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## Forging Legitimizing Coalitions: Comparing EU/U.S. Financial Consumer Protection Reforms

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What is the role of non-state actors—corporate and civic—in influencing and redirecting regulatory reforms? How do critical junctures like financial crises change interest group dynamics? Focusing on financial consumer protection reforms across the Atlantic, this essay discusses the role of civil society actors in bringing about policy change that runs counter the traditional capture narrative in the literature on financial regulatory reform. In light of the 2008 financial crisis, policymakers in the European Union (EU) and the United States turned their attention to financial consumer protection (FCP) and adopted a range of policy measures in response to crisis-related failures. The U.S. financial reform overhaul established a new federal agency solely responsible for consumer protection, the Consumer Financial Protection Bureau (CFPB). At the same time, the European Commission (EC) brought forward a policy package, including new supervisory authorities, which changed the institutional design of FCP in the EU. This essay will address the similarities and differences in FCP reforms across the Atlantic. Industry efforts clearly failed to prevent the increased consumer protection focus by policymakers and regulators. The discussion will highlight the role of weak and diffuse interests such as consumer, labor, and grass-roots groups and their ability to forge legitimizing coalitions with policymakers to bring about more consumer-friendly regulations, despite having fewer resources at their disposal to tackle the high complexity of financial regulatory issues and the continuing lobbying efforts by the financial industry. As a result, transatlantic financial reforms are not purely captured by high finance but reflect a compromise between the various interests involved.

### EU and U.S. Consumer Protection Reforms

According to a 2010 World Bank working paper on good practices, “the need for consumer protection arises from *an imbalance of power, information and resources* between consumers and their financial service providers, placing consumers at a disadvantage.<sup>[1]</sup> Consumer protection aims to address this market failure.” According to four principles issued by the World Bank, a well-designed FCP framework provides the consumer with:

1. *Transparency* by providing full, plain, adequate, and comparable information about the prices, terms, and conditions (and inherent risks) of financial products and services;

2. *Choice* by ensuring fair, non-coercive, and reasonable practices in the selling and advertising of financial products and services, and collection of payments;
3. *Redress* by providing inexpensive and speedy mechanisms to address complaints and resolve disputes; and
4. *Privacy* by ensuring control over access to personal financial information.

Analysts have pinpointed failures in consumer protection as “the detonators and amplifiers in the recent crisis” that unfolded in 2008 and subsequently demanded more effective consumer protection in provision of financial products and services.<sup>[2]</sup> This analysis is largely based on the experience of the U.S. housing bubble, which was largely made possible by deteriorating mortgage origination and underwriting standards. U.S. and EU consumer groups at the Transatlantic Consumer Dialogue (TACD) jointly emphasized the role of lax consumer protection standards in the financial meltdown: “[...] strong consumer protection regulation is essential not only to the protection of the financial consumer interests, but also to the safety and soundness of our nations’ financial systems. The breakdown of our economies was instigated by [...] dishonest and unfair consumer lending practices.”<sup>[3]</sup> This narrative resonated with policymakers in the U.S. and the EU who recognized the importance of consumer protection for the stability of the financial sector and subsequently put consumer finance protection at the heart of their policy response to the financial crisis.

The EC markedly stepped up its rhetoric on increasing consumer protection in retail financial services. Several initiatives were undertaken at the EU level to develop useful standards or benchmarks on FCP in financial services. Since 2008, the EC has measured malfunctions of consumer protection in retail financial services with a “Consumer Markets Scoreboard.” Also in 2008, the European Parliament (EP) released measures to increase consumer education and awareness on credit and finance.<sup>[4]</sup> The Larosière Report, issued in February 2009 by an expert committee, was the first EU-level document that gave a comprehensive account of required structural changes. Based on the report, a new regime of supervisory and regulatory institutions came into force in January 2011, including three new European Supervisory Authorities (ESAs) that work in tandem with the existing national authorities in charge of micro-prudential supervision.<sup>[5]</sup> The reform transformed the previous Lamfalussy Level 3 committees into bodies with greater supervisory, rule-setting, and coordinating powers while day-to-day supervision remains in the hands of member state authorities. Although not quite comparable to the American CFPB, the ESAs have a mandate to protect consumers against abusive practices, with stakeholder groups representing consumer associations in all three organizations. The European Securities and Markets Authority, for instance, issues reports on consumer trends and monitors new financial activities as well as the development of common rules on information transparency. Analysts have commented on the retail financial services reforms in the EU, as marking a “conspicuous” shift in regulatory focus “from internal market integration towards more consumer protection issues.”<sup>[6]</sup> TACD members had been lobbying intensively to get FCP into the mandate of the three authorities. The European Green Party strongly supported civil society efforts, and several Members of the EP called for a strong consumer protection mandate for the new institutions.<sup>[7]</sup> Industry representatives were all but happy about the regulatory changes. Their lobbying efforts had clearly failed to prevent the EC from focusing more on consumer protection than market integration.<sup>[8]</sup>

Consumer protection, in particular the new CFPB, was arguably the most contentious issue in the U.S. reform act. The Wall Street Reform and Consumer Protection Act (short: Dodd-Frank) of July 2010 created an independent regulatory agency, housed in the Federal Reserve, with the sole responsibility of protecting consumers of financial products. In

charging one single agency with consumer protection responsibilities, the reform succeeded in replacing a patchwork of different agencies, thereby consolidating and strengthening the regulation of consumer financial products. U.S. authorities quickly acknowledged the need for an enhanced FCP regime after the financial crisis. In March 2009, Sheila Bair, Chair of the U.S. Federal Deposit Insurance Corporation, noted: “There can no longer be any doubt about the link between protecting consumers from abusive products and practices and the safety and soundness of the financial system.[9] The consumer-friendly political environment had already become evident when consumer groups successfully pushed for credit card reforms in 2009 that resulted in the Credit Card Accountability Responsibility and Disclosure (CARD) Act, which has subsequently been put under the administrative authority of the CFPB. The Credit CARD Act of 2009 bans rate increases, prevents fee traps, and includes provisions for plain language disclosures in account terms. Both regulatory reforms—the Credit CARD Act and the CFPB—had been pushed for by the major consumer groups first in an informal alliance and later as the “Americans for Financial Reform” (AFR), which brought together more than 250 civil society groups in a pro-reform coalition. Both pieces of legislation were a clear defeat for the banking lobby, which had spoken out against the CARD Act and whose goal had reportedly been to kill the CFPB.[10]

Parallel to the EU and U.S. developments, consumer protection became a prominent issue on the G20 agenda. At the G20 summit in Pittsburgh in September 2009, leaders acknowledged that “far more needs to be done to protect consumers, depositors, and investors against abusive market practices, promote high quality standards, and help ensure the world does not face a crisis of the scope we have seen.”[11] In November 2010, the final declaration of the Seoul Summit confirmed the need for enhanced FCP.[12] In response to a call by the G20 in February 2011, a Task Force led by the Organization for Economic Cooperation and Development (OECD) produced “High-level Principles on Financial Consumer Protection,” For the first time, decision-makers agreed on international (non-binding) standards to enhance FCP across all financial service sectors. Sensing the political opportunity for reform, the G20 Summit meetings had been accompanied by a “Consumers for Fair Financial Services” campaign organized by members of Consumers International, which had mobilized its 240 members to lobby the G20 meetings in close cooperation with the European Consumer’s Bureau (BEUC) and Consumers Union, the largest European and American consumer associations, calling for the G20 to take action to support FCP and develop new international guidelines. Clearly, the pro-reform groups benefited from the post-crisis environment in which financial reforms took place.

### **Contextual Conditions of Financial Reforms**

The sub-prime crisis as exogenous shock significantly altered the context of financial regulatory policymaking. In “normal times” financial regulation is an issue of interest groups politics characterized by relatively low public visibility.[13] The policy field is characterized by what Culpepper (2011), Professor of Political Science at the European University Institute, termed “quiet politics.”[14] In this context private sector influence is said to dominate over financial regulatory policy by means of several different avenues for policy influence. First, bankers and regulators are part of the same “transnational policy community” with the public-private distinction becoming increasingly blurred.[15] Second, technical expertise about complex financial products grants industry groups privileged access to the policy process.[16] Traditionally, financial regulation is not only marked with issue complexity but also with relatively limited public attention to negotiations among regulatory agencies and bankers, taking place largely shielded from public debate.[17] However, crises and public outrage can significantly change dynamics of capture regulation. As a result of the recent financial crisis,

regulatory reform had become susceptible to public outrage, pushing financial regulatory reform out of the arena of “quiet politics,” where interest group politics take place behind closed doors, into the arena of “noisy politics,” which forces politicians to react to public and interest group pressures.[18] Recent scholarly work shows that increased issue salience and altered social relations within the financial policy network have considerably weakened the industry’s capacity to veto or block reform proposals. The increased issue salience was accompanied by a qualitative shift in policymaking with policymakers becoming more reluctant to exchange information with industry groups. As a result, overall communication levels dropped significantly. Adjusting to these shifts, the financial industry changed its advocacy strategy putting more emphasis on self-regulatory moves and delaying implementation instead of vetoing policy proposals.[19] Hence, the contextual setting in which financial reforms proceeded after the sub-prime crisis was not ideal for regulatory capture to take place, to say the least. As a bank lobbyist in Washington put it: “When I was trying to get something done for the biggest banks, there was not a lot I could do.”[20]

### **Civil Society Mobilization: U.S. and EU Coalitions “for Financial Reform”**

The public’s attention to a specific policy issue also has another important consequence. From an interest group perspective, increased salience of a policy issue changes the dynamics of interest groups trying to influence it, in that it levels the playing field among various actors and opens a policy window for new entrepreneurs.[21] Civil society groups in the U.S. and Europe alike clearly benefited from altered political opportunity structures and coalitions “for financial reform” mushroomed on both sides of the Atlantic. The crisis turned out to be a major catalyst for the formation of new alliances among consumer associations, trade unions, NGOs, and grass-roots groups. On the U.S. side, the U.S. Public Interest Research Group together with other NGOs and labor groups established a new and unprecedented coalition of labor, civil rights, small business, and senior organizations called “Americans for Financial Reform” (AFR). More than 250 groups joined the alliance that was formally announced in May 2009. Modeled after the American example, the European reform coalition “Europeans for Financial Reform” officially launched its campaign two months later supported by twenty-three different groups representing several hundred European organizations. Contrary to AFR, a grass-roots coalition made up exclusively of civil society groups, the European Socialist Party, under the leadership of its president Poul Nyrup Rasmussen, together with the Green party organized the European reform movement in tandem with trade unions, think tanks, and NGOs. Starting in May 2010, U.S. and EU consumer groups also decided to come together at financial services conferences, to lay out common principles, and to put emphasis on the need for increased consumer protection. High-level EC officials attended the TACD consumer conferences in Ljubljana in May 2010 and Brussels in June 2011.[22]

With the core challenge of making financial reform policy appear legitimate, consumer groups were at a clear advantage to the concentrated banking industry interests. Policymakers on both sides of the Atlantic started to reach out to consumer groups, thereby forming pro-reform coalitions. In the EU, the European Commissioner for Internal Market and Services Michel Barnier became a strong policy entrepreneur, calling for consumer protection across the board. One of his first acts in office in early 2010 was to tell his staff that “a consumer voice had to be taken on board.”[23] Soon after, the EC started to restructure its experts groups and established a new Financial Services User Group (FSUG) that consists of experts on consumer finance from consumer groups, small retail investors, and NGOs; industry representatives are not allowed to participate. The group is funded by the EC, which is only rarely the case for advisory groups. A second politically-motivated measure initiated

by twenty-two MEPs in an effort to establish a counter-lobby to the financial industry created a new NGO named “Finance Watch” in 2011. Since its creation, national parliaments and the EP have invited experts from Finance Watch to testify on a regular basis on financial reform issues. Finance Watch today is funded by the EC under a Pilot Project grant entitled “Capacity building of end-users and non-industry stakeholders in Union policy making in the area of financial services.” The activism by the European institutions in the aftermath of the crisis to establish a political opportunity structure has clearly helped alternative groups such as consumer associations to make their voices heard in the financial reform process. Political receptivity had changed “as day and night,” as one Brussels-based consumer advocate reported. At the same time, in the U.S., consumer groups have become a central interlocutor for the administration and the Treasury Department to draft the new financial reform bill in the spring of 2009. Before the Treasury published the administration’s White Paper in June 2009, the blueprint on which the Dodd-Frank Act would be based, Michael Barr, the Treasury’s Assistant Secretary between 2009 and 2011, and his team had consulted several times with consumer groups. Moreover, one of Barr’s top staff members came from a consumer organization, the Center of Responsible Lending. Industry saw itself “cut out of the process.”<sup>[24]</sup> Looking at the White Paper, one industry representative remembered to be “aghast about was in it.”<sup>[25]</sup>

This anecdotal evidence demonstrates the financial services industry’s loss of political clout in the post-crisis regulatory environment. In an effort to legitimize reform decisions, policymakers actively sided with consumer groups, which served as a new source of advice as well as moral authority. Demands from the new reform coalitions in favor of enhanced consumer protection gained moral leverage over industry arguments favoring the efficient market hypothesis. As a result, industry’s lobbying efforts aimed at preventing an increased regulatory focus on consumer protection failed. At present, the degree of regulatory capture seems weakened; however, doubts may well remain whether this represents a long-term structural change.

*Lisa Kastner is a DAAD/AICGS Research Fellow in February and March 2014.*

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[23] Interview with European Commission official, Brussels (May 2013).

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