

The non-reversal of delegation in international standard-setting in finance: The Basel Committee and the European Union

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Abstract

International non-majoritarian institutions (NMIs) in finance have proliferated over the last decades. The Basel Committee on Banking Supervision (BCBS) is the main international NMI in finance and the European Union (EU) is one of its core jurisdictions. Despite the far-reaching effects of international banking standards in the EU, especially the Basel accords, there has been limited politicization of delegation to the BCBS and no attempt to reverse it. Why? By taking a “soft” principal-agent approach, this paper points out two explanatory factors: the composite nature of both the principal and the agent. It also identifies a pattern that can be generalized to other international NMIs in finance. Thus, following the initial delegation of international standard-setting to the BCBS, this international NMI considerably increased its activities, going beyond what certain elected officials wanted; the response from elected officials was limited to the use of relatively weak ex-ante and ex-post controls, including delayed compliance.

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1 | INTRODUCTION

From the 1980s onwards, non-majoritarian institutions (NMIs) proliferated across countries in a variety of economic policy areas (Coen & Thatcher, 2005; Gilardi, 2008; Gilardi & Maggetti, 2011; Thatcher & Stone Sweet, 2002), ranging from utilities (Coen, 2005), monetary policy (Mcnamara, 2002), financial services (Thatcher, 2005), credit rating (Kerwer, 2005) and accounting (Mattli & Buthe, 2005). Following the globalization of finance, international NMIs that brought together domestic NMIs were established to promote international regulatory harmonization and supervisory cooperation (Brummer, 2015; Newman & Posner, 2018; Zaring, 2020). International NMIs in finance were delegated the function of issuing “soft law” (Brummer, 2015), or “informal international law” (Pauwelyn, Wessel and Wouters, 2012), which, although not legally binding, fosters international harmonization and regulatory convergence across jurisdictions.¹ International NMIs, like the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS) and the Financial Stability Board (FSB), are “informal international organisations” (Donnelly, 2019; Roger, 2020) and are also examples of “complex delegation”, as explained in Section 3.

Over the last decade, the rise of anti-establishment movements, the election of populist governments and public backlash against “experts” and “technocracies” have set the background for the “politicization” of delegation to NMIs (i.e., a challenge to their institutional legitimacy and existing delegation arrangements) and a potential reversal of delegation. The delegation to domestic and international NMIs in the financial sector has been criticized especially after the 2008 international financial crisis, which represented a major policy failure and increased the political salience of finance, that is to say, the attention that politicians and public opinion pay to this policy area (Culpepper, 2011; Pagliari, 2013). At the national level, the delegation of powers to domestic NMIs in finance (for instance, national central banks) was reversed in some countries (Bodea & Garriga, 2022). International NMIs in finance were also publicly challenged. For instance, the vice-chair of the US House Financial Services Committee (2017) considered “unacceptable” the “setting of international regulatory standards for financial institutions among global bureaucrats in foreign lands without transparency accountability or the authority to do so”. There were also several congressional speeches and media releases accusing international bodies, such as the FSB and the BCBS, of “threatening national sovereignty by imposing rules on the US” and berating “faceless people in Basel who think they can tell American institutions what to do”.²

In theory, the EU was one of the most likely cases for the politicization of delegation of international standard-setting to the BCBS and the potential reversal of delegation due to several reasons. To begin with, the international banking rules issued by the BCBS had major redistributive implications. In particular, these rules had far-reaching implications for the bank-centric EU economy, where banks provide credit to businesses and households (Howarth & Quaglia, 2013; Young, 2014). Second, given the considerable market size and regulatory capacity of the EU in this sector (Posner, 2009; Quaglia, 2014) and the relatively “thin” institutional apparatus of the BCBS (outlined in Section 3), the EU could have considered unilateral action, for instance, by withdrawing from this international arrangement. Third, the 2008 international financial crisis was first and foremost a banking crisis (Tooze, 2018), revealing the inadequacy of existing banking rules, which were mostly based on those issued by the BCBS. Yet, in practice, the politicization of the delegation of international standard-setting to the BCBS remained limited in the EU and there was no attempt to de-delegate. Why?

This work adopts a “soft” principal-agent approach, which is discussed in Section 2. Section 3 outlines the “complex delegation” of international standard-setting to the BCBS, spelling out the agent, the principal(s), and the ex-ante and ex-post controls, as well as the activities of the BCBS. Section 4 explains the limited politicization and no reversal of delegation in the EU by pointing out two explanatory factors: the composite nature of both principal and agent. This piece of research identifies a pattern, which can be generalized to other international NMIs in finance, whereby the BCBS set out initial rules and increased its activities; this went beyond what certain elected officials and parts of the financial industry wanted; the response was not to publicly challenge the delegation arrangements, but rather the use ex-ante and ex-post controls (including partial or delayed compliance) by elected officials in the EU.

2 | THE PRINCIPAL-AGENT APPROACH TO EXPLAIN DELEGATION TO NMIs

NMIs are defined in this special issue (Thatcher et al., 2022) as having the following features: (i) they have been delegated the authority to govern specific domains of activity; (ii) they are not directly elected; (iii) and their decisions are subject to override on the part of elected politicians only under conditions prescribed by law. The functional rationale for the initial delegation to NMIs is that unelected bodies staffed by technocrats were expected to deliver better policy outcomes than elected politicians, enhancing efficiency, especially in highly technical policy areas. Among the benefits of delegation, one could mention: avoiding market failures, addressing commitment problems, minimizing transaction costs, overcoming informational asymmetries, and shifting blame for unpopular decisions (Coen & Thatcher, 2005; Maggetti, 2012; Thatcher, 2002; Thatcher & Stone Sweet, 2002).

The delegation of competences and powers to NMIs has often been examined using a principal-agent approach (Christensen & Læg Reid, 2007; Franchino, 2007; Pollack, 2003; see also the path-breaking works of Epstein & O’Halloran, 1999; McCubbins et al., 1989). In a principal-agent relationship, the agent acts on behalf of the principal. Moreover, both the principal and the agent can be *composite*, that is to say, collective actors. The principal-agent literature argues that if there are multiple principals – that is often the case for international NMIs (Hawkins et al., 2006) – it is harder for them to control the agent as they must agree, especially if they have different preferences (McCubbins, 1999). At the same time, the more the principals, the more the institutional status quo is likely to prevail because changes in the delegation arrangements usually require unanimous agreement among multiple principals (Tsebelis & Garrett, 2001). Yet, one of the principals may decide to de-delegate for itself through unilateral withdrawal (Pollack, 2022). The agent can also be composite, that is to say, a collective actor. That is the case of international NMIs that are based on “complex delegation” and whose members are domestic NMIs to which certain competences have been delegated by elected officials at the national level (Hawkins et al., 2006).

Although most of the literature has so far focused on explaining the initial delegation to NMIs, it is important to consider explanations for the reversal of delegation – “de-delegation” refers to the process through which an existing delegation to an NMI is formally reduced, either by reducing its powers, or considerably increasing controls, or even through withdrawal or abolition (Thatcher et al., 2022) (see the Introduction of this special issue, this volume). Particularly relevant for this paper is the discussion of de-delegation with reference to NMIs that have composite principals and are composite agents, as is often the case for international NMIs. As

explained above, de-delegation usually requires unanimous agreement among multiple principals, thus encouraging continuity (McCubbins, 1999; Tsebelis & Garrett, 2001). Yet, one of the principals may decide to de-delegate unilaterally, especially if delegation arrangements are based on “soft law” (Hawkins et al., 2006), as in the case of international standard-setting.

The presence of multiple principals is however relevant for another reason. The institutional design and functioning of an international NMI can over-represent certain principals (and their preferences), while under-representing others. This means that the principals that are over-represented are satisfied with the institutional status quo, hence, they are unlikely to challenge the delegation, although they might occasionally be unhappy with specific policy outputs. Moreover, the fact that international NMIs are composite agents has implications for the politicization of delegation because national and regional NMIs (which are members of international NMIs) can mobilize at multiple levels of governance, developing formal and informal multi-level networks (Eberlein & Newman, 2008). In turn, this creates opportunities to form ties and forge alliances between international, regional and national NMIs that enable them to withstand political challenges and render delegation difficult to reverse.

Instead of opting for formal de-delegation, the principal can decide to use “ex-ante” and “ex-post” controls vis-a-vis the agent (Hawkins et al., 2006; McCubbins et al., 1989). However, only some of the traditional control tools are available with reference to international NMIs (Coen & Thatcher, 2005; Pollack, 2003, 2022; Stone Sweet & Sandholtz, 2022). Among the ex-ante controls available there are explicit formal contracts (mandates), or implicit informal ones, for example, documents outlining the key priorities of the principal, which delineate the agent’s room for maneuver in the execution of its discretionary powers (Coen & Thatcher, 2005; Hawkins et al., 2006; Thatcher, 2002, 2005). Ex-post control tools consist of active surveillance of the agent’s behavior by the principal through various forms of scrutiny, including hearings, studies, and examinations of agent reports. Another ex-post control is the ability of the principal to override the decisions taken by the agents (Garrett & Tsebelis, 2000; McCubbins, Noll and Weingast, 1989), for example, through partial or delayed compliance.

2.1 | Research design

The question that this paper sets out to address is why there has been limited politicization of delegation to international NMIs in finance and, eventually, no attempt to reverse delegation. The paper focuses on the BCBS, which is one of the main international NMIs in finance, and the EU, which is one of the main jurisdictions in the global financial system. This case study has been chosen because, for the reasons mentioned in the introductory section (in a nutshell, the large size of the EU banking sector, its ties to the real economy, and EU regulatory capacity in this area), the EU was one of the most likely cases for the politicization of delegation to the BCBS.

Given the complexity of examining the delegation to the BCBS - which is a composite agent with a composite principal - at multiple levels of governance - (see Rangoni & Thatcher, 2022) international, regional (EU), and domestic levels - this paper focuses on elected officials at the EU level, first and foremost, the members of the EP, the only directly elected body in the EU, although reference is also made to elected officials of national governments gathered in the Council of Ministers. The EP is particularly important as far as delegation to international NMIs is concerned because the national parliaments of the member states or individual member state governments have a collective action problem to exert oversight and control over bodies such as the BCBS, whereas the EP has legal basis as Council’s co-legislator to seek to do so (Garrett

& Tsebelis, 2000). The time frame of the analysis covers the period after the 2008 international financial crisis, which triggered an overhaul of financial regulation worldwide. Of particular relevance are the Basel accords, which are the main regulatory outputs of the BCBS, specifically, the Basel III accord (2010) and the Basel IV accord (2016).

The expectation is that following the policy failure of the 2008 international financial crisis, which highlighted the shortcomings of existing financial regulation, and the far-reaching effects of international banking standards for the bank-centric EU economy, the delegation of competences to the BCBS would come under severe political pressure in the EU. Yet, this was not the case, as substantiated in the next section. To account for this outcome, building on the literature reviewed above, this paper identifies two explanatory factors: the composite nature of both the principal and the agent. First, the EU is only one of the principals of the BCBS, but the institutional design and functioning of the BCBS give the EU considerable influence in the Committee. Thus, the EU has little to gain from challenging the institutional status quo and questioning the legitimacy of the BCBS. Second, the BCBS is a composite agent, whose members are national and EU NMIs that can mobilize at different levels of governance to fend off politicization and avoid de-delegation. Moreover, given the composite nature of the agent, the EU can opt to beef up ex-ante and ex-post controls vis a vis not only the BCBS, but also EU NMIs that sit in it. The following sections illustrate the analytical leverage of these explanatory factors against the empirics.

The empirical material for this paper was gathered through a systematic survey of press coverage, publicly available policy documents, responses to consultations, and confidential semi-structured elite interviews with policy-makers and stakeholders in the EU and third countries (please see Annex for details). The interviewees were senior public officials and private sector officials, who were selected on the basis of their positions in their respective organisations and their involvement with the BCBS.³ To minimize problems of potential bias, I adopted two strategies: first, I interviewed a cross-section of practitioners from different jurisdictions; and second, the material collected through interviews was triangulated with other publicly available sources. The first set of interviews were carried out shortly after the Basel III accord was agreed (2011-12) to gather a better understanding of the functioning of the BCBS and preferences of various jurisdictions (in particular, the EU) during the negotiations of the accord and their respective influence on the final output of the BCBS. The second set of interviews was conducted in 2015 and focused on the EU and the BCBS, investigating the influence of the EU in the BCBS, the arrangements for the representation of the EU in this body, and how the European Parliament could increase its control on the Basel processes (EP, 2015). In this respect, I had the opportunity to attend under Chatham House rules a couple of close door meetings with MEPs and representatives from the Commission and the ECB.

3 | DELEGATION TO AND FUNCTIONING OF THE BASEL COMMITTEE

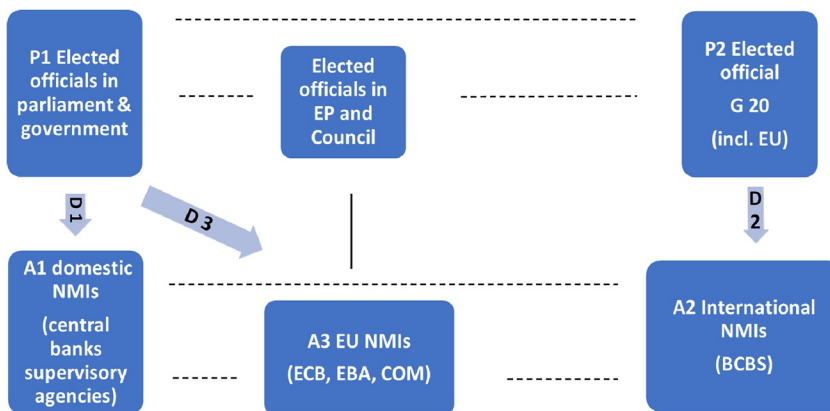
3.1 | Complex delegation

International NMIs in finance, including the BCBS, bring together domestic regulators that oversee various segments of the financial sector (Donnelly, 2019) and involve complex delegation, where both principals and agents are collective actors and delegation spans across levels of governance. At the national level, elected officials, that is to say, national governments and

parliaments (P1), partly delegate the governance of financial services to domestic NMIs, such as national central banks and banking regulatory agencies (A1) (see arrow D1 in Figure 1), who are members of international NMIs (membership indicated by the dashed line in Figure 1), such as the BCBS. At the same time, national elected officials gather in the Group of Twenty (G20) (membership indicated by the dashed line in Figure 1), which is a composite principal (P2) that delegates standard-setting to international NMIs, such as the BCBS (A2, which is a composite agent) (see arrow D2 in Figure 1).

In the case of multi-level jurisdictions, such as the EU, there is a third, regional, level of delegation (Coen & Thatcher, 2005; Pollack, 2003; Thatcher, 2005; Thatcher & Stone Sweet, 2002), whereby elected officials in the member states (P1) partly delegate financial governance to the EU (see arrow D3, Figure 1), specifically: EU legislation is proposed by the European Commission (an EU NMI, A3) and then co-decided by the EP and the Council of Ministers (of which national elected officials are members, as indicated by the dashed line); the European Banking Authority (EBA) (an EU NMI, A3) adopts EU regulatory standards and promotes supervisory cooperation amongst national NMIs in banking; and the European Central Bank (ECB) (an EU NMI, A3) is responsible for banking supervision in the euro area and has some regulatory powers. National NMIs in banking are members of EU NMIs, namely, the EBA and ECB (membership indicated by the dashed line), which are therefore composite agents.

The BCBS can be considered as an international NMI for several reasons. To begin with, the BCBS was delegated the functions of setting international banking standards and monitoring their implementation. According to its Charter (Article 1), the BCBS is “the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Its mandate is to strengthen the regulation, supervision, and practices of banks worldwide with the purpose of enhancing financial stability”. Moreover, the BCBS and its members are not directly elected as the Committee brings together central bankers and banking regulators - hence, domestic NMIs - of the jurisdictions of the G20. Third, although international standards issued by the BCBS are not legally binding, the expectation is that they



Arrows → (D1, D2, D3) indicate delegation

Dashed lines ---- indicate membership

Solid lines ___ indicate relationships

FIGURE 1 International non-majoritarian institutions (NMIs) in finance and complex delegation

will be incorporated into the domestic regulatory framework of the jurisdictions that negotiated and signed up to the standards (Brummer, 2015; Zaring, 2020). Furthermore, the BCBS monitors the process of domestic compliance with international banking standards. The BCBS is a *composite agent* that comprises NMIs of 20 countries, plus the EU, as well as the BCBS's Chair and Secretariat.

The collective principals of the BCBS are elected officials that gather in the G20 (P2), which is a composite principal that comprises the political authorities of 20 countries plus the EU, and possesses the authority and resources to maintain the BCBS (A2), and to monitor its performance, overriding undesirable outcomes (Zaring, 2020). The G20 can mandate work to the BCBS, as it happened, for instance, in the wake of the international financial crisis of 2008 (see G20, 2008, see also; G20, 2016), although the Committee can also undertake work on its own accord (Roger, 2020). The BCBS periodically reports to the G20, which endorses the major outputs produced by the BCBS, notably, the Basel accords (e.g., G20, 2010, 2017). At the domestic level, elected officials in member jurisdictions, including the EU, can modify or override the output of the BCBS, when international standards are incorporated into domestic rules.

3.2 | Functional rationale and activities

International NMIs in finance, including the BCBS, are established to deal at the international level with the governance “dilemma” between financial stability and international competitiveness (Kapstein, 1989; Singer, 2007). This is a dilemma because stringent financial rules contribute to safeguarding financial stability, but increase operational costs for the financial industry. Thus, if one jurisdiction tightens up domestic rules, its financial industry will suffer from a competitive disadvantage vis-a-vis competitors located in other less stringently regulated jurisdictions. At the same time, stringently regulated jurisdictions are exposed to cross-border negative externalities ensuing from less stringently regulated jurisdictions because financial instability does not stop at national borders. Financial stability can be regarded as an international public good because it is non-excludable and there are “costs” in producing it - hence, there is a free-rider problem and the danger of under-provision. Given the globalization of finance, the risk of market failures and commitment problems, the dilemma outlined above can only be tackled at the international level (Kapstein, 1989; Roger, 2020; Singer, 2007).

The 2008 international financial crisis brought into sharp relief the inadequacy of existing bank capital requirements, but higher capital requirements would have been detrimental to the competitiveness of banks (Howarth & Quaglia, 2016; Young, 2012, 2014). Thus, the dilemma between stability and competitiveness (which is a trilemma also involving the real economy in the case of banks that provide funding to the real economy) could only be addressed by setting more stringent post-crisis international banking rules. The international leveled playing field is particularly important for the main jurisdictions, first and foremost the EU, given the large size and relative openness of its banking sector (interviews H, Q, S). At the same time, the BCBS fosters international harmonization in a flexible way, based on soft law and a lean international body, as compared to legally binding international treaties and formal international organizations (Roger, 2020).

The BCBS has issued more than 50 standards on a vast array of topics in the banking sector, ranging from bank capital requirements, bank exposure to clearinghouses, margins for uncleared derivatives, and systemically important banks. The most important “outputs” of the Committee are the Basel accords, which harmonize bank capital requirements across countries

(Goodhart, 2011; Zaring, 2020) with a view to addressing the dilemma between financial stability and the competitiveness of the financial industry (Kapstein, 1989; Singer, 2007). The Basel I accord was issued in 1988. It was followed by the Basel II accord (2006), the Basel III accord (2010), and the Basel IV accord (2017). The Basel accords were incorporated in the domestic regulatory framework not only of the jurisdictions that negotiated and signed up to those standards, but also more than 100 jurisdictions worldwide (Jones & Zeitz, 2019; Quillin, 2008). Moreover, domestic compliance is monitored periodically by the BCBS, which has not shied away from occasionally declaring jurisdictions as non-compliant (e.g., BCBS, 2014). However, state non-compliance with the standards issued by the BCBS is the exception, rather than the rule (Greenwood & Roederer-Rynning, 2015; Quaglia, 2019; Young, 2014). It is also noteworthy that international capital rules are adopted first (the Basel accords) and domestic rules are adopted later by jurisdictions worldwide (Donnelly, 2019). Hence, it is common practice for the EU, but also for other jurisdictions, including the US, to wait for international capital rules to be agreed upon by the BCBS before issuing domestic rules, which incorporate international standards (Kudrna & Müller, 2019; Newman & Posner, 2018).

The activities of the BCBS have produced some unintended effects for the principals. Indeed, Basel standards have harmonized banking regulation across countries, limiting the room for manoeuvre of elected officials in deciding on domestic banking rules. For elected officials, especially those in the main jurisdictions, such as the EU and the US, which were used to setting their own domestic rules in finance and elsewhere, the BCBS has become “too effective” in setting international standards (interviews F, N), which politicians, the banking industry and non-financial companies sometimes do not like (Greenwood & Roederer-Rynning, 2015; Quaglia, 2019; Young, 2014). Furthermore, international banking standards, in particular, capital and liquidity rules, have become more detailed and stringent after the international financial crisis of 2008. Hence, they have constrained the activities of private financial actors (banks) as well as non-financial firms that relied on bank funding, first and foremost in the EU, which has a bank-based financial system (interviews E, G, L, M).

4 | EXPLAINING LIMITED POLITICIZATION AND NO REVERSAL OF DELEGATION

4.1 | Limited politicization and no de-delegation in the EU

After the 2008 international financial crisis, international NMIs in finance issued a vast array of international rules. The most important standards issued by the BCBS were the Basel III (2010) and Basel IV (2016) accords, which substantially tightened up capital requirements for banks. Overall, despite policy debates concerning the negotiation and, especially, the implementation of these Basel accords in the EU, there was limited politicization of delegation to the BCBS and no attempt to reverse it. The discussions surrounding the tightening up of capital requirements in the EU were due to the fact that the traditional dilemma between stability and competitiveness in finance is a “trilemma” in the case of banking because more stringent banking regulation also tends to curtail the flow of credit to the real economy, hence, reducing economic growth (Howarth & Quaglia, 2016). By and large, unelected officials in NMIs prioritize financial stability, which became part of the official remit after the international financial crisis of 2008, even though they are also mindful of the implications of financial regulation for the competitiveness of the financial industry they oversee (Kapstein, 1989; Singer, 2007) and the availability of

bank funding to the real economy (Howarth & Quaglia, 2016). Elected officials tend to prioritize economic growth, and, to a lesser extent, the competitiveness of the financial industry (which lobbies politicians), although politicians also want to avoid financial crises that would upset public opinion (Singer, 2007).

In the EU, which has a bank-based financial system, the principal dissatisfaction concerned the effects of more stringent banking rules on the reduction of credit to the real economy. Thus, elected officials in the EP, under pressure from parts of the financial industry, criticized the Basel III accord for not taking into account national or regional specificities, imposing “one size fits all measures” (EP, 2010, 2016b). At the same time, a Resolution of the EP (2016) on Basel IV reaffirmed that “banks need to be well capitalized in order to support the real economy, reduce systemic risk and avoid any repeat of the enormous bailouts witnessed during the crisis”. In the Council of Ministers, elected officials from national governments stressed that the BCBS should take into account the impact of its rules on “different banking models” to avoid creating “significant differences for specific regions of the world” (Council of Ministers, 2016). Yet, both the EP (2016a) and the Council of Ministers (2016) reiterated their support for the BCBS, underlining “the importance of sound global standards for the prudential regulation of banks” (EP, 2016a) in order to promote “regulatory certainty, coherence and effectiveness worldwide” (Council of Minister, 2016).

4.2 | Explanatory factors – Composite principal and agent

The first factor that accounts for the limited politicization of delegation to the BCBS has to do with the fact that this international NMI, like its international counterparts, has a composite principal. The EU is only one of the principals, but the institutional design of the BCBS and its functioning tilt the balance of power in favor of the EU and the main stakeholders therein - elected officials, financial industry, and regulators (Quaglia, 2014; Wouters & Odermatt, 2016), at the expenses of other principals. The EU and its member states are over-represented in the BCBS, which includes central bankers and banking regulators (all NMIs) of nine, after Brexit, eight, member states of the EU - namely, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Sweden, plus the United Kingdom - as well as EU NMIs - specifically, the EBA and the Commission, which have observer status, and the ECB, which has full membership. The BCBS is sometimes seen by other members of the G20 (notably, by emerging economies) as too western-centric (meaning, North American and European) (interviews D, P), and by the US as too Europe-centric (interviews A, B).

This over-representation of the EU is part of a broader pattern concerning international NMIs in finance. As one senior EU regulator acknowledged, there are “too many Europeans” in international financial standard-setting bodies (interview Q), which, by the way, are all based in Europe (i.e., the BCBS, the IOSCO, the IAIS, the FSB, the Committee on Payments and Market Infrastructure, the Financial Action Task Force). “We risk becoming Switzerland, but still having an imperial attitude toward the rest of the world” (interview M). The complaint about the “European crowd” in Basel is often made not only by developing countries, but also by the US (interviews A, B). Moreover, European officials, together with US officials, are part of all the working groups of the BCBS, which they often chair. Even after the inclusion of all the G20 jurisdictions in the BCBS following the 2008 international financial crisis, the US and EU have remained the “heavyweights” in the Committee, as confirmed by interviews with policy-makers in the EU and third countries.

On the one hand, it is true that technically, it is European NMIs (i.e., to say, EU and national NMIs) that are over-represented in the BCBS, whereas elected politicians (and the financial industry) do not directly participate in the standard-setting process. On the other hand, European regulators are mindful of the implications of international standards (the Basel accords) for the domestic banking systems in Europe and the flow of funding to the real economy (Howarth & Quaglia, 2016). In other words, regulators do not operate in a political vacuum (interviews, A, B, L, O1, Q) and are aware that the international standards agreed in Basel then need to be implemented in the EU through domestic legislative processes led by elected officials (interviews, A, K, H, I, N1). As confirmed by several interviewees, “European interests” are (and still are) very well represented in Basel, as compared to those of other jurisdictions, with the exception of the US.

Traditionally, the US, often in coalition with the UK, has had a considerable influence in shaping the Basel rules (Drezner, 2007; Singer, 2007; Young, 2012, 2014). However, the EU and its member states have come as a close second (Howarth & Quaglia, 2016; Wouters & Odermatt, 2016) and there have been instances in which the policy outputs of the BCBS have predominantly been shaped by the EU. Notably, this has been the case of bank capital rules for securitization (to be precise, for “simple, safe and transparent securitization”), whereby the UK has sided with the rest of the EU in successfully promoting international rules to re-launch financial securitization between 2015 and 2018 (Braun, 2020; Quaglia, 2021). This has been an important achievement for elected officials, private actors and regulators in the EU. When the EU has punched below its weight in the BCBS, this has been due to the lack of internal and external EU cohesiveness (Donnelly, 2019; Quaglia, 2014), and to the fragmented arrangements for the external representation of the EU (Muegge, 2011; Wouters & Odermatt, 2016), not the institutional design or functioning of the BCBS per se (interviews N, O1,2). Thus, elected officials in the EU have sought to improve the arrangements for the external representation of the EU as well as intra-EU coordination (interview F), as explained below.

The second factor that accounts for the limited institutional politicization and no reversal of delegation had to do with the fact that the BCBS is a composite agent, which also includes EU NMIs and national NMIs of some EU member states. This has implications for the defensive strategies deployed by the BCBS and the NMIs that are part of the Committee to fend off political pressure. Indeed, European banking regulators are the main supporters of this international NMI. They value the international regulatory harmonization and supervisory cooperation taking place in the BCBS (Drezner, 2007; Singer, 2007; Tsingou, 2010). They also value their autonomy from elected officials and this autonomy is somewhat increased by their participation in the BCBS (Quaglia, 2014). One interviewee referred to the BCBS as the “trade union” of banking supervisors, helping them to fend off unwanted pressure from elected officials at the domestic level. Finally, European banking regulators are over-represented in the BCBS, where *both* EU and national NMIs had seats (interviews I, L, O1, Q). Following the establishment of Banking Union, the ECB has become responsible for banking supervision in the euro area, in cooperation with national competent authorities. Whereas (non-European) members of the BCBS have suggested that the euro area should be represented in the BCBS only by the ECB-SSM, European regulators have dismissed this idea (interviews I, L, O2, N2, Q).

EU regulators (specifically, the NMIs that were members of the BCBS) have been the main defenders of the BCBS by challenging the financial industry's and elected officials' criticisms of the Basel accords and calling, instead, for a “timely” and “consistent” implementation of the Basel standards in the EU. For instance, according to Andrea Enria (2011), then Chairman of the EBA, the complaints that Basel III would “significantly affect the ability of banks to support the real economy, thus adversely affecting growth and employment prospects” were “not confirmed by

the empirical analysis conducted by the supervisory authorities”. In defense of Basel IV, Sabine Lautenschläger (2018), a member of the ECB Executive Board, recognized that “a global standard cannot suit everyone perfectly. The key is to find an acceptable compromise; the alternative would be to have no global standard, and that would definitely be worse”. Similarly, Andrea Enria (2019) warned “We must preserve effective international standards, particularly in the current environment; without them, global financial markets will not work properly. The EU is a key player in this regard, and it needs to act as a reliable partner in the global regulatory community. European legislators must stand up to national interests and the lobbying of some banks... the effectiveness of the new standards as a whole would be seriously undermined if unequal and unsynchronized implementation persisted at the global level”.

However, it was not just fellow regulators who “defended” the BCBS. The financial industry, especially the “big players” that were located in the EU and the US, never challenged the institutional legitimacy of the BCBS, although, occasionally, they criticized the outputs of the BCBS. To begin with, large cross-border banks that were mostly based in the US and the EU were generally supportive of the harmonization efforts of the BCBS – international standards could reduce the costs for banks operating across borders by minimizing duplication costs and limiting differences in domestic regulations (interviews C, E, G, R). Moreover, the financial industry had good access to and well-established contacts with the BCBS (Tsingou, 2010; Young, 2012). Private actors in the EU and the US provided considerable input into the working of the BCBS, directly and by lobbying domestic NMIs (interviews C, E, G). For instance, the bulk of the responses to the public consultations held by the BCBS were submitted by private financial actors and trade associations in Europe and North America. Furthermore, the BCBS also organized public events and closed doors meetings with financial industry representatives – the vast majority of participants to these events came from the EU and the US.

4.3 | Beefing up ex-ante and ex-post controls, with limited real “bite”

For the reasons mentioned, elected officials in the EU did not challenge the institutional legitimacy of the BCBS. Instead, they sought (with limited success) to strengthen existing ex-ante and ex-post controls over the international NMI at the center of this analysis, the BCBS, and to introduce new controls over the EU NMIs that were members of the BCBS. Initially, the use of ex-ante controls by elected officials in the EU was limited (interview K) because the EP paid little attention to the making of Basel III and the Council of Ministers did not express any position during the first phase of the Basel III negotiations. Only in October 2010, a few months before the signing of the agreement in Basel, the EP (2010, p. 24) issued a (non-legally binding) resolution, urging the BCBS to “take proper account of such specificities and the different types of risk affecting the banking sector” and calling on the Commission “to be more pro-active” in the Basel III negotiations “to actively promote and safeguard European interests, to coordinate the approaches of the Member States in order to achieve the best outcome for the European economy”. But it was too late to change anything meaningful in the text of the accord.

With reference to Basel IV, elected politicians in the EU sought to use ex-ante controls to limit the discretion of the BCBS. In November 2016, the EP (2016a) adopted a (non-legally binding) resolution concerning the content and the process of Basel IV. As for the content, the EP pointed out the need “to promote the level playing field at the global level by mitigating – rather than exacerbating – the differences between jurisdictions and banking models, and by not unduly penalizing the EU banking model”. Concerning the process, the resolution of the EP (2016a)

called for “greater transparency and accountability to enhance the legitimacy and ownership of BCBS deliberations”. The EP also took the unprecedented step of inviting the secretary of the Basel Committee, Will Coen, to a parliamentary hearing on Basel IV in the fall of 2016,⁴ which, however, did not have much bite: the oral evidence had no legal value and the EP had no power of appointment or dismissal concerning the personnel of the BCBS. Moreover, the EP sought to establish new ex-ante controls on EU NMIs that were members of the BCBS, namely, the Commission, the ECB and the EBA, requesting them to provide “transparent and comprehensive updates” on developments of the BCBS discussions to the EP. Yet, elected politicians did not confer a mandate nor did they issue specific instructions to EU NMIs sitting on the BCBS, they simply requested to be kept informed about the discussions taking place in Basel and afterward, this request was not followed in practice.

Elected politicians in the Council of Ministers discussed Basel III and Basel IV at several meetings, albeit there is no public record of these discussions. The attempt to use ex-ante controls by the Council was limited to a request for the BCBS to “carefully assess the design and calibration of the proposed reform package”, so as to avoid “significant differences for specific regions of the world” (Council of Ministers, 2016). Moreover, a joint letter of the President of the European Council, Donald Tusk, and the President of the Commission, Jean-Claude Juncker, to other elected officials in the G20 noted that “the Basel Committee has worked to complete the Basel III post-crisis reform, but has yet to produce a final agreement. The G20 should encourage a swift outcome that promotes a level playing field and does not lead to significant increases in overall capital requirements for banks” (Tusk & Juncker, 2017). However, neither the BCBS nor the G20 were legally bound by EU statements.

Elected politicians in the EU also used a distinctive type of ex-post control that resembled an override mechanism by modifying important provisions of the Basel III accord when it was implemented in the EU through the Capital Requirements Directive IV (CRD IV) (Greenwood & Roederer-Rynning, 2015; Young, 2014). That is to say, the Basel rules, which, like, all international standards, are “soft law”, were only partly incorporated in the “hard law” of the EU. Following extensive mobilization by the financial industry, the EP (2010) called for “European specificities” to be taken into account in implementing the Basel III accord in the EU. National governments gathered in the Council of Ministers were also sympathetic toward the concerns raised by their domestic banks (Quaglia, 2019).

Eventually, the EU’s attempt to accommodate the distinctive features of the national banking systems of its member states resulted in significant differences between Basel III and the CRD IV (Greenwood & Roederer-Rynning, 2015; Howarth & Quaglia, 2013; Young, 2014). On the one hand, this partial non-compliance by the EU could be seen as an override mechanism, or a form of de-facto de-delegation. On the other hand, such divergence concerned only some provisions and did not last for long. In fact, the EU amended its CRD IV in 2016 to bring it closer to the Basel rules. In the case of Basel IV, EU legislation - the Capital Requirements Directive V (CRD V) that incorporated some of the new Basel rules - was adopted in 2019, earlier than in several other jurisdictions. However, parts of Basel IV – those that proved most controversial during the discussions in Basel (see James & Quaglia, 2020) - have not yet been incorporated into EU legislation. On the one hand, this partial compliance could be seen as an override mechanism. On the other hand, following the Covid-related economic crisis, the BCBS has postponed the deadline for the implementation of Basel IV at the domestic level in all jurisdictions.

5 | CONCLUSIONS

The financial crisis of 2008 first and the Covid-related economic crisis later have brought into sharp relief the political salience of financial regulation, which is important, not only for regulators and the financial industry, but also for elected officials and public opinion. This paper explains why there has been limited politicization of delegation to the BCBS in the EU by pointing out the composite nature of the principal and the agent. Specifically, the EU is only one of the principals and its institutional preferences are in favor of the status quo, which grants the EU considerable (relative) influence on the activities of the BCBS. Moreover, the BCBS is a composite agent that enjoys the support of national NMIs that are its members (and vice versa). Indeed, the main defenders of the BCBS are EU and domestic NMIs, and the unelected officials who staff them. Thus, international and national NMIs in finance engage in a form of mutual support to push back against political pressure. For all these reasons, rather than attempting to reverse delegation, elected officials in the EU have sought (with limited success) to strengthen ex-ante and ex-post controls vis a vis the BCBS and EU and national NMIs sitting in it. This kind of analysis, which adopts a soft principal-agent approach, is somewhat a novelty as compared to the existing literature on the Basel Committee and international NMIs in finance more generally (Drezner, 2007; Kapstein, 1989; Newman & Posner, 2018; Roger, 2020; Singer, 2007; Young, 2012; Zaring, 2020).

The main findings of this research have also wider implications for the literature on NMIs (see, e.g., the path-breaking special issues of *Governance* 2005 and *West European Politics* 2002), which has so far mostly focused on the reasons for delegation and has paid limited attention to the policy area of finance. This paper sheds light on the difficulties of a composite principal dealing with a composite agent. Under these circumstances, rather than seeking a reversal of delegation, principals prefer to use ex-ante and ex-post controls to the full, including (partial or delayed) non-compliance as an override mechanism. These findings can be generalized cum grano salis to international NMIs in other regulatory domains that involve complex delegation spanning across levels of governance with composite principals as well as agents. There are several proposals for further research. To begin with, it would be interesting to examine the politicization of NMIs across policy areas and across levels of governance - that is, national, regional and international levels - in the same policy areas at the same point in time, as well as over time. Finally, it would be intriguing to investigate the politicization of delegation to financial NMIs in jurisdictions other than the great powers (namely, the US and the EU) and western countries more generally. Of particular interest are the raising powers, notably, China.

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CONFLICT OF INTEREST

There are no conflicts of interest.

DATA AVAILABILITY STATEMENT

Part of the empirical material for this paper was gathered through confidential semi-structured elite interviews with policy-makers and stakeholders in the EU and third countries (please see Appendix for details). The interviews were conducted on condition of anonymity and the interviewees asked their institutional affiliation not to be revealed. Interview notes are on file with the author.

ENDNOTES

- ¹ Moreover, international soft law in finance is ‘hardened’ when it is incorporated into domestic regulatory frameworks (Newman & Bach, 2014; Newman & Posner, 2018).
- ² Reported in <https://www.rfigroup.com/rfi-group/news/yellen-letter-ups-stakes-bank-regulation>
- ³ The interviews were conducted on condition of anonymity and the interviewees asked their institutional affiliation not to be revealed. Interview notes are on file with the author.
- ⁴ <https://www.bis.org/speeches/sp161012.htm>

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