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Retaining Influence in Post-Brexit International Financial Regulation: Lessons from the UK's FinTech Framework

Pedro Schilling de Carvalho*

ABSTRACT

A common rhetoric has emerged among UK authorities when it comes to how to deal with a potential loss of influence in the regulation of financial services after Brexit: as divergence from the EU increases, it will be necessary to retain the UK's influence as a rule maker through an enhanced engagement via international standard-setting bodies (ISSBs). This article argues that placing an excessive focus on the role of ISSBs to mitigate the UK's loss of influence might be misguided, based on an analysis of the UK's past relationship with these regulatory networks, alongside an assessment of their historical shortcomings and increasing limitations. Furthermore, this article advances the argument that the UK FinTech regulatory approach might serve as a successful complementary template for influence, combining a domestic framework with the development of a domestic-led network. For that purpose, this article compares initial responses to FinTech regulation at the UK, EU, and international levels, focusing on the Financial Conduct Authority's regulatory sandbox and Global Financial Innovation Network to show how the UK's regulatory *ethos* was effectively exported, constraining the options available to other countries while also framing the debate at the international level.

KEYWORDS: FinTech, regulatory sandbox, international standards, Brexit, GFIN, NGFS

1. INTRODUCTION

Between the UK Government, Parliament, and regulatory authorities such as the Financial Conduct Authority (FCA) and the Bank of England, a common rhetoric has formed when it comes to the question of how to deal with financial services after Brexit: with the loss of influence over the EU, it would be necessary to retain the UK's influence as a rule maker through an enhanced engagement at the international level, particularly via international standard-setting bodies

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(ISSBs) such as the Financial Stability Board (FSB), Basel Committee on Banking Supervision (BCBS), and the International Organization of Securities Commissions (IOSCO).[1] Although there are nuances—especially when it comes to the FCA[2]—the reasoning is that engagement with ISSBs would reduce the risk of market fragmentation, influence the rules of third countries, and even facilitate mutual access regimes.

This article argues that placing an excessive focus on the role of ISSBs to mitigate the UK's loss of influence might be misguided. While ISSBs certainly are an important piece of the puzzle, an analysis of the UK's past relationship with these regulatory networks, alongside an assessment of their historical legal shortcomings and increasing limitations, suggest that ISSBs might not be enough for the influence retaining purpose which is envisioned by the UK.

As a result, this article advances the argument that the UK FinTech regulatory approach might serve as a complementary strategy to ISSB engagement and as a successful template for influence after Brexit, especially in nascent markets in which having a first-mover advantage is an important element for defining who gets to be a rule maker and who is a rule taker. For that purpose, the article compares the initial responses to FinTech regulation at the UK, EU, and international levels, in order to illustrate how the UK was able to export its preferences and regulatory *ethos* without using traditional channels. The article also focuses on the FCA's regulatory sandbox—as a domestic model that seems very apt to facilitate regulatory capacity-building and to harness first-mover advantages—and on the FCA-led Global Financial Innovation Network (GFIN), which consolidates the UK's preferences and uploads its rules to third countries. Although the focus of this article is on FinTech, there are examples of similar strategies being deployed on other nascent areas such as green finance, as illustrated by the Network for Greening the Financial System (NGFS) led by the Banque de France.

This article is organized into five main areas of discussion. Section II draws upon the UK's prior relationship with the ISSBs—outside, alongside, and within the EU—to suggest that after Brexit the UK will find more friction than before. Sections III–V discuss some of the inherent limitations of the ISSBs, particularly in terms of effectiveness and granularity, as well as some factors—such as the reticence of the US towards multilateralism, the growing relevance of China, and the increased preference heterogeneity that Brexit will cause—that might be making these constraints even worse. Sections VI–XII look at FinTech regulation, comparing the developments that have happened in the UK, EU, and the ISSB levels. These sections also explore how the joint initiatives between the Bank of England and the FCA showcase a high degree of awareness of the challenges at the international level, and a different vision for retaining influence in an increasingly fragmented and multipolar environment is put forward. Section XIII brings the findings of the previous sections together to advance the case for looking at FinTech as one additional template for influence after Brexit. Section XIV concludes.

[1] See, for instance, House of Lords—Select Committee on the European Union—Financial Affairs Sub-Committee, 'Brexit: The Future of Financial Regulation and Supervision' (2018) 96, paras 13–22, 44–53, 55–56, 60–63, 145, 207–09, 222–26; UK Government, 'Government Response to the House of Lords European Union Committee Report' (2018) <https://www.parliament.uk/globalassets/documents/lords-committees/eu-financial-affairs-subcommittee/financial-regulation-and-supervision/Response-to-report.pdf> accessed 15 January 2022; Mark Carney, 'The Promise of FinTech—Something New Under the Sun?' (Speech given at the Deutsche Bundesbank G20 conference, 25 January 2017); Larry Elliott, 'Mark Carney: Brexit is the First Test of a New Global Order' *The Guardian* (12 February 2019) <https://goo.gl/MWxhDP> accessed 15 January 2022; Financial Conduct Authority, 'International Standards and Regulations' (2020) <https://goo.gl/fSC15x> accessed 15 January 2022.

[2] See, for instance, Andrew Bailey, 'Multilateralism and Global Coordination: A Case for Balancing Autonomy and Co-Operation in the Interests of Financial Markets' (Speech at the Eurofi Financial Forum, 6 September 2018) <https://goo.gl/zjEYFW> accessed 15 January 2022; Nausicaa Delfas, 'The FCA's Approach to Brexit: Our Preparations and Our Vision for the Future' (Speech at Bloomberg/TheCityUK, 19 July 2018) <https://goo.gl/MegCax> accessed 15 January 2022; Megan Butler, 'Effective Global Regulation in Capital Markets' (Speech at ICI Global Conference, London, 5 December 2017) <https://goo.gl/SC71V5> accessed 15 January 2022.

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II. LOOKING BACK: BUILDING THE UK'S RELATIONSHIP WITH ISSBS

The UK, as a major financial centre, was a key actor in the formation of ISSBs during the 1970s and it retained a disproportionate level of international influence in this area after becoming an EU Member State. Such influence was a consequence of various factors—the size of the UK's markets, the slow maturing of EU financial regulatory policy, the differences in regulatory approaches between Member States, the alignment between UK and US regulatory preferences in some segments, and so on and so forth. This section will look at how the UK developed its relationship with ISSBs in each of three waves of international financial regulation (IFR) in order to explore how different the scenario the UK will find after Brexit may be.

The context for the rise of financial networks is well-documented and generally attributed to changes in how finance is structured.[3] The most significant changes are traced to the collapse of the Bretton Woods system in the early 1970s and to the increasing financial liberalization rounds of the same period.[4] Firms and financial institutions became increasingly multinational; the end of fixed exchange rates created novel cross-border banking risks; and capital markets were used as conduits to structure these operations,[5] with both issuers and investors becoming more active in multiple jurisdictions.[6] Data illustrates how intense the ramp-up of integration and interconnectedness was: in Bank for International Settlements (BIS) reporting countries alone, external bank assets grew from US$687 billion in 1977 to US$30 trillion in 2010; international equity issues went from US$1.7 billion in 1983 to US$708 billion in 2010.[7]

As the integration and interconnectedness of markets increased, so did the demand for coordination between different domestic regulators, as well as the burdens for achieving such coordination,[8] considering how limited strictly domestic-oriented regulation became in some instances.[9] For market participants, compliance with different rules in multiple jurisdictions represented additional costs, reduced market access, and hindered legal certainty.[10] For regulators, territoriality-based rules and regulation faced more limitations, and purely domestic oversight became insufficient to contain risks to financial stability[11] and provide adequate investor protection.[12] These tensions have been summarized as a 'financial trilemma' between financial stability, cross-border integration, and national interests.[13]

3 Christopher Brummer, *Soft Law and the Global Financial System: Rule Making in the 21st Century* (Cambridge University Press 2015) 6–16.

4 Ross P Buckley and others (eds), *Reconceptualising Global Finance and Its Regulation* (Cambridge University Press 2016) 28, 31–32.

5 John Armour and others, 'International Regulatory Coordination' in *Principles of Financial Regulation* (Oxford University Press 2016) 617.

6 Hannah L Buxbaum, 'Transnational Legal Ordering and Regulatory Conflict: Lessons from the Regulation of Cross-Border Derivatives' (2016) 1 UC Irvine J Int Transnatl Comp Law 91, 92.

7 Pierre-Hugues Verdier, 'The Political Economy of International Financial Regulation' (2013) 88 Indiana Law J 1405, 1415–16.

8 Eilís Ferran, 'Regulatory Parity in Post-Brexit UK–EU Financial Regulation: EU Norms, International Financial Standards or a Hybrid Model?' in Kern Alexander and others (eds), *Brexit and Financial Services: Law and Policy* (Hart Publishing 2018) 20.

9 Rolf H Weber, 'Multilayered Governance in International Financial Regulation and Supervision' (2010) 13 J Int Econ Law 683, 696.

10 Chris Brummer, *Minilateralism: How Trade Alliances, Soft Law and Financial Engineering Are Redefining Economic Statecraft* (Cambridge University Press 2014) 4; Chris Brummer, 'Post-American Securities Regulation' (2010) 98 Calif Law Rev 327.

11 Alexey Artamonov, 'Cross-Border Application of OTC Derivatives Rules: Revisiting the Substituted Compliance Approach' (2015) 1 J Financ Regul 206, 220.

12 John Armour, 'Brexit and Financial Services' (2017) 33 Oxf Rev Econ Policy S54, 4; Howell E Jackson, 'Substituted Compliance: The Emergence, Challenges, and Evolution of a New Regulatory Paradigm' (2015) 1 J Financ Regul 169, 170; Ethiopis Tafara and Robert J Peterson, 'A Blueprint for Cross-Border Access to U.S. Investors: A New International Framework' (2007) 48 Harv Int Law J 31, 41–42.

13 Matthias Lehmann, 'Legal Fragmentation, Extraterritoriality and Uncertainty in Global Financial Regulation' (2017) 37 Oxf J Leg Stud 406, 412.

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Starting in the 1970s, ISSBs became the central answer[14] for how to deal with coordination issues across the banking, capital markets, and insurance industries. In the most widespread definition, these regulatory networks are 'relatively loose, cooperative arrangements across borders between and among like agencies that seek to respond to global issues and that manage to close gaps through coordination among governments from different states'.[15] There are three main phases of their development.[16]

The first phase of IFR began in the banking sector with the failures of Bankhaus Herstatt and Franklin National Bank[17] in the early 1970s, followed by crashes of other smaller banks in the 1980s.[18] Each of those events highlighted consequences of interconnectivity[19]—Herstatt's default could have folded five US-based banks as a result. The lack of information-sharing structures became an issue, as it was clear that systemic risk could not be managed by domestic supervision and rules alone.[20] Therefore, in 1974, the G-10 (starting its role as agenda-setter) created the Basel Committee on Banking Supervision (BCBS) in the Bank for International Settlements, with a limited membership of 11 central banks.[21]

Early exportation of regulatory preferences in financial markets that led to the formation of the initial wave of standards tends to be attributed to the US, which acted as the driving force behind those efforts.[22] The UK's influence, however, should not be underestimated. The creation of the BCBS is a useful example to illustrate the UK's role in the first phase of IFR. The US was concerned about prudential risks stemming from Mexico and needed to push for regulation that facilitated cross-border operations, while also reducing externalities. But, at the same time, the US could not be interpreted as imposing its preferences alone, and it therefore needed to seek partners to rally around its efforts.[23] The UK was in a singular position to do so. Both countries had comparable interests and were similar from a varieties of financial capitalism perspective. The UK already had a relevant internal market and technical expertise, thus enabling it to engage and improve the suggestions made by the US, while also legitimizing them.[24] Other areas of financial regulation—such as capital markets regulation—which were also very US-driven had similar partnerships between both countries, as their domestic regulatory approaches were very similar.[25]

Such context enabled the UK to have a say in the regulatory agenda and to follow more closely ISSB debates, leading to what was called 'technocratic influence'.[26] This technocratic engagement feature is often linked to another, circular argument: the capacity to participate in ISSBs structures was, initially, an expression of the UK's economic strength and expertise. As

[14] Ferran, 'Regulatory Parity' (n 8) 6.

[15] Anne-Marie Slaughter, *A New World Order* (Princeton University Press 2009); Weber (n 9) 688.

[16] Verdier (n 7) 1408–09.

[17] David Zaring, *The Globalized Governance of Finance* (Cambridge University Press 2019) 13. Goodhart also stresses the relevance of increasing competition in the banking sector based on regulatory advantages, especially from Japanese banks. See Charles Goodhart, *The Basel Committee on Banking Supervision: A History of the Early Years, 1974–1997* (Cambridge University Press 2011) 146–81.

[18] Matthew C Turk, 'Reframing International Financial Regulation after the Global Financial Crisis: Regional States and Interdependence, Not Regulatory Networks and Soft Law' (2014) 36 Mich J Int Law 59, 68–69.

[19] Buckley and others (n 4) 32.

[20] Sanaa Ahmed, 'The Politics of Financial Regulation' (2015) 11 Socio-Leg Rev 61, 68–69.

[21] Dalit Flaiszhaker, 'Dissonance in Global Financial Law' (2019) 24 Deakin Law Rev 61, 68.

[22] Brummer, 'Post-American Securities Regulation' (n 10) 345–46.

[23] Lucia Quaglia, *The European Union and Global Financial Regulation* (Oxford University Press 2014) 35–36.

[24] Scott James and Lucia Quaglia, 'Why Does the United Kingdom (UK) Have Inconsistent Preferences on Financial Regulation? The Case of Banking and Capital Markets' (2019) 39 J Public Policy 177.

[25] Lucia Quaglia, 'The Political Economy of Post-Crisis International Standards for Resolving Financial Institutions' (2017) 22 New Polit Econ 595, 606.

[26] House of Lords—Select Committee on the European Union—Financial Affairs Sub-Committee, 'Oral Evidence—Financial Regulation and Supervision Following Brexit—Professor Eilís Ferran and Professor Niamh Moloney' (2017) pt 2 <https://goo.gl/LJ7EjN> accessed 15 January 2022.

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time passed, securing and maintaining the key roles in each of these organizations contributed to preserving and strengthening UK's starting position in terms of influence, as the produced standards and the discussions in the networks reflected the engagement of UK personnel.

The second phase of IFR is entangled with the Asian and the Mexican Financial Crisis and led to a first 'tightening' of the existing regulatory frameworks, starting in the early 1990s and continuing throughout the early 2000s.[27] The G-7 (and then the G-20) established the Financial Stability Forum (FSF) in 1999 to promote financial stability and facilitate coordination among existing networks, thus creating the 'international financial architecture'.[28] There was also a greater focus on developing common guidelines and standards for the main financial industries, alongside a trend towards institutionalizing some assessment mechanisms[29]—namely the Financial Sector Assessment Program (FSAP) under the auspices of the International Monetary Fund (IMF) and World Bank.[30]

During the second phase, the UK further cemented its influential role in the formation of international financial standards.[31] The UK consistently acted as an independent player: it adopted strategies to entrench in the ISSBs and would often choose whom to side with—sometimes advancing rules with the support of the EU and other times with countries such as the US.[32] The UK also continued to be one of the countries that adhered closely to international standards.[33]

The EU was still in a somewhat formative phase in terms of financial regulation, as it tried to balance the construction of an integrated internal financial system—weeding out major regulatory differences and reducing associated costs—with the introduction of control mechanisms for diminishing risk transmission and protecting financial stability.[34] In terms of international influence, the EU started to gain more regulatory capacity in the early 2000s, but it would only become a key player after the 2008 financial crisis.[35] Among the factors that explained the limited influence that the EU had during that period are the differences between Member States financial markets and regulatory policy, the lack of overarching mechanisms to accelerate the development of EU financial rules, and a more cumbersome legislative and regulatory process when compared to countries such as the UK.[36]

However, the UK's role in structuring EU financial regulation and in the instances where the EU was able to be influential in the international arena must be stressed. Before the financial crisis, a series of elements made the UK one of the most relevant proponents of financial

27 Emilios Avgouleas, 'Rationales and Designs to Implement an Institutional Big Bang in the Governance of Global Finance' (2013) 36 Seattle U L Rev 321.

28 Vido Sara De, 'Soft Organizations, Hard Powers: The FATF and the FSB as Standard-Setting Bodies' (2019) 19(2) Glob Jurist.

29 Abraham Newman and Elliot Posner, *Voluntary Disruptions: International Soft Law, Finance, and Power* (Oxford University Press 2018) 38.

30 Adam Feibelman, 'Law in the Global Order: The IMF and Financial Regulation' (2017) 49 Int Law Polit 687, 716.

31 Donald Langevoort, 'Global Securities Regulation after the Financial Crisis' (2010) 13 J Int Econ Law 799, 802–08; Quaglia (n 23) 9–10, 15–16.

32 Niamh Moloney, 'International Financial Governance, the EU, and Brexit: The "Agencification" of EU Financial Governance and the Implications' (2016) 17 Eur Bus Organ Law Rev 451, 453; Pierre-Henri Conac, 'The European Union's Role in International Economic Fora: The International Organisation of Securities Commissions (IOSCO)' (International Organization of Securities Commissions 2015) 24–37; Patrick Müller and others, 'EU–Global Interactions: Policy Export, Import, Promotion and Protection' (2014) 21 J Eur Public Policy 1102, 1104; Niamh Moloney, 'The European Union in International Financial Governance' (2017) 3 RSF Russell Sage Found J Soc Sci 138, 139–41.

33 Ferran (n 8) 6.

34 Niamh Moloney, 'Bending to Uniformity: EU Financial Regulation With and Without the UK' (2017) 40 Fordham Int Law J, 1339.

35 Quaglia (n 23) 2–9.

36 Paul Davies, 'Financial Stability and the Global Influence of EU Law' in Marise Cremona and Joanne Scott (eds), *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law* (Oxford University Press 2019) 13–15; Abraham L Newman and Elliot Posner, 'Putting the EU in Its Place: Policy Strategies and the Global Regulatory Context' (2015) 22 J Eur Public Policy 1316, 1319–21.

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regulation in the EU and a key participant of the legislative process.[37] There are various reasons for this claim:[38] the size of the UK's economy; the lobbying capacity of the City of London in EU institutions; the UK's voting power in the EU; and a clear strategy of technical and administrative engagement of UK regulatory authorities in the EU level, which all led to an embeddedness of UK regulatory expertise in the EU.[39] As a result, the EU's regulatory output in the pre-crisis period was heavily marked by the UK's views.[40] Initially, such influence was achieved directly; then, at times, the UK acted to constrain Member States' initiatives; in other instances, the UK supported or promoted regulation aligned with its interests.[41] Such alignment between the UK's preferences and the efforts at the EU level further strengthened the UK's position as a rule maker in IFR, as both the UK and the EU would advance similar views in the ISSBs.

The third phase of IFR can be linked to the global financial crisis in 2008. Considering it so carries a paradox: the international financial architecture was not enough to prevent the crash; but, at the same time, the regulatory agenda that ensued doubled down on expanding existing mechanisms and their underlying logic.[42] A part of the problem was perceived to be the lack of an overarching design in the expansion of the various ISSBs, leading to a 'fragmentation of knowledge, power, and control' with multiple 'variations of regulatory types or regimes of relationships and arrangements'.[43] The gaps in cross-border supervision also gathered slightly more attention than before.[44]

The most illustrative example of the mindset of the reforms of the third phase—and which tried to curb the lack of a coherent system—was the transformation of the FSF into the FSB, which through a larger mandate became the focal point for financial regulatory networks and a hub for ensuring 'effective implementation' of standards.[45] In the standard-setting bodies, reforms affected both internal structures (through expansion of memberships) and facilitated the creation of additional sets of rules and supervisory frameworks.[46]

While the UK remained an influential actor in the international arena during the third phase, changes in its relationship with the EU are worth stressing to illustrate some of the differences in its influence when compared to the previous phases.[47]

Before the financial crisis, the UK was viewed as the proponent of a distinct regulatory approach when compared to other EU Member States.[48] In this sense, the UK usually adopted a *market-making ethos* that was marked by a higher degree of openness and experimentation.[49]

This regulatory philosophy was in contrast to the strategy of other EU Member States—such as Germany and France—which defended a *market-shaping* approach. Here, a more harmonized

[37] Michelle Cini and Amy Verdun, 'The Implications of Brexit for the Future of Europe' in Benjamin Martill and Uta Staiger (eds), *Brexit and Beyond* (Rethinking the Futures of Europe, UCL Press 2018) 64–66; Eilís Ferran, 'Crisis-Driven EU Financial Regulatory Reform' in Eilís Ferran and others (eds), *The Regulatory Aftermath of the Global Financial Crisis* (Cambridge University Press 2012) 10–12.

[38] Armour (n 12) 2–6.

[39] David Howarth and Lucia Quaglia, 'Brexit and the Single European Financial Market' (2017) 55 J Common Mark Stud 149.

[40] Moloney (n 34) 1340–42.

[41] Cini and Verdun (n 37) 66.

[42] Federico Lupo-Pasini, 'The Rise of Nationalism in International Finance: The Perennial Lure of Populism in International Financial Relations' (2019) 30 Duke J Comp Int Law 93, 110; Verdier (n 7) 1462.

[43] Weber (n 9) 686.

[44] Armour and others (n 5) 627.

[45] Buckley and others (n 4) 51–52.

[46] Zaring (n 17) 48, 85.

[47] Howarth and Quaglia (n 39) 2; Niamh Moloney, 'EU Financial Governance after Brexit: The Rise of Technocracy and the Absorption of the UK's Withdrawal' in Kern Alexander and others (eds), *Brexit and Financial Services: Law and Policy* (Hart Publishing 2018) 2; Ferran (n 37).

[48] Lucia Quaglia, 'The "Old" and "New" Politics of Financial Services Regulation in the European Union' (2012) 17 New Polit Econ 515, 519–21.

[49] James and Quaglia (n 24) 1, 2; Howarth and Quaglia (n 39) 2–4.

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and strict regulatory *ethos* was favoured, which included avoiding over-reliance and delegation of supervisory roles to financial intermediaries and industry.[50] Instead, this line of regulation advocated for a more traditional command-and-control type of intervention. As Moloney points out, these dynamics were evident in the negotiations that were carried out in the context of the ECOFIN Council, as illustrated by the drafting of the Capital Requirements Directive and the Capital Requirements Regulation (CRD IV/CRR) and the Markets in Financial Instruments Directive and the Market in Financial Instruments Regulation (MiFID II/MiFIR).[51].

After the financial crisis, the tensions between these two distinct groups strengthened. First, because many of the actors involved in the turmoil (eg credit rating agencies, hedge funds, and the derivatives industry) were not subject to EU regulation. Second, as the lighter, more liberal approach to regulation associated with the UK and the US was viewed as being somewhat responsible for the crisis, this contributed to the regulatory pendulum swinging back towards a less industry-led and more prudential-oriented strategy.[52]

Consequently, as a response—and especially after the 2009 Larosière Report—stricter and more prescriptive rules were introduced, increasing the EU's supervisory powers and creating prudential instruments at the regional level.[53] These new rules reflected the *market-shaping* approach, leading the associated EU Member States[54] to gain a greater degree of influence in setting the strategy and overall tone of financial regulation.

From being the main proponent of the regulatory *ethos* at the EU level, as it was before the financial crisis, the UK started to act as a resistance force—a *grit in the oyster* using Moloney's expression[55] or often *meeting in the middle*, as described by Ferran[56]—diminishing its overall first-mover influence. Effectively, the UK was instrumental in lessening, to some extent, the heavier and stricter rules that were being adopted, without obstructing the general underlying philosophy.[57] Therefore, the UK became arguably less influential in the EU at a moment when the EU became more influential at the international level.

A lessening of influence does not mean that the UK did not remain a central proponent for regulation in some areas. Resolution provides a good insight: the UK and US were the main forces for the standardization efforts in the FSB and BCBS, chairing the relevant committees and getting their views across the final documents.[58] Not only was the importance of resolution in the two countries relevant, but also the technical expertise obtained by their authorities—in an area in which the EU lacked significant experience—granted them influence over the matter.[59]

Having analysed the UK's role in each of the three phases of IFR, there are some takeaways for the post-Brexit era. First, the UK will not find the same context that it had before it joined the EU. As the balance of influence has shifted more towards the EU, the UK's influence needs to be increasingly analysed in a sector-by-sector basis, as the UK's regulators still have greater technical expertise (and a more developed market to work with than the EU) in some areas. Second, before Brexit, the UK was able to exert influence through various institutional channels: directly, as a member of the ISSBs; as a member of the EU in these institutions; during the processes of implementation of international standards both in the EU and domestic levels; and as a voice

50 Moloney, 'EU Financial Governance after Brexit' (n 47) 6.
51 Niamh Moloney, 'Brexit and EU Financial Governance: Business as Usual or Institutional Change?' (2017) 42 Eur Law Rev 15, 1–5.
52 Quaglia (n 48) 528; Ferran (n 37) 14.
53 Howarth and Quaglia (n 39) 4–8.
54 Niamh Moloney, 'Brexit and Financial Services: (Yet) Another Re-ordering of Institutional Governance for the EU Financial System?' (2018) 55 Common Mark Law Rev 175, 9–10.
55 Moloney (n 34) 1338, 1346–47, 1352.
56 Ferran (n 37) 15–19.
57 Moloney (n 54) 10; Quaglia (n 23) 169–70.
58 Emily Jones and Alexandra O Zeitz, 'The Limits of Globalizing Basel Banking Standards' (2017) 3 J Financ Regul 89.
59 Quaglia (n 25) 597, 602–03, 605–06.

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in the European Supervisory Authorities (ESAs). Some of these venues are now lost.[60] The UK will therefore need to explore new ways to influence IFR to compensate for those losses. Third, even if the EU in some respects curtailed the influence of the UK after the 2008 financial crisis, the UK was still a driving force for defining how EU financial regulation should be set. Fourth, with Brexit there is a greater potential for divergence between the UK and the EU—which, if harnessed, could provide important first-mover advantages for the UK in some instances.

III. DRAWING THE LINE: ISSBS ROLES AND LIMITATIONS

Having suggested that Brexit might leave the UK in a tougher spot in relation to the ISSBs—as the EU has increased its influence in those fora while the UK has lost some of the channels it had to access the networks—it is also important to query what can realistically be achieved in the ISSBs, especially in terms of influencing regulation from other countries. There are two facets that are worth exploring in that regard. First, it is necessary to analyse some of the ISSBs' design traits that were, at the same time, fundamental for allowing their expansion, but now pose limitations to what they can realistically achieve. Second, it is helpful to enquire how a more heterogeneous set of regulatory preferences might impact on institutions that were formed while there were a small number of influential players, with largely shared preferences.

IV. THE ISSB DILEMMA: STRUCTURAL LIMITATIONS

As discussed earlier, starting in the 1970s, the uniformization of international rules and practices—which facilitated the operation of market participants and the exchange of information between authorities[61]—was touted as a potential solution to coordination problems, and ISSBs became the main vehicle for how to deal with these issues in the banking, capital markets, and insurance industries.[62]

In the case of financial markets, ISSBs were created as *regulatory networks*, which can be characterized as quasi-public, informal transnational bodies, composed by national authorities and private stakeholders.[63] These regulatory networks developed largely outside of traditional structures of international public law.[64]

The peculiar nature of ISSBs had interesting consequences: free from the rigid structures of international law and treaty-based institutions, the ISSBs' informal internal processes, lack of significant transparency requirements, and the technical nature of their activity facilitated their operation and the creation of standards.[65] Moreover, despite their lack of traditional enforcement tools and the *sui generis* nature of their regulation, ISSBs obtained a significant degree of adoption—at least by their own measures.[66]

Although ISSB standards have often been considered soft law, the rules produced by those networks are better described as a *form of rule of law*: a *law-like system* that has singular cooperation mechanisms that are tangled with reputational, market, and institutional feedback structures.[67] In the case of financial market ISSBs, this law-like system is illustrated by their

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60 Niamh Moloney, 'Financial Services, the EU, and Brexit: An Uncertain Future for the City?' (2016) 17 Ger LJ 75.
61 Nora Rachman, 'Beyond "Best Practices": The International Regulation of Capital Markets' (2015) 126 FGV Direito SP Res Pap Ser, 5–6; JH Dalhuisen, 'Globalization and the Transnationalization of Commercial and Financial Law Global Challenges—Global Law Symposium' (2015) 67 Rutgers Univ Law Rev 19, 33; Fabrizio Cafaggi, 'New Foundations of Transnational Private Regulation' (2011) 38 J Law Soc 20, 25–26.
62 Ferran (n 8) 6.
63 Richard B Stewart, 'Remedying Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness' (2014) 108 Am J Int Law 211, 214.
64 Ferran (n 8).
65 Lehmann (n 13) 406.
66 David T Zaring, 'Finding Legal Principle in Global Financial Regulation' (2013) 52 Va J Int Law.
67 Chris Brummer, 'How International Financial Law Works (and How It Doesn't)' (2011) 99 Georgetown Law J 72.

association with more traditional organizations, such as the World Bank and the IMF, which incorporated these rules in their dealings and helped to push the standardization agenda.[68]

The singular structure of ISSBs led to a dilemma of sorts: the same features that seemingly facilitated the expansion of these networks, such as their flexibility and informality, pose inherent limitations to what they can now realistically achieve.[69]

First, there are concerns related to a lack of cohesion within and across networks, arising from the discussion about standards' nature and their effectiveness. While the lack of binding obligations facilitates the formal adoption of standards, it can be ineffective for achieving their desired substantive outcomes.

Within a network, the lack of cohesion can happen (i) due to domestic conduct during implementation (eg insufficient granularity or carve-outs; adopted rules vary from jurisdiction to jurisdiction); (ii) in domestic supervision (eg rules are enacted, but enforcement *vis-à-vis* market agents is lacking); or (iii) in regulatory network supervision (eg supervisory tools are not systematic, so failures might not be corrected).[70]

Across different ISSBs, there are two main issues. On the one hand, the granularity of financial standards varies depending on the network and market segment in question. Thus, especially in networks producing broad principles instead of more granular rules, a higher degree of flexibility follows during implementation, which might lead to fragmentation and hinder the intended harmonization.[71] On the other hand, although regulation across different market sectors would often be necessary, networks are quite siloed[72] and there is no central coordination body (given the limitations of the FSB).[73] Moreover, the expansion of multiple decision centres—domestic, regional, global—leads to more complexity, with both regulatory overlaps and gaps.[74] Accordingly, the lack of an overarching coherence structure hinders and limits what can be achieved by the system as a whole, given that 'multi-layered governance requires common foundations applicable to all relevant layers'.[75]

Second, there are difficulties in the supervision of standards. Although the post-crisis reforms tried to create a 'vertically integrated system', combining networks with traditional international organizations,[76] networks' supervisory structures are marked by a 'fragmented architecture'.[77]

Apart from the variance between institutions, reliance on domestic regulators, and the lack of attention that initiatives have gathered from participants, achieving 'normalized surveillance' has been elusive, as not every single supervisory mechanism in a network is sufficiently well-designed to collect information across legal regimes.[78]

Furthermore, even different supervisory mechanisms within a single network (which were often implemented at different phases of IFR) might adopt different assessment rationales. As a result, current supervisory regimes do not always provide the data that would be more useful

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68 Hassane Cissé, 'Alternatives to "Hard" Law in International Financial Regulation: The Experience of the World Bank' (2012) 106 Proc Annu Meet Am Soc Int Law 320, 322.

69 Pierre-Hugues Verdier, 'Transnational Regulatory Networks and Their Limits' (2009) 34 Yale J Int Law 113.

70 Eric Helleiner and Stefano Pagliari, 'The End of an Era in International Financial Regulation? A Postcrisis Research Agenda' (2011) 65 Int Organ 169, 187.

71 Jonathan Herbst and Simon Lovegrove (eds), *Brexit and Financial Regulation* (Oxford University Press 2020) 71–72; Ferran (n 8) 20, 22–25; Weber (n 9) 696.

72 Newman and Posner (n 29) 33.

73 Lucia Quaglia, 'Regulatory Power, Post-Crisis Transatlantic Disputes, and the Network Structure of the Financial Industry' (2017) 19 Bus Polit 241, 243.

74 Quaglia (n 23) 2–4.

75 Weber (n 9) 689.

76 Walter Mattli and Ngaire Woods, *The Politics of Global Regulation* (Princeton University Press 2009) 3.

77 Brummer 'Minilateralism' (n 10) 99–111, 121; Brummer (n 3) 93–97.

78 Mads Andenas and Iris HY Chiu, *The Foundations and Future of Financial Regulation: Governance for Responsibility* (Routledge 2014) 457–61; Brummer (n 67) 106–08, 132.

either for the goals of the network (related to harmonization) or to other actors that might rely on it (such as jurisdictions conducting comparability exercises).

Third, there are enforcement challenges—in the sense of a lack of mechanisms to more successfully nudge countries into honouring their international commitments, thus contributing to 'hardening' the network rules to give them their unique character. This criticism puts into question whether the feedback mechanisms are effective at incentivizing compliance when interests were not sufficiently aligned at the start.[79]

As even traditional treaties are 'difficult and expensive to enforce',[80] enforcement of standards is complicated due to factors such as the more prominent role of subsidiarity[81] and the unwillingness of network participants to enforce rules against their own,[82] which leads to the possibility of cherry-picking rules or ignoring them.[83]

All of these traits have been deemed relevant to facilitate the rise of financial networks ever since the 1970s and allowed for some degree of adoption of standards. However, the same elements that allowed a 'lax adoption' and that were introduced by design could now represent inherent hurdles for what some of these networks might achieve[84] in terms of harmonization, thus putting into question what the UK would be able to accomplish, even if it maintained or even increased its influence in these fora.

V. THE CURRENT POLITICAL ECONOMY OF ISSBS

In the last five years, contextual changes introduced even more preference heterogeneity among traditional rule-making countries, thus lessening the possibility of agreement around a harmonized approach.[85] At the same time, these contextual changes also increased the number of actors willing to become rule makers in IFR. This situation was driven by changes in US policy, the impacts of Brexit, and the changing role of some emerging economies.[86]

The US—historically the *de facto* standard-setter for preferences due to its market size, regulatory capacity, and embeddedness within networks—has seen a decrease in its influence, which, albeit still relevant, has no longer been characterized as hegemonic.[87] After Trump's election, it also signalled a more hostile attitude towards multilateral coordination,[88] which is best illustrated by a bill introduced in 2017 at the House of Representatives (the 'Financial Choice Act').[89] Although it was never passed by the Senate, the Act would make Senate participation during the negotiation of international standards mandatory, reallocating a role that has always been held by domestic regulators. This development—alongside a higher willingness to walk

[79] Newman and Posner (n 36) 21.

[80] Anu Bradford, 'Exporting Standards: The Externalization of the EU's Regulatory Power via Markets' (2014) 42 Int Rev Law Econ, 10.

[81] Edward F Greene and Joshua L Boehm, 'The Limits of Name-and-Shame in International Financial Regulation' (2011) 97 Cornell Law Rev 1083, 1087; Zaring (n 66) 4.

[82] Helleiner and Pagliari (n 70) 194.

[83] Brummer (n 3) 1–2, 18–22, 24–28.

[84] Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020) 86.

[85] Helleiner and Pagliari (n 70).

[86] Zaring (n 17); Andrew Walter, 'Emerging Countries in Global Financial Standard Setting: Explaining Relative Resilience and Its Implications' (Centre for International Governance Innovation 2019).

[87] Brummer, 'Post-American Securities Regulation' (n 10) 4–5, 30; Ferran (n 8) 7; Daniel W Drezner, 'Club Standards and International Finance' in *All Politics Is Global: Explaining International Regulatory Regimes* (Princeton University Press 2008) 4.

[88] With the clearest example coming from trade law and the disassembling of the dispute resolution regime. For a finance perspective, see Bradford (n 84) 24, 270; Andrew Walter, 'Emerging Countries in Global Financial Standard Setting: Explaining Relative Resilience and Its Implications' (Centre for International Governance Innovation 2019) 52; Eric Helleiner and others, *Governing the World's Biggest Market: The Politics of Derivatives Regulation After the 2008 Crisis* (Oxford University Press 2018) 55; Moloney, 'EU Financial Governance after Brexit' (n 47) 62, 85.

[89] 115th US Congress, 'H.R.10—Financial CHOICE Act of 2017' <https://www.congress.gov/bill/115th-congress/house-bill/10>.

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away from multilateral fora—has implications for the supervision and enforcement of standards. As explored, the US often led the way in introducing international standards and adhering to them. A side effect of the support and adoption of international standards by the US was that other countries had more incentives to adopt them as well, often as a condition for market access, or to improve trade relations or signal the implementation of best practices to market participants. Therefore, US adoption of international standards contributed to the 'hardening' of soft law mentioned earlier, creating more incentives for ISSB practices to be followed. Even though it is unclear how the Biden administration will approach multilateral fora, the interests that now coexist in ISSBs are, in any case, more heterogeneous than before. As a result, there is less space for the US to single-handedly (or with only a few partners) impose its will.

Brexit also has consequences for IFR. Although there is no consensus on what will happen in the next couple of years, an overall trend towards some level of divergence between the UK and the EU has been identified and should lead to more market fragmentation, as competition for services has happened and tends to continue.[90] The lack of any comprehensive discussion concerning financial services during the transition period and difficulties with the equivalence process illustrate such potential for more competition and divergence.

While scholarship (and the UK Government)[91] discussed the limited scope for divergence in areas where there already are international standards in place[92]—rather suggesting that gold-plating could be adopted in those instances[93]—there are potential benefits in setting the tone of the conversation in segments that are still fragmented, such as attracting innovative firms,[94] facilitating market access to overseas jurisdictions,[95] and creating altogether new market segments.[96]

Regardless, Brexit means the creation of an additional influence pole: while in the past, divergences with other Member States were resolved within the EU, now they tend to happen directly at the network level, which is ill-suited to handle divergence, as ISSBs are built around the idea of consensus, harmonization, and a limited number of influence sources. Such increase in heterogeneity has been described as a consequential development on the move towards a 'regional world', where standardization might be feasible in smaller settings, but different variations of how to regulate will have to live alongside each other globally.[97]

The rise in importance of some emerging economies equally has implications. With some oversimplification for the sake of argument, IFR has evolved from a US (and sometimes US–UK) hegemonic-based system to a US–EU–UK club-like system.[98] Although these remain

90 David Howarth and Lucia Quaglia, 'Brexit and the Battle for Financial Services' (2018) 25 J Eur Public Policy 1118, 1120–21; Moloney, 'EU Financial Governance after Brexit' (n 47) 81–82; Moloney' (n 51) 21; Georgina Wright and others, 'Influencing the EU after Brexit' (Institute for Government 2020) 125.

91 HM Treasury, 'Financial Services Future Regulatory Framework Review: Proposals for Reform' (2021).

92 Niamh Moloney, 'Brexit, the EU and Its Investment Banker—Rethinking Equivalence for the EU Capital Market' (2017) LSE Law, Society and Economy Working Papers 5/2017 56; Ferran, 'Regulatory Parity' (n 8); Moloney (n 51).

93 Scott James and Lucia Quaglia, *The UK and Multi-Level Financial Regulation: From Post-Crisis Reform to Brexit* (Oxford University Press 2020).

94 EY, 'UK FinTech' (2016) 7–19, 50–60 <https://www.gov.uk/government/publications/uk-fintech-on-the-cutting-edge> accessed 15 January 2022; Christian Haddad and Lars Hornuf, 'The Emergence of the Global FinTech Market: Economic and Technological Determinants' (2019) 53 Small Bus Econ 81; Deloitte UK, 'Regulating FinTech' (2017) <https://goo.gl/y22PUA> accessed 15 January 2022.

95 Parma Bains, 'Building a Level Playing Field—How Innovation Shapes Regulation' (2020) <https://www.fca.org.uk/insight/building-level-playing-field-how-innovation-shapes-regulation> accessed 15 January 2022.

96 London's role in the growing Islamic FinTech market is a good example. See Cambridge Centre for Alternative Finance, 'FinTech Regulation in Middle East and North Africa' (Cambridge Centre for Alternative Finance 2022).

97 Giovanni Barbieri, 'Regionalism, Globalism and Complexity: A Stimulus Towards Global IR?' (2019) 4 Third World Themat 1, 7; Luk van Langenhove and Ivaylo Gatev, 'Regionalization and Transregional Policies' in Diane Stone and Kim Moloney (eds), *The Oxford Handbook of Global Policy and Transnational Administration* (Oxford University Press 2019).

98 Emily Jones and Peter Knaack, 'The Future of Global Financial Regulation' [2017] Glob Econ Gov Programme Work Pap 25, 26; Lucia Quaglia and Aneta Spendzharova, 'Post-Crisis Reforms in Banking: Regulators at the Interface Between Domestic and International Governance' (2017) 11 Regul Gov 422, 433.

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dominant players, the increase in market size and systemic relevance of emerging economies cannot be ignored,[99] with China providing the clearest example.[100] The potential consequences of these emerging economies are not yet evident.

On the one hand, the new role of emerging economies has been suggested to have the capacity to boost the diversity and heterogeneity of the regulatory preferences in international fora, increasing the legitimacy of networks and the quality of their output.[101] On the other hand, heterogeneity decreases the odds of achieving more granular harmonization-based measures. Even when that is not the case, implementation and supervision processes might become more contentious,[102] as emerging economies often have different sources of risk and other structures for financial innovation, exacerbating the redistributive consequences of standards.

All these changes might point, as mentioned, to transformations in the ways ISSBs operate and of the processes through which global financial regulation is produced, reproduced, and disseminated—decreasing multilateral solutions, altering the bargaining power of countries, and forcing the appearance of new arrangements. In the same sense, a general lessening of influence from the ISSBs might lessen the constraints for regulatory entrepreneurship both at the UK and the EU level, thus making competition—and divergence—more likely. Therefore, if the UK's ability to exert effective influence in third countries through ISSBs was already structurally challenging, there are elements to indicate that these difficulties will increase rather than decrease, thus requiring more avenues for influence to be explored.

VI. LOOKING INTO THE FUTURE: FRAMEWORKS FOR REGULATING FINTECH

Having explored the historical relationship between the UK and ISSBs, and the EU's increasing influence in the network context, as well as the growing structural and contextual challenges that IFR has faced, it is possible to turn to FinTech regulation as a case study that illustrates some of these difficulties and signals another way out. This section will compare the initiatives for dealing with FinTech that happened on the UK, EU, and ISSB level in the period between 2014 and 2020. The focus will be on banking FinTech, which includes payments, clearing, and settlement services, as this is the largest FinTech segment.[103] Some specific areas that have elicited reactions—especially crypto-assets, which affect more directly some functions that are usually attributed to state authorities—will not be included.[104]

VII. DEFINING FINTECH AND ITS UNDERLYING RISKS

The 2008 financial crisis—alongside scandals, such as the LIBOR cartel—provides the contextual background against which the current state of affairs can be assessed.[105] Not only are these events associated with a decrease in consumer trust in traditional financial institutions,

[99] Quaglia (n 23) 180–82.

[100] Different examples have been used to illustrate that, especially the growth in size of the Chinese banking market and, more broadly, the increasing number of IPOs based on emerging markets. See Senator Christopher Murphy and others, 'The Danger of Divergence: Transatlantic Financial Reform & the G20 Agenda' (Atlantic Council 2013) 73–74; Elliot Posner, 'International Financial Regulatory Cooperation: An Experimentalist Turn?' in *Extending Experimentalist Governance?* (Oxford University Press 2015) 23–24; Helleiner and Pagliari (n 70) 175, 186.

[101] Peter Knaack, 'An Unlikely Champion of Global Finance: Why is China Exceeding International Banking Standards?' (2017) 46 J Curr Chin Aff 41.

[102] Julian Gruin and others, 'Tailoring for Development: China's Post-Crisis Influence in Global Financial Governance' (2018) 9 Glob Policy 467.

[103] Basel Committee on Banking Supervision, 'Sound Practices: Implications of Fintech Developments for Banks and Bank Supervisors' (2018) 10.

[104] The one area that has elicited more responses from the ISSBs has been stablecoin arrangements. In that sense, see Financial Stability Board, 'Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements' (2020).

[105] Dirk A Zetsche and others, 'From Fintech to Techfin: The Regulatory Challenges of Data-Driven Finance' (2017) 14 N Y Univ J Law Bus 393, 404.

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but also they were followed by a regulatory push towards increasing competition in the banking industry.[106] The UK (as well as other jurisdictions, such as Germany) is well-known for having a concentrated banking sector, in which the main banks have become too big to fail while also diminishing the capacity of smaller businesses entering the market.[107]

Alongside the consumer and regulatory search for alternatives that resulted from the crisis, there was an increase in computational power, leading to broader access (with decreased costs) to technological products.[108] Consequently, barriers to entry began to be eased by innovation, allowing (at least in theory) more players to enter financial markets. Such developments have been particularly salient with regards to services that benefited from stagnant practices of the mainstream industry, as well as with regards to offerings that targeted consumers who were not subject to traditional banking. Thus, convenience, trust, and price have often been referred to as the main components that explain FinTech.[109] These elements have led FinTech to become a rapidly growing sector, with large investments that, however, still represent a small part of the total volume of financial services.[110]

Although there have been attempts to define what should be understood as FinTech,[111] the definitions that were employed by ISSBs are of particular interest for the purposes of this article, as they represent the summarized views of domestic regulators.

The FSB definition is the most commonly referred to[112] and has generally been used. For the FSB, FinTech is defined 'as technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on the provision of financial services' that might 'fundamentally change the essence of intermediation in the financial system or the required economic functions'.[113] Interestingly, the definition does not only comprise the incumbent and/or challenger banks but is applicable to technological innovation carried out by larger businesses.

Other ISSBs and authorities have adapted their working concept of FinTech depending on their specific mandate. IOSCO, for instance, refers to a 'variety of innovative business models and emerging technologies that have the potential to transform the financial services industry' with regards to securities, including the offering of products and services 'in an automated fashion' and employing technologies such as 'cognitive computing, machine learning artificial intelligence, and distributed ledger technologies'.[114]

As the markets in which FinTech operates are subject to a high degree of regulation, services and products that are offered might fall under more general and traditional rules.[115] Regulators have tried to come up with answers by better comprehending the underlying tensions and new risks that FinTech might create.[116] This requires a balancing act: as policy decisions often involve trade-offs, a consistent approach is necessary to achieve the best outcome[117]

[106] Lerong Lu, 'Financial Technology and Challenger Banks in the UK: Gap Fillers or Real Challengers?' (2017) 32 J Int Bank Law Regul, 8.

[107] Nizan Geslevich Packin, 'RegTech, Compliance and Technology Judgment Rule FinTech's Promises and Perils' (2018) 93 Chic–Kent Law Rev 193, 202–03; Lu (n 106) 2–7.

[108] International Organization of Securities Commissions, 'Research Report on Financial Technologies (Fintech)' (2017) 6–8.

[109] Rory Van Loo, 'Making Innovation More Competitive: The Case of Fintech' (2018) 65 UCLA Law Rev 232, 241.

[110] Basel Committee on Banking Supervision (n 103) 10–12.

[111] Hilary J Allen, 'Sandbox Boundaries' (2019) 22 Vanderbilt J Entertain Technol Law 299.

[112] Rolf H Weber and Rainer Baisch, 'FinTech: Eligible Safeguards to Foster the Regulatory Framework' (2018) 33 J Int Bank Law Regul 24.

[113] Financial Stability Board, 'Financial Stability Implications from FinTech' (2017) 7.

[114] International Organization of Securities Commissions (n 108) 4.

[115] Allen (n 111) 6–8.

[116] Weber and Baisch (n 112) 9–14.

[117] Iris HY Chiu, 'A Rational Regulatory Strategy for Governing Financial Innovation' (2017) 8 Eur J Risk Regul 743; Dirk A Zetzsche and others, 'Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation' (2017) 23 Fordham

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between the potential outputs of innovation (such as increased competition, decentralization, diversification) and considerations such as consumer protection and welfare, as well as financial stability.[118]

However, the unstable, heterogeneous, and dynamic nature of the sector—as well as the lack of adequate information—seems to be the defining component when deciding whether and how to regulate, at least initially.[119] As many of the potential benefits and risks might be hidden, finding the correct regulatory balance—rules or principles, engagement or enforcement, harmonization or decentralization[120]—is harder than usual and depends on the responsiveness of regulators. Information gathering and exchange regarding the structures, risks, and benefits assumes an even more central role.[121] As will be suggested in the next section, the UK's regulators are aware of that increased need for information, as their approach is centred around facilitating the deployment of tailor-made rules for certain financial products.

VIII. UK'S FRAMEWORK

The creation of a setting in which FinTech could prosper was an explicit UK Government goal. In 2014, then Chancellor George Osbourne announced measures that were intended to harness 'innovations in finance' in order to 'continue to meet the diverse needs of business and consumers'.[122] This was later reinforced by the publication of the Regulatory Innovation Plan by HM Treasury, which sets out that financial regulators should adapt and encourage 'new technologies and disruptive business models'.[123]

As a response, the FCA wanted to create a regime that reduced barriers to innovation and associated costs while promoting and governing this process. The kick-off was a public consultation, which marked the adoption of a dialogic style of regulation: instead of a command-and-control strategy, the FCA began to look for potential business with capacity to innovate and tried to construct the best regulatory approach alongside firms, serving as a mediator to the various interests at stake.[124] This became Project Innovate, which is a concentration of the most relevant policies in terms of how the UK views FinTech regulation and how it emphasizes the learning process.[125] Two of the fronts of Project Innovate—the regulatory sandbox and GFIN—embody the philosophy adopted by the FCA, the nuances of UK's strategy of engagement with other countries, and are also the most consequential for this article, as both initiatives can signal a relevant plan post-Brexit. Therefore, the analysis shall be focused on them.[126]

J Corp Financ Law 31, 43–47; Péter Fáykiss and others, 'Regulatory Tools to Encourage FinTech Innovations: The Innovation Hub and Regulatory Sandbox in International Practice' (2018) 2017 Hitelintézeti Szle 43, 43, 51–53.

118 Lev Bromberg and others, 'Cross–Border Cooperation in Financial Regulation: Crossing the Fintech Bridge' (2018) 13 Cap Mark Law J 59, 59–60; Van Loo (n 77) 249–55; Chris Brummer and Daniel Gorfine, 'FinTech: Building a 21st-Century Regulator's Toolkit' (2014) Cent Financ Mark Inst 15, 4–6.

119 Christopher G Bradley, 'FinTech's Double Edges: FinTech's Promises and Perils' (2018) 93 Chic–Kent Law Rev 61, 62; Iris HY Chiu, 'FinTech and Disruptive Business Models in Financial Products, Intermediation and Markets—Policy Implications for Financial Regulators' (2016) 21 J Technol Law Policy 55, 63; William Magnuson, 'Regulating FinTech' (2018) 71 Vanderbilt Law Rev 1167, 1204–07; Ross P Buckley and others, 'The Dark Side of Digital Financial Transformation: The New Risks of FinTech and the Rise of TechRisk' (2019) 2019/112 Univ Hong Kong Fac Law Res Pap.

120 Brummer and Gorfine (n 118) 6–14.

121 Saule T Omarova, 'Technology v Technocracy: Fintech as a Regulatory Challenge' (2020) 6 J Financ Regul 75, 96–107.

122 Samuel Gibbs, 'George Osborne Hopes to Turn Britain into Bitcoin Capital' (2014) <https://goo.gl/ZLtebE> accessed 15 January 2022.

123 'UK and EU Regulation of Financial Innovations and FinTech' (2019) <https://goo.gl/PyVunt> accessed 15 January 2022.

124 Michael Huertas, 'The UK FCA's Regulatory "Sandbox": Any Lessons for the EU?' (2018) 33 J Int Bank Law Regul 10, 10–13; Chiu (n 117) 3. It is worth pointing out that bringing industry actors into the regulatory design process has been tried before. However, that inclusion of industry actors fell out of favour in the 2008 financial crisis because the crash demonstrated the misalignment between industry self–interests and the public interest. In that sense, see Julia Black, 'Enrolling Actors in Regulatory Systems: Examples from UK Financial Services Regulation' (2003) 1 Public Law 63.

125 Financial Conduct Authority, 'FCA Innovate' (4 April 2016) <https://www.fca.org.uk/firms/fca-innovate> accessed 15 January 2022.

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Regulatory sandboxes are 'formal regulatory programs that allow market participants to test new financial services or business models with live customers, subject to certain safeguards and oversight'.[127] The UK regulatory sandbox was introduced in 2016 and represents a change in the paradigm of regulation which builds upon the principles-based approach that has been often adopted in the past.[128] Among the key differences in the UK approach when compared to previous principles-based initiatives, the FCA purports that the regulatory sandbox actively expands the space for experimentation, while trying to minimize risks;[129] acknowledges that innovation causes legal uncertainty and doubts concerning the application of pre-existing rules to new business models; and, to counter these issues, increases engagement with stakeholders,[130] thus boosting the responsiveness of regulation to technological change.[131]

Enrolment in the programme is voluntary, but there are incentives for firms to join. These will depend on whether the firm is authorized or unauthorized, as each will have access to different tools in the sandbox. In terms of eligibility, businesses can apply to be in the sandbox for up to six months as long as they (i) want to provide or support financial services in the UK; (ii) show that their approach is innovative (and not derivative); (iii) demonstrate an identifiable consumer benefit; (iv) justify the need of testing the new product in a sandbox; and (v) are ready to test it.[132] Applications to the sandbox are presented by the applicants and then vetted by the FCA,[133] which discusses with the firms how to implement the sandbox, how the success of the test will be measured, and what needs to be reported at the end of the trial.[134]

There is a variety of tools in the sandbox.[135] The FCA can grant restricted authorizations; provide guidance to clarify which rules will be applicable after the sandbox is over and how it will interpret regulation; and issue waivers or no-action letters regarding the enforcement of obligations within a pre-approved scope.[136] After a three to six-month period, the sandbox ends and applicable regulation kicks in. The participating firm is then obliged to provide extensive information that was collected while operating inside the sandbox.[137].

Reception by the industry has been very positive, with significant interest registered in each of the call for applicants issued by the FCA.[138] Among the benefits cited by market actors, the sandbox has been deemed to be effective in signalling an openness to innovation, as well as in reducing the time and costs of development of novel business models. The sandbox is also often cited as a primordial factor in transforming London into a FinTech hub.[139] In fact, the

126 Other FCA initiatives, such as its Direct Support Team and the Advice Unit, are, in a sense, more traditional, as they seek to provide guidance to firms concerning the potential application of regulation: the sandbox comprises and combines these approaches and therefore offers the most illustrative case example for this article, alongside the FCA's international engagement strategy. The same kind of soft engagement can be seen in similar programmes from other authorities, such as the Bank of England's Accelerator.

127 Cambridge Centre for Alternative Finance, 'Early Lessons on Regulatory Innovations to Enable Inclusive FinTech: Innovation Offices, Regulatory Sandboxes, and RegTech' (2020) 26 <https://www.jbs.cam.ac.uk/wp-content/uploads/2020/08/2019-early-lessons-regulatory-innovations-enable-inclusive-fintech.pdf> accessed 25 January 2021.

128 Peter Yeoh, 'Innovations in Financial Services: Regulatory Implications' (2016) 37 Bus Law Rev 190, 193.

129 Allen (n 111) 26.

130 Bradley (n 119) 85.

131 Cambridge Centre for Alternative Finance, 'Guide to Promoting Financial & Regulatory Innovation' (2018) 14–15 <https://goo.gl/L76w3S> accessed 15 January 2022.

132 FCA, 'Applying to the Regulatory Sandbox' (2020) <https://www.fca.org.uk/firms/regulatory-sandbox/prepare-application> accessed 15 January 2022; Weber and Baisch (n 112) 3.

133 Huertas (n 124) 3–5; Chiu (n 117) 4–5.

134 Financial Conduct Authority, 'Regulatory Sandbox' (2019) <https://www.fca.org.uk/firms/regulatory-sandbox> accessed 15 January 2022.

135 Financial Conduct Authority, 'Sandbox Tools' (2022) <https://www.fca.org.uk/firms/innovation/regulatory-sandbox> accessed 15 January 2022; Cambridge Centre for Alternative Finance (n 131) 17.

136 Usually, only basic consumer safeguards will remain in place, alongside disclosure requirements regarding the context in which the services are being provided. See Chiu (n 117) 4.

137 Allen (n 111) 27–28.

138 Chiu (n 117) 6; Cambridge Centre for Alternative Finance (n 131) 26–29.

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differences in policy have been singled out as the most important driver that increased UK's competitiveness on FinTech when compared to other innovation hubs[140] and the UK has been the most benchmarked against jurisdiction when it comes to FinTech regulation.[141]

The formation of a *feedback loop* is also mentioned: authorities receive more information and have a greater ability to define clear and transparent guidelines for the broad range of services that are being provided, creating more adaptive regulation, which results in more firms wanting to opt-in into the sandbox.[142] In the long run, this should also boost the regulatory capacity of the UK's authorities, as they will have a more granular understanding about what FinTech is (and is not) in the UK, and how to move fast in order to harness potential first-mover advantages.

The kind of influence achieved domestically by the sandbox (as a template for regulation) needs to be associated with other initiatives adopted by the FCA. From the launch of Project Innovate in 2014, the FCA's strategy involved entering into bilateral agreements with other authorities to facilitate cooperation.[143] Following a consultation in 2018, the FCA advocated the benefits of establishing the structure for a global regulatory sandbox.[144] This desire led to the creation of the GFIN in early 2019,[145] which was accompanied by a very quick expansion of its membership. This does not, however, include most of the European financial authorities (and it has even received vocal opposition from Germany's Federal Financial Supervisory Authority)[146] but it has very significant involvement from Asia-Pacific members, some of the US regulators, and even international organizations.[147] This was expressly acknowledged by members of the FCA in 2020.[148] It is argued that the GFIN represents a model where a certain jurisdiction internalizes a structure that is similar to ISSBs to facilitate exporting regulatory preferences (or, at least, a regulatory *ethos*) and harnessing first-mover advantages.

The GFIN mission statement exemplifies the shifts in the governance of IFR. Through GFIN, the FCA wants to establish a cooperation network between regulators that could foster 'shared learning, lead to the adoption of common policies, and create an environment for trialling new products and services'—which connote, respectively, cooperation, policy export, and market access. Although the description sounds similar to the objectives and goals of other financial networks, the GFIN reports published so far illustrate (i) how the FCA sees it as something different, that *complements* existing networks; (ii) that it is designed to pursue types of cooperation that are not necessarily harmonization-based, but rather outcomes-oriented.

In the 2018 Consultation Document, the FCA stressed that 'the GFIN is not designed to replace or duplicate the role of international financial services standard-setting bodies or other international organisations'. Instead, it would 'seek to complement, and where appropriate, feed into the work of standard-setting bodies'.[149] In a 2019 Report, this notion is further explored, as the GFIN mentioned 'expanding its objectives from the original focus of facilitating responsible

139 Agnieszka Smoleńska and others, 'The Impacts of Technological Innovation on Regulatory Structure: Fintech in Post-Crisis Europe' in Adrienne Héritier and Magnus G Schoeller (eds), *Governing Finance in Europe* (Edward Elgar Publishing 2020) 167–68; Dirk A Zetzsche and others, 'Fintech Toolkit: Smart Regulatory and Market Approaches to Financial Technology Innovation' [2020] 29–34; 'UK and EU Regulation of Financial Innovations and FinTech' (n 123).

140 EY (n 94); Haddad and Hornuf (n 94); Deloitte UK, 'Regulating FinTech' (n 94).

141 Cambridge Centre for Alternative Finance, 'Regulating Alternative Finance—Results from a Global Regulator Survey' (2020) 37.

142 Cambridge Centre for Alternative Finance (n 131) 18–19, 25–26.

143 Cambridge Centre for Alternative Finance (n 131).

144 HM Treasury, 'UK and EU Regulation of Financial Innovations and FinTech' (2019) <https://goo.gl/PyVunt> accessed 15 January 2022.

145 FCA, 'Global Financial Innovation Network (GFIN)' (2019) <https://goo.gl/s6ffiY> accessed 15 January 2022.

146 Allen (n 111) 18.

147 Deloitte Centre for Regulatory Strategy Asia–Pacific, '2020 Asia–Pacific Financial Services Regulatory Outlook: Rebuilding Trust in Financial Services' (2020) 28.

148 House of Lords, 'Select Committee on the European Union—Oral Evidence: Financial Services after Brexit—Wednesday 5 February' (2020) 6; House of Lords, 'Select Committee on the European Union—Oral Evidence: Financial Services after Brexit—Wednesday 12 February' (2020) 12–13.

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cross-border experimentation of innovative ideas to now include various other forms of regulatory collaboration'. The 2019 Report also acknowledged that 'the type of collaboration that GFIN aims to encourage is arguably new to many regulators' but concluded that 'the increasing amount and pace of innovation driven by technological advancements require testing of new approaches to international cooperation'. [150]

This move towards a more flexible type of coordination is also present in speeches. Andrew Bailey suggests that the future of regulation requires 'standards which are strong but flexible enough to enable competition and innovation'. He goes on to say that 'a common commitment to international standards is an essential part of achieving equivalent outcomes' but concludes: 'freedom for jurisdictions to set their own standards domestically can certainly coexist with international co-operation in a way that enables agreed equivalence of outcomes'.[151] He also mentions the regulatory sandbox and GFIN as examples of this kind of engagement: one where domestic regulation can be complemented by bilateral and network engagement. GFIN seems to be quite effective, as regulatory models similar to those used by the FCA have been adopted in many other countries and sandboxes have become a necessary step in discussing FinTech regulation.[152].

So, what may be the downfalls of this eagerness to foster innovation and to grow a market segment that could theoretically change the structures of financial services? First, there is the risk of capture by the industry, due to the intense relationship between regulator and industry which is sometimes unaccompanied by an overarching regulatory goal or strategy.[153] Second, there could be an increase of the costs for regulators as a result of the intense monitoring that is needed—after all, lack of standardization fails to reduce costs. Third, some argue that sandboxes are unable to adequately simulate full-market conditions, allowing risks to stay hidden until their effects are widespread. Finally, side-lining traditional regulation and over-eagerness for new economic activity might lead to excessive risk taking.[154] Although these are all elements that need to be assessed, the contrast with the EU and the ISSBs initiatives in the FinTech arena show how effective the UK was in framing the debate and exporting its *ethos* to other countries.[155] Moreover, it raises questions as to whether some of the FCA's specificities—namely its focus on conduct and its mandate to promote competition—explain why it leapt ahead of other regulators.

Finally, it is also worth mentioning that such a strategy does not seem to be confined to FinTech regulation, as France provides another potential example of a domestic-led network, in the form of the NGFS. It was launched by the Banque de France in late 2017 with eight members and has quickly increased its membership, which now counts all the main US financial regulators, as well as the FSB, BIS, BCBS, IMF, IOSCO, Organisation for Economic Co-operation and Development (OECD), and the World Bank.[156] Its purpose is 'to define and promote best

149 Global Financial Innovation Network, 'Global Financial Innovation Network (GFIN)—Consultation Document' (2018) 7–9.

150 Global Financial Innovation Network, 'GFiN—One Year On' (2019) 3.

151 Bailey (n 2).

152 Péter Fáykiss and others, 'Regulatory Tools to Encourage FinTech Innovations: The Innovation Hub and Regulatory Sandbox in International Practice' (2018) 17 Financ Econ Rev 43, 55–57; Zetzsche and others (n 117) 64–65; Allen (n 111) 17; EY, 'The Emergence and Impact of Regulatory Sandboxes' (2017) 18–20.

153 Zetzsche and others (n 117) 79–81.

154 Eric Brown and Dóra Piroska, 'Governing Fintech and Fintech as Governance: The Regulatory Sandbox, Riskwashing, and Disruptive Social Classification' (2022) 27(1) New Polit Econ 19; Omarova (n 121) 38; Chiu (n 117) 2–3, 7–8; Bradley (n 119) 86–87.

155 For an interesting criticism of some of the current limitations of the sandbox-centred approach to FinTech, see Luca Enriques and Wolf-Georg Ringe, 'Bank–Fintech Partnerships, Outsourcing Arrangements and the Case for a Mentorship Regime' (2020) 15 Capital Markets Law Journal 374.

156 Network for Greening the Financial System, 'The Network of Central Banks and Supervisors for Greening the Financial System' (13 September 2019) <https://www.ngfs.net> accessed 30 January 2020.

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practices to be implemented within and outside of the Membership of the NGFS' and, as in GFIN's case, it mentions that its 'work could feed into the work of existing international regulatory bodies [but] it does not aim to replicate the work conducted elsewhere, but to build on and enrich it where necessary'.[157]

The NGFS seems to share similarities with the GFIN: (i) it was founded on the initiative of a particular domestic regulator, which still provides most of its structures; (ii) it also seems to capitalize on an area with first-mover advantages; (iii) it has an even broader membership, which includes networks and international organizations; (iv) it is intended to take a complementary function to existing mechanisms. Therefore, such alternative pathways to regulatory influence seem to be expanding, as the role of ISSBs change.

IX. EU'S FRAMEWORK

In the analysed period, the EU had yet to provide a significant regulatory response to FinTech. Among the potential reasons was a fear of overregulating the sector and a lack of information to assess what sort of approach would be preferable.[158] Consequently, applicable regulation depended on the services that were being provided, as some of them could have fallen under existing rules.[159] The lack of a regional strategy also reflected the state of domestic rules, which varied greatly among EU Member States, leading to fragmentation across country lines.[160]

Regional implications of FinTech activity, therefore, depend ultimately on whether the services are subject to passporting or not. If they are, FinTech that obtains a licence to operate in its home State will be able to provide services or create a branch in other EU Member States with both regulation and supervision remaining under the charge of the home State. Services not subject to the passporting rules will depend on multiple domestic requirements.[161]

As a consequence of the growth in the sector and due to the varying approaches adopted, discussions about an EU FinTech regulatory strategy have slowly become to surface.

A first step was taken by the European Commission in 2017, when it launched a public consultation.[162] The Commission identified four core areas that required action: (i) crowdfunding and peer-to-peer financing; (ii) lack of consistency across licensing of FinTech across Europe; (iii) creation of standards to facilitate communication; and (iv) enhanced cybersecurity in financial markets.

In 2018, the EU launched its FinTech Action Plan, with a list of measures that was intended to encourage innovative business models, support the use of new technologies, increase cybersecurity, and improve integrity of the financial sector.[163] Supervisory convergence is the key element, not unifying regulation: most of the measures focus on facilitating the exchange of information between authorities. In this sense, the Commission indicated that the ESAs should start to 'systematically consider FinTech in all their activities' in order to allow better risk management and mitigation.[164]

157 Network for Greening the Financial System, 'A Call for Action: Climate Change as a Source of Financial Risk' (2019) 11.

158 Huertas (n 124) 8.

159 House of Commons—Exiting the EU Committee, 'FinTech Sector Report' (2017) 3 <https://www.parliament.uk/globalassets/documents/commons-committees/Exiting-the-European-Union/17-19/Sectoral-Analyses/15-Fintech-Report.pdf> accessed 15 January 2022.

160 Weber and Baisch (n 112) 5–7.

161 Brian Christiansen and others, 'A Look at US and EU Fintech Regulatory Frameworks' (2018) 3–4; Clifford Chance, 'European FinTech Regulation—An Overview' (2017) 6–8.

162 European Commission, 'Fintech: A More Competitive and Innovative European Financial Sector' (2017) <https://ec.europa.eu/info/consultations/finance-2017-fintech_en> accessed 15 January 2022.

163 European Commission, 'COM/2018/0109—FinTech Action Plan' (2018) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0109> accessed 15 January 2022.

164 Ibid 4–5, 15–18.

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The Action Plan also intends to deliver on the European Commission's previous consultation: there is a push for a certain degree of uniformity in terms of requirements in order to tackle the issues with the lack of consistency for licensing procedures. There are also initiatives to support regulatory sandboxes and innovation hubs, facilitating the flow of information. This includes the creation of an EU FinTech Lab, which could use a position of coordinator between different Member States as a way to increase the understanding of the sector and EU's consequent regulatory capacity. The initial meetings of the FinTech Lab, however, suggest a focus on excessively narrow issues.[165] Likewise, while similar on paper to some approaches favoured by the UK, the EU has lagged considerably when it comes to the deployment of innovation-supportive regulation at the EU level,[166] leaving significant space for the FCA to increase its influence across regions such as the Asia-Pacific (APAC), Middle East and North-Africa (MENA), and the Sub-Saharan (SSA),[167] while also allowing the GFIN's membership to increase.[168]

All in all, the European Commission's FinTech Plan is vague and denotes a lack of an overarching strategy in a sector which could represent a relevant portion of economic activity in the financial market[169]—giving the clearer approach adopted by the UK a first-mover advantage during the analysed period.

It is worth highlighting that, recently, an increasing number of regulators at EU Member States have started to introduce regulatory innovation frameworks at the domestic level.[170] In many senses, such initiatives can be seen as a response for the lack of more concrete measures arising from the European Commission's FinTech Plan, with domestic regulators trying to close the gap in relation to their overseas counterparts and lessen existing first-mover advantages. At the same time, the increased pressures from regulators of EU Member States seems to be fostering more activity at the EU level—with examples including the European Forum for Innovation Facilitators and BIS Innovation Hub Eurosystem Centre[171]—potentially to avoid increased fragmentation.

Lastly, this is not to say that the EU could not have an advantage in some market segments. This may be partly through mechanisms that resemble those of the 'Brussels Effect',[172] and also via the increasing EU influence at the ISSB level as mentioned earlier.[173] While outside of the

[165] For instance, the first meeting dealt with issues arising from cloud outsourcing. See European Commission, '1st Session of the FinTech Lab' (2018).

[166] Wolf-Georg Ringe, 'The DLT Pilot Regime: An EU Sandbox, at Last!' *Oxford Business Law Blog* (2020) <https://www.law.ox.ac.uk/business-law-blog/blog/2020/11/dlt-pilot-regime-eu-sandbox-last> accessed 15 January 2022.

[167] Cambridge Centre for Alternative Finance, 'FinTech Regulation in Sub–Saharan Africa' (CCAF 2021); Cambridge Centre for Alternative Finance (n 96); Cambridge Centre for Alternative Finance, 'FinTech Regulation in the Asia Pacific' (Cambridge Centre for Alternative Finance 2022).

[168] Which now has, for example, all the main US financial regulators as members, several of which participate actively across the GFIN's workstreams. See Global Financial Innovation Network, 'GFIN Members' (Global Financial Innovation Network 2021) <https://www.thegfin.com/members> accessed 15 January 2022.

[169] Smoleńska and others (n 139) 172.

[170] With De Nederlandsche Bank providing the best example. See De Nederlandsche Bank, 'Continuing Dialogue—Innovation Hub and Regulatory Sandbox' (2020) 17. For broader overviews on developments in Europe, see Radostina Parenti, 'Regulatory Sandboxes and Innovation Hubs' (European Parliament 2020) and Cambridge Centre for Alternative Finance, 'The 4th European Alternative Finance Benchmarking Report' (Cambridge Centre for Alternative Finance 2019).

[171] European Forum for Innovation Facilitators, 'Joint Committee European Forum for Innovation Facilitators—EFIF' (2021) <https://esas-joint-committee.europa.eu/Pages/Activities/EFIF/European-Forum-for-Innovation-Facilitators.aspx> accessed 15 January 2022); Bank for International Settlements, 'BIS Innovation Hub Eurosystem Centre: Setting the Stage' (2021).

[172] Bradford (n 84).

[173] Quaglia (n 23); Newman and Posner (n 29); Davis (n 36).

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scope of this article, the European Commission's DLT Pilot Regime[174] and Markets in Crypto-Assets regulation[175] will most likely become important reference points for regulation in those spaces, especially if some potential road bumps can be avoided.[176]

X. ISSB INITIATIVES

The efforts of the ISSBs demonstrate that it is currently unclear to the networks which segments of FinTech should be addressed at the network level—and whether they should be addressed at all. As a result, the ISSBs' initiatives have been exploratory in nature.

The FSB has been the protagonist of debates regarding FinTech regulation so far, due to a drive initiated by the G20.[177] This led to the publication of a comprehensive study in 2017, entitled 'Financial Stability Implications from FinTech'.[178]

Overall, the FSB seems to be more cautious than domestic authorities: both to downplay the potential benefits that FinTech might have in the long-term and to emphasize that new risks could arise. This cautious posture has been clear from the start: the five implications that FinTech could have for financial stability identified by the FSB contrast with the tone adopted by the UK and the EU.[179] This contrast to the FCA's position might arise from the fact that the FSB is rooted in prudential regulation and on a somewhat restricted mandate that always resulted from crisis and crisis-related events, whereas the FCA has a focus on conduct and even a mandate to promote competition.

The lack of adequate information for regulators is again the central concern. In the FSB's view, the fact that the long-term effects of FinTech are still unknown makes the pursuit of certain goals (as decentralization and diversification) premature and even counterproductive, as in the past over-reliance on third parties has increased systemic risk. This also applies to other risks: while the FSB admits that some risks might be reduced (eg operational), some could increase (eg cyber). Moreover, the speed of the changes makes monitoring and responding to these emerging risks much more complex.

The FSB also included a mapping exercise to explain how it perceives FinTech to fit within existing regulation. First, there are clues as to what the FSB considers the ISSB role to be: citing the Basel Core Principles and the IOSCO Objectives and Principles, it suggests that the tools for assessing FinTech innovations should be designed using the standards as a starting point—which might not mean much, in areas where the granularity of standards is not well-developed. Second, it notes the vastly varied regulatory responses from its members. As it turns out, even though some activities were covered under existing rules, it identified that most countries created specific frameworks, particularly in the banking segment. However, the FSB reiterates its main concern bluntly: although it acknowledges that the domestic initiatives try to foster consumer protection and decrease prudential risks, it notes that cross-border issues are still seldom debated.[180]

The answer—at least for the time being—would lie in monitoring. The opacity of FinTech is front and centre: it is linked to the idea that some risks might not be perceived at the moment,

174 European Commission, 'COM/2020/594—DLT Pilot Regime' (2020) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0594> accessed 15 January 2022.

175 European Commission, 'COM/2020/593—MiCA Regulation' (2020) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593> accessed 15 January 2022.

176 Dirk A Zetzsche and others, 'The Markets in Crypto-Assets Regulation (MICA) and the EU Digital Finance Strategy' (European Banking Institute Working Paper Series, 2020).

177 G20, 'G20 Finance Communiqué, March 2017' (2017) < http://www.g20.utoronto.ca/2017/170318-finance-en.html> accessed 15 January 2022.

178 Financial Stability Board (113).

179 Ibid 21–23.

180 Ibid 23–27.

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that the structure adopted in most jurisdictions impedes centralized information, and that even understanding some of these issues might require the authorities to seek new experts, as technology increases complexity. The FSB also sees a relevant role for communication: it would be the way to tackle cross-border issues and ensure that regulation evolves and adapts at the same pace as FinTech.[181]

IOSCO followed suit, releasing the 'Research Report on FinTech' in 2017, responding to the G20 and FSB.[182]

IOSCO's report starts with a more optimistic undertone, as it considered that FinTech could expand the reach of services to underserved market segments, decrease interest rates, and allow a greater control over risk management and increases to competition, speed, and efficiency in capital markets in general. Even so, IOSCO reaffirmed that FinTech is still non-uniform as a market.[183]

IOSCO identified an inconsistency in regulatory responses, which ranged from no rules or overlap with existing regulation to tailor-made frameworks for the sector. However, some trends did emerge. First, IOSCO indicated that subsegments that presented intense growth led to more coordination between regulators and to the performance of cost-risk–benefit analysis (eg as was the case with DLT). Second, even in the cases where there was regulation, IOSCO saw an excessive focus on capital formation requirements while monitoring efforts lagged behind. Third, IOSCO suggested that difficulties with consistency, alongside cross-border risks, should be enough to justify efforts centralized at the ISSB level.[184] Finally—in line with the UK experience—IOSCO identified an increase in the use of bilateral MoUs for FinTech.[185]

The BCBS adopted a cautious position. Although it expressly stated that it still considers that FinTech is not big enough in market terms to require swift action, it released a document entitled 'Sound Practices: Implications of FinTech Developments for Banks and Bank Supervisors' in 2018.[186]

The approach was very similar to the FSB and IOSCO: the BCBS stressed that its initial role was to help to map risks and opportunities, while also adopting a more descriptive than prescriptive attitude within its bank-specific mandate. This resulted in the selection of key implications that could affect how banks and supervisors should perform their roles.[187]

The key implications identified relate to the new risks posed by FinTech and were in line with those underlined by the FSB and IOSCO: considering that FinTech has the potential to change the nature of services provided, risks might differ accordingly. These risks would usually derive from the new technologies that are being used (artificial intelligence (AI), machine learning, data analytics). Therefore, areas that were less sensitive in prudential terms could become sources of concern: data privacy, cyber security, and digital consumer protection might need overhauls. As risks transform and FinTech alters business, current supervisory frameworks could prove to be ineffective or require additional resources to function properly. The BCBS also stressed that regulators should be ready to adapt, due to the speed of innovation in the sector.[188]

What can be learned from these different levels of regulation and their distinct states? To sum it up: (i) FinTech exemplifies contemporary coordination issues and the rapid pace of changes

181 Ibid 29–32.

182 International Organization of Securities Commissions (n 108) 2–3.

183 Ibid 10–69.

184 Ibid 70–74.

185 In the FCA's case, for example, the MoUs are focused on increasing cooperation and operationalizing innovation hubs created by each of the contracting authorities, increasing their respective reach. See Bromberg (n 118) 61–74; International Organization of Securities Commissions (n 108) 70.

186 Basel Committee on Banking Supervision (n 103).

187 Ibid 5–7.

188 Ibid 22–41.

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in regulated activities, which causes the appearance of new risks for consumers and financial stability, as well as new challenges for regulation; (ii) due to the greater technical complexity and heterogeneity in FinTech, there are more issues in deciding *if, when, and how* to regulate; (iii) the broadness in the definition of FinTech and the conclusions from the reports that were commissioned by ISSBs indicate a lack of sufficient information to understand the sector; (iv) the UK has a framework for how to engage with firms that would otherwise fail to innovate or try to avoid regulation altogether, alongside initiatives that are designed around the capture of information, creation of expertise, formation of templates, and exporting these templates to other jurisdictions; (v) the EU state of affairs showcases the difficulties with having diverse regulatory responses (and market practices) in the Member States, as well as different degrees of financial regulation development at the EU level, alongside a variety of regulators at the EU and Member State levels; and (vi) the ISSBs seem unwilling or unable, for the time being, to engage in a more substantive way with relation to FinTech, although their role facilitating the exchange of information seems to have a role to play.

XI. INTO THE ABYSS? BREXIT AND REGULATORY CONSEQUENCES

From the pieces that have been laid out in the previous sections, this section will advance the following argument: the central issue in FinTech regulation is lack of information; ISSBs have significant problems dealing with that, due to their structural limitations and governance structures; consequently, over-reliance on ISSBs in order to maintain regulatory influence is not a sound strategy. However, the UK has a good answer to the problem in the FinTech arena. The approach led by the FCA was able to produce innovative regulation that was quick in capturing information and creating regulatory expertise in a very diverse and complex market segment. Then, the FCA was able to export its regulatory preferences through bilateral, minilateral, and non-ISSB international engagement, thus managing to reduce the political risks of competing within ISSBs. This gave the UK an advantage over the EU: as it had a regulatory process that was more able to capture the specificities of the market segment and create regulatory expertise, it had more chances of collecting first-mover advantages. This strategy—to use domestic frameworks to create templates which are uploaded to other jurisdictions, eventually creating *de facto* standards—can become an efficient complementary template for how the UK should engage in financial standard-setting if it wishes to retain its position as a rule maker. Each of these elements will be analysed next.

XII. FINTECH REGULATION AFTER BREXIT: ISSBS BOTTLENECKS

The UK's success in engaging with FinTech, alongside ISSBs unevenness in discussing it, and the EU's difficulty in assessing the phenomena (and deciding whether to deploy rules) all converge to demonstrate that information is the central problem in FinTech and the main commodity that will dictate how to regulate it, at least in the first instance. 'Limited technical expertise within the regulator' has been singled out as the primary impediment to effective supervision of FinTech[189] and is something that the UK model tries to address head-on.

[189] Cambridge Centre for Alternative Finance (n 141) 63. Omarova also brilliantly discusses the elements that make the informational problem in FinTech regulation more prominent that in other areas of financial regulation, singling out the changes in scale, scope, speed, velocity, trust, power, transparency, governability, and boundaries that are specific to FinTech. As Omarova suggests, it remains to be seen whether sandboxes can be effectively designed to address that. See Omarova (n 121) 87–96. In any case, the broader point of this article remains: the FCA seems to have been very efficient in conveying its story and setting the tone of the discussion.

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In fact, current frameworks suggest that regulation needs to be able to effectively capture and understand: (i) the multiplicity of practices (and associated risks) being considered under the same umbrella term; (ii) the variety of different actors exploring the segment and what they represent in terms of future impacts to the market (eg differences between FinTech initiatives from challenger firms versus projects by established financial institutions); and (iii) keeping up with the emerging trends, services, and products that are being offered at a frantic speed. It seems that only regulators that choose rules that enable the capture of such information will be able to implement regulation that creates an environment which fosters innovation and allows the development of new solutions, thus avoiding overburdening firms and enabling the execution of domestic policy goals while maintaining safeguards for consumers and financial stability in the face of new, emerging risks.

These differences in regulatory approaches have consequences for the political economy of global regulation. Elements such as regulatory capacity and technical expertise have become more salient with growing market complexity, making the ability to be able to capture available information even more important.[190]

The main issue with singling out ISSBs as the main source of engagement for the UK after Brexit is that these networks have fundamental problems when attempting to tackle FinTech more substantially exactly due to the informational requirements of the segment.

First, the FinTech arena is currently too varied to allow rules-based network initiatives. As the current ISSB reports suggest, FinTech varies from country to country and still describes a great range of different services and products. In any case, FinTech is not neatly encapsulated within the financial market ISSB mandates. As mentioned, the ISSB mandates resulted from crisis or crisis-related events. As a result, international standards were focused on the narrow issues that represented risks to financial stability during these crises. Such narrow mandates complicate the introduction of standards for FinTech, as the risks arising in the sector tend to be much more heterogeneous than those which were originally addressed by the ISSBs. Furthermore, some of the ISSB governance structures have thrown the possibility of achieving some more granular regulation out of the window, as consensus or super-majority-based rules mechanisms tend to lead to more general and open-ended approaches.[191]

Second, uniformity and standardization might be undesirable at this stage of FinTech, where some regulatory competition is important[192] for the market and for clarifying what are the risks and benefits involved. ISSB engagement might not be *necessary* nor *desirable* in this case.

The FCA (and the Bank of England, at least to some extent) seem to be aware of these issues and comprehend that the role of ISSBs is changing. Networks will no longer necessarily be the centrepiece for *forming* standards in some instances, but a mechanism for facilitating coordination among authorities after common goals have been identified and competing standards have arisen. As a result, domestic initiatives (coupled with bilateral or minilateral tools) will unravel into an arena where the fight to define the standards will play out, as the need for coordination[193] will continue to exist. The Overseas Fund Regime, as proposed by HM Treasury, is also worth mentioning, considering that it would be introducing an UK variant of equivalence based on outcomes (and not harmonization). Such a development could work in a similar way as the EU equivalence mechanisms (for the export of substantive rules to other jurisdictions countries),

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190 Kenneth A Armstrong, 'Regulatory Alignment and Divergence after Brexit' (2018) 25 J Eur Public Policy 1099, 1114.

191 Rahul Prabhakar, 'Varieties of Regulation: How States Pursue and Set International Financial Standards' (2013) Glob Econ Gov Work Pap, 5.

192 Magnuson (n 119) 1224.

193 Caroline Bradley, 'Breaking up Is Hard to Do: The Interconnection Problem in Financial Markets and Financial Regulation, a European (Banking) Union Perspective' (2014) 49 Tex Int Law J 271, 274.

while also creating a competing model for how equivalence should function. The proposed UK's Equivalence Framework for Financial Services provides further details along similar lines.[194]

It is also worth mentioning that there is evidence to support the potential upsides of the competition between regulatory frameworks when it comes to FinTech. While all discussions about regulatory sandboxes tend to use the FCA's model as the frame of reference, there are examples of similar initiatives elsewhere that share the broad vocabulary and objectives created by the FCA, while also allowing for adaptations that are better tailored to local and/or regional needs.[195] In the US, the Consumer Financial Protection Bureau (CFPB) has two types of sandboxes: one for compliance assistance and one focused on disclosure, both complemented by a no-action letter policy.[196] In Kenya, the Capital Markets Authority (CMA) created a regulatory sandbox with a strong focus on financial inclusion, coupled with a FinTech landscape analysis.[197] In Asia, Singapore's Monetary Authority of Singapore (MAS) created a regional variant of the GFIN with the introduction of the ASEAN Financial Innovation Network which, rather than focusing only on regulation, has an API marketplace which centralizes many of the industry-led innovation efforts.[198]

The UK's placement after Brexit also cautions against relying solely on ISSBs to advance regulation in FinTech (and even in some other areas).

As already discussed, in broad terms the UK had already lost some of its influence as the agenda-setter and approach-definer as a result of the backlash from the 2008 crisis and due to the dynamics within the EU, retaining its influence mainly due to its technical expertise and market size. Now, in theory, the UK can start to find its own voice again, as it does not need to be the *grit in the oyster* or responsible for *meeting in the middle*. However, diverging might also engender other dangers. It is essential to balance innovation and development of expertise with the pursuit of financial stability as, in the event of another crash or crisis, the UK risks becoming less relevant (this time without having its role within the EU to retain its influence and support its recovery).

Losing the formal channels that the EU provided for engagement with ISSBs is significant, especially in a moment when the EU has bolstered its influence[199] and when the US is reluctant to engage with these networks. Although the actual consequences of these changes are still unclear, they do not seem to point towards an increase in the amount of influence that the UK is able to exert. In the same sense, there have been suggestions that technocratic engagement is no longer enough to ensure influence, as more countries are becoming politically involved in financial regulation.[200].

What seems to be the takeaway? It is not desirable to only (or primarily) fight for influence only at ISSBs not only because of their structural issues, but also because of the context in which the UK finds itself after the end of the transition period.

194 HM Treasury, 'Guidance Document for the UK's Equivalence Framework for Financial Services' (2020).

195 World Bank, 'Global Experiences from Regulatory Sandboxes' (2020); World Bank, 'How Regulators Respond to FinTech—Evaluating the Different Approaches' (2020).

196 Consumer Financial Protection Bureau, 'Policy on the Compliance Assistance Sandbox' (2019); Consumer Financial Protection Bureau, 'Policy to Encourage Trial Disclosure Programs' (2019); Consumer Financial Protection Bureau, 'Policy on No-Action Letters' (2019).

197 Ivo Jenik and Kate Lauer, 'Regulatory Sandboxes and Financial Inclusion' [2017] 22; Ivo Jenik, 'One Thing Regulators Should Do Before Launching a Sandbox' (2018) <https://www.cgap.org/blog/one-thing-regulators-should-do-launching-sandbox> accessed 15 January 2022).

198 Monetary Authority of Singapore and others, 'Media Release: ASEAN Financial Innovation Network to Support Financial Services Innovation and Inclusion' (2017); AFIN, 'APIX' (2021) <https://apixplatform.com> accessed 15 January 2022; Cambridge Centre for Alternative Finance, 'FinTech Regulation in the Asia Pacific' (Cambridge Centre for Alternative Finance 2022).

199 David Bach and Abraham L Newman, 'The European Regulatory State and Global Public Policy: Micro-Institutions, Macro-Influence' (2007) 14 J Eur Public Policy 827, 837–42.

200 John C Coffee, 'Extraterritorial Financial Regulation: Why E.T. Can't Come Home' (2014) 99 Cornell L Rev 1259.

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XIII. FINTECH REGULATION AS A TEMPLATE FOR THE UK'S FUTURE ENGAGEMENT

UK FinTech serves to showcase some domestic initiatives that can become central in the dynamics of influencing regulation, as well as providing the necessary coordination for IFR.

A relevant part of the answer as to why the UK experience was so successful seems to lie in information. Effectively, the UK adopted a regulatory approach which is oriented towards the capture of information. The importance of market size becomes less about exerting direct influence in networks, and more about being able to gather data from the best possible environment. This translates into building a distinct technical expertise for UK regulators in that segment, allowing them to devise new strategies while engaging with the regulation of new and emerging services.[201]

Changing how the UK uses its market size and availability—from a form of pressure to a source of information—reduces the importance of engagement with ISSBs. Authorities can instead focus on *how* the engagement with regulation and the formation of new regulatory solutions happen. This gives the UK a competitive advantage, given that it is in a uniquely informed position to decide on the best course of action concerning how a particular market should be tackled. The regulatory sandbox is the best example of this strategy.

Emphasizing the gathering of information, the formation of expertise, and the introduction of innovative regulation also reduces the political noise that is intrinsic to ISSBs. In fact, the UK—at least in FinTech—was able to control the agenda and impact the development of the sector before these networks were able or willing to act, which can be an advantage for when the discussions advance. In a sense, the collection-formation-introduction approach is better suited to profit from first-mover advantages.

Information, expertise, and innovation are also one possible answer *vis-à-vis* the EU after Brexit. Considering that the EU has more limitations on swift movement due to variations among Member States, equivalence would not limit UK's options in situations where it has first-mover advantages—which has often been the case, as Ferran[202] suggested and as Coffee[203] identified when discussing strategies that the US should adopt. Therefore, if the template the UK produces is successful by the time the EU starts to act, its model might (i) constrain the options available for regulating a segment; and (ii) end up influencing what the adopted rules actually will be.

Finally, it seems that regulatory approaches based on information gathering and tailored rules are also able to create a circular process: openness to fine-tuning regulation to businesses can serve to attract and maintain those businesses, which reinforces a country's market in that segment and, as a result, leads to the availability of more information that can then be translated into more expertise and to responses to the rapid occurring changes.

Alongside the sandbox, the other fundamental element to understand how the UK approach worked relates to GFIN, which facilitated engagement with third countries and dissemination of policy preferences. Through GFIN, the UK offered cooperation and used expertise in a very effective manner: it transformed bilateral engagement into a multilateral mechanism that is still coordinated and centred around its own regulatory authorities.

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201 The recent FCA TechSprint focused on sustainable finance also suggests that it might be able to build upon its successful approach to regulatory innovation when it comes to other nascent markets. See Financial Conduct Authority, 'Sustainability TechSprint' (2021) at <https://www.fca.org.uk/events/techsprints/sustainability-techsprint-2021> accessed 15 January 2022.

202 House of Lords—Select Committee on the European Union—Financial Affairs Sub-Committee, 'Oral Evidence—Brexit: Financial Services—Professor Eilís Ferran and Sir Charles Bean' (2017) pt 5 <https://goo.gl/QFGebT> accessed 15 January 2022.

203 Coffee (n 200) 70.

These types of bilateral (or minilateral) engagement that led to multilateral coordination seem to be preferable to ISSBs in the UK's case for several reasons.

Bilateral engagement and instruments such as a memorandum of understanding (MoU) are more opaque and less contentious, in the first place. This allows the UK to gather support for its views prior to their introduction in networks—bypassing some of the costs of bargaining in multilateral fora—as other jurisdictions might have adopted similar regulatory solutions. The FCA was able to tailor different forms of bilateral cooperation to try to achieve those goals. Apart from the ever-present MoUs, the FCA introduced two additional modalities: FinTech Cooperation Agreements and FinTech Bridges. While the former are even 'softer' versions of an MoU—which requires less red-tape to be entered into by the regulators—the FinTech Bridges are a bundle that combines deals on trade, policy, and regulation.[204] Apart from serving as useful frames of reference for regulators in other jurisdictions that might want to engage in bilateral cooperation in FinTech, such greater range of granularity in bilateral engagement has been suggested to foster specialization within domestic regulators.[205] Ultimately, more specialization across jurisdictions is beneficial to the global regime, as more regulators will be able to understand and keep up with developments in FinTech. Likewise, it is beneficial to the UK, as it has a greater range of opportunities to access other markets, develop new market segments that are increasingly relevant in economic terms—such as Islamic FinTech and DLT-based companies—and increase competition in its financial services market.[206]

Information itself becomes a commodity that can be used for bargains in negotiations: for instance, it will continue to constitute a crucial element for the EU supervisory institutions after the end of the transition period. Moreover, being able to choose strategic partners to validate a specific template reduces dependence on retaining the same market size: both countries with less regulatory capacity (ie those with a greater need for information or expertise) and with more regulatory capacity but which have similar preferences (ie the US) could be used in cementing the UK's influence, especially as it has lost access to the EU passport for providing cross-border financial services.

A minilateral approach also enables more experimentation and even non-standardization, as it fosters the development of similar (but not identic) rules in different jurisdictions, which could be coupled with equivalence regimes that are outcomes-based. The creation of sandboxes that share similarities but also depart from the FCA's model in relevant ways—as IN the examples mentioned above—are illustrations of that.

GFIN seems to explain why some of the UK's authorities are focusing on the wrong direction, while the FCA seems to have a clearer picture of the future of FinTech. The relationship between the UK and ISSBs after Brexit is not solely about retaining control of international administrative bodies, but rather about defining the roles and rules of engagement. ISSBs should have more of a validation than a centralization role in the UK's plans, as bilateral and minilateral strategies serve as workarounds for building and retaining influence. ISSBs are fora that can be used to cement influence and validate templates that have already been adopted by other jurisdictions, not the main venue in which the regulation should happen.

In the same sense, as Andrew Bailey suggested, this forces ISSBs to move on to standards with a higher degree of flexibility, which can incentivize new forms of international regulation that have been called *informal convergence* or *cooperative decentralization*. These forms of IFR are marked by the search of common and broad objectives through the implementation of

[204] Bains (n 95).

[205] Newman and Posner (n 29).

[206] World Bank, 'Fintech in Europe and Central Asia: Maximizing Benefits and Managing Risks' (2020); UK in a Changing Europe, 'Impact of Brexit on UK Services' (2021); FCA, 'Regulatory Sandbox: Lessons Learned Report' (2017); Global Financial Innovation Network, 'Cross-Border Testing: Lessons Learned' (2020).

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different frameworks.[207] Such varieties of regulation increase the variability of domestic rules and introduce a good variant of competition for standards, which increases the role of testing outcomes and fosters evidence-based regulation.[208] Therefore, regulatory models such as the one adopted by the UK—where testing is essential—benefit from these changes and can be translated into regulatory influence.

XIV. CONCLUSIONS

Looking at the historical relationship that the UK has established with ISSBs, their flaws and inherent limitations, while also pinpointing what has led UK FinTech regulation to be extremely successful in terms of influence, heralds some clues and warnings as to what the future strategy for regulating the sector should be after Brexit, as well as indications of where financial regulation might be heading.

The main issue with the recommendations drawn by the UK's authorities is that too much reliance (and hope) is centred in ISSBs, which alone simply cannot deliver the type of influence that the UK wants to retain. More complementary influence strategies need to coexist in order for influence to be preserved or expanded.

Firstly, ISSBs have structural limitations that have been amplified by the increase in their membership and due to strategic shifts in the posture of relevant players, such as the US. This has often turned these networks into inefficient bodies for discussing regulation—as there are too many divergent interests and insufficient governance mechanisms to coordinate them—and has endangered the adequacy of the rules produced. Moreover, FinTech also illustrates that networks are unable to respond to quick changes, both in terms of assessing their impacts and for deciding whether to regulate.

Secondly, financial regulation is heading towards a more competitive and less multilateral environment. As a result, ISSBs are a bad venue for trying to retain influence in the EU if used exclusively and a bad battleground to try to compete with it, as the UK will lose channels in those networks and have a harder time advancing its own regulatory preferences. There are also important lessons from the past, as this stresses that the UK needs to retain its expertise in regulating financial matters, harness first-mover advantages whenever possible, be flexible in choosing who to side with, and avoid the adoption of excessively market-friendly regulation (as the EU safety net is now gone).

These remarks are to some extent reflected by the different views that the FCA has: one that acknowledges the current political economy of IFR and understands that novel types of coordination can often yield more successful results, as a structural shift in the role of ISSBs might be underway.

Instead of being central rule-making nodes, these networks will tend to recognize and act to legitimize broader policy objectives, which can serve to support distinct groups of domestic or minilateral rival standards that are sufficiently adapted to local specificities but are still in pursuit of those common goals. ISSBs might also be relevant as sources of comparability, as they still facilitate the exchange of information between different regulatory authorities in a more informal and flexible setting.

In this context, FinTech is a prime case study for the future of financial regulation, as it deals with emerging issues such as the increasing speed of market changes and transactions, the growing technical nature of the regulated services, and an ever more heterogeneous market in terms of participants and risks. It also serves to showcase the main trade-offs that regulators have

207 Helleiner and Pagliari (n 70).
208 Wolf-Georg Ringe, 'Regulatory Competition in Global Financial Markets—The Case for a Special Resolution Regime' (2016) 1 Annals of Corporate Governance 175.

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to face while trying to achieve the balance between increasing competition, fostering innovation, ensuring consumer protection, and achieving financial stability.

UK FinTech regulation has a unique and leading answer to these difficulties, as it adopts a new kind of approach that falls between the old divide of rules and principles: it is flexible, adaptable, and dialogic, avoiding one-size-fits-all choices. It is also designed around creating a positive feedback loop: UK regulatory authorities attract participants, gather information, increase their own expertise, and deploy tailor-made solutions that, in turn, attract more firms to the regulated environment. These tailor-made rules can also reduce barriers to innovation, while trying to erect safeguards to consumers and financial stability.

Then, the UK model is also able to influence the domestic regulation of other jurisdictions. With GFIN, the FCA views information and expertise as relevant commodities, therefore using them to form bilateral or minilateral bonds with other authorities, expanding the influence of the UK's framework and controlling the regulatory 'vocabulary' for FinTech. By proceeding in that manner, the UK validates its regulation as a potential global standard before other templates can be created and manages to retain its domestic market as the centre of regulation. Therefore, complementary initiatives such as those spearheaded by the FCA should be central to the UK regulatory strategy after Brexit.

Adopting domestic frameworks that are coupled with mechanisms to export regulation to other jurisdictions also gives the UK an advantage over the EU and the ISSBs, as the UK is able to come to the necessary diagnostics about a certain market segment, implement the required solutions, and export them much sooner. After all, the UK is able to create its own bilateral or minilateral regulatory templates before engaging with ISSBs, thus harnessing first-mover advantages and creating an uneven playing field in its favour for when discussions eventually arise in these international multilateral fora.

More importantly, initiatives such as the ones championed by the FCA can lead to a more fluid type of regulation, with more room for diversity and less standardized solutions. This enables a positive competition of different frameworks that pursue similar outcomes—a race to the top—and reduces the risks of failing templates, especially in areas with a greater variety of market practices such as FinTech. The diffusion of a more outcomes-based approach also allows for more domestic and regional variations to arise in a more controlled and structured manner, which enables greater attention to the specific demands and risks of a given country. This can ease some of the challenges arising from a field that is as fragmented as FinTech.

Finally, acknowledging the impact that the UK FinTech regulatory approach had on other countries and on providing coordination among different jurisdictions outside of ISSBs is also relevant for future research, as further examination is required in order to understand whether there are other domestic regulatory processes that can also lead to the creation of global regulatory standards outside networks.

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