This leads to a methodological approach characterised by adherence to reality and dynamism, and which proves capable of grasping the outcomes of the interaction between historical, cultural, economic and military factors in order to interpret current conflicts and alliances; see most recently PASSAGLIA, *Geopolitica e diritto. Un legame trascurato*, Milan, 2026.

[4] Cfr. CAPRIGLIONE, *Il declino delle democrazie liberali*, Milan, 2025.

2. It is evident that, in the context outlined above, the analysis of *"ethics in finance"* should be conducted in ways different from those that have so far characterised research aimed at identifying remedies capable of establishing the climate of trust and harmony that should underpin every civilisation.

What is now required is a responsible adherence to ordering canons capable of enabling a beneficial turning point in the conceptualisation of new forms of institutional coordination among States, through a redefinition of the *"human being – law – economy"* relationship. It becomes clear that the *"force of political power"* must be replaced by that of *"law"*, while the selfish intent to accumulate wealth at the expense of others must give way to recognition of the needs of the international community.

In this direction must act those who wish to survive the turbulence caused by a ruler who, in a delusion of omnipotence, disavows the force of law and asserts that his power is limited only by his *"personal morality"* and not by external constraints. This assertion recalls the well-known declaration by Immanuel Kant: *"Two things fill the mind with ever new and increasing admiration and awe… the starry heavens above me and the moral law within me"* – a central concept in his philosophical reflection, indicative of the absolute and the universal residing in the conscience of every individual.[5]

However, it cannot be overlooked that the words spoken by the president of the most powerful State in the world give rise to concerns of various kinds, particularly in light of his personality and of the observations made by John Bolton, former adviser to Donald Trump during his first term. In an interview broadcast on 29 April 2025 by the Italian broadcast La7, Bolton dwelt on outlining Trump's critical

[5] Cfr. *La Critica della ragion pratica*, published in 1788, which constitutes one of the major works on moral philosophy where Kant develops his theory of the will, which is determined solely by the moral law; therefore, we are not told which ethical precepts should be followed by man, but rather "how" he must behave in order to perform a genuinely moral action.

traits, above all his established amorality.

Significant in this respect are several writings by well-known American psychologists on the US Chief Executive, published especially in recent times, [6] from which emerges a figure that certainly does not correspond to the prototype of man envisaged by Kant. Indeed, it is often not reason that determines his will, but rather a spirit of narcissistic self-exaltation, combined with an over-sized business-oriented intent deriving from his professional background as a property developer. As such, the principle *"do what you ought"*, which characterises Kant's categorical imperative, does not belong to him.

The distinguishing feature of Donald Trump's policy lies in an operational line attributable to the option of an uncompromising defence of national interests in the name of the free market and individual freedoms. From this follows the nationalist retreat that such a stance entails, together with the rejection of multilateralism as a limitation on decision-making sovereignty. In this context, international law, supranational organisations and cooperative mechanisms for conflict resolution become, in the tycoon's view, obstacles to the will of the people embodied by the leader.

One year after his inauguration, the real imperial objectives pursued by the American head of the executive emerge clearly, revealing also the ultimate goal he intends to achieve: to alter the established order in order to *"Make America Great Again"*. This aim leads him to distance himself from European allies, initiating a process that, in the view of many observers, undermines at its core their historic

[6] See the work by LEE, *The Dangerous Case of Donald Trump: 27 Psychiatrists and Mental Health Experts Assess a President*, New York, 2017, containing a collection of essays written by mental health experts who analyse Trump's psychology and the danger he represents for American democracy. Also noteworthy, in this regard, is the book written by the psychopathologist MARY L. TRUMP, entitled *Too Much and Never Enough. How My Family Created the World's Most Dangerous Man*, St. Martin's Press, 2024.

friendship with the United States.[7] He believes they obstruct this programme and therefore treats them with contempt, subjecting them to constant critical judgements, regarding them as *"parasites"* and exploiters, as he had already stated at the first meeting of his *cabinet*, declaring: *"The EU was formed to screw the United States*."[8]

Conversely, it should be pointed out that *"US investments in Europe have always been highly profitable"*, as replied by the spokesperson of the European Commission.[9] Above all, Trump neglects to consider the significant contribution of values that Europe has provided to the United States through intense cultural relations - values that today are being profaned and attacked with the intention of destroying them.

Within this logic, Trump adopts behaviours aimed at replacing respect for legal rules with the pursuit of personal interests and those of the United States, assuming an attitude that, in concrete terms, conflicts with and negates the values underlying both the rule of law and, more generally, ethical precepts. This gives rise to a situation of chaos that makes it impossible to envisage a serene future. Confirmation of this can be found in the strange correlation he posits - in a letter

[7] For an analysis of the outcomes of Trumpian policies which, inter alia, suggest the substantial end of the historic friendship between the United States and Europe, see CAPRIGLIONE, *Gli esiti del trumpismo e la nuova realtà geopolitica*, in *Aperta Contrada*, 19 December 2025, where it is emphasised that Trump's action – in addition to fostering the conditions for the initiation of a process which, in the long term, could have led to the death of democracy – tends to implement a progressive distancing of America from the participants in the Atlantic Pact, as demonstrated by the closure of the protective umbrella hitherto offered and by the declared intention that NATO should not expand.

[8] See the editorial entitled *Musk apre la prima riunione del governo Trump: "Tagliare subito il debito altrimenti il paese va in bancarotta"*, of 26 February 2025, available at *https://tg.la7.it/esteri/musk-parla-prima-riunione-gabinetto-tagliare-debito-paese-bancarotta-26-02-2025-232809*.

[9] See the editorial entitled, *L'Ue replica a Trump, 'siamo stati una manna per gli Usa'*, of 26 February 2025, available at *https://www.ansa.it/europa/notizie/rubriche/altrenews/2025/02/26/lue-replica-a-trump-siamo-stati-una-manna-per-gli-usa_e4f8817c-0dd8-4c52-a072-31594a2e6acc.html.*

sent in January 2025 to Norwegian Prime Minister Jonas Gahr Støre - between not having received the Nobel Peace Prize, to which he aspires without success, and his *"duty to think about peace"*, claiming to have *"stopped eight more wars"*.[10] His words clearly reveal a instrumentalisation of the declared role of peacemaker in pursuit of the prize, indirectly confirming the validity of the judgement of the Norwegian Committee, which takes into account the value-based essence of the award.

3. Recent events at the World Economic Forum 2026 in Davos confirm the considerations set out above. Reference is made, first and foremost, to Donald Trump's delirious attack on the European Union. While declaring that he *"wants a strong and united West"*, he outlined what might be the future relationship between the United States and the European Union, as well as between the United States and NATO. After an ill-considered exaltation of the economic growth achieved in America under his leadership, he stated: *"I love Europe and I want to see it do well. But it is not going in the right direction"*, proceeding to list numerous alleged deficiencies as the basis for his judgement. He demanded *"Greenland, including ownership, because ownership is needed to defend it"*, since *"only the United States can defend it"*; with regard to the war in Ukraine, he stressed that *"it is up to Europe to resolve it, not the United States"*. In this discourse, criticism of the EU is also implicit in the assertion that *"the United States has been treated very unfairly by NATO. We give so much and receive so little*."[11]

We are dealing with unacceptable criticisms that are, moreover, traceable to

[10] See the editorial entitled, *La lettera di Trump al premier norvegese: «Non sono obbligato a pensare alla pace»*, of 19 January 2026, available at *https://www.ilsole24ore.com/art/trump-non-sono-obbligato-pensare-pace-ecco-lettera-premier-norvegese-AIY0GSw.*

[11] See the editorial entitled, *Il discorso integrale di Donald Trump, a Davos*, of 21 January 2026, available at *www.corriere.it/esteri/26_gennaio_21/il-discorso-integrale-di-donald-trump-a-davos-a68c7f7c-20a5-4294-9cfd.*

an unequivocal imperial vision over vast areas of the planet underlying Donald Trump's strategic design, which despises and humiliates medium- and small-sized countries, attempting to weaken them in order subsequently to subjugate them. This discourse tells us that the established order, as configured in the decades following the Second World War, must now be considered defunct. It follows that the West -still today evoked as an imaginary reality by some EU Member States- no longer exists.

Trump's contempt for countries that, in his eyes, are no longer the allies they once were is aimed at definitively dismantling any presumed position of equal dignity vis-à-vis America. For him, Europe represents an anomalous island with a democratic structure -lacking military defences but endowed with economic relevance that can be exploited for the benefit of the United States- within a geopolitical context dominated by great autocratic powers that have decided to divide up the world. Hence the historical relevance of the speech in question, which occupies a position of marked centrality in the tycoon's strategic plan, as it signals, at the international level, the affirmation of a vision of political totalitarianism in some respects analogous to that imposed internally,[12] even through violence and the use of ICE (Immigration and Customs Enforcement) agents, authorised to kill while enjoying unjustified immunity.[13]

[12] In the literature, this concept has not been associated exclusively with anti-communism and anti-Nazism; see the well-known works by ARENDT, *The Origins of Totalitarianism*, 1951, in which she offers an in-depth analysis of the mechanisms and dynamics of totalitarian regimes, with particular attention to Nazism and Stalinism, as well as WEIL, *Oppression et liberté*, published posthumously in 1955, which provides a critical view of authoritarianism and hierarchical structures.

More recently, philosophical reflection on the concept in question has led to the view that it represents an expression of twentieth-century nihilism and secularisation, framing its essence as a moral phenomenon rooted in politics; see FORTI, *Il totalitarismo*, Bari, 2023.

[13] See the editorial entitled, *La battaglia di Minneapolis: in città 3.000 agenti dell'Ice, Trump minaccia di schierare anche l'esercito*, available *at www.corriere.it/esteri/26_gennaio_15/la-battaglia-di-minneapolis-trump-minaccia-di-schierare-l-esercito-7b7312df-89df-4a6b-9e00*, which mentions the acts of violence committed by ICE agents during the "targeted operation" against irregular immigrants.

Some European countries reacted promptly, others responded with cautious silence, indicative of the objective difficulty faced by heads of government when confronted with a position taken by the US presidency that appears to force them to assume responsible decisions affecting their countries' future. A call for firmness came from the vigorous and entirely shareable response of the Canadian Prime Minister, who demonstrated through his words that he had fully grasped the American President's irresistible expansionist drive, his real desiderata, and his firm intention to realise them through the unconditional use of political power.

In his memorable speech, Mark Carney acknowledged that *"we are in an era of rupture, not transition"*, signalling that *"the world order is over"*. This reality, he argued, cannot be remedied by submitting to *"the great powers"*, a behavioural line that would not guarantee security. Equally inadequate, in his view, are measures based on the construction of walls and fortresses, which are incapable of containing or opposing such powers. A realistic geopolitical vision of current inter-State relations is thus proposed, identifying as the only viable alternative the *"construction of a new dialogue among 'middle powers', such as Canada"*, in order to create *"a new order"* founded on strong coalitions among countries that share visions, values and interests.[14]

This discourse offers a valid alternative for removing States targeted by Trump's attacks from a bleak position of subordination to his will. Obviously, this requires acknowledgement of the consequences produced by the US President's conduct, namely the substantial end of the historic alliance between America and the European Union. This is accompanied by the presumed recognition of a favourable position for countries exhibiting political affinity (more precisely,

[14] See the editorial entitled, *Il memorabile discorso del premier canadese Mark Carney a Davos: «È tempo che le medie potenze agiscano insieme perché se non siedi al tavolo sei nel menu»*, of 21 January 2026, available at *https://www.corriere.it/esteri/26_gennaio_21/mark-carney-discorso-davos-2d7f7050-c66c-4fdb-892a-ml, where Mark Carney's speech is reported in full.*

familiarity) with the current American head of the executive, such as Italy and Hungary. Hence the need for an innovative approach of firmness on the part of EU States which -while avoiding outright rupture- should consist, on the one hand, in abandoning assertive postures or inexplicable silence in response to Trump's reckless statements (often adopted in an attempt to curry favour), and, on the other, in seeking new commercial partners by exploring the cotton route (India) or the silk route (China).

In this scenario, it is also necessary to activate certain reforms of the regulatory framework governing the functioning of the EU. Consideration should be given to the elimination of the rule requiring unanimity for EU decision-making, thus abolishing the veto power.[15] At the same time, the Union should undertake a structural transformation endorsing the creation of a democratically legitimised supranational authority - a solution recently opposed by certain European countries (namely the minority group of governments of the Czech Republic, Slovakia, Hungary and Italy), where right-wing sovereigntism represents the prevailing political orientation.[16]

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[15] The issue of the need to extend qualified majority voting has for several years been at the centre of the debate within the European institutions (inter alia, Committee on Constitutional Affairs of the European Parliament (AFCO), "Relazione sulle proposte del Parlamento europeo sulle modifiche dei Trattati", 7.11.2023), but has recently intensified as a result of international crises and the prospects of EU enlargement (AFCO, "*Relazione sulle conseguenze istituzionali dei negoziati relativi all'allargamento dell'Ue*", 2.10.2025).
Whereas in the original phase of the European system unanimity voting was intended to give a voice to less influential governments within a European Community limited to a small number of Member States operating within a framework of emerging "decision-making supranationality" (see WEILER, *Il sistema comunitario europeo*, Bologna, 1985, p. 49), today, in the presence of a large number of EU members, the defence of unanimity voting undermines the very nature of the Community method, distorting its purpose through the superimposition of sovereigntist orientations upon State sovereignty that bear no relation to that "method" (see BESTAGNO, *Le dinamiche della "democrazia consiliare" dell'Unione europea tra consensus e astensioni*, in *Eurojus*, 1/2024, p. 30 ff.).

[16] See the editorial entitled *Abolire il potere di veto per uscire dalla paralisi europea*, available at *https://www.rivistailmulino.it/a/abolire-il-potere-di-veto-per-uscire-dalla-paralisi-europea*, which

Nevertheless, Trump's attitude could paradoxically push Europe towards greater integration and unity, despite the current context of geopolitical tension. Indeed, it has created a situation characterised by a set of favourable factors that could, hopefully, interact to promote integration. In this context, the conditions have even been identified for nominating Donald Trump for the EU's *Charlemagne Prize,* awarded to individuals who have distinguished themselves for their contribution to European integration.[17]

Such an eventuality would certainly not be welcome to the tycoon and does not form part of his plans. Yet, albeit indirectly, his conduct is contributing significantly to making the Union more cohesive and determined to strengthen itself. At this point, it becomes indispensable to move from *wishful thinking* to the concrete construction of the conditions necessary to initiate a transition towards a *federal order*. Guiding this complex path must be the awareness that this is the only route capable of realising the dream of the founding fathers of the European Community, safeguarding freedom and the values of a consolidated democratic system.

4. A perspective thus emerges in which reference to Carl Schmitt's decisionist doctrine becomes inevitable. The centrality of sovereign decision-making, detached

specifies: "The President of the Council of Ministers, Giorgia Meloni, stated before the Italian Parliament, in the debate on the eve of the European Council, that her government opposes the abolition of the veto power in the European Council… thereby contradicting the decision of her Deputy Prime Minister and Minister of Foreign Affairs, Antonio Tajani, to join the group of friends of majority voting".

"The President of the Council thus confirmed her alignment with the minority group of sovereigntist governments, which act to dismantle from within the functioning of the European Union, causing serious harm to the interests of our country and to the collective interests that should be safeguarded in accordance with the principle of sincere cooperation".

[17] Reference is made here to the proposal put forward by Enrico Letta in the article entitled *Perché premiare Trump con il premio Carlo Magno 2025*, available at *https://www.ilfoglio.it/politica/2025/03/15/news/perche-premiare-trump-con-il-premio-carlo-mag no-2025-751789*.

from normative constraints, leads to a regression towards pre-constitutional models.[18] Trump's statements regarding the replacement of law with his own personal morality highlight an anthropological transformation of power: no longer institutions, but personalities; no longer norms, but subjective convictions. This phenomenon marks the dissolution of the public legal order, replaced by an informal and charismatic power. [19] In line with authoritative doctrine, it may be said that the premises of a crisis of legality arise when political power no longer recognises external limits to itself.[20]

This situation affects the fate of the transatlantic alliance, which has historically rested on a balance between asymmetry of power and convergence of values. The loss of the latter produces a radical transformation of the relationship: Europe ceases to be a partner and becomes a functionally subordinate subject. Hence the inevitable change destined to affect the European legal order, founded on a community of law and values, which cannot survive in its autonomous integrity if reduced to a mere economic space dependent on external decisions.[21]

That being so, the epilogue of the Trumpian programme emerges unequivocally from two specific events at Davos. Reference is made to Donald Trump's intervention in which he harshly criticised NATO allies for their role in the

[18] See the well-known work *Teologia politica*, Berlin, 1922, Italian trans. Bologna, 1972, in which sovereignty is analysed, arguing that the modern concepts of the State are secularised theological concepts, linking politics to decisionism and asserting that the norm lives only through the exception.
[19] See CASSESE, *Il diritto globale. Giustizia e democrazia oltre lo Stato*, Turin, 2009, a work examining the global legal space, which is characterised by the presence of sectoral regulatory regimes, each with its own system of rules and an apparatus responsible for enforcing them, through action that goes beyond the sphere of the State.
[20] See ZAGREBELSKY, *Il diritto mite. Legge, diritti, giustizia*, Turin, 1992, a work in which the Author demonstrates that legal rules can no longer be either expressions of partial interests or formulas for universal and immutable conceptions that some may impose and others must endure.
[21] See von BOGDANDY, *Constitutional Principles for Europe*, Oxford, 2010, where a systematic exposition of the most essential legal norms of the European legal order is provided, with the aim of identifying and clarifying principles, established case law, as well as affirmed constitutional theories and doctrines.

Afghan conflict, claiming that they had remained in the *"rear"* while the United States bore the main military burden.[22] Once again, the desire to magnify American power prevails over reality, which shows the heavy human losses suffered by European allies. These unjustified criticisms provoked indignation and strong reactions from numerous States; from Great Britain to Italy, Trump's words were rejected as *"unacceptable"*.

To fully assess the significance of this minimisation of allied contributions, one must consider the tycoon's strategic design: he seeks to downsize the military commitment of other countries -perceived as insufficiently active- in order to highlight disparities in effort among NATO members. It should be recalled that, at meetings held in The Hague in June 2025, he had already demanded an increase in their contributions to NATO expenditure, justifying this on the grounds that the burden fell predominantly on the United States.[23]

It is evident that the US President's strategy uses NATO instrumentally as a tool of blackmail, while no longer considering the organisation as the cornerstone of an indissoluble alliance between countries on both sides of the Atlantic. This conviction is reinforced by his threat to *"leave NATO"* in order to force European countries to accept increased military spending,[24] and above all by the interpretative doubts he has raised regarding the automatic applicability of Article

[22] See the editorial entitled *Trump minimizza il ruolo degli alleati Nato in Afghanistan, oltraggio in Gb*, available at *https://www.ansa.it/sito/notizie/mondo/2026/01/23/trump-minimizza-il-ruolo-degli-alleati-nato-in-afghanistan-oltraggio-in-gb_3de76805-ab12-488c-8ca5-3ec6e7a860aa.html*

[23] See CARUSO, *Nato verso il 5%. Così i ministri della Difesa preparano la svolta dell'Aia*, 5 June 2025, available at *https://formiche.net/2025/06/nato-verso-il-5-cosi-i-ministri-della-difesa-preparano-la-svolta-dellaia.* On that occasion, a significant increase in the military expenditure of the Member States of the Alliance was decided, which over the next ten years is to reach 3.5% of GDP for the amount devoted exclusively to the enhancement of defence capabilities, and 1.5% for investments related to security and defence, for each individual State.

[24] See the editorial entitled *Trump minaccia di lasciare la Nato, 'meno aiuti all'Ucraina'*, 9 December 2024, available at *https://www.ansa.it/sito/notizie/mondo/europa/2024/12/08/trump-zelensky-vuole-un-accordo-con-mosca-dcfe30e2-bbcf.*

5 of the founding Treaty, thereby undermining the stability of the alliance.[25] A climate of strong tension thus exists, legitimising serious doubts about the current system of collective defence among NATO member countries.

Europe therefore faces an alternative: to continue complying with all demands, accepting its current subordinate position, or - acknowledging the reality described above - to adopt a firm stance. In the latter case, while maintaining functional cooperation with the United States, Europe should decouple its defence from a relationship of political loyalty that risks becoming an obligation of outright submission.

Such an operational line responds to the need to acquire a space of *"integrated autonomy"*, in which military defence becomes one component of an operational aggregate comprising industry, finance and technology. This aggregate gives substance to relations structured around an innovative form of cooperation that may be defined as *post-Americanism*, in light of the historical-political context from which it originates. Moreover, implementing this *change of pace* in Atlantic policy should not await the end of Donald Trump's term – considering him a *"necessary evil"* to be endured, as I argued in a recent monograph[26] – but should proceed without delay to avoid further damage from his escalating imperialism. This is irrespective of the long-recognised need of European democracies to achieve a *"European security … indispensable … to be flanked alongside NATO"*, as highlighted some years ago by Mario Draghi.[27]

To analyse the outcomes of the Davos Forum, it is also appropriate to recall

[25] See the editorial entitled *Trump mette in dubbio l'articolo 5 della Nato e crea tensioni sulla difesa collettiva in Europa*, 27 June 2025, available at *https://www.unita.tv/spettacolo/trump-mette-in-dubbio-larticolo-5-della-nato-e-crea-tensioni-sulla-difesa-collettiva-in-europa*.

[26] See CAPRIGLIONE, *Il declino delle democrazie liberali*, p. 89.

[27] See the editorial entitled, *Draghi al vertice Ue di Versailles: "Non siamo in economia di guerra, ma è bene prepararsi"*, 11 March 2022, available at https://www.rainews.it/articoli/2022/03/draghi-al-vertice-ue-di-versailles-non-siamo-in-economia-di-guerra-ma–beneprepararsi.

the establishment of the so-called *"Board of Peace"* for the administration of the Gaza Strip. This body represents the strategic instrument devised by Trump to *"bring peace to the world"*. It revolves around the tycoon, who is its president for life with veto power - even beyond the end of his US presidential mandate - and is endowed with the operational capacity to do nothing, extending beyond the borders of Gaza. Its founding Charter assigns generic and broadly extended tasks, without geographical limits and detached from any *"local mandate"*, with the obvious consequence of enabling global interference in any matter of interest to the Board.[28]

Another significant aspect lies in the Board's organisational structure, which reflects the business-oriented logic known to drive Trump's decisions. Participants are required to pay an entry fee of one billion dollars, situating the Board's rationale within a private-law sphere and opening the way to a peculiar commingling of economic and political interests.

It clearly emerges that the Board is intended to perform functions free from legal obligations and detached from public-interest accountability, granting its leadership absolute power capable of operating simultaneously in political and economic spheres. As a simulacrum of global governance, the Board appears destined to become an object of significant legal analysis. It is an informal institution marked by opacity regarding its real objectives, which seem also attributable to those of a colossal real-estate corporation an inference supported by references to the reconstruction of Gaza and by the status of its participants as charismatic leaders and billionaires.

At its core lies Trump's will, and he will undoubtedly use his power to transform the Board into a further device for expanding his global influence. It has

[28] See the editorial entitled, *Il 'Board of Peace' di Trump: la pace come club privato*, available at *https://www.ispionline.it/it/pubblicazione/il-board-of-peace-di-trump-la-pace-come-club-privato-228084*.

rightly been noted that this constitutes a privatisation of political power: not an international organisation, but *"a sort of kingdom, of which Trump has proclaimed himself monarch"*, eliminating any semblance of democracy, as shown by his reservation of the right to designate his successor.[29]

The Board also appears intended to replace the United Nations, whose *"potential is not being used"*, as Trump stated at its presentation, while claiming to act *"in cooperation with the UN"* - words widely interpreted as a challenge.[30] The prospect of dismantling the UN as an ultimate objective of Trump's imaginative creativity raises serious concerns, especially given his well-known hostility towards the organisation, evidenced by the withdrawal of the United States from 31 UN entities deemed contrary to national interests, security, prosperity or sovereignty.[31]

The reservations expressed by almost all invited States are therefore justified. Beyond the immediate adherence of autocratic countries willing to accept the diktat of a single leader, there is a real risk that the Board's activity will unfold entirely outside international law. Europe, in a position of clear impotence, may thus witness the definitive abandonment of democratic logic, replaced by a private oligarchy in global governance, with law supplanted by a soft law reflecting the wishes of the Board's owners.

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[29] See the editorial entitled, *Board of Peace, ecco cos'è il Consiglio voluto da Trump: seggi in vendita a un miliardo e successione su designazione*, available at *https://www.corriere.it/economia/finanza/26_gennaio_27/board-of-peace-ecco-cos-e-il-consiglio-voluto-da-trump-seggi-in-vendita-a-un-mi liardo-e-successione-su-designazione*.

[30] See the editorial entitled *Trump lancia la sfida all'Onu: a Davos nasce il «Board of Peace» con i 19 fedelissimi (e le slide immobiliari su Gaza). «Ora potremo fare tutto ciò che vogliamo»*, available at *https://www.corriere.it/esteri/*26_gennaio_22/trump-sfida-onu-davos-board-peace-d8a9a2db-d051-4498.

[30] See above, note no. 28.

[31] See the editorial entitled, *L'algoritmo della menzogna. Trump usa le fake news come arma politica*, 8 May 2025, available at *https://www.editorialedomani.it/politica/mondo/lalgoritmo-della-menzogna-trump-usa-le-fake-news-come-arma-politica-phzsuh7*8, which specifies that Trump and his circle of advisers have often behaved in ways that rendered them scarcely credible, having realised that "fake news" circulate and capture our attention more than real news.

5. There is no doubt that such a reality constitutes a source of instability for financial markets, within which regulatory chaos will soon prevail and economic activity will no longer be conducted in compliance with rules, but rather within a context characterised by the recourse to threats of various kinds, such as the threatened imposition of very high tariffs (already experienced during the first months of the Trump administration), or the use of substantial sanctions as instruments of economic pressure.

To this must be added the presence of erratic political communication - replete with *fake news* contradicted by footage broadcast by television networks worldwide[32] - which prevents a correct assessment of the situations under examination and produces, as a collateral effect, volatility in financial markets. This scenario is finally completed by the continuous delegitimisation of multilateral institutions and of the shared rules of trade and finance, mirrored by the reduction of regulation to a negotiable element; a reality in which human beings are reduced to instrumental factors, being regarded as adjustment variables within political and economic strategies.

More generally, one witnesses a strategic project that appears to be centred on a geopolitical vision aimed at dividing the planet's zones of influence among the major military and economic powers. It is therefore evident that the varied forms of cooperation and assistance to developing countries that had characterised the era of multilateralism are being abandoned. Inevitably, finance - under the pressure of this politico-business logic - loses its function as a service for socio-economic growth, being reduced to a mechanism for short-term value extraction. At the same time, the market loses the configuration traditionally attributed to it as a *means* through which economic activity pursues its ultimate purpose: the improvement of

human living conditions.

Within this framework, ethics sees its role diminished as a reference criterion capable of correlating (more precisely, of holding in balance) economic efficiency, financial stability and social cohesion. Firmness and courage are therefore required in order to open a path of hope and avoid succumbing, acting with the awareness that *"otherwise fantasies and utopias will remain mere dreams of reason that … produce monsters"*, as the philosopher Remo Bodei once pointed out with regard to the consequences of the absence of an adequate methodology when addressing ethical issues.[33] The value system underlying ethics must assume a central role in analyses seeking to comprehend the present historical moment; indeed, such analyses are traceable to principles of equality, equity and solidarity, which require that political action and economic activity be guided by a teleological framework capable of recovering *"the ideal - already vaguely sought in the philosophical speculation of classical antiquity - of a life founded upon 'respect' for others"*.[34]

This is the path to be followed in order to restore the function of ethics, commonly regarded as a *"regulatory principle"* that enables the identification of appropriate disciplinary modalities to be applied in behavioural practice, by grounding their essence in principles perceived as binding. Indeed, ethics provides a specification of the canons that qualify a *modus operandi* in which the management of one's freedom and interests must not be separated from respect for others; moreover, it allows for an extension of its interpretation so as to include the need to prevent and avoid negative effects on *"human coexistence"* deriving from distorted forms of interaction between politics, law and economics.

In this way, ethics may once again rise to the status of a *"fundamental law"* of human existence, highlighting its universal character through the use of rational

[33] See BODEI, *Sogno e utopia*, Modena, 2009, p. 17.
[34] Thus ALPA, Presentation in AA.VV., *Banche ed etica*, edited by Sabbatelli, Padua, 2013, p. XIII.

methods. Its balancing function will likewise be reaffirmed, which - by virtue of its ordering purposes - makes an undisputed contribution to social and economic development; this not only by preventing such development from occurring to the detriment of certain subject categories (more precisely, States of the planet), but also by safeguarding the general interest of the international community in achieving high levels of growth.

In light of these considerations, a first conclusion may be drawn. The problem of the relationship between ethics and the market can no longer be addressed as a merely value-based issue, entrusted to the individual responsibility of economic actors. The current geopolitical and financial context - marked by aggressive policies and by a growing erosion of shared rules - clearly shows that, where the correlation between the provision of services and the correctness of conduct is lacking, it becomes extremely difficult (if not impossible) to provide a credible answer to the question of finance's openness to social demands.

In the absence of stable rules and of a reliable institutional framework, ethics risks being reduced to a rhetorical element, incapable of exerting any real influence on market dynamics and on the choices of operators. A market devoid of ethics is not only unjust, but structurally unstable, exposed to the arbitrariness of political and economic power and, therefore, incapable of performing a function oriented towards the enhancement of human dignity.

THE PREVENTIVE COVERAGE OF THE COST OF BANKING CRISES BY CREDIT INSTITUTIONS: JUDGMENT OF THE CJEU OF NOVEMBER 13, 2025 (CASE C-4/24 P, BNP)

Alberto J. Tapia Hermida*

ABSTRACT: *This article comments on the judgment of the Court of Justice of the European Union (CJEU) of 13 November 2025, which dismisses BNP's appeal and confirms the judgment of the General Court of 25 October 2023. In that earlier judgment, the General Court had dismissed BNP's action against the decision of 13 August 2021 adopted by the Single Resolution Board (SRB), which informed BNP that it would return the guarantees backing the irrevocable payment commitments to the Single Resolution Fund (SRF) once BNP paid in cash amounts equal to the value of the various commitments in question.*

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1. Given that the judgment we are about to discuss concerns a complex technical issue within a sophisticated financial mechanism, we must begin by clarifying the context in which it operates; to this end, we should refer to Article 1 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014, which establishes uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms within the framework of a Single Resolution Mechanism and a Single Resolution Fund, and amends Regulation (EU) No 1093/2010, which defines its purpose.[1] This provision, together with others in the same Regulation cited in the judgment discussed, establishes a system for managing banking crises in the EU[2] based on the preventive coverage – through 'ex ante' contributions and irrevocable payment commitments – of the cost of banking crises by credit institutions

[1] Stating that: "*This Regulation establishes uniform rules and a uniform procedure for the resolution of the entities referred to in Article 2 that are established in the participating Member States referred to in Article 4. Those uniform rules and that uniform procedure shall be applied by the Single Resolution Board established in accordance with Article 42 (the 'Board'), together with the Council and the Commission and the national resolution authorities within the framework of the single resolution mechanism ('SRM') established by this Regulation. The SRM shall be supported by a single resolution fund ('the Fund'). The use of the Fund shall be contingent upon the entry into force of an agreement among the participating Member States ('the Agreement') on transferring the funds raised at national level towards the Fund as well as on a progressive merger of the different funds raised at national level to be allocated to national compartments of the Fund*".

[2] On the subject of the banking crisis and the resolution of credit institutions, interested readers may find it useful to consult our studies on "*La crisis del Banco Popular: estado de la cuestión*", Libro Homenaje al Profesor Ubaldo Nieto de Alba, Volumen III. Estudios Jurídicos, Ed. Tirant lo Blanch. Valencia 2020, pp. 257-281 and "*La regulación global de las crisis bancarias. Reflexiones a propósito de la Guía Legislativa sobre Liquidación Bancaria de UNIDROIT de mayo de 2025*". RDBB, n.º 176, mayo-agosto 2025, Sección Artículos. As well as the following commentaries on selected judgments in this same journal, LA LEY UE: "*La regulación global de las crisis bancarias. Reflexiones a propósito de la Guía Legislativa sobre Liquidación Bancaria de UNIDROIT de mayo de 2025*". RDBB, n.º 176, mayo-agosto 2025, Sección Artículos; 237; and "*Regulación de las crisis bancarias en la Unión Europea. Jurisprudencia europea reciente Sentencia TG 20 de diciembre de 2023, asunto T-496/18 y Sentencia TJ 21 de diciembre de 2023, asunto C-340/23*", La Ley Unión Europea, No. 122, Case Law Review section, February 2024. Finally, interested readers may consult numerous posts on our financial blog (ajtapia.com), notably the one dated 7 October 2024 on the "*Resolución de Banco Popular mediante su venta al Banco Santander: El TJUE, en sus Sentencias de 4 de octubre de 2024, desestima los recursos de casación y confirma las Sentencias del Tribunal General de 1 de junio de 2022*".

subject to the risk of insolvency, through the creation of a fund (the SRF) earmarked for a specific purpose (the resolution of potential solvency crises of credit institutions based in EU Member States), managed by the SRB and funded by contributions that must reach a certain percentage of the amount of covered deposits of all authorised credit institutions in all participating Member States.

In short, the aim is for the cost of banking crises to be managed using funds from those very institutions exposed to the risk of insolvency and, in the event of failure, that cost is borne by their own shareholders or bondholders (bail-in) and not by taxpayers outside the banking sector via the levying of taxes that would have to cover the final losses of those banking crises (bail-out).

2. The judgment of 13 November 2025 delivered by the CJEU in Case C-4/24 P concerned an appeal brought by BNP Paribas and Public Sector SA against the judgment of the General Court of the European Union (GC) of 25 October 2023 (Case BNP Paribas Public Sector v SRB (T-688/21). In that judgment, the General Court had dismissed BNP's action against the JUR's decision refusing to refund the amounts corresponding to the cash guarantees linked to the irrevocable payment commitments entered into by BNP.

In particular, the judgment of the CJEU of 13 November 2025 dismisses BNP's appeal and upholds the judgment of the General Court of 25 October 2023 (EU:T:2023:675), by which that Court dismissed BNP's action seeking, firstly, a declaration that the Single Resolution Board (SRB) had breached its obligation to return the amounts corresponding to the cash guarantees linked to the irrevocable payment commitments; and, secondly, to obtain the return of the sums which the SRB allegedly retained in breach of this contractual obligation, as well as the payment of all expenses, default interest and costs of any kind incurred. Furthermore, and in the alternative, BNP sought compensation for the loss it claimed to have suffered as a

result of the SRB's conduct in relation to the irrevocable payment commitments entered into for the contribution periods between 2016 and 2021, as well as, secondly, to obtain compensation for the damage it claimed to have suffered as a result of the SRB's refusal to return the guarantee covering the irrevocable payment commitment it had entered into for the 2015 contribution period.

3. On the basis of the background to the dispute set out in paragraphs 11 to 20 of the CJEU judgment, we can provide the following chronology of relevant events:

(a) In 2015, BNP made part of its contribution to the national resolution financing arrangement in the form of an irrevocable payment commitment (CPI 2015), entered into with the SRB, the French Prudential Supervision and Resolution Authority and the French Deposit Guarantee and Resolution Fund.

b) In 2015 and for the contribution periods between 2016 and 2021, BNP made at least part of its 'ex ante' contributions in the form of irrevocable payment commitments, within the meaning of Article 70(3) of Regulation (EU) No 806/2014. To that end, it entered into separate commitments with the SRB for each of those periods through the 2016–2021 CPI contracts, which were governed by Luxembourg law and contained an arbitration clause. According to clause 2.1 of the 2016–2021 CPI contracts, the institution shall pay to the SRB and irrevocably undertakes to pay to the SRB a maximum amount equal to the amount [of the irrevocable payment commitments] following enforcement and a demand for payment by the SRB, in accordance with the applicable regulations, including, in particular, Article 7(2) of Implementing Regulation 2015/81.

(c) On 24 March 2021, the ECB withdrew BNP's authorisation; until that date, BNP had been operating as an authorised French credit institution. That withdrawal was made at the institution's own request.

(d) On 1 April 2021, BNP informed the SRB by email that the ECB had withdrawn

its authorisation and subsequently requested information from the SRB regarding the steps to be taken to obtain the repayment of the guarantees linked to the irrevocable payment commitments it had entered into.

(e) On 14 April 2021, the SRB informed BNP of the formalities to be followed in order to obtain the return of the guarantees underpinning those commitments.

(f) On 29 July 2021, following several exchanges of correspondence, the appellant notified the SRB of the termination of the 2015 CPI and the 2016–2021 CPIs.

g) On 13 August 2021, the SRB informed BNP that it would return the collateral securing the 2015 CPI and the 2016–2021 CPIs upon receipt of the cash corresponding to the amounts committed under those commitments. In that letter, the SRB recalled that the appellant had entered into several irrevocable payment commitments with it. For each of them, the SRB indicated the amount committed. After listing those amounts, it stated, in particular, that, having regard to Article 70(4) of Regulation 806/2014, according to which contributions duly received would not be reimbursed to the institutions, and Article 7(1) of Implementing Regulation 2015/81, according to which the use of irrevocable payment commitments would in no way affect the financial capacity and liquidity of the FUR; the cancellation of the 2016–2021 CPIs and the subsequent return of the guarantees underpinning those commitments could only take place following the payment in cash of sums equal to the amount of the various commitments in question. The SRB therefore invited BNP to transfer a total amount of a specified sum to it and to notify it by email. Upon receipt of this amount, the SRB would return the guarantees to it, less any negative interest accrued, after a period of fourteen banking days from the date of receipt of the notification of the decision.

(h) On 25 October 2021, BNP notified the SRB that it would not make that transfer, in so far as, according to its interpretation of the applicable regulatory framework, it was not required to transfer the cash corresponding to the total amount of the sums committed under the 2015 CPI and the 2016–2021 CPIs in order for the

collateral to be returned to it.

4. Based on the account of the proceedings before the General Court and the judgment under appeal set out in paragraphs 21 to 29 of the CJEU judgment, we can provide the following chronology of relevant legal events:

a) BNP's application to the General Court for the annulment of the SRB's decision of 13 August 2021: On 25 October 2021, BNP lodged an application with the Registry of the General Court seeking, firstly, the annulment of the SRB's letter of 13 August 2021; secondly, a declaration that the position expressed in that letter was contrary to the provisions of the 2016–2021 CPI and an order requiring the JUR to refund the amounts corresponding to the cash guarantees linked to the commitments for all expenses, default interest and costs of all kinds incurred; thirdly, a declaration that the SRB's refusal to refund the amounts corresponding to the cash guarantees linked to the 2015 CPI gave rise to unjust enrichment, and an order requiring the SRB to pay those amounts as damages, together with all expenses, default interest and costs of any kind incurred; and, fourthly, in the alternative, a declaration that the SRB's refusal to repay the amounts corresponding to the cash collateral linked to the 2016–2021 CPIs gave rise to unjust enrichment, and an order requiring the SRB to pay those amounts as damages, together with all costs, interest for late payment and expenses of any kind incurred.

b) The General Court's judgment of 25 October 2023 dismissing BNP's action: On 25 October 2023, the General Court delivered its judgment dismissing the action in its entirety on the following grounds: Firstly, I reject BNP's claim because it follows from Article 70(1) of Regulation 806/2014 that, for each year of contribution, credit institutions established in a Member State participating in the SRM – as was the case with the appellant until it fell outside the scope of that Regulation – are obliged to pay the ex ante contribution to the SRF. Secondly, I reject the claims on the grounds that

the SRB's decision to retain the amounts corresponding to the cash collateral linked to the irrevocable payment commitments entered into by the appellant had a valid legal basis, namely the 2015 CPI, the 2016–2021 CPI and Article 70(1) of Regulation 806/2014, and, consequently, could not give rise to unjust enrichment on the part of the SRB that would justify compensation for damages.

c) The appeal brought by BNP before the CJEU: In its appeal brought before the CJEU, BNP – supported by the French Republic and the French Banking Federation – requested the CJEU to set aside the contested judgment of the General Court, uphold the claims made at first instance and order the JUR to pay the costs.

d) For its part, the JUR requested the CJEU to dismiss the appeal; in the alternative, if necessary, to amend the grounds of the contested judgment of the General Court and dismiss the appeal; and to order the appellant to pay the costs.

5. In the operative part of the judgment under discussion, the Fifth Chamber of the Court of Justice decided: "1. Dismisses the appeal. 2. Orders BNP Paribas Public Sector SA to bear its own costs and to pay those incurred by the Single Resolution Board (SRB). 3. Orders the Fédération bancaire française and the French Republic each to bear their own costs".

In short, the CJEU judgment of 13 November 2025 upheld the CJEU judgment of 25 October 2023, ultimately confirming the SRB's decision of 13 August 2021 in which it instructed BNP to return the guarantees underpinning the 2015 CPI and the 2016–2021 CPIs upon receipt of the cash corresponding to the amounts committed under those commitments. That is to say, the decision refusing the return of the sums paid by BNP to the SRF as security for irrevocable payment commitments.

6. The reasoning underpinning the aforementioned judgment is based on the general principles of the criteria for interpreting the rules and contracts applied by the

CJEU. Indeed, if we examine the arguments put forward by the CJEU to dismiss the two grounds of BNP's appeal and ultimately confirm the JUR's ruling,[3] we may make an initial methodological observation, namely that – given that in this case it is necessary to interpret regulations (primarily Regulation 806/2014) and contracts (the 2015 CPI and the 2016–2021 CPIs) – the CJEU applies the criteria for interpreting rules and contracts common to continental legal systems, namely the literal, systematic, intentional and teleological criteria contained, for example, in Article 3.1[4] and in Articles 1281 et seq.[5] of our Civil Code.

7. As regards the substantive aspects, the CJEU judgment under discussion holds that the General Court did not err in law in its interpretation of Regulation 806/2014 and Implementing Regulation 2015/81. Indeed, the CJEU judgment under discussion first addresses the substantive and aspects[6] implicit in the first ground of appeal raised by BNP, which was based on an error of law in the interpretation of Regulation 806/2014 and Implementing Regulation 2015/81. Specifically, BNP challenged the GCEU's interpretation of Articles 69(1) and 70(1) to (4) of Regulation No 806/2014, as well as Article 7(1) to (3) of Implementing Regulation 2015/81. In essence, the appellant argued that the withdrawal of a credit institution from the scope of Regulation No 806/2014 should result in the SRB returning the collateral securing the

[3] Set out in paragraphs 32 to 102 of the judgment in question.

[4] Which states: "The rules shall be interpreted according to the plain meaning of their words, in relation to the context, the historical and legislative background, and the social reality of the time in which they are to be applied, taking into account, above all, the spirit and purpose of those rules".

[5] Which state, amongst other things: "If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its clauses shall prevail. If the words appear to be contrary to the evident intention of the contracting parties, the latter shall prevail over the former" (Art. 1281); "In assessing the intention of the contracting parties, one must look primarily to their acts, both contemporaneous with and subsequent to the contract" (Art. 1282); "The clauses of contracts must be interpreted in the light of one another, attributing to those that are ambiguous the meaning that results from the whole" (Art. 1285).

[6] Sections 33 to 88.

irrevocable payment commitments entered into by that institution, without any further obligations being imposed on it.

After setting out in detail the parties' submissions,[7] the Judgment sets out the Court of Justice's reasoning[8] in which it sets out the grounds for dismissing, in particular, each of the five parts into which the first ground of BNP's appeal is divided, and thus rules successively:

a) On the literal error: According to the first part of the first ground of appeal, BNP argued that the General Court erred by failing to analyse the wording of Article 7(3) of Implementing Regulation 2015/81. In response, the CJEU notes that the literal wording of Article 7 of Implementing Regulation 2015/81[9] led the General Court to state – in paragraph 36 of the judgment under appeal – that, according to common sense, the term 'irrevocable' contained in that provision refers to anything that cannot be called into question and that an irrevocable payment undertaking therefore entailed an unquestionable obligation to pay the amount for which that undertaking

[7] In sections 33 to 42.

[8] Paragraphs 43 to 88.

[9] This Article 7 of Council Implementing Regulation (EU) 2015/81 of 19 December 2014, which specifies uniform conditions for the application of Regulation (EU) No 806/2014 – entitled *Execution of irrevocable payment commitments* – provides as follows: "*1. Recourse to irrevocable payment commitments, referred to in Article 70(3) of Regulation (EU) No 806/2014 shall in no manner affect the financial capacity and the liquidity of the Fund. 2. When a resolution action involves the Fund in accordance with Article 76 of Regulation (EU) No 806/2014, the Board shall call part or all of the irrevocable payment commitments, made in accordance with Regulation (EU) No 806/2014, in order to restore the share of irrevocable payment commitments in the available financial means of the Fund set by the Board within the maximum threshold set by Article 70(3) of Regulation (EU) No 806/2014. Once the Fund duly receives the contribution linked to the irrevocable payment commitments that have been called, collateral backing such commitments shall be returned. If the Fund does not duly receive the required amount of cash at first demand, the Board shall seize the collateral backing the irrevocable payment commitment in accordance with Article 70(3) of Regulation (EU) No 806/2014. 3. The irrevocable payment commitments of an institution that no longer falls within the scope of Regulation (EU) No 806/2014 are cancelled and collateral backing these commitments is returned*".

had been entered into.[10]

b) On equal treatment: According to the second part of the first ground of appeal, BNP argued that the General Court of the European Union (TGUE) had infringed Article 70(1) of Regulation No 806/2014 and Article 7(2) and (3) of Implementing Regulation 2015/81, and had breached the principle of equal treatment. In response, the CJEU notes that the purpose of Regulation No 806/2014 implies that, from the moment credit institutions fall outside its scope, those institutions and the credit institutions remaining within that scope are no longer in a comparable situation as regards the obligations incumbent upon them. Consequently, even if it were to transpire that the first credit institutions to have fallen outside the scope of Regulation No 806/2014 find themselves in 'a less favourable situation' compared to the second credit institutions that remain within that scope, such a situation would not constitute a breach of the principle of equal treatment.[11]

c) On the existence of a legal basis: In the third part of the first ground of appeal, BNP argued that the reasoning of the General Court, in so far as it relies on Articles 69(1) and 70(4) of Regulation No 806/2014 to justify its position that the credit institution has an unconditional obligation to 'pay' the amount of the irrevocable payment undertaking when it ceases to fall within the scope of that Regulation prior to the return of the collateral, lacks a legal basis. In response, the CJEU notes that there was an adequate and sufficient legal basis because the General Court of the European

[10] Specifically, paragraph 43 of the CJEU judgment states: "*(...) after citing the wording of Article 7 of that regulation, in paragraph 36 of the judgment under appeal the General Court noted that, according to its ordinary meaning, 'irrevocable' as found in that article refers to things which cannot be called into question, and that an irrevocable payment commitment therefore implies an obligation, which cannot be called into question, to pay the sum in respect of which that commitment is entered into*".

[11] In this regard, paragraph 64 states: "*In view of the objective of Regulation No 806/2014, the Court finds that, as from the time when credit institutions have exited from the scope of Regulation No 806/2014, those institutions and the credit institutions which have remained within its scope are no longer in a comparable situation as regards their obligations under Regulation No 806/2014. It follows that, even if it were to be found that the former are in 'a more unfavourable situation' in relation to the latter, that situation does not give rise to an infringement of the principle of equal treatment*".

Union relied on Article 69(1) of Regulation No 806/2014[12] to set out the main purpose pursued by the annual collection of 'ex ante' contributions, which is to ensure that, at the end of the initial period provided for in that provision, the financial resources available to the SRF reach the level set as a target therein.[13]

d) Regarding the absence of misinterpretation: In the fourth part of the first ground of appeal, BNP argued that the General Court of the European Union (CJEU) interpreted Article 7(1) of Implementing Regulation 2015/81 in such a way as to misinterpret Article 7(2) and (3) of that Implementing Regulation, whilst at the same time rendering Article 7(3) of that provision ineffective. In response, the CJEU notes that the General Court "stated that that provision expressly provides that the use of irrevocable payment commitments must in no way affect the financial capacity and liquidity of the SRF".[14] In relation to the above reasoning, it is worth recalling that Implementing Regulation (EU) 2015/81 states, in its recitals and with regard to 'ex ante' contributions to the SRF, that the use of irrevocable payment commitments shall not affect the financial capacity and liquidity of the SRF; so that such commitments will only be executed when the resolution measure concerns the SRF. Consequently, during the initial period and under normal circumstances, the SRB should distribute the use of irrevocable payment commitments evenly amongst the institutions requesting them.[15]

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[12] Article 69 of that Regulation, entitled "Target level", provides: "*By the end of an initial period of eight years from 1 January 2016 or, otherwise, from the date on which this paragraph is applicable by virtue of Article 99(6), the available financial means of the Fund shall reach at least 1 % of the amount of covered deposits of all credit institutions authorised in all of the participating Member States*".

[13] Specifically, paragraph 67 states that the General Court "*based itself on Article 69(1) of Regulation No 806/2014 in order to set out the principal objective pursued by the annual collection of ex ante contributions, consisting in ensuring that, at the end of the initial period provided for by that provision, the available financial means of the SRF reach the target level fixed therein*".

[14] See paragraph 76.

[15] Specifically, recital 16 of Commission Implementing Regulation (EU) 2015/81 states: "*Recourse to irrevocable payment commitments, referred to in Article 70(3) of Regulation (EU) No 806/2014 should in no manner affect the financial capacity and the liquidity of the Fund. Irrevocable payment*

e) On compliance with the principle of speciality and the hierarchy of norms: In the fifth part of the first ground of appeal, BNP argued, in the alternative, that the General Court of the European Union (GC) infringed the principle of speciality ('lex specialis generalibus derogat') by giving precedence to the general provisions set out in Article 70(4 of Regulation No 806/2014 and in Article 7(1) and (4) of Implementing Regulation 2015/81 over the specific provisions laid down in Article 7(2) and (3) of that Implementing Regulation.

In response to this, the CJEU puts forward two successive arguments: Firstly, the argument of speciality, noting, first of all, that Article 7(3) of Implementing Regulation 2015/81[16] cannot be regarded as a 'lex specialis' establishing an exception, in particular, to Article 70(4) of Regulation No 806/2014.[17] Secondly, the argument regarding the hierarchy of legislation because, in any event, given that Regulation No 806/2014, as the basic regulation, has a higher legal status than Implementing Regulation 2015/81, in the absence of an exception or an express provision to that effect, the provisions of Implementing Regulation 2015/81 cannot take precedence over the relevant provisions of Regulation No 806/2014.[18]

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commitments should be called for only in case of a resolution action involving the Fund. During the initial period, under normal circumstances, the Board should allocate the use of irrevocable payment commitments evenly among institutions requesting it. These payment commitments should be fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes of the use of the Fund".

[16] Which provides: "*3. The irrevocable payment commitments of an institution that no longer falls within the scope of Regulation (EU) No 806/2014 are cancelled and collateral backing these commitments is returned*".

[17] Which provides: "*4. The duly received contributions of each entity referred to in Article 2 shall not be reimbursed to those entities*". In this regard, paragraph 82 of the CJEU judgment states: "*(...) contrary to the appellant's submissions, Article 7(3) of Implementing Regulation 2015/81 cannot be regarded as a lex specialis derogating, in particular, from Article 70(4) of Regulation No 806/2014*".

[18] In this regard, paragraph 83 states: "*as observed by the Advocate General in point 87 of her Opinion, Regulation No 806/2014, as the basic regulation, ranks higher in the hierarchy of norms than Implementing Regulation 2015/81, such that, in the absence of a derogation or express stipulation, the provisions of Implementing Regulation 2015/81 cannot prevail over those of Regulation No 806/2014*".

8. As regards procedural aspects, the CJEU judgment under consideration maintains that the General Court did not fail to state reasons or provide contradictory reasoning in the judgment under appeal. Indeed, in its second ground of appeal, BNP alleged a lack of reasoning and contradictory reasoning in the contested judgment of the General Court because it "points to contradictions in paragraphs 30, 33, 36, 41 and 43 of that judgment, in which the General Court stated, in essence, as follows: first, that irrevocable payment commitments are contributions 'duly received' within the meaning of Article 70(4) of Regulation No 806/2014, even though they are not paid 'immediately'; secondly, that those commitments are 'irrevocable', while nevertheless going on to state that Article 7(3) of Implementing Regulation 2015/81 is intended to 'bring [them] to an end', 'so that they do not continue after the contributing [credit] institution has left the scope of Regulation No 806/2014'; thirdly, that, as has been stated, Article 7(3) of Implementing Regulation 2015/81 is intended to 'bring to an end' irrevocable payment commitments, whereas the General Court states that that provision is intended to 'ensure that the financial resources of the SRF will be available to the SRB as soon as possible in the event of resolution'; and, fourthly, that Article 7(3) of Implementing Regulation 2015/81 cannot be applied 'to the detriment of the SRF' and so as to affect its 'financial capacity [or] liquidity', in accordance with Article 69(1) of Regulation No 806/2014 and Article 7(1) of Implementing Regulation 2015/81, without demonstrating, in the appellant's view, how the application of that Article 7(3) can 'affect […] the financial capacity [or] the liquidity of the SRF', or the objective of attaining the target level laid down in Article 69(1)".

In response, the CJEU dismisses that ground by means of syllogistic reasoning whose:

In response, the CJEU dismisses the ground of appeal on the basis of a syllogistic line of reasoning, the:

a) The major premise is based on the case-law of the CJEU concerning the

obligation to state reasons for judgments. This premise is established by recalling that: on the one hand, and with regard to the very existence of reasoning, "according to settled case-law, the obligation to state reasons requires the General Court to clearly and unequivocally disclose the reasoning followed by it in such a way as to enable the persons concerned to ascertain the reasons for the decision taken and the Court of Justice to exercise its power of review (judgment of 20 April 2023, Council v El-Qaddafi, C-413/21 P, EU:C:2023:306, paragraph 41 and the case-law cited)".[19] Furthermore, with regard to any inconsistent or contradictory reasoning, "contradictory or unintelligible reasoning in a judgment of the General Court amounts to a failure to state reasons (judgment of 20 April 2023, Council v El-Qaddafi, C-413/21 P, EU:C:2023:306, paragraph 42 and the case-law cited)".[20]

b) In the minor premise, the CJEU applies the general case-law to the circumstances of the case and states: "In the present case, the Court notes, first of all, that, as observed by the Advocate General in point 95 et seq. of her Opinion, there is no contradiction in the observation made by the General Court, in paragraph 33 of the judgment under appeal, to the effect that irrevocable payment commitments are not contributions paid 'immediately', but contributions the payment of which is 'deferred', and the General Court's statement in paragraph 30 of the judgment under appeal, to the effect that an irrevocable payment commitment given by an institution constitutes a 'duly received' contribution".[21] The CJEU adds that "lastly, as is apparent from the response to the first ground of appeal, the General Court provided a proper statement of reasons for why the risk incurred by the SRF and the objective of achieving the target level precluded the ex ante contributions in the form of irrevocable payment commitments from disappearing due to the exit of a credit institution from the scope

[19] Paragraph 91.
[20] Paragraph 92.
[21] Paragraph 93.

of Regulation No 806/2014".[22]

c) The CJEU concludes its reasoning by dismissing the second ground of appeal, stating: "As none of the arguments put forward with a view to demonstrating that the judgment under appeal is vitiated by a failure to state reasons and by contradictory reasoning appears to be well founded, the second ground of appeal must be dismissed".[23]

9. We conclude this commentary by drawing the following conclusions:

a) The judgment of 13 November 2025 delivered by the CJEU in Case C-4/24 P falls within the regulatory framework of the Single Resolution Mechanism (SRM), managed by the Single Resolution Board (SRB) and financed by the Single Resolution Fund (SRF).

b) The objective of this SRM is to ensure that the cost of banking crises is managed using funds from the very institutions at risk of insolvency and that, in the event of failure, that cost is borne by their own shareholders or bondholders (bail-in) and not by taxpayers outside the banking sector via the levying of taxes that would have to cover the final losses of those banking crises (bail-out).

c) The FUR's preventive coverage is structured through 'ex ante' contributions and irrevocable payment commitments from credit institutions falling within the scope of Regulation 806/2014.

d) The judgment of the CJEU of 13 November 2025 dismisses BNP's appeal and upholds the judgment of the General Court of 25 October 2023 (EU:T:2023:675), by which that Court had dismissed BNP's action against the SRB's decision of 13 August 2022, which instructed BNP that it would return the collateral securing the irrevocable payment commitments to the SRF once BNP had paid in cash sums equal to the

[22] Paragraph 96.
[23] Paragraph 97.

amount of the various commitments in question.

(e) Given that, in order to rule on the appeal, it was necessary to interpret both legal provisions (primarily Regulation 806/2014) and contracts (primarily the contracts entered into by BNP with the JUR, the French Prudential Supervision and Resolution Authority and the French Deposit Guarantee and Resolution Fund to document its contributions to the FUR in the form of irrevocable payment commitments, known as CPI 2015 and CPI 2016–2021); the reasoning underpinning the judgment of the CJEU is based on applying the criteria for interpreting both the rules and the contracts common to civil law systems, namely the literal, systematic, intentional and teleological criteria.

f) On this basis, we can identify in the CJEU's reasoning two types of aspects which – for the sake of consistency – correspond to the two grounds of appeal raised by BNP: substantive aspects and procedural aspects.

g) On the substantive aspects, the CJEU dismisses BNP's appeal on the grounds that the General Court did not err in law when interpreting Regulation 806/2014 and Implementing Regulation 2015/81; dismissing, in particular, the alleged infringements committed by the General Court in the contested judgment regarding an error in interpreting the wording of the rules and contracts, regarding equal treatment between credit institutions included and excluded from the scope of Regulation 806/2014, regarding the existence of a sound legal basis in Regulation 806/2014 and in Implementing Regulation 2015/81, regarding the absence of misinterpretation of the provisions and regarding compliance with the principle of speciality and the hierarchy of norms.

h) On procedural matters, the CJEU dismisses BNP's appeal on the grounds that the General Court did not omit to state reasons or provide contradictory reasoning in the contested judgment, applying a syllogism in which the major premise was the CJEU's case-law on the obligation to state reasons in judgments, the minor premise

was constituted by the circumstances of the case, and the conclusion was the dismissal of the second ground of appeal.

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THE EU REGULATORY MODEL AND LIBERAL DEMOCRATIC DECLINE

Mads Andenæs[*] - Valerio Lemma[**]

ABSTRACT: *This article argues that the European Union regulatory model is under strong systemic stress. The model was designed to stabilise market integration under shared liberal-democratic values through rules and enforcement. The decline of liberal democracies, in some Member States and across key Western allies, should not be understood merely as a political pathology or a sociological trend. This decline is a legal-economic variable that could undermine the very conditions that make the Internal Market governable. Geopolitical tensions intensify, emergency-driven governance becomes routine, and economic power concentrates in strategic sectors (finance, energy, digital infrastructures). This makes ever more fragile the traditional assumption that public intervention can remain technically neutral and functionally oriented towards integration. The result is a dual crisis: a crisis of domestic politics – where representative accountability weakens and policy choices become more permeable to concentrated interests – and a crisis of the EU regulatory paradigm, which risks being captured by governance logics as economic security, resilience or strategic autonomy, at the expense of competition, equal conditions, and the rule of law.*

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[***] The work is the result of joint reflection and work by both authors under the guidance of Professor Francesco Capriglione over many years. The first paragraph is to be attributed to both authors. Paragraphs 8 to 10 are to be attributed exclusively to Mads Andenas, and paragraphs 2 to 7 exclusively to Valerio Lemma.

The article reframes "decline" as a category of economic law and reconstructs its implications for the EU founding assumptions: mutual trust, value homogeneity, and the capacity of national systems to sustain a stable space of freedoms and responsibilities. It then examines how contemporary geoeconomic dynamics and "weaponised interdependence" transform markets into arenas of power, exposing the EU's Internal Market to external coercion and internal fragmentation. The analysis highlights that the stability of European integration does not depend solely on the multiplication of sources such as legislative measures, but on systemic coherence and credible enforcement. General principles of EU law emerge as key instruments of convergence, mediating between international obligations and the autonomy of EU law, and of imposing substantive limits on both public and private power.

The article's central normative claim is that the EU must rethink the conditions and modalities of European public intervention in the Internal Market so that Member State political crises – EU external coercive measures or the strategic realignment of an ally – cannot jeopardise the pursuit of Treaty objectives of peace, prosperity, social welfare and an open market economy with free competition. This requires a qualitative recalibration of regulatory techniques: strengthening accountability, remedies and transparency, resisting regulatory capture, and re-anchoring market governance to general principles and fundamental values as structural criteria of legitimacy and coherence in a period of democratic and geopolitical instability.

1. The 2025 Nobel Prize in Economics[1] went to Joel Mokyr, Philippe Aghion and Peter Howitt for explaining the central role of innovation in economic growth.[2] Joel Mokyr identified the prerequisites for stable economic growth through technological progress. Philippe Aghion and Peter Howitt developed their theory of 'creative destruction' as a tool for economic growth. Economic growth is central, and - not surprisingly - also at the heart of the objectives underlying European integration. The full agreement is economic and institutional, but undermined in different ways, The *decline in liberal democracies* affects the possibility of peaceful sustainable development. The decline increases the difficulties of the legal order has to meet the current military, demographic and economic dynamics that are challenging the global balance.[3]

Economic growth and democratic decline are central elements that – judging by the criticisms raised by certain academics[4] – create social challenges in the

[1] The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel.

[2] https://www.nobelprize.org/prizes/economic-sciences/2025/press-release/.

[3] At the time of the crisis at the beginning of the millennium, Francesco Capriglione had already noted – based on a comparison with the experience of the 1930s – the inability of public intervention to address macroeconomic imbalances; see CAPRIGLIONE, *Crisi a confronto*, Rome, 2009; ID., *Crisi finanziaria e dei debiti sovrani*, Turin, 2012; while Guido Rossi anchored his criticism of capitalism to the 'identical structure of its main instrument, which are the large corporations'; See ROSSI, *Capitalismi*, Milan, 2012, p. 19. Today, these and other cries of alarm are being brought together,[3] hypothesising a 'likely loss of the political and economic freedoms that have characterised European countries until now, should they become subordinate to the financial and technological corporations that currently hold power in the US'; cf. CAPRIGLIONE, *Il declino delle democrazie liberali*, Milan, 2025, p. 72, where one immediately grasps the importance of an interpretation that addresses contemporary issues from a perspective that sees governments constrained by globalisation, as if the latter were a tightly woven network linking the US, European countries, Russia, China, India and all other states that may be involved in the affairs of a powerful few. See also the wider perspective in CAPRIGLIONE, ANDENAS and LEMMA, *Demographic dynamics and economic law in the light of recent geopolitical trends*, volume 14 (2025), *Law and Economics Yearly Review*, pp. 1-68.

[4] In Sergio Fabbrini's view, Francesco Capriglione's book is an attempt to bring order to the disorder created by recent disturbances. Investigating an ongoing process, it must move across overlapping fields of analysis, such as law, economics and geopolitics. It is a significant contribution to understanding the reasons that are leading to the decline of liberal democracies; see FABBRINI, *Un commento al volume*

democracies, that require a legal analysis of the market and the way in which it functions. The public market controls are increasingly subject to the vagaries of certain governments. This article addresses the legal and economic implications of these vagaries on European integration.[5]

This article contributes to the analysis of these question in the context of the contingent issue in the European Union. The EU has not assumed all the powers of a state, but is called upon to guarantee a fair balance in the market that requires a significant capacity for intervention in the market and the wider society. This is consistent with the assumptions underlying European integration since the inception of the first European Communities (ECSC, EEC and Euratom). It is necessary to understand whether the current configuration of the EU is adequate to protect the Internal Market from geopolitical tensions, it is necessary to address - at the legal level - problems of a systemic nature and global dimension.

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di Francesco Capriglione, Il declino delle democrazie liberali. Diritto, Economia, Geopolitica, Utet, 2025, in *Apertacontrada*, 22 December 2025. For Giancarlo Montedoro, it is a book animated by strong commitment and civic passion, by tireless love – so intense as to risk appearing naive (because love for values always appears naive to cynics) but always genuine – for freedom and justice. It is a scientific book that tackles a politically hot topic, or a political book that does not deviate from the use of scientific method. It is a book that moves between political, economic and legal analysis; cf. MONTEDORO, *The crisis of liberal democracies: based on a book by Francesco Capriglione*, in *Apertacontrada*, 22 December 2025. According to Pierluigi Ciocca, this fine book confirms that American jurists have denounced the risk of democracy being reduced to unlimited power. Schumpeter anticipated this: power ceded to those who are indicated by a majority of an increasingly less individually oriented minority of voters, even if ideologically motivated; see CIOCCA, *Commento a F. Capriglione, Il declino delle democrazie liberali. Diritto-Economia-Geopolitica*, Turin, 2025, in *Apertacontrada*, 22 December 2025.

[5] Ultimately, at first glance, approaching the arguments of the debate on the decline of liberal democracies leads us to question the future of the market as a legal institution and the very possibility of democratic governance of the economy in an era of global interdependencies and particularly powerful actors. It is with this awareness in mind that it becomes possible to address, in the following paragraphs, geopolitical phenomena and their impact on the structure of the market and European integration; see Lemma, On the decline of liberal democracies and public intervention in the economy, currently being printed in a supplement to the *Rivista Trimestrale di Diritto dell'Economia*.

2. A legal-economic assessment of the European Union's ability to pursue peace, prosperity and economic growth must account for the democratic decline of certain Member States and allies. The assessment could begin by considering the legal meaning to be attributed to 'decline', removing it from purely descriptive readings and more apocalyptic interpretations. This emerges with particular specificity from the political and sociological debate.[6] The decline does not coincide with the formal dissolution of democratic structures, nor with their immediate replacement by openly authoritarian forms. Rather, it manifests itself as a progressive loss of the constituent characteristics of democratic institutions (from *the rule of law* to the balance of powers[7]), rendering them inadequate to govern the economic, social and geopolitical transformations of the present in a coherent and appropriate manner.[8]

In this sense, the decline takes on an clearly legal-economic character. It concerns not only the functioning of representative mechanisms or the maintenance of constitutional guarantees, but also directly affects the structural relationship between sovereignty, democracy and the market. This relationship has been a pillars of the Western economic order since the Second World War. The model of liberal democracy, in its historical form, has served as the 'institutional framework' for the most advanced market (in terms of progress and wealth redistribution). The model has also ensuried the freedom of economic initiatives and their compatibility with objectives of social utility. This provides initial support for the hypothesis that

[6] Cf. KECK, THOMAS, *Erosion, Backsliding, or Abuse: Three Metaphors for Democratic Decline*, in *Law & Social Inquiry*, 48, 1, 2023, pp. 314-339.

[7] The classic works are those of KELSEN, *La dottrina pura del diritto*, Turin, 1961; BOBBIO, *Il futuro della democrazia,* Turin, 1960; and, more recently, DWORKIN, *Law's empire*, Hart Pub Ltd, 1998. More recent work by various authors include *The Rule of Law under Pressure. A Transnational Challenge*, edited by G. Shaffer and W. Sandholtz, Cambridge University Press, Cambridge, 2025, in which the authors note the erosion of *the rule of law* in a growing number of countries and in international relations. This leads to the hypothesis that, on the one hand, citizens are exposed to increasingly authoritarian governments responsible for violations of fundamental rights and, on the other, peaceful relations between states are destabilised.

[8] See CAPRIGLIONE, *Il declino delle democrazie liberali*, cit., esp. p. 201.

European integration took for granted that the process of integration would take place among democracies capable of putting nationalism aside in favour of the desire for peace and growth. This hypothesis assums that internal systems would always tend towards configurations that had a positive impact on the stability of the Internal Market and the well-being of citizens. On closer inspection, this assumption also seems to have applied to the legal systems of militarily allied countries, which one reason the European Union has not built its own common and autonomous defence system.

The contemporary world is fuelling fears that there will be a gradual shift in policy towards subservience to certain very specific interests (political or economic). This is the first sign of a decline that interacts with economic law models and instruments. On one level this decline is the result of an unresolved tension between the growing global interdependence of markets on the one hand, and the declining effectiveness of the powers that sovereign states can exercise over transnational economic processes on the other.[9]

From this perspective, the category of decline can be understood as a useful interpretative key to understanding the crisis affecting the European Union's ability to exercise autonomous public intervention in the economy. A reality is emerging in which Member States and their allies may favour economic policies that are not geared towards the pursuit of general welfare (as has historically been the case in liberal democracies).[10] Instead they are geared towards that of certain specific categories of stakeholders (whether electoral or economic groups). At present we are seeing a situation in which the decisions of Western governments appear to be increasingly

[9] In other words, the specificity of the proposed approach is welcomed, however, in that it has brought these phenomena back to a unified reflection on the relationship between law and economics in a profoundly changed geopolitical context. In the book, globalisation – far from being a simple expansion of market spaces – is presented as a tightly knit network connecting legal systems, economies and societies, reducing the margins of decision-making autonomy of states and, with them, the ability of democracies to represent themselves as effective places of collective self-determination. See CAPRIGLIONE, *Il declino delle democrazie liberali*, cit., p. 34 ff.

[10] See ESPING-ANDERSEN, *The Three Worlds of Welfare Capitalism*, Princeton, 1990, p. 140 ff.

influenced by external factors such as geopolitical dynamics, global market pressures and the strategies of large financial and technological corporations. From this perspective, the decline reflects of a growing divide in political decision-making between common values (which should guide government action) and the practical administration of the economy (which is carried out through the actions of the executive). This gives rise to concern about the mechanisms adopted to ensure peace among European peoples (from the Internal Market to the Single Currency). Ultimately the concern is about the stability of the EU (at least in terms of political and strategic planning).

Under this interpretation, the decline can also be understood as the crisis of a model of sovereignty that provides for market regulation by a public decision-maker. In the 20th century, democracy was not limited to the ability to produce rules through representative bodies, but also manifested itself in the possibility of directing economic processes towards socially useful ends.[11] Where this capacity is lost — because decision-making power becomes subordinate to the wishes of a powerful few — democracy gradually loses its economic and institutional function.[12] It is no coincidence that the contemporary debate on the decline of liberal democracies is paying increasing attention to phenomena such as 'corporate power', the financialisation of the economy and the privatisation of traditionally public functions, already highlighted in another critical period by a significant part of legal and economic

[11] The classic work by POLANYI, *The Great Transformation*, New York, 1944 argues that political freedom is not limited to representation, but implies the ability of the community to remove the economy from the sole logic of profit, orienting it towards social ends through public intervention.

[12] It seems necessary to make another consideration, linked to the effects of political action that is reduced to emergency management of external constraints. This is a condition that has been evident for some time within the European Union, where public debate has supplanted the pursuit of progress and well-being in order to counteract the emergencies of the moment. Significant in this regard the attention devoted to migration flows, which are still managed according to emergency logic, without politics having brought back to structural unity the demographic variables linked to ageing, (de)natality and the resulting migrations, which should be followed by the enrichment of the form of government with the skills (and capacities) necessary for the formulation of the relevant public policies.

doctrine.[13]

From this perspective, the decline is not only the result of contingent political choices, but the outcome of a structural transformation of the conditions under which sovereignty is exercised.

All the above allows us to avoid recurring misunderstandings in public debate about the idea of the decline of liberal democracies. This is that the decline coincides with a simple regression in values due to the prevalence of instrumental logic over the defence of constitutional principles, such as phenomena of *democratic* backsliding[14] with an altertive coincidence is with a crisis of participation of citizens in political life and elections. Instead it should be understood as an internal tension within the very model of liberal democracy and regulated markets. This tension arises when traditional legal categories — economic freedom, formal equality, competition[15] — are no longer able to perform an ordering function in a context characterised by increasingly marked power asymmetries. This appears particularly relevant at a time when there is a lack of public intervention that could perhaps have countered the processes of power concentration, as was the case with the antitrust experiences of the 20th century.[16]

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[13] Reference is made, in particular, to CIOCCA, *Commento a F. Capriglione, Il declino delle democrazie liberali. Diritto-Economia-Geopolitica*, UTET, Turin, 2025, cit. and MONTEDORO, *La crisi delle democrazie liberali: a partire da un libro di Francesco Capriglione*, cit.

[14] See AA.VV., *The rule of law crisis and democratic backsliding in the EU. Open questions and outstanding challenges*, 2025, *passim* and spec. SIDDI - GAVEDA, *Democratic backsliding in the European Union*, *ibidem*, p. 63 ff.

[15] A question arises that seems to open the way to many research hypotheses: to what extent does the decline of liberal democracy affect the legal stability of the internal market and the European Union's ability to ensure effectively equal conditions of competition between Member States?

[16] In the 20th century, US antitrust enforcement resorted on several occasions to structural remedies of exceptional intensity, conceived not as mere sanctions but as ordinary means of rebalancing the economic order. This perspective is exemplified, first and foremost, by the break-up of Standard Oil ordered by the Supreme Court in *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911), which required the oil trust to be split into numerous independent companies, inaugurating the idea of

The decline[17] takes on a legal-economic dimension affecting the ability of the law to act as an instrument of mediation between conflicting interests and to orient economic processes towards the maximisation of social welfare (through the correction of market failures).[18]

The decline of liberal democracies is at the root of difficulties that the European

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break-up as a remedy consistent with the aims of the Sherman Act. see BRINGHURST, *Antitrust and the Oil Monopoly: The Standard Oil Cases, 1890–1911*, Greenwood Press, 1979.
This precedent was followed, in a different context but with a similar structural logic, by the vertical separation of film studios ordered in *United States v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948), where the Supreme Court ordered the *divestiture* of cinema chains, considering the integration of production, distribution and exhibition to be incompatible with competition; see SKEEL, 'The Paramount Case and the Future of Antitrust', in *Supreme Court Review*, 1948.
Finally, in the second half of the twentieth century, the break-up of the Bell system was the most advanced example of structural remedy in a strategic infrastructure sector: the *Modified Final Judgment* in *United States v. AT&T* (1982) led to the separation of AT&T and the *Baby Bells*, marking a crucial step in the history of modern antitrust and network regulation; see TEMIN – GALAMBOS, *The Fall of the Bell System: A Study in Prices and Politics*, Cambridge University Press, 1987; WALLER, *United States Antitrust Law and Economics*, 2008, 31, World Competition, Issue 4, pp. 631-632.

[17] The decline in anti-trust enforcement in the US since the 1970s had many reasons, and one consequence was the departure from long-established antitrust rules. The departure from bright-line rules toward a direct test of whether the agreement served consumer welfare, including a 'rule of reason', had costs. The deregulation did not promote consumer welfare. Justice Stephen Breyer has explained how the resulting legal confusion generated costs and makes enforcement impractical. See BREYER, *Economic Reasoning and Judicial Review*, in ANDENAS and FAIRGRIEVE (eds), *Tom Bingham and the Transformation of the Law: A Liber Amicorum* (Oxford, 2009). The deregulation and scaling back of enforcement has disabled any effective regulation of new models of retail, as with Amazon, or with new platforms such as Google and Facebook. Lina Kahn has argued for alternative frameworks for antitrust policy restoring traditional antitrust and competition policy principles or applying common carrier obligations and duties to meet the current market failures, see KHAN, "Amazon's Antitrust Paradox. Yale Law Journal. 2017 126 (3): 710–805", "The New Brandeis Movement: America's Antimonopoly Debate". Journal of European Competition Law & Practice. 2017 9 (3): 131–132. doi:10.1093/jeclap/lpy020, "The Ideological Roots of America's Market Power Problem". The Yale Law Journal Forum. 127 2018, "The Separation of Platforms and Commerce" Columbia Law Review. 2019 119 (4): 973–1098. As an extension of his work on inequality, Thomas Piketty has in his writing explored parallel and such wider structural reforms of the ways in which the market is regulated, see e.g. PIKETTY, *Equality Is a Struggle. Bulletins from the Front Line, 2021-2025.* Yale University Press, 2025.

[18] Ultimately, following this approach, it seems possible to hypothesise that the decline should be viewed as an internal variable within economic law, which affects the European legal system's ability to pursue its founding objectives.

Union is encountering. European integration was based on a model of integration that presupposed convergence between democracy, market economy and peaceful cooperation between Member States, and the loss of one of these elements will affect the overall stability of the Union's legal and economic architecture.[19]

3. The decline of liberal democracies represents a change that directly affects the configuration of markets, the allocation of economic power and the ability of legal systems to regulate trade through regulatory policies of public intervention in the

[19] The conceptual relevance of the criticisms raised in the volume becomes clear when the author addresses issues that, in our opinion, relate to the foundations of European integration, now undermined by certain governmental policies which, instead of pursuing peace between peoples, favour the interests of their own political communities, following a *different* moral code from that advocated in the Ventotene Manifesto or the Schuman Declaration.
In truth, the issue lends itself to broader interpretations, given that the Communities arose after the founding countries had historically joined a *military pact* that served as an instrument of collective defence and military cooperation between them and with the United States; see LUNDESTAD, The United States and Western Europe since 1945: From 'Empire' by Invitation to Transatlantic Drift, Oxford, 2003, GILBERT, *European Integration: A Political History*, Oxford, 2012; DINAN, *Europe Recast: A History of European Union*, Basingstoke, 2014, esp. chaps. 1–2; as well as MILWARD, *The European Rescue of the Nation-State*, London, 1992, where the author highlights how European integration is not an alternative to, but complementary to, the construction of the post-war Western order, in which NATO guarantees security, stability and cooperation between the states of Western Europe and the United States.
The role played by NATO (see SPERLING - WEBBER (eds), *The Oxford Handbook of NATO*, Oxford, 2025), has been crucial for political and strategic dialogue between the two sides of the Atlantic (to which the Member States that founded the original European communities already belonged); see volume 4 of the 1999 edition of the Limes magazine, entitled 'A che ci serve la NATO' (What is NATO for?) and, in particular, the contribution by PASSY and IVANOV, *'La NATO al posto dell'ONU*' (NATO instead of *the UN*), as well as KRISHNAN, *'NATO's Relevance in The New Security Environment*', in *International Journal of Military History* (IJMH), vol. 3, 2019; KIRGIS Jr., 'NATO Consultations as a Component of National Decision-making', *American Journal of International Law* 73(3) (1979), 372–406; ABDELAL – JOHNSTON, *What Is Wrong with NATO and How to Fix It*, in International Relations, SAGE Publications, vol. 23, no. 4, 2009, pp. 529–547.
Morality, government and international relations are, in fact, elements that have perhaps been taken for granted for too long in the legal analysis of the EU internal market. This approach is justified by the fact that, since the days of the Chicago School, the interdisciplinary method has been applied by scholars who professed unshakeable confidence in the future, as globalisation and the thaw (between the United States and the Soviet Union) began to take hold; see POSNER, *A Theory of the Laws of War*, 2002.

economy.[20] It is precisely these reasons that - prompting a continuation of the investigation from geopolitics to the ordering factors of the financial market - allow us to grasp the systemic scope of the transformations taking place.[21]

The most recent international doctrine has hypothesised that the transformation of the global economy is taking place in a field of political competition: interdependence no longer operates as a mutual constraint between states seeking peace Instead it is an architecture of power, insofar as control of global economic networks allows the powerful to convert market integration into instruments of geopolitical coercion.[22] From this perspective, geoeconomics and geofinance describe

[20] See WEILER, *The Constitution of Europe. 'Do the New Clothes Have an Emperor?" and Other Essays on European Integration*, Cambridge University Press, Cambridge, 1999, esp. pp. 19 ff., where the author reconstructs European integration as a project based on a presumption of homogeneity in values and democracy among Member States, highlighting how this assumption is an implicit condition for the functioning of coordination and mutual trust mechanisms. For a critical view of the political sustainability of this model, see OFFE, Europe Entrapped, Polity Press, Cambridge, 2015, esp. pp. 59 ff., which highlights the structural tension between economic integration and national democratic pluralism, emphasising the limitations of a Union based on market policies in the absence of a sufficiently homogeneous political and democratic basis. On the issue of legitimacy, see SCHARPF, *Governing in Europe: Effective and Democratic?*, Oxford University Press, Oxford, 1999, esp. pp. 6 ff. and 28 ff., where the author distinguishes between input legitimacy and output legitimacy, observing how the European Union has historically prioritised the effectiveness of economic integration, assuming the democratic nature of national systems, with a consequent crisis of sustainability of the model when this assumption fails. On both legitimacy and sustainability see GRIMM, 'The Democratic Costs of Constitutionalisation: The European Case' 21 (2015) European Law Journal 460 which comes from a domestic constitutional perspective, resplendent with extensive discussion of (and concomitant distancing from) Carl Schmitt on whose contemporary role see ANDENAS and BJORGE, "Carl Schmitt, International Law, and Constitutional Tradition in the United Kingdom", *Völkerrechtsblog,* 2025, doi: 10.17176/20250806-122335-0. - Finally, see also the analysis by SCHÜTZE in his important article "'Integration-through-Law': grand theory, revisionist History", European Law Open (2025), 1, doi:10.1017/elo.2025.15.

[21] There is a clear need to consciously engage with this horizon, highlighting how the power dynamics between states, regional blocs and transnational actors have gradually taken on decisive importance in the definition of economic rules. Far from moving towards progressive political neutralisation, the global market today appears to be riven by tensions that reflect strategies of domination, technological competition, control of resources and management of economic dependencies; see CAPRIGLIONE, *Il declino delle democrazie liberali*, cit., p. 109.

[22] See FARRELL - NEWMAN, *Weaponised Interdependence*, in International Security, 2019, pp. 44–55.

the systematic use of capital - in trade, investment, research and development - to pursue strategic and security objectives, marking the end of the representation of the market as an autonomous order that tends to be neutral with respect to political power.[23] It is therefore not surprising that a significant part of the doctrine takes as paradigmatic cases the competition between the United States and China, the consequent restructuring of global value chains and the use of economic sanctions and customs duties, seen as ordinary instruments of *economic statecraft*.[24] In fact, a global context is emerging that is considerably more complex and entropic than in the past, deeply characterised both by interrelationships between different poles of attraction and by socio-economic aspects so disruptive that they trigger dynamics that affect the global order in variable ways.[25]

The very notion of the state is undergoing a significant shift. In the liberal tradition public intervention was called upon to ensure the proper functioning of the market through general and abstract rules. Today it is increasingly involved in the selective management of economic dynamics, guided by objectives related to national security, strategic autonomy or the protection of sectors or operators considered essential.[26]

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[23] See BLACKWILL - HARRIS, *War by Other Means*, Cambridge - London, 2016, pp. 20–39.

[24] See BALDWIN, *Economic Statecraft. New edition*, Princeton, 2020, pp. 1–24; HWANG, *The US–China Competition*, Cambridge, 2024, pp. 3–10.

[25] See MINENNA, *G20. Le politiche economiche*, Turin, 2024, p. 59 ff.

[26] See the anthology edited by SAVONA and MASERA*, Monetary Policy Normalization: One Hundred Years After Keynes' Tract on Monetary Reform*, Springer, Cham, 2023, esp. Introduction and chapters 1–3, where the 'normalisation' of monetary and economic policy is analysed as an institutional and political problem, highlighting how the continuation of extraordinary and selective public intervention measures - justified in emergency situations - ultimately alters the traditional role of the state as guarantor of a market order based on general and abstract rules. The authors emphasise how, in the contemporary context, public action increasingly tends to focus on specific objectives of stability, security and protection of strategic sectors, with a consequent functional shift of the state from general regulator to selective manager of economic dynamics, raising important questions about the institutional sustainability and democratic legitimacy of such choices.

This evolution is understandable in light of new vulnerabilities,[27] but raises important questions about international cooperation (or rather, the consistency of public action with the principles of the rule of law that prefigure peace among peoples).[28]

Within the context of these transformations, the decline of democracy not only affects *policy* choices, but also tends to redefine the set of fundamental legal categories taken into consideration when regulating the market. Consider, for example, the growing centrality of concepts such as 'economic security', 'food sovereignty', 'supply chain resilience' and 'strategic autonomy'; concepts that introduce evaluation criteria that are foreign to the traditional logic of allocative efficiency and competition. In this way, market regulation is gradually being brought back into a political sphere that alters the technical neutrality originally assumed by economic logic.[29]

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[27] The emergence of new vulnerabilities and unprecedented protection needs does not represent a mere extension of traditional categories of public intervention in the market, but rather reflects a structural transformation of economic relations, in which growing technological, informational and organisational complexity alters the asymmetries between the recipients of the rules. This necessitates a functional rethinking of protection instruments, aimed not only at safeguarding weak positions in the classical sense, but also at preserving the conditions of trust, inclusion and sustainability that are the very prerequisite for the proper functioning of the market.

[28] The shift in the function of the state referred to in the text refers, first and foremost, to the transformation of the state from a general market regulator, operating through abstract and impersonal rules, to an entity called upon to intervene selectively and discretionally in specific economic dynamics, with obvious implications in terms of the principles of legality, equality and legal certainty. Secondly, this evolution raises questions about the stability of the economic rule of law, insofar as extra-economic objectives – such as national security or strategic autonomy – risk legitimising structural and not merely exceptional derogations from the ordinary functioning of the market. Finally, the progressive politicisation of public intervention affects the coherence of state action in a context of international economic cooperation, calling into question the legal assumptions of multilateralism and the idea, typical of the liberal tradition, that a regulated economic order is a factor of stabilisation and peace among peoples. Hence the reference to the considerations of SCHARPF, *Governing in Europe: Effective and Democratic?*, Oxford, 1999.

[29] The classic approach of SMITH, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 1776, esp. lib. IV, conceived the market as a spontaneous order capable of coordinating individual

Legal doctrine has begun to question these dynamics, highlighting how the return of war – or, at least, overt geopolitical tensions with regard to armed conflicts or special operations[30] – may be a relevant factor for legal analysis, as it marks a break with the premises on which the post-World War II international economic order was founded.[31] Conversely, in the presence of tensions, the market, far from being a neutral space for interaction, becomes itself a battleground, where rules are bent to the purposes of power.[32] We are therefore faced with studies that reflect on the relationship between law and war, between forces and norms, between realpolitik and constitutional values; hence the observation that the hope for a peaceful globalised

interests through impersonal mechanisms, requiring the state to play a predominantly framework role; as well as that of WALRAS, *Éléments d'économie politique pure*, 1874, which, in the neoclassical formalisation of general equilibrium, presupposes a self-regulating economic system in which public intervention is justified only in the presence of market failures; to which we can add the insights from KEYNES, *The General Theory of Employment, Interest and Money*, 1936, which goes beyond the idea of market neutrality, attributing to public action a constitutive role in orienting economic processes towards objectives of stability and social welfare, albeit within general macroeconomic logic. It goes without saying that, considering also an ordoliberal approach, we can refer to EUCKEN's thesis, *Grundsätze der Wirtschaftspolitik*, 1952, which clearly distinguishes between legal regulation of competition, based on abstract and impersonal rules, and selective political management of the economic process, considered incompatible with the rule of law; reference can then be made to SCHARPF, *Governing in Europe: Effective and Democratic?*, cit., which analyses how the gradual shift of public intervention from a general regulatory function to a selective and strategic instrument - justified by security, stability or autonomy requirements - alters the physiognomy of the market and raises crucial questions about the democratic legitimacy of public action and the coherence of the international economic order.

[30] These are influences which, rather than distancing hostile parties in the world, fuel the triggers of potential geopolitical crises, interacting with an economic and legal reality that underlies the varied models of conjunction that unite forms of capitalism and politics.

[31] See FEDERICI, *Guerra o diritto? Il diritto umanitario e i conflitti armati tra ordinamenti giuridici*, Naples, 2009, p. 200.

[32] See SALMONI, *Guerra o pace. Stati Uniti, Cina e l'Europa che non c'è,* Rome, 2023, esp. chaps. 1 and 3, where the author analyses the gradual overcoming of the idea of economically peaceful globalisation, highlighting how strategic competition between the United States and China has transformed economic interdependence into a factor of conflict and geopolitical pressure. From this perspective, the market no longer appears as a neutral space governed by purely economic logic, but rather as an arena traversed by power relations, in which legal instruments, trade rules, industrial policies and trade restrictions are bent to the purposes of power, security and strategic positioning, with significant implications for the relationship between law, economics and international peace.

economy is now proving to be an oversimplification.

From this perspective, the crisis of classic dichotomies – peace/war, economy/politics, public/private – takes on particular significance for economic law.[33] It is not a question of verifying that war is no longer confined to the use of armed force (as was the case during the 20th century), but of observing how it also manifests itself through public intervention in the markets (from customs duties to gold plating[34]), as the state does not limit itself to setting regulatory frameworks, but intervenes directly in the selection of the winners and losers in the market; Finally, the private sector no longer appears as a recipient of public power, but as an actor that invests resources and develops the capacity to influence collective choices.[35]

[33] At this point in the investigation, it seems useful to anchor our reflection to the great dichotomies that studies – in this case not only legal, but also social, political, demographic and economic – use to delimit, represent and order reflections in the fields of investigation concerning civil society and its business relations. Peace and war, democracy and autocracy, society and community, natural order and civil status, public and private should demonstrate the otherness of the two terms and, therefore, the suitability of the dichotomies in question to delimit two spheres, jointly exhaustive, as a result of a division that is both total and principal. All this, considering that the legal system must address in innovative terms the double public-private dichotomy which, through reference to two passages from the Corpus iuris, Norberto Bobbio considers as 'quod ad statum rei romanae spectat' and 'quod ad singolorum utilitatem' (Institutiones, I, i, 4; Digesto, I, I, i, 2); cf. BOBBIO, *Stato governo società*, Turin, 1985, p. 10 ff.
However, this is not the case today; in fact, there is a fluidity that undermines the exclusive force of the two terms that the dichotomy - as such - should oppose; cf. in a critical sense with respect to the traditional ordering function of legal dichotomies, cf. AGAMBEN, *Stato di eccezione*, Turin, 2003, esp. p. 31 ff., where the author shows how, in contemporary times, the progressive normalisation of the emergency produces a zone of indistinctness between classic categories of legal thought – public and private, peace and war, law and force – emptying them of their ability to delimit distinct spheres and transforming them into flexible instruments of government.

[34] See SEGNANA, *La "guerra dei dazi": chi vince e chi perde*, *in LAB Politiche e culture*, 14 October 2025, according to which the boundary between security and protection is often subtle and politicised, therefore - the author concludes - the use of national security as a reason for tariffs represents a considerable challenge even for the WTO.

[35] The volume describes this convergence, highlighting how large financial and technological corporations have taken on a role that transcends that of mere economic operators. They are increasingly becoming geopolitical actors, capable of influencing the balance between states and directing public policies according to profit-driven logic that does not necessarily coincide with collective well-being.

Contemporary transformations have a dual effect on the market. On the one hand, they accentuate its fragmentation through the creation of economic blocs, differentiated trading regimes and protectionist policies; on the other, they reinforce its global interdependence, as decisions taken by a few dominant actors can have immediate effects on a global scale. This apparent contradiction between fragmentation and interdependence is one of the distinctive features of the current phase of globalisation and helps to explain the difficulty democratic institutions encounter in exercising effective control over economic processes. It is therefore clear that the traditional categories of economic law - forged in a context of relative international stability and confidence in progress - now appear inadequate to protect fundamental rights from military conflicts, geopolitical tensions and profound power asymmetries.[36]

4. The founding assumptions of the European Union and their current limitations.

The above considerations lead us to reflect, with greater critical awareness of the legal effects of decline, about the assumptions that underpinned the construction of the European Union, as there is a political variable (namely the trend towards autocracy) that undermines the most fundamental legal assumptions of a pact that implicitly promised to put national interests aside in favour of peace between peoples

See CAPRIGLIONE, *Il declino delle democrazie liberali*, cit., p. 190 ff., where the author poses a disarming question: *What will become of Europe*?

[36] In light of these considerations, analysing the decline of liberal democracies is a necessary prerequisite for understanding market transformations and questioning the stability of democratic governance. Following the above approach, geopolitics is essential not only for understanding the tensions between politics and territory, but also for assessing the prospects of European economic and legal structures. In this regard, see KISSINGER, *World Order*, New York, 2014, esp. chaps. 1, 7 and 9, which shows how changes in political, territorial and institutional balances directly affect the configuration of the global economic and legal order. The decline of the liberal order does not appear to be a purely political phenomenon, but rather a crisis affecting the overall sustainability of the economic and regulatory structures on which it has historically been based.

and general well-being. Today, therefore, the Union appears to be exposed to a crisis that concerns not only the policies or values declared in the Treaties, but also the conceptual framework of the foundations on which its legal and economic architecture has been built since the inception of the first Communities.

Among the points of greatest weakness, a central element is the link between freedom and equality within Member States; these are categories that are mutually reinforcing in modern political thought and which have found specific expression in European integration law. Indeed, when addressing the relationship between politics and law in the Internal Market, freedom, understood as a condition of the sovereign state, and equality, understood as the relationship between states (within and outside the European Union), constitute the foundation on which the idea of a market based on common rules and fair competition has been built (regardless of the nationality of the economic operators involved in trade).[37]

Indeed, geopolitical tensions and growing economic asymmetries call into question the effectiveness of the freedom/equality combination, revealing its somewhat presumptive nature. While it is true that, in a globalised world, states continue to be formally sovereign and equal, it is equally clear that they are in profoundly different positions in terms of economic capacity, demographic weight, strategic importance, military strength and independence from external factors.[38] Among these, the Atlantic alliance plays a decisive role.[39] It is no coincidence that the

[37] From this perspective, each Member State is both free as a sovereign entity and equal to the others as part of a system that presupposes equal legal status among its participants.

[38] In this context, legal equality risks being reduced to a fiction that struggles to hold up in the face of the real dynamics of power.

[39] Let us recall the hypothesis formulated above, according to which the Atlantic alliance is a fact that, historically speaking, predates the construction of the European Communities. Hence, the further hypothesis that this alliance also constitutes a logical-institutional prerequisite, whereby the loss of one of its components – i.e. the friendship of the Member States with the United States – raises the need to reconsider the advisability of a European military alliance and, therefore, to calibrate strategies and investments according to a model that does not take into account the resources made available by the

birth of the European Communities followed a military pact that guaranteed not only collective defence,[40] but also a framework of geopolitical stability within which the economic integration project was able to develop without directly confronting the military aspects of external security and armed conflict.[41] Moreover, from the outset,

US; see VINCZE, *The EU-NATO Syndrome: Spotlight on Transatlantic Realities*, in *Journal of Contemporary European Research*, 2007, p. 99 ff.

The conceptual relevance of the criticisms raised in the volume becomes apparent when the author addresses issues that, in our view, relate to the foundations of European integration, which was achieved following a *military pact* that served as an instrument of collective defence and military cooperation between countries, as well as a crucial forum for political and strategic dialogue between the two sides of the Atlantic (to which the Member States that founded the original European communities had already acceded). In other words, the doubts raised about the stability of NATO and the EU in the face of new government policies which, instead of pursuing peace between peoples, favour the interests of their own political communities, following a *different* moral code from that advocated in the Ventotene Manifesto or the Schuman Declaration, are taken into consideration.

Morality, government and international relations are, in fact, elements that have perhaps been taken for granted for too long in the legal analysis of the EU internal market. This approach is justified by the fact that, since the time of the Chicago School, the interdisciplinary method has been applied by scholars who professed unshakeable confidence in the future, as globalisation and the thaw (between the United States and the Soviet Union) began to take hold.

[40] This assumption has significant legal consequences, as Europe is built as a system oriented towards peace and cooperation, taking for granted the security framework provided by the alliance with the United States.

[41] Today, rereading those Treaties, it is clear that the Communities were established between countries that were, first and foremost, military allies (with each other and with the United States), so that, since the Communities were a bundle of international relations between different entities, the political problems of a group of unequal entities, characterised by relationships of subordination (military and economic), commutative justice (so that exchanges are of equal value and therefore considered fair) and distributive justice (in the sharing of burdens and honours) were not addressed. In this case too, numerous commentators have identified, over time, valid reasons to justify the limitations of European integration; however, it now seems necessary to reflect on the distinction between politics and economics, public and private, as I see less certainty in the private sphere of peace over enrichment, politics over economics, and the public over the private. In fact, the process of privatisation of the public sector is only one facet of the change in Western countries. It is accompanied and complicated by a process of atomisation of society, in which individualism undermines social groups and intermediate bodies, contrary to what Hegel had predicted in hypothesising an ethical totality of the state. What appears dangerous is a *revenge* of private interests through undue interference in government policies and the conditioning of electoral communities to achieve objectives that produce individual profit without maximising collective well-being and ensuring the balanced redistribution of wealth. Faced with this danger, political forums must become places of debate where conflicts of interest are played

the organisation of the Communities, first, and then the Union, has focused primarily on regulating trade, protecting competition and removing internal barriers, without explicitly addressing the issue of power relations between states or the asymmetries resulting from geopolitical constraints and military capabilities.

Today, the issue has become complex. Peace and war, democracy and autocracy, public and private, politics and economics no longer appear as mutually exclusive and ordering pairs of terms. On the contrary, contemporary reality shows a fluidity that undermines the ability of these dichotomies to delimit distinct spheres. Thus, the European legal system must take into account that war takes hybrid forms and also manifests itself through economic instruments; democracy coexists with concentrations of power; the public and private spheres are increasingly intertwined; politics intervenes directly in the markets and the economy increasingly influences public choices.[42] We are faced with new dichotomies, which could make legal modernity more fragile.

On closer inspection, the likelihood of such fragilities occurring appears even greater due to the shift in political priorities, which in the past were focused on socially relevant objectives (such as growth, employment and cohesion) and today appear increasingly oriented towards the management of emergencies (economic, health,

out and resolved, through the legal instrument of a continuously renewed agreement which, in organising world politics around the concepts of peace and well-being, is a contemporary representation of the traditional figure of the social contract.

[42] Added to this is a further element of complexity, represented by the transformation of the relationship between the public and private sectors. The process of privatisation of traditionally public functions, accompanied by the growing influence of large financial and technological corporations, is undermining the idea of a market regulated by democratically legitimate institutions. This phenomenon is not foreign to European integration, which has often relied on technical regulatory mechanisms and independent authorities, assuming a neutrality that today appears increasingly problematic. The risk is that economic decisions will be progressively removed from the circuit of democratic accountability, with disruptive effects on the legitimacy of the entire system.

demographic, *etc*.).[43] In this context, the current institutional configuration of European integration risks becoming a factor of vulnerability for citizens and Member States, as the EU does not have the legal instruments to protect the market from geopolitical or military threats. As a result, the debate within the EU institutions could prolong the inertia that undermines any possibility of protecting the individual rights of European citizens.[44]

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[43] This mode of intervention, while understandable in extraordinary situations, risks becoming established as standard practice, further eroding the space for democratic deliberation; see DRAGHI, "The Future of European Competitiveness" (Report to the European Commission, 2024), especially the introductory sections and Part I, where it is observed that, in recent years, EU public action has increasingly been shaped around the management of successive and interconnected shocks (pandemic, geopolitical, energy-related, climatic and demographic). The Report notes a corresponding reorientation of political priorities away from long-term structural objectives-such as sustainable growth, employment and social cohesion-towards emergency-driven logics centred on resilience, preparedness and systemic risk containment. While this shift is presented as a response to an exceptional and volatile context, Draghi warns that a predominantly reactive mode of governance may ultimately undermine the Union's capacity to address underlying structural fragilities in a coherent and forward-looking manner. In addition, see CINNIRELLA, *'Emergency Powers' of the European Union: An Inquiry on the Supranational Model*, European Papers – A Journal on Law and Integration Vol. 10, No. 3, 2025, p. 525 ff. as the A. try to reply to the question: What role do emergency powers play under the EU Treaties, and how might they be further developed?

[44] Numerous considerations lead us to doubt the Union's ability to survive in the long term without a critical re-examination of its founding principles. While European integration was possible on the assumption of full political and military alignment among the founding states, the progressive fragmentation of the international order and the re-emergence of divergent national interests call into question the sustainability of a model that continues to presuppose a convergence of aims that no longer exists (at least to the extent assumed when the rule of unanimous voting within the EU bodies was adopted); see WEILER (1999) *The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays on European Integration*. Cambridge University Press, Cambridge, esp. chs. 1–3, highlighting the tension between legal integration and democratic legitimacy; SCHARPF (1999) *Governing in Europe: Effective and Democratic?* Oxford University Press, Oxford, developing the distinction between input and output legitimacy and its implications for EU governance; HABERMAS (2012) *The Crisis of the European Union: A Response*. Polity Press, Cambridge, criticising the rise of executive federalism and emergency-driven decision-making; MAJONE (2005) *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth*. Oxford University Press, Oxford, arguing that the EU's regulatory state model is ill-suited for redistributive and crisis-management functions; STREECK (2014) "Buying Time: The Delayed Crisis of Democratic Capitalism." *New Left Review* 95: 59–71, and STREECK (2015) *Buying Time*. Verso, London–New York, questioning the long-term political sustainability of European integration; MORAVCSIK (2002) "In Defence of the

Ultimately, an examination of the founding assumptions of the European Union, conducted in light of the decline of liberal democracies, shows that many of the certainties that have accompanied the integration process deserve critical reflection. Therefore, if the Atlantic alliance can no longer be taken for granted as a stable and sufficient prerequisite (with regard to Europe's military needs), then it is necessary to start reworking the common construction in order to take into account the new geopolitical conditions and the transformations of global capitalism, even if this has to take place in a cultural context marked by political crisis.

5. Given that the crisis of politics is a structural variable of contemporary capitalism, it is necessary to assess whether public intervention can continue to play a role in regulating the EU Internal Market, as has been assumed since the Second World War. On the one hand, there seems to be general agreement that European regulation could continue to operate as a protective tool, aimed at correcting inefficiencies in trade and finance, protecting the most vulnerable and promoting a more equitable distribution of resources. On the other hand, it seems difficult for the EU to address other issues, such as preventing geopolitical tensions, military actions and certain demographic dynamics from affecting the functioning of the markets.

European law seems to be losing its ability to act *as* a necessary constraint on private autonomy, which is essential for preserving the competitive nature of the Internal Market and preventing concentrations of economic power that are incompatible with European values. Far from being a sign of freedom, this loss profoundly undermines one of the elements of balance in the EU's market economy

'Democratic Deficit': Reassessing Legitimacy in the European Union." *Journal of Common Market Studies* 40(4): 603–624, offering a more restrained but non-teleological view of the Union's future. Taken together, these contributions converge on the view that the EU's trajectory is contingent and fragile, particularly insofar as the progressive reorientation of political priorities towards emergency management and crisis containment risks further weakening democratic legitimacy and long-term structural coherence.

model.[45]

In this sense, the decline of liberal democracies is causing a crisis in the effectiveness of public intervention in the economy. Indeed, the traditional justification for the latter presupposed the existence of a transparent and accountable decision-making process, in which public choices could be traced back to a collective will expressed through representative mechanisms, albeit at a secondary level, and forms of democratic control, sometimes entrusted to the autonomy of the judiciary. Today, this circuit appears increasingly fragile, even when political leaders are directly elected by the people.

This dynamic is further complicated by the crisis in politics, in that - as mentioned above - private economic power does not merely operate within the rules laid down by the legal system but actively contributes to supporting electoral alliances that can then shape the rules themselves, exercising an influence that often escapes traditional instruments of democratic control.

From this perspective, the EU Internal Market takes on a paradoxical character. On the one hand, it is invoked as a tool for containing private power and rebalancing the inequalities produced by trade and finance; on the other, it risks being captured by the very interests it is supposed to regulate, transforming itself into a mechanism for *ex post* legitimisation of already consolidated economic structures. This paradox is particularly evident in the digital platforms and large technological infrastructure sector, where information asymmetry and the concentration of resources make

[45] The decline of liberal democracies, as reconstructed so far, has a direct impact on this balance. When the ability of democratic institutions to guide public intervention weakens, the latter risks being transformed from a guarantee into a risk factor for the very stability of the system. In particular, public intervention may lose its function of mediating between conflicting interests and become a vehicle for opaque decisions, dictated by emergency logic or pressure from economic actors with disproportionate bargaining power; as stated by Capriglione, *The Decline of Liberal Democracies*, 2025

effective public control extremely difficult.[46]

In such a context, the redistribution of collective welfare - which should be one of the historical objectives of the European Union - takes on a problematic meaning. Indeed, the EU's ability to redistribute resources would require not only strong political legitimacy and a widespread perception of fairness, but also adequate tax instruments. When these conditions are not met and progress towards a common fiscal policy stall, redistribution tends to be perceived as a wish (rather than a right underpinning modern democracies), fuelling further social tensions and strengthening populist forces that call into question the very foundations of the common project and liberal democracy.

In light of these considerations, it is clear that the Internal Market has various external and internal weaknesses. However, in the author's *wishful thinking*, new forms of regulation and control could be a factor in stabilising and renewing the European democratic pact, provided that adequate mechanisms are put in place to contain economic power, identify responsibilities and promote transparency.

From this perspective, the problem is not whether and to what extent the EU should continue to intervene in the Internal Market, but rather to understand what the legal preconditions are for such intervention to be effective in economic and social terms, and democratic in terms of substantive legitimacy. Hence the interest in resolving the geopolitical problems that plague Europe (from common defence to

[46] It is no coincidence that there are dynamics of coercion of greater economic and social significance, See, inter alia, BRADFORD (2020) *The Brussels Effect: How the European Union Rules the World*. Oxford University Press, Oxford, analysing the EU's capacity to discipline global Big Tech through market-driven regulatory externalities; PETIT (2020) *Big Tech and the Digital Economy: The Moligopoly Scenario*. Oxford University Press, Oxford, examining the structural power of digital platforms and the limits of traditional competition law in European markets. Collectively, these contributions frame Big Tech as a systemic actor within the European internal market, whose economic and political relevance has prompted a shift towards ex ante regulatory instruments (notably the DMA and DSA), reflecting broader concerns about market contestability, democratic oversight and the concentration of private power.

international pacification) and in implementing measures that will bring about the prospects for stability and growth that still seem desirable today.[47]

6. The decline of liberal democracies - which, at this point in our investigation, can be considered a structural legal phenomenon and not merely an expression of contingent election campaigns - is now a central problem for the European Union, to be resolved in an orderly manner.[48] It directly affects the stability of the summit architecture on which public intervention in the Internal Market is based, calling into question the assumptions of mutual trust, homogeneity of values and institutional convergence that have made economic integration possible for decades between Member States that are formally sovereign but essentially cooperative.

From this perspective, the debate concerns the ability of the European legal system to function as a unified space of shared rules, freedoms and responsibilities. This has given rise to specific issues concerning the structure of European public powers with regard to global issues, as well as the distancing of the prospect of peace and prosperity that had been envisaged by the founding fathers of European integration.

Indeed, the European Union is built on a strong assumption: that Member States share not only a set of common values, but also a substantially homogeneous conception of the relationship between public power, the market and fundamental

[47] It is in this area that a decisive part of the legal stability of the internal market and the European Union's market economy model is at stake, as will become clearer in the concluding paragraph on European problems and systemic prospects.

[48] In other words, the decline of liberal democracy as a form of political organisation is a problem for the legal stability of the European Union, with obvious implications for freedoms and trade dynamics within the internal market. In other words, it seems possible to hypothesise critical issues that are not limited to politics or values, but extend to influence the legal and institutional architecture, since the Union is built on the assumption that Member States share and respect a common core of principles.

rights.[49] This assumption led to the construction of a unified legal system that could limit itself to entrusting economic law with the task of ensuring the proper functioning of the Internal Market through regulatory coordination, mutual recognition and the limitation of nationalist interference.[50] It was not considered necessary to address other organisational aspects, including those relating to the military system.

In light of the above, it seems possible to consider that the various critical issues that arise as a result of international turmoil can be traced back to the single issue of the common defence of the Internal Market. Similarly, competition and state aid rules, designed to prevent distortions and ensure a level playing field, may come under increasing pressure in the name of economic security or strategic autonomy. It is therefore a question of protecting against any attempt to undermine fundamental economic freedoms, traditionally understood as instruments of integration and openness.

We are therefore faced with significant problems that directly affect the paradigm of European cohesion. After all, economic integration requires not only common rules, but also a minimum degree of cooperation between Member States. When nationalism or sovereignty prevail, liberal democracy enters into crisis and the propensity for cooperation is gradually eroded, as Member States struggle to recognise each other as reliable partners in a common project that transcends local interests. This results in fragmentation dynamics that manifest themselves both politically and economically, fuelling centrifugal tendencies and reinforcing the idea of a variable-geometry Union, in which the degree of integration depends on the contingency of interests.[51]

[49] It is worth to rise a question: how are geopolitical dynamics and economic security needs transforming the function of European economic freedoms and their relationship with fundamental rights?

[50] Hence the hypothesis that, when this common basis weakens, the European Union is exposed to tensions that call into question its internal coherence.

[51] The reflection formulated in the text allows us to grasp this critical passage with particular clarity.

In this context, the question will not only be whether it is possible to achieve a renewed synthesis between national politics, the global economy and supranational integration,[52] but also whether public intervention should play a crucial role in decision-making processes, insofar as it can contribute to rebuilding spaces of social solidarity, political responsibility and democratic control over economic dynamics, in order to further promote the prospects for progress and efficiency that have characterised the European project.[53]

Future prospects therefore depend therefore, on the ability (of what remains) of politics to address the decline of the liberal democratic model within Member States and Western allies, putting the European Union in a position to counteract centrifugal forces (now seemingly inevitable) and to overcome the challenge of critically reviewing the traditional legal categories of the Union's legal system in order to build an Internal Market capable of producing and redistributing wealth.[54]

7. In light of the above, it seems possible to consider that the decline of liberal

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The decline of liberal democracy is not only an abstract threat to the founding values of the Union, but a factor that has a concrete impact on the ability of European institutions to govern markets and steer economic processes towards objectives of collective well-being. Without a solid democratic foundation, public intervention at European level risks appearing technocratic or distant, fuelling further legitimacy deficits and strengthening Member States' resistance to ceding portions of sovereignty.

[52] At this point in the investigation, other questions arise, firstly concerning the possibility of identifying a new synthesis between the market, democracy and European integration that would make it possible to govern the transformations of global capitalism, and secondly concerning the search for instruments (of economic law) that can be used to bring the economy back into a circuit of democratic legitimacy compatible with the supranational dimension of the EU.

[53] This is also important in view of the need to reorganise the democratic apparatus of the Union in order to enable a continuous but constructive dialogue with the governments that have allowed a dangerous concentration of economic power.

[54] Economic freedoms, competitive equality, public intervention and the socialisation of welfare must be rethought in the light of new geopolitical conditions and the transformations of global capitalism, avoiding both the instigations of economic sovereigntism and the temptation of technocratic solutions, in order to find, in legal dialectics, a formula that ensures lasting peace between peoples and the maximisation of social welfare in a structure that guarantees respect for individual rights and the redistribution of wealth.

democracies interacts with the inability of the legal system to regulate the techno-economic phenomena that are taking place in contemporary society. This is especially true at a time when politics is prey to new interests, and these interests seem to be organised into oligopolies. Hence, there is a dual crisis of politics and of the regulatory model that underpins the Internal Market.

Consequently, from a legal perspective, there is a need to address the structure of the European regulatory paradigm in light of the aforementioned legal and institutional phenomena, as their structural nature puts pressure on the assumptions on which European economic harmonisation has been built since its inception: the idea of an Internal Market that can be governed through technical rules, functionally oriented towards integration, and supported by a presumption of political neutrality of the law.

From this perspective, economic law today appears to be under functional pressure similar to that which affected it at the time of the financial crisis.[55] There is no doubt that the crisis affects a model of public intervention based on sectoral, prescriptive rules of a predominantly public nature, leaving issues that formally belong to private law in the background. It is no coincidence that one of the first weaknesses to emerge concerns the growing dependence on indirect corrective instruments - interpretative and remedial - entrusted to national legal systems in the name of the principles of effectiveness and equivalence.

This dynamic fully affects large areas of economic law, where the crisis affects the regulatory capacity of European regulation with regard to protecting citizens from

[55] In a consistent perspective, although developed at the level of international economic analysis, see POSTELNICU – DINU – DABIJA, *Economic Deglobalisation – From Hypothesis to Reality*, in *Ekonomie a Management / Economics and Management*, vol. 18, no. 2, 2015, pp. 4–14, where the gradual weakening of global economic integration processes is attributed not to a contingent phenomenon, but to a structural transformation of the international economic environment. This change helps to explain the growing pressure on traditional regulatory instruments and the use of indirect and fragmented corrective mechanisms, entrusted to national legal systems, in the absence of a fully coherent supranational framework.

the market power of dominant companies.

On closer inspection, the Union's regulatory paradigm is firmly anchored in an Internal Market-driven logic, as its legal basis lies in the functional goal of trade integration. This approach has allowed for a significant expansion of public intervention - including institutional intervention - in the economy, but at the same time has accentuated a structural tension: regulatory intervention has been strengthened without a corresponding evolution of the mechanisms of democratic accountability, substantive control and redistribution of the social costs of economic decisions. As a result, there is a centrality of administrative apparatus which, on the one hand, makes this environment less vulnerable to the effects of political crisis, but which, on the other hand, leads to a restriction of civic space that does not appear to be sustainable in any way from a democratic point of view.

In a context marked by geopolitical instability, multiple emergencies and the concentration of economic power, European regulation risks tending towards forms of selective governance, which are probably justifiable in the name of economic security, national resilience or strategic autonomy.[56] This trend could have an ambivalent regulatory effect. On the one hand, it would expand the scope for public intervention and strengthen the Union's ability to influence complex markets; on the other, it could weaken the propensity to protect competition, freedom of initiative and private autonomy. What appears most risky is the possible subordination of the typical safeguards of economic law to political decisions that are difficult to trace. Indeed, in

[56] In a context of progressive rearticulation of globalisation processes, see BANK FOR INTERNATIONAL SETTLEMENTS, *Globalisation and Deglobalisation*, BIS Paper No. 100, 2019, which reports on the growing tension between market openness and the use of selective economic policies justified by security, resilience and strategic autonomy requirements. Although based on a predominantly economic analysis, the contribution highlights how these trends affect the configuration of public policies and the quality of governance, raising important questions about the risk that formally neutral regulatory instruments will be progressively bent to contingent purposes, with ambivalent effects on the protection of competition, economic freedoms and, more generally, on the legal assumptions of market integration.

the absence of a solid democratic anchor, regulation risks losing its reference to individual rights, while maintaining formal legitimacy.

It is in this area of friction that economic law is called upon to reclaim an ordering function that cannot respond exclusively to sectoral needs or emergency measures.[57] In truth, democratic decline makes it clear that the technical neutrality of regulation is, in reality, a fragile assumption: every regulatory choice affects the distribution of economic power and wealth, and therefore requires reference to robust regulatory principles.

This leads to a first regulatory implication: the effectiveness of European regulation can no longer be separated from its reference to bodies with autonomous and direct democratic powers, in order to address the issues that are emerging in the political sphere of Member States. In the current context, public intervention in the economy - even if expanded - risks translating into technocratic management of power if it is not accompanied by mechanisms of accountability, transparency and substantive legal control based on models that are not affected by the crisis in domestic politics.

A second implication concerns the role of remedies. In a context of democratic decline, legal remedies take on a function that goes beyond compensation for damage: they become instruments of systemic rebalancing and rebuilding trust. Just as the use of contractual remedies has helped to strengthen the effectiveness of finance, so too is public intervention in the economy called upon to promote remedies capable of addressing the power asymmetries produced by market transformations. This implies

[57] For a perspective that highlights the fragility of the claimed technical neutrality of regulatory choices, see SANDNER – GROSS, *The Digital Euro From a Geopolitical Perspective: Will Europe Lag Behind?*, FSBC Working Paper, February 2022, where the analysis of regulatory options relating to the digital euro project shows how apparently technical decisions on architecture, priorities and instruments have significant distributional effects in terms of economic and monetary power. The paper highlights, in particular, how the absence of a clear anchorage to substantive regulatory principles exposes regulation to the risk of responding to contingent or sectoral logics, rather than to a regulatory design consistent with the objectives of integration, strategic autonomy and the protection of economic rights.

a rethinking of the relationship between public and private enforcement, as well as greater attention to the redistributive – and not just allocative – function of regulatory intervention.

This leads to further reflection on the regulatory basis of European integration. If the Union can no longer rely on spontaneous convergence between liberal democracy and wealth redistribution, economic law must contribute to building minimum conditions for cohesion, explicitly accepting conflict as a structural feature of the market that needs to be regulated. In this sense, the current crisis does not mark the end of the European regulatory paradigm, even if it reveals its limitations and calls for a transformation: from the law of efficiency to the law of economic coexistence in a context of political and geopolitical instability.

In conclusion, it seems possible to formulate a normative hypothesis: the decline of liberal democracies not only weakens politics, but also puts public intervention under stress in its regulatory function. Therefore, the response of the legal system cannot consist of a simple quantitative strengthening of regulation, but rather a qualitative recalibration, capable of recomposing public intervention, democratic responsibility and the protection of general interests.

8. In this section we extend the analysis beyond the institutional sphere. This contributes to understand the structural implications for the functioning of markets and, in particular, for the legal relationships that allow the economy to organise itself according to competitive models. The European regulatory model is also undermined as the conditions that prevent industry from structuring itself in oligopolistic or highly concentrated forms.[58] The decline is a particular form of a dual crisis: on the one hand,

[58] See SCHARPF, *Governing in Europe: Effective and Democratic?*, Oxford University Press, Oxford, 1999, esp. pp. 28 ff., where the author highlights how the progressive loss of capacity of political institutions to guide economic processes translates into a crisis of the European regulatory model, affecting both the democratic legitimacy and the competitive strength of the internal market.

the crisis of politics as a space for mediating general interests; on the other, the crisis of the regulatory model underlying the European Internal Market, its parity and related safeguards.[59]

The starting point for an analysis based on a law and economics model, is the by now evident change in the structure of the EU Internal Market.[60] In numerous strategic sectors – from finance[61] to digital infrastructure, from energy to information technology – there is a high concentration of economic power, which cannot be explained solely by dynamics of efficiency or technological innovation. On the contrary, these concentration processes appear increasingly to be the result of a complex interaction between private strategies and public choices, in a context where regulation fails to act as a factor in the dispersion of economic power, but is exposed to the risk of becoming a possible element of stabilisation of already consolidated oligopolistic structures.

In this context, public intervention takes on an ambivalent character. While, in theory, it should be the preferred tool for correcting market failures and preventing the formation of dominant positions incompatible with competition, in practice it risks

[59] See above about the constributions by Thomas Piketty and Lina Kahn. Thomas Piketty's work on inequality show how liberalization has disenfranchised large groups also in the wealthier economies, and how the lack for structural policies only increase this, see e.g. PIKETTY, *Equality Is a Struggle. Bulletins from the Front Line, 2021-2025.* Yale University Press, 2025. Much of Lina Kahn's work is directly relevant to the EU issues we are discussing in this article.

[60] From a *law and economics* perspective, but with findings that caution against a purely efficiency-based interpretation of market phenomena, see CHAVANNE, *Thinking Like (Law-And-) Economists – Legal Rules, Economic Prescriptions and Public Perceptions of Fairness*, in *Review of Law & Economics*, 16(1), 2020, as the author shows how economic prescriptions of efficiency, although often perceived as fair, do not exhaust the complexity of the legal and distributive dynamics underlying regulatory choices. This approach allows for a critical reading of the processes of concentration of economic power in the European internal market, highlighting how regulation, when oriented primarily towards criteria of efficiency or stability, may end up legitimising already established oligopolistic structures, rather than acting as a factor in the dispersion of economic power.

[61] See ANDENAS, CHIU, *The Foundations and Future of Financial Regulation Governance for Responsibility,* Routledge 2014.

producing the opposite effect.[62] In the face of a decline in liberal democracies, public intervention tends to be exercised by policy-makers who are increasingly unable to escape sectoral pressures, concentrated interests and short-term thinking. The result is intervention that, far from rebalancing the market, can contribute to strengthening the position of already dominant operators, implicitly selecting the 'winners' and 'losers' of the competitive process.

In this context, economic law – traditionally conceived as a set of rules aimed at ensuring open markets, contestability of economic positions and a level playing field between operators – is exposed to the risk of undergoing a significant shift. Competition law, state aid and freedom of economic initiative will continue to be formally operational, but their practical application increasingly conditioned by requirements external to the competitive paradigm, such as economic security, strategic autonomy, resilience of production chains and protection of sectors considered essential. Traditional objectives will give way to others, perhaps politically understandable objectives, but which will introduce selective criteria that alter the original logic of the Internal Market and call into question its regulatory neutrality.

The crisis of the European regulatory model manifests itself not so much as a reduction in public intervention, but rather as a qualitative transformation. Intervention would not be primarily enhance an efficient market, but take on political objectives of a sectoral, exceptional and emergency nature.[63] This leads to rules that

[62] See EUCKEN, *Grundsätze der Wirtschaftspolitik*, Tübingen, 1952, esp. §§ 6–8, where the author distinguishes between legal regulation of competition, based on general and impersonal rules, and selective public intervention in the economic process, which is considered to be a harbinger of competitive distortions and the strengthening of dominant positions, especially in contexts characterised by weak political mediation.

[63] For a perspective that allows us to grasp the qualitative transformation of public intervention, see MAYES, *Early Intervention and Prompt Corrective Action in Europe*, Bank of Finland Research Discussion Paper No. 17/2009, where the analysis of early intervention and *prompt corrective action* measures shows how, in crisis contexts, public action tends to take on increasingly discretionary, exceptional and sectorally oriented characteristics, justified by the need for stability and systemic

give effect to the discretion necessary to pursue policies that reflect the preferences of the majority in power. The legal order of the Internal Market, rather than constituting an orderly space of regulated competition, risks becoming an arena of permanent negotiation between political decision-makers and major economic players.

In the face of such a model, the impact of the recent trend towards oligopolistic concentration is further accentuated by the growing role that certain private operators play in shaping public policy.[64] In a context of democratic decline, the boundary between regulator and regulated is becoming increasingly permeable: large companies are not merely subject to regulation, but are beginning to actively contribute to its formation, through structured lobbying or participation in technical committees, *not to mention other forms of capture*.[65] This weakens the ability of public

security. Although referring to the banking sector, the contribution highlights a regulatory model based on flexible rules and increasing interaction between public authorities and large economic operators, with the risk that the legal order of the market will be transformed from a space of regulated competition into an area of permanent negotiation between policy makers and entities with significant economic power.

[64] See FARRELL – NEWMAN, *Weaponised Interdependence: How Global Economic Networks Shape State Coercion*, in *International Security*, 44(1), 2019, pp. 42 ff., where the authors highlight how the growing centrality of large economic operators in the strategic nodes of global networks enables them to directly influence the formation of public policies and rules, contributing to blurring the boundary between regulator and regulated and legally legitimising existing power asymmetries.

[65] See, inter alia, GREENWOOD (2003) *Interest Representation in the European Union*. Palgrave Macmillan, Houndmills, providing a systematic account of the institutionalisation of interest representation within EU governance; MAZEY and RICHARDSON (eds.) (1993) *Lobbying in the European Community*. Oxford University Press, Oxford, offering a foundational analysis of lobbying practices and their interaction with European institutions; GREENWOOD and DREGER (2013) "The Transparency Register: a European vanguard of strong lobby regulation?", *Interest Groups & Advocacy* 2(2): 139–162, analysing the emergence of the EU Transparency Register as a soft-law instrument aimed at structuring and disciplining lobbying activities through disclosure and conditional access. These scholarly contributions are complemented by the institutional framework described by the European Parliament, according to which lobbying at EU level is primarily regulated through the Joint Transparency Register operated by the Parliament, the Council and the Commission. The Register constitutes a public database identifying organisations and individuals seeking to influence EU policy-making, the interests they represent and the resources deployed; registration is a precondition for

authorities to act as a balancing force, transforming the legal system into a mechanism for ex post legitimisation of existing power relations.

This has a particularly significant systemic effect on the European Union. The Internal Market, conceived as an area of integration based on competition and free trade, presupposes a minimum level of homogeneity in terms of access and competition. When, on the other hand, public intervention contributes – directly or indirectly – to the concentration of economic power in the hands of a few, the integrative logic of the Internal Market is gradually undermined.[66]

From this perspective, the crisis of the European regulatory model is inextricably linked to the decline of liberal democracies. Where politics is no longer able to express a general will oriented towards collective well-being, public intervention loses its redistributive function and is reduced to a tool for managing emergencies and containing the most visible economic conflicts. Economic law, in turn, loses its ability to serve as a common language for the reconciliation of interests, becoming a fragmented set of regulatory techniques lacking a clear value foundation that responds to general interests.

The result is a paradox that economic law cannot ignore: the intensification of public intervention in the economy does not coincide with a strengthening of democracy or greater market openness. On the contrary, in the absence of solid democratic foundations, such intervention can accelerate the processes of oligopolistic concentration and accentuate inequalities between operators and

obtaining long-term access badges to Parliament premises, participating in certain hearings and engaging in structured interactions with EU officials, and is coupled with a Code of Conduct and monitoring mechanisms. Taken together, the literature and institutional practice depict EU lobbying regulation as a transparency-based, predominantly non-coercive model, centred on disclosure and conditional access rather than on comprehensive statutory regulation, reflecting both the pluralist nature of EU governance and the persistent debate on the adequacy of transparency as a substitute for binding legal controls.

[66] On closer inspection, smaller operators are structurally disadvantaged, fuelling centrifugal dynamics and reinforcing the sovereignist pressures that further undermine the European project.

between states.[67]

It is in this space that the dual crisis outlined here takes place: the crisis of politics as a place of legitimate decision-making and the crisis of the regulatory model of the Internal Market as an instrument of integration and social development. These considerations therefore lead us to question the minimum legal conditions required for public intervention to return to performing an ordering function rather than merely managing the market. This question, which exceeds the scope of this paper, naturally opens up further reflections on the systemic prospects of the European Union and the role that economic law can still play in the attempt to rebuild democracy, supranational integration and the market.

9. The demographic, geopolitical and military tensions that characterise the current phase of the global order not only affect political and strategic balances, but also raise increasingly profound questions about the ability of international law to function as a coherent system. Indeed, the recent selective use of treaty sources, the fragmentation of customary practice and the instrumental use of international rules for contingent purposes fuel doubts that international law is gradually losing its regulatory function.[68] These dynamics are not confined to the external sphere, but directly affect European integration, which is both a historical derivation and an autonomous evolution of international law.

[67] See OFFE, *Europe Entrapped*, Polity Press, Cambridge, 2015, esp. pp. 59 ff., where the author shows how the expansion of public intervention and economic policies in the absence of adequate democratic anchoring does not lead to a strengthening of democracy or an opening up of markets, but rather tends to accentuate structural asymmetries between states and operators, fuelling a joint crisis of European politics and the European regulatory model.

[68] See SHAFFER – SANDHOLTZ (eds.), *The Rule of Law under Pressure. A Transnational Challenge*, Cambridge University Press, Cambridge, 2025, where the authors highlight how the selective use of international sources, the fragmentation of practices and the instrumental use of legal norms in a contingent manner are affecting the ability of international law to function as a coherent system, with direct repercussions on regional legal systems based on the rule of law, including the European Union.

The crisis of the European regulatory paradigm is not merely a technical inadequacy of the rules, but rather a crisis of systemic coherence of the common construction underlying the Internal Market.[69] In other words, it is not the multiplication of sources per se that produces legal instability, but rather the difficulty of bringing this plurality within a regulatory framework anchored to consistent enforcement mechanisms. The general principles of law take on a significance that transcends their traditional function of filling gaps, becoming essential instruments for convergence and stability within the European legal system, even in the face of disruptive attitudes on the part of individual Member States.

In the EU legal system, general principles are recognised as having significant effectiveness. It is no coincidence that this effectiveness gives them a unifying force that is lacking in the regulatory choices adopted to deal with special and sectoral contingencies. The European legal system will ascribe new centrality to these principles, as their function extends to guiding interpretation, limiting political fragmentation and, in some cases, establishing binding limits on the exercise of power. General principles can represent the central pillar of a new European regulatory model, as they are conceived as instruments designed to preserve the coherence of the system in the presence of a plurality of self-referential political orientations. General principles do not have a methodological apparatus equally structured as for treaty law, so the legal system has to deal with an asymmetry particularly evident in times of crisis, when the executive seeks convincing solutions to highly complex

[69] From an institutional perspective that confirms the systemic nature of the crisis in the European regulatory paradigm, see BOHLE – GRESKOVITS – NACZYK, *The Politics of Europe's Rule of Law Crisis*, CEU Democracy Institute Working Papers No. 4, 2023, where the progressive challenge to the founding values of the Union by certain Member States is attributed not to mere technical dysfunctions of the legal system, but to a crisis of coherence in the common regulatory framework and its enforcement mechanisms. The contribution shows how, in this context, the weakening of the rule of law has a disruptive effect on the European legal system as a whole, making it essential to resort to general principles capable of operating as cross-cutting criteria for convergence and integration, even in the presence of openly conflictual or counter-hegemonic attitudes on the part of individual Member States.

conflicts beyond the scope of positive law.

Current geopolitical and military tensions call into question not only the effectiveness of the rules, but also the very credibility of law as a system of rational coordination within the EU. The friction between human rights, humanitarian law and the use of force shows that, in the absence of general principles capable of operating as cross-cutting criteria of interpretation, law risks being reduced to a set of partial, mutually inconsistent and sometimes destructive regimes.[70] This loss of systemic coherence translates, at the institutional level, into a reduction in the capacity of EU bodies to guide public decisions in areas of significant relevance to the Internal Market.

These considerations are particularly important for the European Union. The Internal Market can no longer be conceived as a neutral space of spontaneous integration, but as a place of regulated conflict, in which the ordering function of law depends on its ability to maintain consistency and legitimacy. In the regulation of the market, European values, in this context, are not mere programmatic statements of ethical value, but rise to structural criteria designed to ensure continuity and rationality in the European legal system.

European Union case law shows how general principles operate as instruments of mediation between international law and Union law, sometimes incorporating principles common to both legal systems, sometimes reaffirming the autonomy of European terminology and systematics.[71] This dynamic confirms that general

[70] See KELSEN, *Reine Rechtslehre*, 1934 and the 1960 much revised and expanded edition translated into English in 1967 as *Pure Theory of Law* and in 1961 into Italian as *La dottrina pura del diritto*, Turin, in which the author reconstructs law as a unified regulatory system based on general criteria of validity and coordination, showing how fragmentation and the absence of common principles of interpretation compromise the coherence of the legal system and, with it, its ability to rationally guide public decisions.

[71] See, inter alia, Case C-402/05 P and C-415/05 P, *Kadi and Al Barakaat International Foundation v Council and Commission* (EU:C:2008:461), paras 281–285, where the Court of Justice held that the implementation of binding UN Security Council resolutions within the EU legal order must comply with the general principles of Union law, in particular fundamental rights and effective judicial

principles are not simply reflections of other sources, but active factors in the construction of the Union's legal identity. At the same time, it highlights a structural tension: in an international context marked by fragmentation and conflict, the Union's ability to maintain internal coherence increasingly depends on the solidity of its founding principles.

The autocratic orientation of certain Member States is not a problem external to European integration, and directly undermines its regulatory foundations. This is because the European legal system cannot ignore explicit reference to general principles as instruments of consistency and limitation of power. In the absence of such an anchor and in an unstable global context, there is a risk that Union law will survive as a formally complex system, but one that is progressively incapable of fulfilling its regulatory function.

10. The conclusion is not limited to recording the difficulties of the European order during this time of decline of liberal democracies and crisis of the European regulatory model. It extends to how economic law can still perform an ordering function for the European Union's Internal Market. To this end, it is first necessary to distinguish between the disappearance of certain founding assumptions of the European project and the inevitability of its systemic failure.[72] It is conceivable that democratic decline, however structural and widespread, does not automatically

protection; see also Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *Commission and Others v Kadi* (EU:C:2013:518), confirming that general principles operate as an autonomous standard of review even vis-à-vis measures giving effect to international obligations. The *Kadi* jurisprudence can be widely regarded as emblematic of the mediating function of EU general principles, which simultaneously reflect values common to international legal orders (such as due process and the rule of law) and reaffirm the conceptual autonomy and systemic coherence of Union law.

[72] See POLANYI, *The Great Transformation*, New York, 1944, where the author shows how crises in the liberal assumptions of the market do not necessarily lead to the failure of the legal governance of the economy, but require a reconsideration of the relationship between the market, institutions and protection needs, attributing to law an ordering function aimed at containing the vulnerabilities produced by the disincorporated economy.

coincide with the impossibility of legally governing the economy in an integrated supranational space. Rather, it represents a danger to the relationship that public intervention has had so far with regard to certain vulnerabilities and the related needs for protection.

The construction of the Internal Market has been based, since its inception, on a set of implicit assumptions: the progressive convergence of national political systems towards stable liberal-democratic models; the ability of the market to allocate resources in a generally efficient manner in the presence of general and abstract rules; the neutrality of public intervention with regard to competitive outcomes.[73] These assumptions are deeply criticised by certain political interests. the emergence of highly concentrated economic interests and the growing selectivity of public intervention call into question the possibility of continuing to conceive of the Internal Market as a neutral space of spontaneous integration, which the law can correct where it recognises the failure of allocation mechanisms.

In this context, therefore, the regulatory techniques developed to ensure the smooth functioning of the Internal Market show their limitations when called upon to operate in an environment marked by increasingly marked power asymmetries and a reduction in the political will to direct public intervention towards objectives of general interest, as it is subordinate to existing economic power relations.[74] Therefore, recognising the conflict between the pressures exerted by the most powerful

[73] It is worth noting that the conclusions of this work are drawn from a perspective that partially converges with that developed with specific reference to the juridical relevance of the current demographic dynamics, see CAPRIGLIONE – ANDENAS – LEMMA, *Demographic Dynamics and Economic Law in the Light of Recent Geopolitical Trends*, in *Law and Economics Yearly Review*, 2025, spec. §§ 5–7 and 9–10, where demographic decline, population ageing and the structural management of migration flows are analysed as systemic variables capable of affecting the sustainability of markets, public policies and the regulatory function of economic law in the European Union.

[74] See BALDWIN, *Economic Statecraft*, Princeton University Press, Princeton, 2020, esp. pp. 1–24, where the author shows how economic regulation and public intervention techniques are structurally limited in contexts characterised by strong power asymmetries, in which public action tends to reflect existing economic power relations rather than being oriented towards objectives of general interest.

operators and the resistance aimed at protecting the most vulnerable operators is a prerequisite for restoring the law to a genuinely regulatory function, capable of limiting both public and private power.

From this perspective, the central issue is not whether public intervention should increase or decrease, but rather under what legal conditions it can be considered legitimate and compatible with the European project at this advanced stage of globalisation. Public intervention which, although justified by economic security or strategic autonomy requirements, contributes to consolidating oligopolistic structures or penalising vulnerable operators, ultimately empties the Internal Market of its integrative function. Hence the need to address directly the issue of the legal responsibility of economic power, both public and private.

The final question is on who can assume a role of economic governance and market control in the absence of a solid democratic anchor. By whom and how the criteria should be specified according to which public intervention is permitted, economic concentrations countered and power asymmetries levelled out to ensure the allocative efficiency of the Internal Market.[75]

[75] In this sense, economic law increasingly takes on the characteristics of a 'borderline' law: the border between politics and economics, between integration and fragmentation, between efficiency and legitimacy. It is not a law oriented towards theoretical optimisation, nor is it an instrument of social engineering, but rather a law called upon to guarantee minimum conditions of institutional sustainability in contexts characterised by instability and conflict. Its function is not to eliminate the tensions that run through the internal market, but rather to make them legally governable.
Only a right capable of placing credible constraints on the exercise of economic power, of making public choices transparent and of preserving effective spaces for competition can contribute to healing, at least partially, the rift between democracy, the market and European integration. Without such a reconstructive effort, there is a risk that the internal market will survive as a formal construct but gradually lose its capacity to function as a shared political and economic project.

THE IMPACT OF SUSTAINABILITY RISK ON THE BANKING INDUSTRY

Andrea Miglionico*

ABSTRACT: *This article addresses the major problems involving climate change and sustainability risk in the banking industry. It provides an overview of the rationales for and types of regulation that banks are subjected to in the context of sustainable finance. It also depicts the climate change movement in the banking sector along with the interplay between banking activities and environmental hazards. Furthermore, this article examines the emerging questions regarding banks' behaviour in causing climate exposures, in particular the impact of sustainability risk on banks and the challenge of implementing disclosure obligations given the voluntary approach of climate-change reporting rules. It explains why the sustainability of financial activities has attracted significant attention on the part of policymakers and regulators on account of the pressing need to address the impact of climate change on banks. The article concludes with some reflections on recent regulatory trends in the banking system which canvasses the key challenges facing bank regulators and supervisors in the UK and the EU about green investment and taxonomy.*

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1. The debate about the implications of environmental issues for bank governance and potential harms that climate change can pose to financial stability has raised concerns among regulators and policymakers.[1] The sustainability factors in the banks' business activities—with particular emphasis on certain weaknesses in the current regulatory framework (i.e., soft law approach)—as well as the problems associated with the regulatory reporting (i.e., voluntary disclosure) have become the key challenges for credit institutions.[2] There is growing concern about the consequence of environmental effects in banks' business models and bank capital regulation, which show limitations in establishing a framework aimed to ensure compliance with climate reporting.[3]

Regulatory responses to climate change and sustainability have produced several guidelines which have been issued in the international forum with the aim of equipping banks with adequate tools for mitigating the environmental externalities for financial activities.[4] Global standards have made a step forward to reduce the scarcity of climate information and ensure consistency in reporting requirements. However, the lack of uniformity in the definitions of sustainable activities makes for increased ambiguity in measuring firms' performance with

[1] ALLEN, 'Regulatory Managerialism and Inaction: A Case Study of Bank Regulation and Climate Change' (2023) 86(3) *Law and Contemporary Problems* 71; NIETO, 'Banks, climate risk and financial stability' (2019) 27(2) *Journal of Financial Regulation and Compliance* 243; SKINNER, 'Central Banks and Climate Change' (2021) 74(5) *Vanderbilt Law Review* 1301; Financial Stability Board, 'The Implications of Climate Change for Financial Stability' (23 November 2020), https://www.fsb.org/uploads/P231120.pdf.

[2] Bank of England and Prudential Regulation Authority, 'Climate-related financial risk management and the role of capital requirements' (October 2021), p. 27-28, https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/publication/2021/october/climate-change-adaptation-report-2021.pdf?la=en&hash=FF4A0C618471462E10BC704D4AA58727EC8F8720.

[3] ALLEN, 'Regulatory Managerialism and Inaction: A Case Study of Bank Regulation and Climate Change' (2023) 86(3) *Law and Contemporary Problems* 71, 83-85.

[4] ALEXANDER and LASTRA, 'International Banking Regulation and Climate Change' (2022), https://ssrn.com/abstract=4290785.

regard to social and environmental values.[5]

A copious set of recommendations has been published in various quarters with the aim of equipping companies with adequate tools for mitigating the implications of environmental externalities on financial activities.[6] The pressure of global regulators has encouraged firms to reduce the scarcity of climate information and ensure consistency in reporting requirements. Several initiatives focus on the possibility of establishing green finance objectives in sustainability reports, which represents the major concern for climate economic policies.[7] There is a prevalent sentiment among policymakers and shareholders on the need to introduce mandatory sustainability reporting for financial organisations.[8] In this context, the discussion lies on the role of environment, social and governance (ESG) criteria, sustainability principles and human rights in the banking activities.[9]

The climate change movement stimulated bank behaviour to consider non-financial information in the business strategy. The shift towards sustainability reporting is the new frontier of banks' performance, while, at the same time, providing an important measure of social and environmental practices.[10] Much of the initiatives in this area have been taken by the EU and, while not directly

[5] DELL'ERBA, 'Sustainable Digital Finance and the Pursuit of Environmental Sustainability' in BUSCH, FERRARINI and GRÜNEWALD (eds), *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets* (Palgrave Macmillan 2024) 103-104.

[6] United Nations Framework Convention on Climate Change 'The Paris Agreement' (2015), https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement.

[7] STEUER and TRÖGER, 'The Role of Disclosure in Green Finance' (2022) 8(1) *Journal of Financial Regulation* 1.

[8] FCA, 'Sustainability-related reporting requirements' (26 June 2025), https://www.fca.org.uk/ firms/climate-change-sustainable- finance/ reporting-requirements.

[9] LITWIN and SAVOUREY, 'Human Rights in EU Sustainable Finance' (2025) 11(1) *Journal of Financial Regulation* 41; DOWELL-JONES, 'Financial Institutions and Human Rights' (2013) 13(3) *Human Rights Law Review* 423; WATCHMAN, Banks, Business and Human Rights (2006) *Butterworths Journal of International Banking and Financial Law* 46.

[10] RICHARDSON, 'Climate Finance and its Governance: Moving To A Low Carbon Economy Through Socially Responsible Financing?' (2009) 58(3) *International & Comparative Law Quarterly* 597, 619-621.

applicable to the UK, these regulatory instruments are of practical and broader significance for UK finance.

However, it is generally considered that financial institutions find difficult to identify a suitable modelling approach for assessing the material factors of climate change: different models (e.g., stress testing and scenario analysis) have been proposed among regulators to predict potential losses stemming from climate risks.[11] Specifically, banks lack adequate methodologies and clear indicators for the assessment of environmental hazards; the absence of an international consensus on green investments creates information imbalances that limit the effectiveness of monitoring systems.[12] Valuation, while involving an inherent subjective element, can still be carried out using more standardised procedures; and the underlying data and risk factor simulations can be made available to external parties seeking to reach their own judgements on the valuation of assets and other exposures.

2. Prudential regulation for climate risk management is generally categorised into micro-prudential and macro-prudential tools.[13] At the micro level, it is referred to disclosure requirements and environmental and social risk-management standards. At the macro level, it is considered climate-related stress testing, differentiated capital requirements, and counter-cyclical capital buffers. The green prudential regulatory tools are complemented with targeted refinancing lines, green finance guidelines and frameworks, minimum and maximum credit quotas,

[11] GEORGOPOULOU et al., 'A methodological framework and tool for assessing the climate change related risks in the banking sector' (2015) 58(5) *Journal of Environmental Planning and Management* 874.

[12] SMOLEŃSKA and VAN'T KLOOSTER, 'A Risky Bet: Climate Change and the EU's Microprudential Framework for Banks' (2022) 8(1) *Journal of Financial Regulation* 51.

[13] DEMEKAS and GRIPPA, 'Walking a Tightrope: Financial Regulation, Climate Change, and the Transition to a Low-Carbon Economy' (2022) 8(2) *Journal of Financial Regulation* 203.

and central bank assistance to development banks.[14]

Prudential regulation requires granular taxonomies to support the assessment of banks' vulnerabilities (e.g., corporate exposures) which needs to be based on comprehensive scenarios including climate developments and climate-related risk exposures.[15] Prudential regulators should address the financial impact of climate change on firms through mandatory disclosure obligations, supervisory actions, and the adjustment of capital requirements.[16]

The EBA fostered policies on the appropriateness of the current prudential framework to address environmental risk drivers in view of considering the need for a dedicated prudential treatment of exposures associated with environmental and social objectives.[17] The EIOPA echoed EBA's regulatory initiatives recommending a dedicated prudential treatment for insurers' fossil fuel assets to cushion against transition risks;[18] it is observed that fossil fuel-related stocks and bonds are more exposed to transition risks than assets connected to other economic activities. To absorb potential losses from investments in assets with high transition risks, EIOPA recommends additional capital charges for these assets.[19]

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[14] GRÜNEWALD, 'Sustainability and prudential banking regulation' in PACCES, MARTINO and NABILOU (eds), *Comparative Financial Regulation* (Edward Elgar 2025) ch.19.

[15] RESTOY, 'The role of prudential policy in addressing climate change' (22 October 2021), BIS, FSI speech, https://www.bis.org/speeches/sp211008.htm.

[16] Prudential Regulation Authority, 'Climate-related financial risk management and the role of capital requirements' (28 October 2021), https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/publication/2021/october/climate-change-adaptation-report-2021.pdf.

[17] EBA, 'The Role of Environmental Risks in the Prudential Framework' (August 2022), Discussion Paper 10, https://www.eba.europa.eu/publications-and-media/events/discussion-paper-role-environmental-risk-prudential-framework.

[18] EIOPA, 'Prudential Treatment of Sustainability Risks for Insurers', Final Report, BoS-24/372, 7 November 2024, https://www.eiopa.europa.eu/publications/final-report-prudential-treatment-sustainability-risks-insurers_en.

[19] See 'EIOPA recommends a dedicated prudential treatment for insurers' fossil fuel assets to cushion against transition risks', 7 November 2024, https://www.eiopa.europa.eu/eiopa-recommends-dedicated-prudential-treatment-insurers-fossil-fuel-assets-cushion-against-2024-11-07_en.

Prudential risk considerations are at the centre of policy debate on account of environmental factors in risk-based prudential capital requirements. Castren and Russo argue that employing environmental risk aspects in prudential measures could be an effective tool to redirect financing towards green projects although it is still a matter of concern how to design prudential measures that support policymakers to achieve a balance between prudential and environmental outcomes.[20] The prudential framework for green investments enhances banks to improve risk management systems in line with the sustainable finance objective to prevent exposures associated with brown assets of bank lending.[21]

Bowman and Keller observe that central banks, within their legal mandate of maintaining price stability, have a unique opportunity to work coordinatively with governments and other stakeholders to facilitate a net zero transition.[22] Specifically, central banks can harness forms of 'soft' capital to advance their efforts in legitimately addressing climate and nature-related risks. As a result, the climate change objective would be equal to the inflation and financial stability objectives in the legal mandates for central banks, which intertwine with the supervision of sustainability criteria in the monetary policy operations.[23] However, it has been pointed out that 'the tools that central banks possess are insufficient to make any

[20] CASTREN and RUSSO, 'Green-Supporting Factors, Brown Penalising Factors and The Prudential Framework. A Theoretical Approach' (2024) EBA Staff Paper Series No. 19- 08/2024, p. 21.

[21] EBA, 'Report on Green Loans and Mortgages' (December 2023) EBA/REP/2023/38, p. 55-56.

[22] BOWMAN and KELLER, 'Through the Lens of Legal Mandate: Central Bank Capital in a Time of Climate Crisis' in BROEDERS, HOUBEN and BONETTI (eds.), *Central Bank Capital in Turbulent Times. The Risk Management Dimension of Novel Monetary Policy Instruments* (Springer 2025) p. 295.

[23] BECKMANN, GERN, JANNSEN and SONNENBERG, 'Climate Change and Monetary Policy in the Euro Area' (November 2023) European Parliament, Monetary Dialogue Papers, https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/755711/IPOL_IDA(2023)755711_EN.pdf.

meaningful contribution to emissions reductions and prevent global heating'.[24]

The sustainability of financial activities has gained significant emphasis on account of the large debate around the impact of climate change on banks' business models.[25] As Gordon discusses, 'addressing climate change risk can improve risk-adjusted returns for investors holding a diversified portfolio of equity and other investments'.[26] An important indicator is the ESG criteria that afford a benchmark for firms' business strategies on climate change and sustainability. The ESG factors further developed the categories of socially responsible investing which emphasise the ethical and moral effects of investment decisions.[27] The key challenge is to achieve standardised representation of climate risk granular data in order to aid the integration of sustainable objectives in corporate disclosure.

Tackling the impact of climate risk in order to preserve financial stability has become the main priority in the agenda of global regulators and national supervisory authorities. The Task Force on Climate-related Financial Disclosures (TCFD) formed by the Financial Stability Board provides guidance to companies for the reporting of climate change implications for investment decisions.[28] The TCFD aims to standardise the reporting requirements of climate change by providing a

[24] CULLEN, 'Central Banks and Climate Change: Mission Impossible?' (2023) 9(2) *Journal of Financial Regulat*ion 174.

[25] JEUCKEN, *Sustainable Finance and Banking. The Financial Sector and the Future of the Planet* (London: Routledge 2001) 71-72. See also ZUMBANSEN and NASIRY, 'Sustainable Transformation of Business and Finance. A democratic challenge in an age of climate change and artificial intelligence' (2023) McGill SGI Academy Impact Paper), https://ssrn.com/abstract=4473822.

[26] GORDON, 'Unbundling Climate Change Risk from ESG' (2023), https://clsbluesky.law.columbia.edu/2023/07/26/unbundling-climate-change-risk-from-esg/.

[27] ABHAYAWANSA and MOONEEAPEN, 'Directions for future research to steer environmental, social and governance (ESG) investing to support sustainability: a systematic literature review' in Carol A. Adams (ed), *Handbook of Accounting and Sustainability* (Cheltenham: Edward Elgar 2022) p. 318-319.

[28] Financial Stability Board, 'Recommendations of the Task Force on Climate-related Financial Disclosures' (2016), p. 10-11, https://www.fsb-tcfd.org/recommendations/.

set of voluntary recommendations to be incorporated in companies' business models and regulatory monitoring process. These reporting standards marked a shift towards a common framework of climate change disclosures. The recommendations are articulated in such a way as to stimulate companies to measure climate exposures through detailed financial indicators applicable to internal corporate controls.[29] This set of standards should enhance organisational operations and improve the sustainability of the decision-making process.

The Task Force identifies five major areas in which disclosure standards and investor engagement with board committees on climate-related issues should be improved: governance, strategy, risk management, metrics, and targets.[30] These macro areas of disclosure practices focus on material information about climate objectives and recommend financial institutions to adopt a scenario analysis in order to facilitate transparency in reporting requirements. Specifically, it is recommended to disclose the models and data used to assess and manage relevant climate risks so as to make it easier for participants to acquire information about the potential vulnerabilities of a given company's management and oversight by the board.[31] To facilitate the assessment process, the TCFD provides a classification of climate risks into physical risks, which arise from the adverse effects of climate change, such as material events that cause disruptions and financial damages; and transition risks which arise from the transition to a low-carbon and climate-resilient

[29] Task Force on Climate-related Financial Disclosures, 'Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures' (October 2021), p. 17-18, https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf

[30] Financial Stability Board, 'Recommendations of the Task Force on Climate-related Financial Disclosures. Final Report' (2017), p.13-14, https://www.fsb.org/wp-content/uploads/P290617-5.pdf.

[31] See 'Task Force on Climate-related Financial Disclosure (TCFD) -aligned disclosure application guidance', 17 July 2025, https://www.gov.uk/government/publications/tcfd-aligned-disclosure-application-guidance/task-force-on-climate-related-financial-disclosure-tcfd-aligned-disclosure-application-guidance--2.

economy which affect the value creation and reputation of the company.[32]

The TCFD expands the regulatory policies of the United Nations Framework Convention on Climate Change and the Paris Agreement, which established a worldwide forum for negotiating the global response to environmental hazards.[33] The involvement of multilateral actors so as to address the systemic effects of climate change has resulted in a comprehensive agenda of 'green targets' to be attained through inclusive and sustainable practices. These targets have been elaborated in the UN Sustainable Development Goals in order to produce a significant long-term vision of climate change and global economic governance.[34] This is an ambitious project that proposes a strategic plan for enhancing the ability of financial institutions and stakeholders to ensure social and environmental equality.

The UN project interplays with the G20 Climate Finance Study Group, which provides guidelines for the internalisation of environmental risks within the financial system.[35] The G20 Study Group points to the main challenges to green finance, such as the absence of a common language on sustainable investments and the inadequate internalisation of environmental externalities for companies' climate change disclosures. It also evidences the fragmented reporting activities

[32] Those risks are source of financial losses and expose to credit default. See Task Force on Climate-related Financial Disclosures, 'Guidance on Metrics, Targets, and Transition Plans' (October 2021), https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf. See also Matthew Scott, Julia van Huizen and Carsten Jung, 'The Bank's Response to Climate Change' (2017), Bank of England Quarterly Bulletin 2017 Q2, p.100-102, https://www.bankofengland.co.uk/quarterly-bulletin/2017/q2/the-banks-response-to-climate-change.

[33] United Nations Framework Convention on Climate Change (1992), http://unfcc.int/sites/default/files/convention_text_with_annexes_english_for_posting.pdf.

[34] United Nations, 'The 2030 Agenda for Sustainable Development' (2015) A/RES/70/1, https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf.

[35] G20 Green Finance Study Group, 'G20 Green Finance Synthesis Report' (2016), p.3-4, http://unepinquiry.org/wp-content/uploads/2016/09/Synthesis_Report_Full_EN.pdf.

and limited understanding of green financial indicators, which are partly due to the complex risk analysis models used to assess the environmental factors of financial losses.

This initiative aligns with the IOSCO's Sustainable Finance Network (SFN) that aims to address climate issues, such as diverse sustainability frameworks and standards, a lack of common definitions of sustainable activities, 'greenwashing' (consumer confusion about misleading sustainability reports) and investor protection.[36] This project incorporated the results presented in the 'Statement on Disclosure of ESG Matters by Issuers', which is concerned with the monitoring of non-financial activities in the business strategy and risk assessment methodology.[37] The SFN evolved into the Sustainable Finance Taskforce (STF), a Board-level initiative with the aim of supporting aligned reporting standards for sustainability disclosures across jurisdictions and avoiding market fragmentation.[38] As a major outcome, the STF builds on the TCFD's recommendations to develop a climate reporting standard that could set a common baseline for consistent and comparable data.

3. The climate change movement in financial activities has reached impetus with the Action Plan on Financing Sustainable Growth, a comprehensive framework adopted by the EU Commission which was followed by the Taxonomy Regulation[39] that provides for harmonisation of the climate and energy targets set in the UN

[36] IOSCO, 'Sustainable Finance and the Role of Securities Regulators and IOSCO. Final Report' (2020), p.6, https://www.iosco.org/library/pubdocs/pdf/IOSCOPD652.pdf.

[37] IOSCO, 'Statement on Disclosure of ESG Matters by Issuers' (2019), p.1-2, https://www.iosco.org/library/pubdocs/pdf/IOSCOPD619.pdf

[38] IOSCO, 'IOSCO steps up its efforts to address issues around sustainability and climate change' (2020), https://www.iosco.org/news/pdf/IOSCONEWS564.pdf. See also IOSCO, 'IOSCO sees strong support for its vision for an International Sustainability Standards Board under the IFRS Foundation' (2021), https://www.iosco.org/news/pdf/IOSCONEWS603.pdf.

[39] EU Regulation No 2020/852 on the establishment of a framework to facilitate sustainable investment, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0852.

2030 Agenda and the Paris Agreement.[40] The Commission highlights long-termism in corporate sustainability reporting as an instrument for investors and stakeholders to assess companies' investment decision-making.

The Action Plan is part of the policies of the European Green Deal as a response to the challenges of sustainable development goals.[41] However, the degree of flexibility allowed in the implementation of the EU initiatives raises doubts as to the successful achievement of the Plan which exhibits a number of gaps (absence of standardised climate data, lack of uniformed definitions of financial sustainability, high costs in gathering data) when it comes to establishing a taxonomy of sustainable investments.[42] To address this gap, the Corporate Sustainability Reporting Directive (CSRD) has replaced the NFRD and introduced more stringent requirements with regard to the reported social and environmental information.[43]

The CSRD has established mandatory disclosure standards on sustainable activities to large companies (listed companies, banks and insurance firms) and further clarified the element of 'materiality' for non-financial indicators. Specifically, the CRSD would increase transparency and accuracy of corporate reports by adopting assurance criteria for auditing sustainability information. This regulatory reform makes a step forward in the development of a mandatory reporting framework, although these measures face challenges on account of the scant incentives to establish sustainable corporate business strategies. In parallel,

[40] EU Commission, 'Action Plan: Financing Sustainable Growth' COM(2018) 97 final, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0097&from=EN.

[41] EU Commission, 'Communication: The European Green Deal' COM(2019) 640 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588580774040&uri=CELEX%3A52019DC0640.

[42] OCH, 'Sustainable Finance and the EU Taxonomy Regulation – Hype or Hope?' (2020), Jan Ronse Institute for Company & Financial Law Working Paper No. 2020/05, https://ssrn.com/abstract=3738255.

[43] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (OJ L 322/2022, p. 15).

the European Financial Reporting Advisory Group (EFRAG) approved the European Sustainability Reporting Standards (ESRS) which set out the rules and requirements for companies to report on sustainability-related impacts, opportunities and risks under the CSRD.[44]

EU legislation has advanced various regulatory interventions to create a platform for sustainable finance. The Taxonomy Regulation adopts a binary approach (i.e., an activity is considered either compliant or not) and mandates credit institutions and investment firms to comply with the reporting requirement on environmentally sustainable activities according to the NFRD obligations.[45] The mandatory rules introduced for companies integrate non-financial statements in their annual reports with respect to the Corporate Social Responsibility (CSR) and ESG criteria.[46]

Corporate non-financial disclosures, such as equality, gender, human rights and anti-corruption, are necessary to access relevant information on climate and environmental matters. At the same time, the NFRD does not provide detailed reporting standards such as permits companies to disclose the information necessary for an understanding of the development, performance, position and impact of their business activities. Further, the Taxonomy Regulation does not define the methodology and metrics of the activities to be included in the qualitative information which companies need to report.[47] The lack of

[44] EFRAG is a private association mandated by the European Commission in June 2020 to prepare for new EU sustainability reporting standards, as part of the revision of the NFRD. See https://www.efrag.org/en/projects/esrs-implementation-guidance-documents;
https://www.efrag.org/en/projects/esrs-implementation-guidance-documents

[45] Article 8 of the Taxonomy Regulation.

[46] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330/2014, p. 1).

[47] AHLSTRÖM and SJÅFJELL, 'Complexity and uncertainty in sustainable finance: An analysis of the EU taxonomy' in CADMAN and SARKER (eds), *Handbook of Sustainable Development and Finance* (Berlin: De Gruyter 2022) 25-26.

standardisation and comparability of data leaves room for discretionary evaluations of climate change risks, thereby allowing corporations to determine which items of information to include in the disclosures.[48]

The European Supervisory Authorities (ESAs) launched a consultation on the proposed Regulatory Technical Standards which should clarify the amount of information and the environmental objectives by which the investments are aligned with taxonomy.[49] The Consultation campaign aims to create a single rulebook for sustainability disclosures while, at the same time, reduce complexity in relation to the content and presentation of the firm's performance indicators. Despite the evident progress in designing a sustainability agenda in the EU regulatory framework, the successful achievement of a sufficient degree of harmonisation requires significant changes in banks' corporate governance models, which would necessitate a level playing field of climate change rules across EU member states.[50]

4. The rapid transition to environmental policies is challenging the paradigm of banks' business models as regards the way to assess the level of exposure to climate risk factors.[51] The content of the ESG requirements and its relevance to investment decision-making entail modelling approaches which should be informed by forward-looking predictions on the climate impact on bank corporate

[48] EHLERS, GAO and PACKER, 'A taxonomy of sustainable finance taxonomies' (2021) BIS Papers No 118, https://www.bis.org/publ/bppdf/bispap118.pdf.

[49] European Supervisory Authorities, 'Joint Consultation Paper on Taxonomy-related sustainability disclosures'. Draft regulatory technical standards with regard to the content and presentation of sustainability disclosures pursuant to Article 8(4), 9(6) and 11(5) of Regulation (EU) 2019/2088 (2021), https://www.esma.europa.eu/press-news/consultations/joint-consultation-taxonomy-related-sustainability-disclosures.

[50] BRENNAN et al., 'Navigating the EU's New Sustainability Agenda: Priorities and Actions' *The Wall Street Journal* (1 August 2025), https://deloitte.wsj.com/sustainable-business/navigating-the-eus-new-sustainability-agenda-priorities-and-actions-e3c3be8e.

[51] CARNEY, 'Breaking the Tragedy of the Horizon – climate change and financial stability' (2015), Speech given at Lloyd's of London, p. 5-6, https://www.bis.org/review/r151009a.pdf.

governance.[52] It is commonly considered that financial reporting reflects a backward-looking and judgement-based approach of information, which raises concerns as regards the achievement of long-term sustainability goals.[53]

Current methodologies for predicting exposures, namely scenario analysis, sensitivity analysis and stress tests, show limitations in relation to capturing climate data, which make the comparison of results meaningless.[54] Data gaps and lack of clarity in the taxonomy render climate risk measurement models inadequate to classify and differentiate environmental hazards, which in turn leads to discrepancies in the evaluation of financial losses.[55] A key area of climate disclosure that needs improvements and consistency is strategic resilience in companies' business strategies.[56] Considerable attention is being paid to enhancing this part of disclosure owing to lack of consolidation of global regulatory standards.

In the academic debate, it is observed that disclosure of climate risk is a significant factor for investors and directors in their strategic management as they prefer standardised and mandatory obligations with regard to climate reporting.[57] Ioannou and Serafeim have examined the extent to which mandatory sustainability disclosure regulations have an impact on corporate disclosure practices, as it is

[52] ZENGHELIS and STERN, 'The importance of looking forward to manage risks: submission to the Task Force on Climate-Related Financial Disclosures' (2016) LSE Policy Paper, Grantham Research Institute on Climate Change and the Environment, https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2016/06/Zenghelis-and-Stern-policy-paper-June-2016.pdf.

[53] LUSK, 'Looking Forward and Backward at Extreme Event Attribution in Climate Policy' (2022) 25(1) *Ethics, Policy & Environment* 38-39.

[54] Basel Committee on Banking Supervision, 'Climate-related financial risks – measurement methodologies' (2021), p. 17-18, https://www.bis.org/bcbs/publ/d518.htm.

[55] MONNIN, 'Integrating Climate Risks into Credit Risk Assessment' (2018) CEP Discussion Note 2018/4, https://ssrn.com/abstract=3350918.

[56] Sustainability Accounting Standards Board, 'Climate Risk. Technical Bulletin' (2023), p. 6-7, https://sasb.org/wp-content/uploads/2023/11/SASB-Climate-Risk-Technical-Bulletin-2023-0823.pdf.

[57] BRESNAHAN et al., 'Global Investor-Director Survey on Climate Risk Management' (2021) Columbia Law and Economics Working Paper No. 650, https://ssrn.com/abstract=3722958.

unclear whether the ESG metrics would improve the transparency of firms.[58] Integrating sustainability reporting in managerial decision-making entails the costs of gathering ESG information from professional data providers and the costs of changing organisational processes.

The EU Commission's study on directors' duties and sustainable corporate governance observed that 'companies lack a strategic perspective over sustainability and current practices fail to effectively identify and manage relevant sustainability risks and impacts'.[59] Specifically, it is reported that corporate decision-making and board management do not adequately promote sustainable goals within the governance framework. The Commission emphasises the need to improve companies' social performance through legislation on directors' duties and sustainability under EU company law.[60] This should enhance the sustainable values of corporate governance and foster sustainable corporate practices. However, efforts to mitigate the implications of climate change on financial institutions and interventions to foster organisational changes appear to be a *déjà vu* in the regulatory policy options.

National regulations do not establish mandatory obligations for companies to adopt and disclose sustainable objectives, which make it difficult to align the corporate disclosure regime with climate reporting.[61] At the same time, the various

[58] IOANNOU and SERAFEIM, 'The Consequences of Mandatory Corporate Sustainability Reporting' in MCWILLIAMS, RUPP, SIEGEL, STAHL and WALDMAN (eds), *The Oxford Handbook of Corporate Social Responsibility: Psychological and Organizational Perspectives* (Oxford: Oxford University Press 2019) p. 452-453.

[59] EU Commission, 'Study on directors' duties and sustainable corporate governance' (2020), https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en.

[60] FERRARINI, SIRI and ZHU, 'The EU Sustainable Governance Consultation and the Missing Link to Soft Law' (2021) ECGI Law Working Paper No. 576/2021, https://ssrn.com/abstract=3823186.

[61] SCHOENEFELD, HILDÉN and JORDAN, 'The challenges of monitoring national climate policy: learning lessons from the EU' (2018) 18(1) *Climate Policy*, p. 121-122.

guidelines on climate risks issued by the global regulators add layers of complexity and do not clarify the sustainability requirements to be incorporated in financial reporting. This voluntary set of soft law measures created more uncertainty for shareholders and investors with the result that the perimeter of climate disclosures is left undefined.[62]

The EU legislation standardises the sustainability impact under the principle of 'double materiality', which calculates sustainable outcomes (social and environmental values), but it does not indicate the sustainability metrics for measuring the impact of sustainable activities in corporate governance.[63] Chiu argues that the metrics on sustainable impact constitute an essential indicator for evaluating the sustainability risks in the corporate's investment decision-making.[64] The regulation on sustainable disclosure requirements identifies the environmental and social objectives as a benchmark indicator for periodic financial reports.[65]

The Sustainable Finance Disclosure Regulation (SFDR) adopts a 'comply or explain' approach to promote harmonisation of climate disclosure standards, although it does not address the issues of limited availability of ESG data and the

[62] COGLIANESE, 'Environmental Soft Law as a Governance Strategy' (2020) 61(1) *Jurimetrics* 19.

[63] This principle mandates companies to report on both the financial impacts of their sustainability activities and the actual or potential impacts on people and the environment. The CSRD aims to align sustainability reporting with financial reporting, providing investors with a comprehensive view of a company's sustainability performance. The European Sustainability Reporting Standards (ESRS) detail the reporting requirements, ensuring that companies disclose information that meets users' needs and aligns with EU policies and internationally recognized principles. See MEZZANOTTE, 'Corporate sustainability reporting: double materiality, impacts, and legal risk' (2023) 23(2) *Journal of Corporate Law Studies* 633.

[64] CHIU, 'The EU Sustainable Finance Agenda: Developing Governance for Double Materiality in Sustainability Metrics' (2022) 23(1) *European Business Organization Law Review*, p. 95-96.

[65] GORTSOS, 'The Taxonomy Regulation: More Important Than Just as an Element of the Capital Markets Union' (2020), European Banking Institute Working Paper Series 2020 No. 80, https://ssrn.com/abstract=3750039.

lack of a central supervisor.[66] Another concern is the absence of a degree of liability with respect to market participants and financial institutions for breach of the sustainability disclosure rules and management (i.e. oversight) duties.[67] It can be argued that investors' desire for social responsibility on the part of companies seems constrained by the undefined materiality of climate change impact on corporate disclosures.[68] The identification and quantification of the material factors of climate change are inherently dependent on publicly available information, which offers little evidence of direct physical and non-physical effects on business activities.

Burton observes that 'the uncertainty surrounding the potential impacts of climate change, the timing of those impacts, and the methods for quantifying potential damage or opportunity place a substantial burden on regulated companies'.[69] The question comes as follows: to what extent those corporations have to indicate the degree of materiality which is necessary for inclusion in the financial report? Corporations would not have particular incentives to disclose items of information which involve negative exposure to investors and shareholders: it is likely that they would avoid analyses on materiality parameters because of the high costs of accessing this information.[70]

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[66] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317/2019, p. 1). For a commentary see Danny Busch, 'EU Sustainable Finance Disclosure Regulation' (2023) 18(3) *Capital Markets Law Journal* 303.

[67] SHAPIRA, 'Mission Critical ESG and the Scope of Director Oversight Duties' (2022) 2 *Columbia Business Law Review* 732; PARTITI, 'Addressing the Flaws of the Sustainable Finance Disclosure Regulation: Moving from Disclosures to Labelling and Sustainability Due Diligence' (2024) 25(2) *European Business Organization Law Review*, 303-304.

[68] ZETZSCHE and ANKER-SØRENSEN, 'Regulating Sustainable Finance in the Dark' (2022) 23(1) *European Business Organization Law Review*, 65-66.

[69] BURTON, 'An inconvenient risk: Climate change disclosure and the burden on corporations' (2010) 62(4) *Administrative Law Review*, 1296.

[70] SCHWEIZER, 'Incentives to Acquire Information under Mandatory versus Voluntary Disclosure' (2017) 33(1) *Journal of Law, Economics, & Organization* 173.

In the absence of mandatory disclosure obligations, financial firms have an appetite to limit the volume of reporting order to reduce the burdensome procedures of internal control systems. Further, corporations face scant incentives to update their measurement methodologies, making the assessment process particularly vulnerable when it comes to capturing climate risks.[71] The classification of material climate risk drivers and their concentration in financial activities depends on the availability of relevant data, which affects the management decision to disclose hazard events.[72] Models for assessing the economic impacts of climate change have elaborated sophisticated stress-testing and scenario analysis approaches in order to formulate predictions of risk outcomes.[73] Stress tests estimate the resiliency of financial institutions to potential adverse climate conditions: they are designed to assist regulators in measuring the societal impact of climate change.[74]

Eley proposed the transition capacity testing as an alternative model for the classification of the exposures that are most vulnerable to climate change. The transition capacity testing aims to support banking supervisors to better identify 'the progress banks are making towards financing the pathway to the Paris climate goals on a forward-looking basis, as set out in the technical screening criteria of the EU Taxonomy'.[75] These methodologies incorporate forward-looking information

[71] ATTENBOROUGH, 'Corporate Disclosures on Climate Change: An Empirical Analysis of FTSE All-Share British Fossil Fuel Producers' (2022) 22 *European Business Organization Law Review*, 334-335.

[72] Basel Committee on Banking Supervision, 'Climate-related risk drivers and their transmission channels' (April 2021), https://www.bis.org/bcbs/publ/d517.pdf.

[73] United Nations Climate Change, 'Methodologies and Tools to Evaluate Climate Change Impacts and Adaptation', https://unfccc.int/methodologies-and-tools-to-evaluate-climate-change-impacts-and-adaptation-2.

[74] SCHOENMAKER and VAN TILBURG, 'Financial risks and opportunities in the time of climate change' (2016) Bruegel Policy Brief, Issue 2016/02, https://www.bruegel.org/policybrief/financial-risks-and-opportunities-time-climate-change.

[75] ELEY, 'Testing capacity of the EU banking sector to finance the transition to a sustainable economy' (2021) EBA Staff Paper Series No. 13, https://ssrn.com/abstract=3852692.

complemented by historical data and provide an assessment of the varying degrees of environmental risk. However, the main question relates to the credibility and reliability of such approaches given the fact that they are essentially based on market information and the backward-looking materiality of risk, which do not guarantee accurate long-term forecasts.[76] Climate risk modelling and stress testing processes should be supported by technological applications, i.e., automated processes, in order to achieve the required granularity and precision as well as swiftly to evaluate the effects of environmental adversities.[77]

Sustainability reporting remains narrative and qualitative with the numbers themselves not properly explained or comparable, including the ratings.[78] Further, the lack of uniformity in the definitions of sustainable assets and the various ESG metrics make for increased ambiguity in measuring banks' performance with regard to social and environmental values.[79] The current transparency regime is weak as banks rely on rating agencies for expensive data as their clients may not disclose information.[80] This approach has exposed greenwashing risk as there is no scrutiny as to how the data is produced and how data is relevant directly to the borrowers.[81]

As mentioned, existing methodologies for predicting exposures, namely scenario analysis, sensitivity analysis, and stress tests, are limited because are not consistent; they present different definitions and measure different factors. The

[76] CHENET, 'Climate change and financial risk' (2019), p. 19, https://ssrn.com/abstract=3407940.
[77] ROGGE, 'Climate Change Stress Testing for the Banking System' (2023) 20(4) *European Company and Financial Law Review* 720-721.
[78] SLACK, 'Capital market perspectives on sustainability accounting and reporting' in ADAMS (ed), *Handbook of Accounting and Sustainability* (Edward Elgar 2022) ch.5.
[79] JACOBS and FINNEY, 'Defining Sustainable Business—Beyond Greenwashing' (2019) 37(2) *Virginia Environmental Law Journal*, 95.
[80] LU, 'Regulating ESG rating firms as the gatekeepers for sustainable finance' (2024) 19(2) *Capital Markets Law Journal*, 187.
[81] PAPATHANASSIOU and NIETO, 'Different Shades of Green: EU Corporate Disclosure Rules and Their Effectiveness in Limiting "Greenwashing" (2025) ECB Occasional Paper No. 2025/370, p. 12-13.

results between these methodologies are not comparable or compatible.[82] Banks rely on explicit instructions from regulators, while regulators anticipate insights into banks' actions but lack the necessary guidance on how to classify these as sustainable economic activity.[83] Consequently, varying practices among banks have made it challenging to establish a unified standard, unlike traditional regulatory practices where regulators negotiate and compare different bank approaches.

In parallel, customers are bound to rely on the information strategically disclosed by banks to form their perceptions about financial, especially investment products' environmental attributes.[84] Thus, under the current system the conventional method of interbank comparison becomes untenable when addressing sustainability initiatives. This means that investors and customers cannot disclose the difference between a more and less environmentally sustainable bank. There is, therefore, a pressing need for standardised practices across all banks, preferably at the international level. This approach would not only ensure meaningful corporate compliance but would also help to internalise many external costs effectively, as a result of market discipline in the capital markets and product markets. Micro-prudential tools could be used to incentivise sustainable investment strategies and re-orient capital flows to sustainability objectives (e.g., sustainable lending).[85] On the contrary, banks under less demanding prudential supervision are more prone to expand their fossil fuel lending, exploiting systemic

[82] HARRISON, JONES and WETMANSKA, 'Issuing a Green Bond: A Practical Perspective' in MUÑOZ and SMOLEŃSKA (eds), *Greening the Bond Market. A European Perspective* (Palgrave Macmillan 2023) 84-85.

[83] World Bank, 'Sustainable Banking Network',http://documents.worldbank.org/curated/en/099745412022220640/IDU19a4a18b61f64f144ec190671227e0cc7be4c.

[84] Financial Conduct Authority, 'Sustainability disclosure and labelling regime' (14 January 2026), https://www.fca.org.uk/firms/climate-change-and-sustainable-finance/sustainability-disclosure-and-labelling-regime.

[85] BINDER, 'Prudential requirements framework and sustainability' in ALEXANDER, GARGANTINI and SIRI (eds), *The Cambridge Handbook of EU Sustainable Finance Regulation, Supervision and Governance* (Cambridge: Cambridge University Press 2025) ch.20.

risks and potentially inflating negative externalities rather than managed energy transition.[86]

5. This article discussed the impact of sustainability risk and the role of ESG factors in the banking industry. It provided an analysis of sustainability as a regulatory objective along with the environmental implications of bank lending. The analysis evaluated how the adoption of green taxonomies can address transparency gaps in the banking sector by providing standardised criteria for classifying sustainable activities; and explored how taxonomies guide reporting practices of banks and contribute to a more transparent assessment of sustainability risk by market participants.

The undefined concept of transparency in sustainable activities which aligned with ESG criteria poses a challenge for regulators and supervisory authorities in identifying sustainability factors in the banks' business activities.[87] This opacity exposes the industry to the risk of incomplete and inaccurate data (e.g., greenwashing), methodological inconsistencies, and sustainability reporting issues, contradicting the objectives of the EU Taxonomy Regulation requiring banks to disclose their environmental financing.[88] It is unclear how banks implement the environmental criteria on their borrowers, which poses challenges for supervisory authorities to regulate sustainability factors in the banking sector.

The international regulatory framework on sustainable finance and climate

[86] FUCHS, NGYUEN, NGUYEN and CHAECK, 'Climate Stress Tests, Bank Lending, and the Transition to the Carbon-neutral Economy', IWH Discussion Papers, No. 9/2024, Halle Institute for Economic Research, https://hdl.handle.net/10419/297697.

[87] DRIESSEN, 'Sustainable Finance: An Overview of ESG in the Financial Markets' in Danny Busch, Guido Ferrarini and Seraina Grünewald (eds), *Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets* (Palgrave Macmillan 2024) p. 487-488.

[88] This is due to the absence of uniform metrics which is in contrast with the UK Sustainability Strategy and EU Green Deal framework requiring banks to disclose their climate financing techniques.

change risk, along with the soft law initiatives of global regulators showed that the banking sector is more exposed to the pressing need of implementing green sustainable duties. In the financial markets system, banks' decision to lend to climatically responsible corporates is vital to ensure all the well visioned targets set, such as those in the Paris Agreement objectives, are achieved.

HIERARCHY TO NETWORK: ECONOMIC LAW AND PROCESS AUTOMATION IN THE NEW PARADIGM OF FINANCIAL SERVICES

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ABSTRACT: *This article examines how rapid advances in digital technologies are reshaping the financial services industry, with a particular focus on innovation, process automation, economic law impacts and emerging decentralized organizational models. It discusses the shift from traditional, institution-centric banking toward platform-based ecosystems enabled by cloud computing, open APIs, and data-driven decision-making. The article synthesizes key developments in automation and artificial*

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intelligence that streamline core financial processes, enhance customer experience, and improve operational efficiency, while also highlighting governance and risk implications related to cybersecurity, data protection, and regulatory compliance. In addition, it explores the strategic relevance of blockchain and distributed ledger technologies as foundations for transparency, traceability, and trust in financial transactions, and considers the growing significance of decentralized finance and DAO-inspired coordination mechanisms for future organizational design. The article concludes by outlining how these technological trajectories may influence competitive dynamics, business models, and managerial priorities in financial institutions, emphasizing the need for adaptive strategies that combine technological capability with robust governance and responsible innovation.

1. The financial services market is undergoing a large-scale digital transformation that has widespread implications for the way companies in the financial sector run their businesses. New technologies are enabling banks, insurance companies, and other financial services companies to review their operations and identify different ways to manage their relationship with customers.

At the same time, the emergence of these technologies also creates opportunities for other types of companies, often indirect competitors of organizations in the financial sector, such as payment service providers. In addition, financial services companies operate in a highly regulated environment, which

requires them to manage digital transformation correctly and procedurally while meeting the demands for greater transparency and trust from stakeholders.[1,2]

In the financial services industry, there is a strong trend to upgrade legacy systems[3] and implement an agile way of working across different business functions. These organizations have been trying for years to restructure their operating models to become more agile and gain in efficiency. To meet customer demands, we continue to invest in increasingly comprehensive, interactive and innovative online banking services, in "full immersive" digital platforms, in the exploration of different channels, in insurance applications appreciated by customers and in the improvement of the quality of the data collected to benefit from increasingly accurate reporting services. The adoption of technology is really the critical element to activate and enable these changes.[4]

The top technologies that financial services organizations are investing in include artificial intelligence (AI), blockchain, data analytics, the Internet of Things, and business process automation (BPA). In addition to these, to update legacy systems, an

[1] PELLEGRINI, DAVOLA, CASALINO, BEDNAR, *Striking a balance between profit, people welfare, and ecosystem health in the transition towards a sustainable financial system*, in *Law and Economics Yearly Review Journal - LEYR*, Queen Mary University, London, UK, vol. 10, part 2, pp. 295-324, 2021.

[2] BARROSO & LABORDA, *Digital transformation and the emergence of the Fintech sector: Systematic literature review*. Digital Business Vol. 2, Issue 2, 2022, available at *https://doi.org/10.1016/j.digbus.20 22.100028*.

[3] A legacy system is a computer system, application, or component that is often outdated, and continues to be used because the organization does not intend to or cannot replace it. Legacy is equivalent to a "backdated" version (compared to current systems or technologies). In Italian it can be translated as "obsolete", "old" or "out of commerce". It also indicates ICT systems that use older technologies (usually computer systems with centralized hardware architecture, i.e. with a mainframe) or peripherals or electronic components of older plants or equipment and for this reason they are very difficult to interface with newer systems. For this interface, middleware systems can be used, but the expensive use of the latter often decrees the replacement of legacy with current technologies (migration to new systems).

[4] BASKERVILLE, CAPRIGLIONE, CASALINO, *Impacts, challenges and trends of digital transformation in the banking sector*, in *Law and Economics Yearly Review Journal - LEYR*, Queen Mary University, London, UK, vol. 9, part 2, pp. 341-362, 2020.

increasing number of financial organizations are turning to the cloud, considered not only an engine of efficiency but also a driver of internal and external change. The benefits of cloud infrastructure for financial services include, for example, a significant reduction in management costs, better and more integrated security, greater scalability and flexibility, as well as being considered an infrastructure capable of ensuring a more efficient and cost-effective approach to big data, including its analysis and subsequent reporting.[5]

Business process automation is a particularly important component of digital transformation for financial services organizations. Banks and insurance companies, in particular, are highly operation-based and data-driven businesses that generate large amounts of data. Automatically processing this data allows them to operate much more efficiently and use technologies, such as artificial intelligence and data analytics, to retain and expand their customer base while managing risk. Businesses, for example, can use chatbots to deliver a better customer experience, artificial intelligence (AI) models and technologies to manage complex information from documents, and analytics to extract information and gain insights into certain business dynamics. Many financial services organizations are also taking advantage of the opportunity offered by automation to develop new products and services, in collaboration with other partner organizations in their ecosystem.

In concert, all the technological innovations that organizations in the financial sector are adopting can greatly improve profitability within the increasingly competitive financial services market. In addition, further greater automation allows banks and insurance companies to react and adapt more quickly in the face of increasingly changing and pervasive needs for change, within and outside organizational boundaries. Digitalization is starting to significantly expand the entire

[5] Activity is understood as the periodic collection of data relating to the management and performance of a company and their transmission to managers or other subjects who make decisions of the company itself.

value chain within the banking sector, a process that is referred to as “open banking”. This process has the potential to fundamentally change the competitive dynamics in the banking sector. The value chain is likely to expand as new technologies embedded in an integrated enterprise platform make it possible to connect between different parts of the value chain, for example through open APIs, which was not possible until now. In addition, recent innovations allow for a seamless flow of information between different parts of the value chain. The exact breakdown will vary between financial products, and it will be up to individual banks to decide where and how to find the most value for them in this new value chain. Compared to traditional service production[6,7], this new value chain is superior for two reasons:

- specialization will result in increased economies of scale, providing customers with more cost-effective products;
- effective organizational impact will allow managers of financial organizations to choose the most effective contributors within each part of the value chain.

An example of what an open value chain in the banking sector could look like is as follows. The online platform of the financial organization is what most customers consider as “their bank”, i.e. the platform from which to obtain financial services; This can be a bank or a platform that specializes in aggregating different service providers into a single interface. This part of the value chain is entirely focused on customer needs and is responsible for all customer interactions. However, the platform is not responsible for producing the necessary services, but transmits customer requests further down the value chain. To attract customers, it is essential to have an interface or dashboard that is easy to use and provides comprehensive financial products and services, to limit disputes and difficulties for customers. A marketplace provider

[6] PFEFFER, *Seven practices of successful organizations*, California Management, 1998.
[7] WIRTZ, KOWALKOWSKI, “*Putting the* “service” *into B2B marketing: key developments in service research and their relevance for B2B*”, in *Journal of Business & Industrial Marketing*, Vol. 38 No. 2, 2023, pp. 272–289, doi: https://doi.org/10.1108/JBIM-02-2022-0085.

connects customers with financial service providers and transmits the financial data required to carry out credit assessments in the basic banking system. This requires managing and analyzing big data, managing open APIs, and processing data, while ensuring national compliance in data transmission often between entities from different nations. In central banking, financial products and services are linked to a regulated balance sheet and delivered at reduced costs thanks to economies of scale. This part of the value chain holds the banking book and license to operate, and therefore assumes the credit risks. As a result, proper risk and capital management is critical. Finally, the digital infrastructure necessary for data management, mainframe systems and the development of IT solutions for customers and other stakeholders must be considered.

2. Digital transformation has now become a great opportunity for financial organizations.[8] Evolving customer demands and pressures to reduce costs, along with the ongoing need to increase efficiency, leave financial organizations with no choice but to invest more and more in modern technology. The Covid-19 coronavirus pandemic has had a significant impact on digital transformation, creating a direct need for banks to communicate with their customers through digital channels, such as platforms and apps, whereas previously social distancing was the exception in the relationship between customer and financial[9] intermediary. The number of users of digital financial products and services has increased dramatically since the beginning of the pandemic, compared to how many there were before it. But these technological developments cannot be considered new. For a few decades now, bank customers

[8] ŻUCHOWSKI, CAPRIGLIONE, CASALINO, SKRODZKI, *Crypto assets, decentralized autonomous organizations and uncertainties of distributed ledger technologies*, in *Law and Economics Yearly Review Journal - LEYR*, Queen Mary University, London, UK, vol. 11, part 1, pp. 123-155, 2022.

[9] McKinsey Digital (2020), "E*urope's digital migration during COVID-19: Getting past the broad trends and averages*".

have been shifting from traditional branch banking to online and mobile alternatives.[10]

Customers have become more familiar with the use of products online. This has opened up the market to new players, such as fintech firms and large technology platforms, who are able to develop attractive and easy-to-use interfaces for their services. As a result, services can increasingly be offered to customers in an efficient manner, allowing for the unbundling of financial services and giving customers a wider range of choices, with greater involvement in the process.

The adoption of digital technologies in the classic business processes of financial organizations makes it possible to reduce the impact of typical fixed costs, increasing profitability per customer.

Even large technology companies such as Amazon and Google have begun to offer financial services, especially in the US market, which is traditionally more open to innovation and at the same time less constrained by the stringent regulations typical of the European financial market. They did this quickly by using their networks, customer data, and available technology to focus on specific financial services connected to their core "core" services.

Traditionally, banks have always been the custodians of relevant customer data (strongly protected by banking secrecy), in particular those necessary to assess their creditworthiness. But even large tech companies can increasingly make a similar assessment by exploiting their customers' data, so it seems that the traditional role of banks as "gate keepers" is being questioned.

The affordability and, above all, the ease of use of their services seem to be the basis of the success of these new market players. In other words, customers appreciate the ability to quickly and easily access all financial services online or via mobile devices; and the simpler the service is to use, the more widespread it becomes. In addition,

[10] HAKKARAINEN, *The digitalisation of banking – supervisory implications*, speech at the Lisbon Research Centre on Regulation and Supervision of the Financial Sector Conference, Lisbon, 2018.

customers can choose from a greater number of customized options, including numerous non-financial services, that meet their specific needs. These options are based on the extensive data that suppliers collect about their customers' day-to-day behaviour.

Using customer data and analytics allows providers to offer services to customers who do not have a strong credit history, which also leads to greater financial inclusion.

The impact of all this, today, is considered very significant by industry experts, especially in emerging markets.

Another decisive element is the ease of access to the online services of banks and insurance companies.

Some platforms, for example, allow customers to compare offers from different banks and choose the best option. Banks are increasingly encouraged to allow the use of these platforms because they attract more customers, while exclusion could result in the loss of customers. But it is the online platform that collects customer data and not the bank; Hence, this development could lead banks to become actual providers of services and products that are sold to customers through dedicated solutions or specific apps.

However, offering technology and user-friendly services does not guarantee that it will be immediately profitable in the short term. However, the high estimated market value shows expectations of future profitability.

New technological developments are putting competitive pressure on banks. Banks will have to react to changes in customer behavior, who demand more efficient online services and more convenient financial products.

Technological developments also bring new risks; the more widespread use of technology and the increased involvement of third parties, for example through

outsourcing[11] and cloud computing[12], will make financial organizations more dependent on the availability of solutions developed by third parties and more vulnerable to cyber risks.

That said, these risks are not entirely new for banks, as banking supervisors have required them to mitigate all risks, including those related to technological innovation.

In addition, banks have extensive experience in regulation and compliance, having already overcome the main regulatory hurdles that new entrants face. In addition, many fintech companies[13] and big tech platforms[14] have been offering their

[11] Outsourcing, also called outsourcing (an English term that can be literally translated as "external procurement"), is in business economics and organization, the set of practices adopted by companies or public bodies to resort to other companies to carry out certain phases of their production process or phases of support processes. The return of the stages of the production process within the company (in-house) are called back-sourcing. At the beginning or end of the outsourcing, overlapping situations called internalization often occur.

[12] Cloud computing or cloud services indicates a paradigm of providing services offered on demand by a supplier to an end user through the internet (such as data storage, processing or transmission), starting from a set of pre-existing resources, configurable and available remotely in the form of a distributed architecture. The cloud computing system involves three distinct factors: Service provider: offers virtual server services, storage, complete applications (e.g. databases) generally on a pay-per-use basis; administrator customer: chooses and configures the services offered by the supplier, generally offering added value such as software applications; End Customer: Uses the services appropriately configured by the admin customer. In certain use cases, the administrator customer and the end customer may be the same: for example, a customer may use an archiving service to make a copy of their data; In this case, the end customer configures and uses the service.

[13] The term fintech generally refers to financial innovation made possible by technological innovation, which can translate into new business models, processes or products, and even new market players.
The use of technology is a necessary element in making financial innovation possible. The nature of the relationship between technological innovation and financial intermediation is the subject of in-depth analysis, taking into account the impact that technological transformation is producing on the financial system on an international scale. The changes taking place in the financial services markets, driven by technology, have a much deeper and broader political-strategic scope than a mere redesign of specialized economic structures (markets and financial intermediaries, first and foremost).

[14] The term big tech is used in reference to the five largest Western IT multinationals, namely Google, Apple, Facebook, Amazon, and Microsoft. These multinationals are often also referred to by the acronym GAFAM, which is made up of the initial letters of the five companies. Big tech is some of the most profitable publicly traded companies in the world, with market capitalizations ranging from $500

financial services to banks and insurance companies for some time[15] now. It is not yet clear whether or not large tech companies want to enter the banking and insurance market directly, with all the requirements that this would entail. The COVID-19 pandemic has somehow shown that digital investments by financial organizations are yielding remarkable results, at least in terms of ensuring operational resilience. Banks in particular faced major challenges and their IT infrastructures proved to be up to the task: continuity of service was maintained smoothly and securely.[16]

3. Financial institutions operate through a wide range of operational processes in which potential losses may arise. With the progressive digital transformation of the financial sector and the increasing adoption of advanced, pervasive, and interconnected technologies, technological risks have become more complex and difficult to identify, assess, and mitigate. The integration of digital platforms, data-driven decision-making systems, artificial intelligence, and cloud-based infrastructures has significantly expanded the risk landscape for banks and other financial intermediaries.

In this context, financial institutions must ensure the presence of robust and continuously updated risk management frameworks capable of effectively addressing technological vulnerabilities. Such frameworks are essential not only to minimize risk

billion to $2 trillion. These operate in different sectors and have billions of consumers on multiple platforms. Amazon is the undisputed e-commerce giant, Facebook is the leading social media platform, Google is the most widely used search engine, while Apple and Microsoft are mainly concerned with hardware. These leading IT companies have now fundamentally changed the way people use technology, creating a digital ecosystem that relies on the services they offer on a daily basis. However, big tech is also often talked about in a negative light, especially when it comes to unfair marketing practices, the establishment of monopolies, mismanagement of user data, and more.

[15] Bank for International Settlements, Fintech and the digital transformation of financial services: implications for market structure and public policy, BIS Papers, No 117, 2021.

[16] HAKKARAINEN, *The digitalisation of banking – supervisory implications*, speech at the Lisbon Research Centre on Regulation and Supervision of the Financial Sector Conference, Lisbon, 2018.

exposure but also to safeguard both tangible and intangible assets, including financial resources, sensitive data, intellectual property, and organizational reputation.

Moreover, managing technological risk in the banking sector requires the systematic development of structured strategies and governance mechanisms aimed at preventing, monitoring, and responding to potential disruptions or losses. This process involves the adoption of appropriate regulatory compliance measures, internal control systems, and technological safeguards aligned with evolving legal and supervisory requirements.

Within this perspective, several key activities and operational practices play a crucial role in effectively mitigating technological risks, including the following:

Real-time internal and external data analysis

Real-time data analysis can help risk prevention and management tremendously, but it comes with its own challenges. One of these is the accuracy of real-time data; Before data can be used to make decisions, it must be cleaned, normalized, verified, and authorized. Another challenge of real-time analytics is effectiveness. Even if a financial organization is able to provide high-quality data in real-time, it may not be able to make quick decisions based on this data. Banks often find it difficult to increase the quality of real data and make quick decisions based on this data.

Data acquisition and management

Banks can be put in serious difficulty by the acquisition and mishandling of huge volumes of data from different sources: customer information, financial transactions, sales data, marketing data as well as numerous other unstructured information in the form of text messages, emails and social media interactions. With the exponential increase in enterprise data, it has become a challenge for financial organizations to

ensure data quality and security. Several banking risks can arise due to the lack of data governance plans; This is because financial organizations often have data scattered across multiple locations or virtual locations (according to the traditional old logic of “silos”), non-interoperable and also available on disconnected systems, with teams of experts then making decisions based on partial data.

API management

API stands for Application Programming Interface. An API is a software intermediary through which two applications can communicate with each other. APIs are a neutral link between an application that makes a request (client) and the application that provides the response (server), independent of the programming language and the specifics of the applications that the APIs connect to. The purpose of APIs is therefore to integrate data, applications and devices both to facilitate communication and collaboration within an organization (and between the organization and business partners), and to make the experience of internal users (primarily employees) and external users (customers, suppliers and other partner organizations) more convenient and fluid. While APIs were born as tools for developers, today their value goes far beyond the niche of an organization's information systems technicians: they are vectors of efficiency, innovation and additional business opportunities. Open banking (an innovative model of banking management by which a financial organization allows access to its financial services via third-party APIs) presents a new set of challenges. The first challenge is the security risks associated with exposing banking functions to APIs. Cyberattacks on these APIs can pose a major risk to banking systems. Another challenge is the financial liability due to a compromised API. In the current regulatory system, when a cyberattack on the API occurs, the financial institution must take responsibility for the losses incurred by customers. Overcoming these challenges requires an innovative API management

platform.

Data virtualization

In many financial organizations, as mentioned above, data resides in closed silos. It therefore becomes difficult, or impossible, to make decisions based on data when there is no archive of data that can be queried and managed in a truly centralized way. Data virtualization solves this problem by combining all business data and providing the ability to use dashboards, views, or logical interfaces for data access. Data virtualization can therefore be a major challenge for financial organizations that are dealing with a huge amount of partially structured and unstructured data. With the latest European and national data standards, data collection and storage must be fully compliant with the typical perimeter of financial sector organisations.

Data science and integration

Models based on data science methods and techniques (see data science) can help banking and insurance organizations make better and more easily adoptable decisions in real-world settings. Additionally, they can help them respond to the market faster and become much more competitive against the competition.

However, there are several challenges related to data science models. There is often no centralized repository for a financial organization's models, and it is difficult to track which model has been used in risk management functions. Tracking the efficiency of data science models is also a challenge because internal teams of experts can develop these models with different programming languages and technologies, making these models difficult to replicate and have a low degree of interoperability.

Blockchain adoption

Blockchain is proving to be a technology that can facilitate the spread of more

efficient and secure financial services. Blockchain technology is an advanced database mechanism that allows for the transparent sharing of information within a corporate network. A blockchain database stores data in blocks that are linked together in a chain. The data is chronologically consistent because you can't delete or modify the chain without the consent of the network. As a result, blockchain technology can be used to create an unalterable or immutable ledger to track orders, payments, accounts, and other transactions. The system has built-in mechanisms that prevent unauthorized transactions from being inserted and create consistency in the shared view of those transactions. For financial services organizations, this technology may increasingly represent a path to faster and cheaper transactions, automated contracts, and greater security.

4. The emergence of Distributed Ledger Technology (DLT) represents more than a mere technical upgrade; it is a fundamental shift in the architecture of financial trust. While economists view blockchain as a tool for drastic transaction cost reduction, legal scholars grapple with the “decentralized” nature of a system that lacks a traditional point of liability.

From a Law & Economics perspective, blockchain serves as a catalyst for allocative efficiency by addressing the friction inherent in legacy financial systems. The transition from Institutional Trust to Algorithmic Trust redefines market dynamics:

- Reduction of transaction costs by enabling “atomic settlement”, DLT eliminates the need for central clearing houses. This significantly reduces the capital tethered in margin requirements and collateral, enhancing systemic liquidity.
- Asset tokenization and market depth. In particular the ability to fractionalize traditionally illiquid assets (real estate, private equity, or IP rights) lowers entry barriers. This democratization of investment leads to more robust price discovery and deeper markets.

- Mitigation of asymmetric information. In financial operations the immutable nature of the ledger provides a "single version of the truth." This transparency reduces the monitoring costs and auditing overhead that currently burden banking balance sheets. Thanks to recent and substantial growth, the digital currency market is now worth trillions of dollars; much of this success comes from all the potential uses of the underlying blockchain technology. Since blockchain networks were first introduced with digital currencies, it makes sense that blockchain applications in finance are some of the most promising. Financial organizations will be increasingly incentivized to invest in blockchain technologies for several reasons.[17,18]
- Money transfers. From the very beginning with Bitcoin,[19] blockchain technology was designed to move funds from point A to point B, without the need for a central governing body[20]. As blockchains evolve, they are able to carry out much

[17] MILANI, GARCIA-BANUELOS, DUMAS, *Blockchain and business process improvement*, BP Trends, 2016.

[18] GOSWAMI et al., "*Blockchain technology and its disruptive impact on financial intermediaries*", in *International Journal of Scientific Research in Engineering and Management*, Vol. 09 Issue: 06, 2025 https://doi.org/10.55041/ijsrem50972.

[19] Bitcoin (symbol: ₿, code: BTC or XBT) is a cryptocurrency and international currency payment system. By convention, if the term Bitcoin is used with a capital initial, it refers to the technology and the network, while lowercase (bitcoin) refers to the currency itself. Bitcoin is not classified by financial experts as a currency, but as a store of value that is currently very volatile. Unlike most traditional currencies, Bitcoin does not make use of a central body or sophisticated financial mechanisms, the value is determined solely by the leverage supply and demand: it uses a database distributed among the nodes of the network that keep track of transactions, but uses cryptography to manage the functional aspects, such as the generation of new money and the attribution of ownership of bitcoins. The Bitcoin network allows for the pseudo-anonymous possession and transfer of coins; The data necessary to use one's bitcoins can be saved on one or more personal computers or electronic devices such as smartphones, in the form of a digital "wallet", or kept with third parties who perform functions similar to a bank. The peer-to-peer structure of the Bitcoin network and the lack of a central body makes it impossible for any authority, governmental or otherwise, to block transfers, seize bitcoins without possession of the relevant keys or devaluation due to the introduction of new currency.

[20] MEIKLEJOHN, POMAROLE, JORDAN, LEVCHENKO, MCCOY, VOELKER, SAVAGE, *A fistful of bitcoins: characterizing payments among men with no names*, Internet Measurement

faster and cheaper transactions. Financial institutions that use blockchain technology will be able to offer more efficient money transfers; International money transfers that sometimes take hours or days can take place in seconds and without expensive fees.

- Increased transaction security. Financial organizations are always targets for fraud. Digital payments, in particular, carry the risk of information theft during the transaction process when they pass through payment processors and banks. Blockchains use cryptographic algorithms to process and record blocks of transactions. The encryption techniques adopted may be a way for financial companies to reduce the level of risk when processing transactions.
- Automation through smart contracts. The blockchain can allow organizations to have smart contracts, i.e. contracts that self-execute when the conditions are met. Contracts are an important part of the financial services industry, and companies in the industry devote a lot of time and resources to them. A self-executing contract makes this process much more efficient; For example, an insurance company could use *smart contracts*[21] to speed up the claims settlement process. When a customer submits a claim, it is automatically reviewed by codes programmed into the blockchain; If it is deemed valid, the smart contract is executed, and the system pays the customer.
- Customer data storage. Most financial organizations must put their customers through an identity verification process to prevent fraud and money laundering. This takes time and money, but it is part of the typical costs of such an activity. An alternative could be to store customer data on a blockchain that can be

Conference, New York, 2013, by ZHENG, XIE, DAI, CHEN, WANG, *Blockchain challenges and opportunities: a survey*, International Journal of Web and Grid Services, vol. 14, no. 4, pp. 352-375, 2018.

[21] Smart contracts are computer protocols that facilitate, verify, or enforce the negotiation or execution of a contract, sometimes allowing the partial or total exclusion of a contractual clause. Smart contracts also usually have a user interface and often simulate the logic of contract clauses.

accessed by different financial organizations. As soon as a company has passed the "Know Your Customer" (KYC) process with a new customer[22], the system will be able to automatically add the latter's data to the blockchain. The other companies could then use the KYC data instead of doing the process on their own. This would also save time for the customer, who would not need to follow the KYC process for each new financial product.

5. It becomes essential to be able to think about the organizational design choices that seem most appropriate for financial companies that want to adopt, for example, blockchain technology and the implications that these intentions[23,24] have on the organizational structure.

This must certainly be analyzed considering the quality of the technological infrastructure that can effectively support the organization of business processes and the management of innovation projects to be implemented.

In recent years, not only in the financial contexts directly involved, but also in academic contexts, researchers and experts[25] are monitoring the evolution of DAOs - decentralized autonomous organizations. This new corporate philosophy had already been talked about for some time before the health emergency, and it is still applied, with effects that are often not entirely certain. In April 2016, "The DAO" was launched, a direct investment project open to *venture capitalists* based on the concept of

[22] The Know Your Customer guidelines in financial services require that professionals strive to verify the identity, suitability and risks involved in maintaining a business relationship. The procedures are part of the broader scope, for example, of a bank's anti-money laundering policies.

[23] WEERAKKODY, JANSSEN, DWIVEDI, *Transformational change and business process reengineering (BPR), Lessons from the British and Dutch public sector*, in *Government Information Quarterly*, 28(3), pp. 320-328 (2011).

[24] SINGH, GAUR & SINGH, *Blockchain-Based Governance: Implications for Organizational Boundaries and Structures*, in *British Journal of Management*, Vol. 35, pp. 1692–1699 (2023). https://doi.org/10.1111/1467-8551.12784.

[25] ŻUCHOWSKI, CASALINO, MURAT, *Experience of academic staff in mentoring programs*, *International Journal of Management and Economics*, vol.58, no.2, 2022, pp. 23-41, 2022.

decentralized autonomous organization.

At the moment there is no regulation of this model nor, even less, can it be given an unambiguous definition; analyzing previous experiences and projects, the DAO should represent an organization designed to be entirely (or almost) automated and decentralized[26,27], without any management structure or board of directors, committing funds for a specific purpose. In this context, the issuance of *tokens*[28], upon payment in cryptocurrency[29] or through *"proof of work"* (the consensus algorithm for validating transactions on the blockchain), would grant its owner a voting right in the management of the organization or additional rights.

An incentive for DAOs has certainly been provided by the pandemic and everything that has been questioned in terms of the typical centrality of the workplace and, consequently, of the entire classic business organization. From platforms to DAO the step is short; It should be immediately clarified that a decentralized autonomous organization does not only mean smart working, distributed IT architectures or collaborative processes as the name might suggest. Quite simply, these phenomena fit perfectly into the DAO paradigm, which is something more. Those who propose the DAO deny the validity of a traditional business organization: centralized and

[26] D'ATRI, DE MARCO, CASALINO, Interdisciplinary Aspects of Information Systems Studies. pp. 1-416, Physica-Verlag, Springer, Germany, 2008.

[27] HASSAN & DE FILIPPI, Decentralized Autonomous Organization. Internet Policy Review, Vol. 10, issue 2, 2021 https://doi.org/10.14763/2021.2.1556.

[28] A security token (also called a hardware token, authentication token, cryptographic token, or simply token) is a physical or logical object required for strong authentications, known as two-factor authentications. It often comes in the form of a small, battery-powered portable electronic device with autonomy in the order of a few years, equipped with a screen and sometimes a numeric keyboard. Some tokens can be connected to a computer via a USB port to facilitate data exchange. It can also be software-based, where the necessary information resides directly on the user's computer, or in a phone app, and not in an external physical object. Sometimes, the token is needed not so much to authenticate to the application (login) as to carry out transactions/operations or the so-called provisions.

[29] ŻUCHOWSKI, CAPRIGLIONE, CASALINO, SKRODZKI, *Crypto assets, decentralized autonomous organizations and uncertainties of distributed ledger technologies*, in *Law and Economics Yearly Review Journal - LEYR*, Queen Mary University, London, UK, vol. 11, part 1, pp. 123-155, 2022.

hierarchical with systems and processes imposed from above, which proves to be slow, cumbersome, complex and which slows down creativity and innovation (fig. 1).

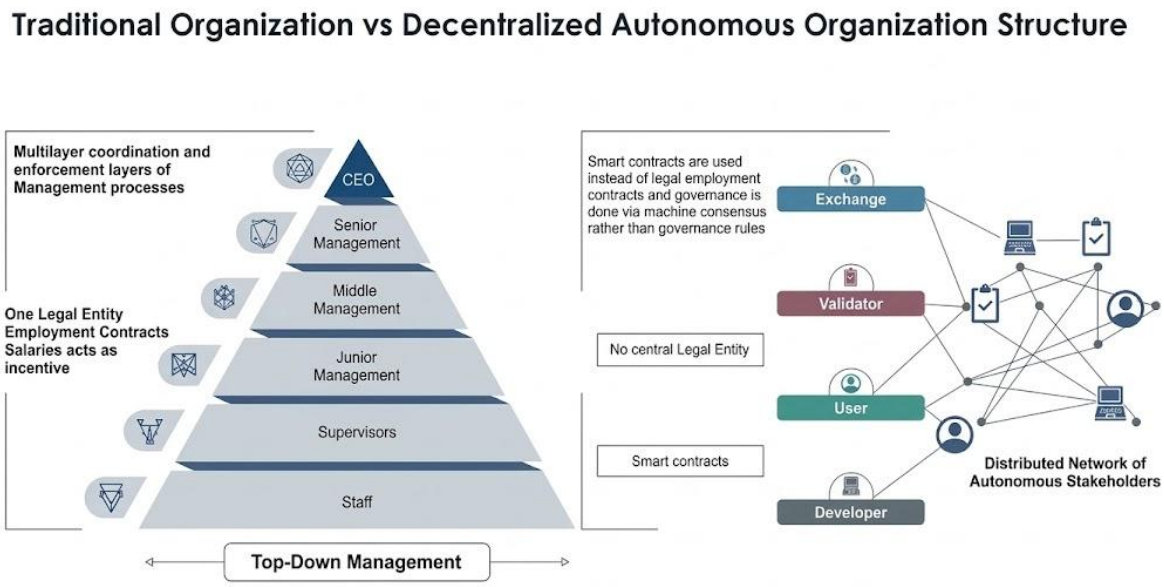

Fig. 1 - Pyramid organization and decentralized autonomous organization (DAO), Buterin V. et al., 2014

Today, organizations in the financial sector have low-cost hardware and software technologies (which, thanks to the cloud paradigm, have become increasingly accessible even to small and medium-sized companies), access to global networks, huge amounts of data generated and integrated with each other, automation algorithms and machine learning solutions (Artificial Intelligence), as well as technologies for the creation of hybrid work environments in which the virtual simulates and interacts with the real (see also the Metaverse, for example). And then, we have platforms like Facebook, Netflix, Amazon, Uber, etc., that take full advantage of the new technologies available and have the first two letters of DAO as their hallmarks: decentralization and autonomy. Decentralization means eliminating centralization: business decisions, the introduction of new services and their customization do not depend on superior choices and, often, far from operational

reality, but are based on the use of the platform by users. Thanks to the latest distributed technology, software, and machine learning algorithms, the platform evolves autonomously, without decision-making intermediaries that can only slow it down.[30]

The business organization, which has always been understood as a set of social entities composed mainly of people (bosses, managers, employees, customers, etc.), listens to users thanks to the inputs that come substantially from a code or algorithm that can really make a difference.

It is the software that provides the data acquired and the information processed, while the role of the operators who supervise and validate changes to the service, perhaps proposed directly by the algorithm, remains fundamental, and finally it is the man who develops and releases the new versions of an application or an online service. Follow a comparison table that highlights main critical differences between DAOs and traditional organizations (tab. 1):

	DAOs	**Traditional organizations**
Governance	Governed by code and consensus	Governed by a centralized authority
Decision-making	Collective decision-making by participants	Decision-making by a top-down hierarchy
Transparency	Transparent operations recorded on the blockchain	Operations may not be fully transparent
Control	Direct control and decision-making power for participants	Control in the hands of centralized authority
Structure	Decentralized, without a central authority	Centralized, with a hierarchical structure

[30] BORIN, CAROLI, CASALINO, CAVALLARI, DI CARLUCCIO, DI NAUTA, PIZZOLO, *A New Approach to Enhance the Strategic Impact of Digital Education in Universities and to Foster the Development of a High Performing Common EU Smart Education Ecosystem*, in the volume *Smart Education and e-Learning - Smart Pedagogy* edited by USKOV, VLADIMIR, HOWLETT, ROBERT, JAIN, LAKHMI, pp. 211-229, Springer Nature, Singapore, 2022.

Flexibility	Flexible and adaptable to changing needs	May be less flexible and slower to adapt
Inclusivity	Inclusive, allowing participation from anyone	Participation may be limited to certain individuals or groups
Accountability	Transparent and auditable actions	Accountability may be less transparent
Intermediaries	No need for intermediaries	May require intermediaries for decision-making
Trust	Trust in code and consensus	Trust in centralized authority

Tab. 1 - How Does a Crypto DAO Work, Minaev A., 2023

Ultimately, the concept of platform simplifies, speeds up and makes the relationship between manufacturer, supplier and customer linear and direct. With the use of a platform, a horizontal ecosystem is created that generates innovation and turnover for those who control it. From here it is easy to understand that another distinctive element of a platform is collaboration;[31,32] an element that has fortunately become widespread and trendy following the health emergency. A great dust-off for remote collaboration between employees, thanks to application services designed to encourage peer-to-peer interaction without hierarchies and centralities, and which make extensive use of new technologies. In particular, network technologies, protection technologies and machine learning algorithms for the autonomous management of application platforms (fig. 2).

[31] CASALINO, CAVALLARI, DE MARCO, FERRARA, GATTI, ROSSIGNOLI, Performance Management and Innovative Human Resource Training through Flexible Production Systems aimed at Enhancing the Competitiveness of SMEs, IJKM, Iup Journal of Knowledge Management, vol. XIII, No. 4, October, pp. 29-42, 2015.

[32] SHCHERBAKOV, SILKINA, Supply Chain Management Open Innovation: Virtual Integration in the Network Logistics System. J. Open Innov. Technol. Mark. Complex. 7, 54 2021. https://doi.org/10.3390/joitmc7010054

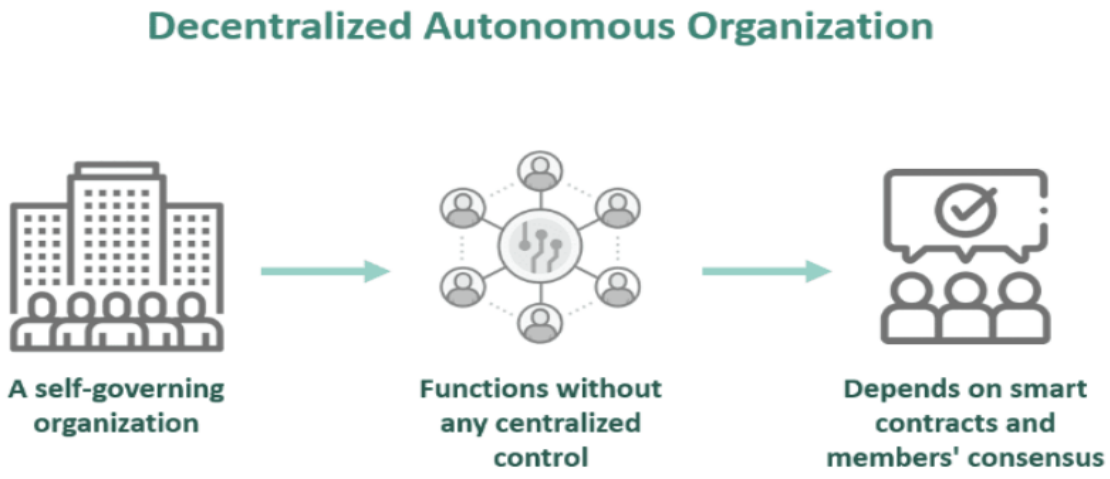

Fig. 2 - Decentralized Autonomous Organization Ghosal S., Srivastav A.K., Vaidya D., WallStreetMojo, 2023.

The term *Distributed Ledger Technologies (DLT)* refers to electronic "ledgers" (or ledgers), geographically distributed over a vast network of nodes, whose data is protected from potential cyber-attacks thanks to the fact that the same information is redundant, verified and validated through the adoption of different protocols (or rules) commonly accepted by each participant.[33]

The management of these ledgers is de facto decentralized, as the secure storage of encrypted information is based on consensus algorithms that involve all or part of the participants, or on mechanisms useful for ensuring that all nodes in the network agree on the set of valid transactions.

The use of such technologies in the financial sector can be advantageous especially for tracking applications: every time a product transits in a new state, the transaction can be documented and recorded in a distributed ledger, thus creating a permanent and unalterable history of the financial service. The inclusion in the register of the information relating to each step takes place only after certain recognition of the user who accesses it, through the adoption of *digital identification technologies*

[33] See Distributed Ledger Technologies, Ministry of Economic Development, Italy, 2021.

(see for example solutions such as SPID[34] or CIE) [35] and/or digital signature, and after obtaining consent according to the established rule. The information entered in this way becomes unchangeable, preventing any subsequent malicious alteration.

Different types of information can be entered within a distributed ledger, although with limitations in terms of size. A company has the possibility to make this information public, then to make it private, in whole or in part, or to share it only with specific players in the supply chain. The end user can consult all the public data contained in the register by scanning, for example, a smart label associated with the product through a special device, typically a smartphone.

The application of *Distributed Ledger* technologies increases the security and reliability of the information associated with an online financial service.

The main strengths can be traced back to the following aspects:[36]

- speed of activation, by a reduced organizational complexity and, through process automation, potentially immediately operational;
- transparency in business processes and provision of financial services[37]. If content is recorded in a smart contract on the blockchain and freely accessible

[34] The Public Digital Identity System (SPID) is the simple, fast and secure access key to the digital services of local and central administrations. A single credential (username and password) that represents the digital and personal identity of each citizen, with which he or she is recognized by the Public Administration to use digital services in a personalized and secure way. SPID also allows access to public services in the member states of the European Union and for companies or traders who have chosen it as an identification tool. With the access system on which SPID is based, the Public Administration is even closer to citizens. By guaranteeing everyone a way of accessing online services, which is always the same and intuitive, SPID facilitates the use of online services and simplifies citizens' relationship with public offices. The private sector can also benefit from digital identity, improving the user experience and the management of their customers' personal data.

[35] The Electronic Identity Card (CIE) is the identity document of Italian citizens that allows access to the online services of the authorized Public Administrations. Thanks to the increasingly widespread use of digital identity, many Public Administrations have integrated the "Enter with CIE" identification system within their online services, allowing users fast and secure access.

[36] LA TROFA, *Decentralized Autonomous Organization (DAO): the governance of the metaverse*, Tech4Future, 2022.

[37] CAROLI, *Anti-corruption policy in international groups*, Luiss University Press, 2019.

to anyone;

- trust, the terms of the agreement cannot be modified, under penalty of its termination, according to the fundamental rules of the blockchain;
- automation, the smart contract can automatically perform the required operations, without the need for lengthy organizational procedures;
- reward, in particular “tokenization” allows to fairly share the commitment that the various stakeholders make to ensure the proper functioning of a service;
- innovation, the absence of constraints related to centralization allows us to experiment with completely new forms of governance, to create unconventional organizations.

On the contrary, decentralized autonomous organizations can be vitiated by some weaknesses, largely deriving mainly from their often-disruptive scope in the typical contexts of traditional organizations:

- legal and regulatory uncertainties, a company defined by an electronic contract, not subject to any form of control by a superior control body, is difficult to frame in the traditional regulatory context, starting with the jurisdiction;
- clarity, the certainty of the rules is not necessarily the same as their clarity. The translation of the terms of an agreement from an IT point of view is in some cases extremely complex, not because of the complexity of their transfer at the code level, but from the interpretative point of view at the regulatory level;
- security, if the blockchain is secure in terms of design, the vulnerabilities of a specific application can be easily exploited by malicious actors, due to the absence of a control body called upon to confirm the validity of a transaction;
- technological immaturity, blockchain-based development does not yet enjoy the experiential background present in other areas, both in terms of tools and expert programmers. This is a skills *gap* that will take time to be compensated for on a large scale, especially in anticipation of a drastic increase in smart

contracts stipulated;

- coordination difficulties, it is still quite complex to coordinate the parties involved, especially if there is an objective need to vary the terms of an agreement.

6. From what emerges, it is evident that the digital transformation of a financial sector organization will have to be designed as a resource-intensive, often complex and relatively slow process. However, this becomes an effective lever to improve many internal and external business operations, as well as becoming a way to provide better services and reduce costs. The integration of so many innovative digital solutions can become truly transformative and can take years to fully implement.

Digital transformations can consist of or be based on different goals, and based on the type and size of the company in question, these goals can also vary over time. Some of the most objectives required for the investments for digital transformation in the financial sector are:

- reduce costs;
- improve response times;
- reduce problems and conflicts between customers and financial services companies;
- simplify internal and external operations;
- enter new markets;
- increase profitability by reaching new customers.

Based on the objectives set in such digitally supported reorganization processes, the definition and choice of priorities play a leading role in the digital transformation process. Fostering and embracing such a fundamental change will be a slow, resource-intensive, and complex process, meaning that based on goal

prioritization,[38,39] finance organizations may have a different approach to the same business process.

There are many software and hardware solutions that come into play in the adoption of a digital transformation process and all of them can become quite expensive if put together in a non-organic way, reducing the effects of the desired changes (both internal and external).

Internal changes will be the way the organization and all its employees work and interact within it. Through digital transformation, you can actively invest in streamlining as many aspects as possible, freeing up your workforce to perform more demanding or value-added tasks. An external digital transformation process manifests itself, for example, in a new, more interactive website or a more constant presence and interaction on social media. The purpose of this step is to convince people to interact with digital. Some of the most important advantages of digitalization in the financial sector are:

- Reduced costs, by implementing a digital transformation, you significantly reduce the costs of some of the many tasks that had to be performed manually. The advantage of digitization is that it simplifies many processes, speeds them up enormously, and automates them to a certain extent, significantly reducing the costs that financial companies face for repetitive tasks.
- Simplified operations, because digitalization directly reduces the costs of many processes, internal and external, and further improves the way business is conducted. Managers and counter operators, for example, often perform *"time consuming" tasks* based on the positions held and, thanks to the advent of

[38] SIMON, *A formal theory of the employment relation, trans. it. Causalità, rationality, organization*, Il Mulino, 1985.

[39] MAVLUTOVA, SPILBERGS, VERDENHOFS, NATRINS, AREFJEVS, VOLKOVA, *Digital Transformation as a Driver of the Financial Sector Sustainable Development: An Impact on Financial Inclusion and Operational Efficiency. Sustainability* 15, 207, 2023. https://doi.org/10.3390/su15010207.

digitization, many of the most trivial and time-consuming ones can be automated.

- Data collection, nowadays, most financial organizations are inclined to make data-driven decisions, and since we live in a world where leveraging data can strongly allow for greater competitive differentiation, it is necessary to work to obtain as much data as possible. A great way to improve data collection is to digitally transform your external operations, website, and social media to capture as much data as possible.
- Improved analysis capabilities, what you can do with the data, once it has been acquired, is just as important as the data collection itself. Data analysis has been the preferred tool for decision-making for some time now, and it has now become easier to use and more powerful than ever. With increasingly advanced algorithms, artificial intelligence and the adoption of software solutions dedicated to digital transformation in the financial sector can have a huge impact on data and business process analysis. Companies can perform more agile controls and prepare *compliance reports* by constantly monitoring the objectives and performance of new hires, keeping them updated effectively and promptly recognizing benefits and rewards to their employees.
- Leverage innovation. In particular innovation in the financial sector can increase customer loyalty, improve brand standing, and drive new customer acquisition. Businesses, especially those in the financial sector, can leverage innovative technology solutions to improve their *front-office* and *back-office* processes. Successful implementation of digital transformation requires a strong *focus* on the organization's operational goals, talented personnel with digital and multidisciplinary skills,[40] and a long-term commitment to ensuring its proper

[40] PELLEGRINI, USKOV, CASALINO, *Reimagining and re-designing the post-Covid-19 higher education organizations to address new challenges and responses for safe and effective teaching activities*, in *Law and Economics Yearly Review Journal - LEYR*, Queen Mary University, London, UK, vol. 9, part 1, pp. 219-248, 2020.

execution.[41,42]

While digital transformation allows companies to benefit from numerous benefits, it still remains an emerging and disruptive innovation; therefore, it is normal that this change is often accompanied by some obstacles and scepticism on the part of certain groups of employees.

In general, the challenges surrounding the implementation of digital transformation can be divided into two categories: those related to *policy making* and then those related to the ability to prevent or remove a whole series of obstacles caused by the current state of some technologies[43], which still need to be perfected.

In addition, one of the biggest complications to be addressed is regulatory issues, which are part of the challenges of policy-making. In many cases, there is still a lack of complete planning capacity for these projects, and this often proves to be a major limitation to be addressed.

The most relevant concerns concern legal issues, data confidentiality and the secrecy of the information present in transactions. In addition to what has just been said, there are technical criticalities which, although on the one hand are seen as challenges, also represent opportunities to be able to increasingly improve the technological assets of organizations in the financial sector. We are talking about millions of transactions, which obviously could not be stored and processed if not supported by effective and secure solutions.

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[41] CAPRIGLIONE & CASALINO, *Improving Corporate Governance and Managerial Skills*, in *Banking Organizations, International Journal of Advanced Corporate Learning (iJAC)*, Austria, vol. 7, issue 4, pp. 17-27, 2014.

[42] GOBNIECE & TITKO, *Staff Competencies for Digital Transformation: Results of Bibliometric Analysis. Virtual Economics*, Vol. 7, No. 1, pp. 25-46, 2024.

[43] CASALINO, DE MARCO, ROSSIGNOLI, *Extensiveness of Manufacturing and Organizational Processes: an Empirical Study on Workers Employed in the European SMEs*, in S*mart Digital Futures* 2015, NEVES-SILVA, TSIHRINTZIS., USKOV (Eds.), *Smart Education and E-Learning* 2015, USKOV, HOWLETT and JAIN (Eds.), IOS Press, *KES Smart Innovation Systems and Technologies series (TBC)*, Springer, 2015.

Another critical issue is that relating to interoperability, understood as the ability to connect and communicate not only between different internal IT platforms, but also with other external systems (managed by industry authorities, partners, other competitors, etc.).[44]

In any case, these changes, despite the risks highlighted, can only bring economic benefits and organizational improvements. Companies in the financial sector have an exasperated need for increasingly innovative[45] and sustainable[46] business management models to operate in an increasingly competitive market.[47,48]

7. The digital transformation of the financial services sector represents a profound structural metamorphosis that moves beyond simple technical upgrades to redefine the very essence of institutional trust. For professionals in business organization and economic law, this evolution marks a decisive shift from traditional, rigid hierarchies toward fluid, platform-based networks where the value chain is increasingly expanded through open APIs and integrated digital ecosystems. This new paradigm replaces the historical reliance on institutional trust with a model based on algorithmic trust, which acts as a powerful catalyst for allocative efficiency by addressing the frictions and information asymmetries inherent in legacy systems.

From an organizational perspective, the rise of Decentralized Autonomous Organizations (DAOs) and automated platforms introduces a radical departure from

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[44] USKOV & CASALINO, *New Means of Organizational Governance to Reduce the Effects of European Economic Crisis and Improve the Competitiveness of SMEs*, in *Law and Economics Yearly Review Journal*, Queen Mary University, London, UK, vol. 1, part 1, pp. 149-179, 2012.
[45] ROGERS, *Diffusion of Innovation, London*, The Free Press, 1993.
[46] CAROLI, *Economics and Sustainable Management of Enterprises*, 1/Ed, Mc Graw Hill, 2021.
[47] PORTER, *Competitive Advantage: Creating and Sustaining Superior Performance*, The Free Press, New York, 1985.
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classical management theories. In these decentralized models, business decisions and the introduction of new services do not depend on top-down commands from a board of directors, but are instead driven by code, consensus, and direct user interaction. This disintermediation challenges the traditional role of banks as “gatekeepers,” as large technology companies and fintech firms leverage vast data networks to offer specialized financial services with superior ease of use. While these changes offer significant benefits in terms of scalability and the reduction of fixed costs, they also require managers to foster a new culture of multidisciplinary digital skills to overcome internal scepticism and the technological immaturity of emerging development frameworks.

For the Law and Economic perspective, the transition to Distributed Ledger Technology (DLT) and smart contracts creates a complex set of jurisdictional and regulatory challenges. The deterministic nature of smart contracts allows for the automation of claims settlements and money transfers, yet their “immutable” quality remains difficult to frame within traditional legal contexts, particularly regarding the clarity of rules and the interpretation of regulatory terms at the code level. Furthermore, as financial intermediaries become more dependent on third-party cloud solutions and interconnected APIs, the risk landscape expands to include heightened cyber vulnerabilities and complex financial liabilities in the event of a compromised system.

In conclusion, the successful integration of these technological trajectories depends on a delicate balance between fostering disruptive innovation and maintaining robust governance and institutional integrity. The emergence of Central Bank Digital Currencies and the implementation of regulated frameworks like those found in supervised “sandbox” environments suggest a path toward a synthesis where the efficiency of DLT is backed by the certainty of the rule of law. Ultimately, the move from hierarchy to network will result in more cost-effective products and increased

economies of scale, provided that the financial sector can navigate the legal uncertainties and operational complexities of this new decentralized era.