

# **How Does the EU Reconcile Uniform Regulation with Legitimate Diversity?**

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There is widely believed to be an intrinsic contradiction or trade-off between uniform regulation – needed to manage interdependencies and externalities in integrated markets – and accommodation of legitimate diversity in socio-economic conditions and preferences among participating units – needed to sustain social acceptance of any integrated regime. Within the European Union (EU), this common uniformity-diversity dilemma is often seen as fueling differentiated integration – rules which apply to some member states but not others in a specific policy domain – or even disintegration, as in the case of Brexit. Pressures for more uniform rules in particular sectors – to prevent regulatory arbitrage and ensure a level playing field – likewise challenge classic experimentalist governance architectures, in which member states are given substantial autonomy to pursue common goals in ways adapted to their local contexts, provided that they participate in peer reviews and formulate plausible plans for improvement where they are not making good progress towards those goals according to agreed metrics.

Yet our own recent research shows that the Union is finding a promising solution to this widespread dilemma through the development of simplified experimentalist architectures, based on a novel combination of synchronic uniformity with diachronic revisability. In this short think piece, we analyze the core features of this simplified experimentalist architecture and how they contribute to resolving the uniformity-diversity dilemma, drawing primarily on the cases of EU electricity and banking regulation.

## **Alternative Approaches to Integrating Diversity within the EU**

Rightly or wrongly, EU regulation has acquired an increasingly contested reputation, at least within the Union itself, where the ‘Brussels rule factory’ has become a term of abuse even among committed supporters of the European project (e.g. van Middelaar 2019). This contested reputation is partly due to the perceived technocratic character of EU rule making and its distance from national parliaments and citizens. It is likewise partly due to the politically contested character of EU rules, which may involve value conflicts and distributive consequences for member states, firms, and taxpayers. But it is also due in no small measure to concerns about misfits between one-size-fits-all, centrally imposed uniform regulation, and heterogeneity of socio-economic conditions, institutional structures, and policy preferences in an increasingly diverse Union of 27 member states (Matthijs *et al.* 2019).

At the same time, however, there is growing pressure from the EU institutions, notably the Commission, for greater uniformity of rules and their enforcement in many policy domains, in order to prevent regulatory arbitrage, ensure a level playing field, and enhance integration within the Single Market. Examples include efforts to replace directives with regulations, intensify rule harmonization, promote supervisory convergence, standardize enforcement procedures, and enhance the hierarchical powers of European authorities. But how, if at all, can such moves towards increased regulatory uniformity be reconciled with legitimate diversity among member states – understood as policy choices and administrative arrangements that accommodate heterogeneity of domestic conditions and preferences without imposing externalities on others?

### **Differentiated Integration**

One widely canvassed solution to this dilemma is *differentiated integration*: policies and rules that apply only to some member states, allowing countries who wish to push ahead with further integration initiatives to do so, while those who do not may opt out. Recent research has shown that most such differentiated integration is temporary, resulting from transitional exemptions from EU rules in accession agreements or secondary legislation, which are eventually scheduled to expire. Others, however, are more durable, especially where they reflect ‘constitutional reservations’ about the integration of so-called ‘core state powers’ in fields such as foreign and defense, interior and justice, or monetary policies. Among the best-known and most visible forms of such durable differentiated integration are the Eurozone and the Schengen Area (Schimmelfennig & Winzen 2020; Schimmelfennig *et al.* 2023).

While differentiated integration may help to overcome blockages in EU decision making and improve the match between Union policies and national preferences (Schimmelfennig *et al.* 2023), it has many significant limitations. One concerns the degree of mutual interdependence, which must be sufficient to motivate closer integration among the vanguard, but not so high as to create externalities (whether negative or positive) that outweigh its expected benefits. A second is that the key policy choice must be reducible to a binary option, which member states can choose to embrace or reject. Most importantly, division of member states into separate groups of ‘Ins’ and ‘Outs’ does nothing in itself to address the very substantial challenges of accommodating the persistent diversity of socio-economic conditions and preferences within differentiated integration arrangements such as the Eurozone or the Banking Union (Zeitlin & Rangoni 2023).

### **Differentiated Implementation/Customization**

A second familiar solution to the uniformity-diversity dilemma in the EU is *differentiated implementation* (also referred to as flexible implementation) or *customization*. Many EU directives leave considerable flexibility to member states in their implementation, either because they take the form of minimum harmonization, setting regulatory standards which member states are free to exceed, or because they offer a variety of national options and discretions on specific issues, or both (Zbiral *et al.* 2023; Thomann 2015, 2019). As in the case of differentiated

integration, preservation of national discretion on politically sensitive issues may help to overcome deadlocks in EU legislative decision making (Schimmelfenning & Winzen 2020: ch. 6). At its best, differentiated implementation may allow member states to choose the level of consumer or environmental protection they prefer and customize common goals and rules to local contexts, thereby improving both effectiveness and social acceptance of EU legislation (Thomann 2019).

Often, however, member states may use the flexibility provided by EU legislation mainly to avoid the need for changes to domestic policy arrangements, thereby preserving existing forms of national diversity without substantially advancing integration (Zbiral *et al.* 2023; Princen *et al.* 2022). Such flexible uses of EU legislation to accommodate diversity recall the ambiguous framework agreements identified by H eritier a generation ago as a key strategy for escaping policy deadlocks through subterfuge (H eritier 1997, 1999). But even where it does genuinely advance integration, differentiated implementation remains a static approach, which does not in itself provide a framework for revision and improvement of EU legislation through learning from local experimentation (cf. Princen *et al.* 2022: 33-34).

### **Experimentalist Governance**

A third prominent approach to integrating diversity within the EU, *experimentalist governance*, focuses by contrast on regular revision and improvement of the Union’s policies through an iterative, multi-level architecture of recursive learning from comparative review of implementation experience in different local contexts. In this architecture’s classical form, the EU institutions and the member states, typically following consultation with relevant stakeholders, jointly establish framework goals, rules, and metrics for assessing their achievement. ‘Lower-level’ units (such as national administrations and regulatory authorities) are given substantial discretion to pursue these goals in ways adapted to their local contexts. In return for this autonomy, they must report regularly on their performance and participate in a peer review in which their results are compared to those of others following different means towards the same general ends. Where member states are not making good progress towards the agreed goals, they are expected to take corrective measures, based on a plausible plan for improvement informed by the experience of their peers. The goals, rules, metrics, and decision-making procedures are then periodically revised in response to the problems and possibilities revealed by the review process, and the cycle repeats (Sabel & Zeitlin 2008, 2010, 2012; Zeitlin 2015, 2016). Figure 1 offers a diagrammatic representation of this experimentalist architecture.

**Figure 1: EU XG as an iterative, multi-level architecture**



**Source: Zeitlin (2015: 2)**

In many cases, these experimentalist architectures are underpinned by ‘penalty defaults’: mechanisms that induce reluctant parties to cooperate in framework rule making and respect its outcomes, while stimulating them to propose plausible and superior alternatives, typically by threatening to reduce control over their own fate. In the EU context, such penalty defaults frequently involve court judgments or (threats of) Commission decisions, which oblige member states and/or private actors to explore how to pursue their preferred goals in ways compatible with the fundamental principles of European law, but without imposing specific hierarchical solutions (Sabel & Zeitlin 2008: 305–8, 2010: 13–16; 2012: 413–14; Zeitlin 2016: 3–4; Gerstenberg 2019; Svietiev 2020).

Experimentalist architectures of this type have a number of fundamental advantages over both differentiated integration and differentiated implementation as approaches to integrating diversity within the EU. First, they accommodate diversity by adapting common goals and rules to varied local contexts, rather than seeking to impose one-size-fits-all solutions or dividing member states into separate groups of “Ins” and “Outs”. Second, they provide a mechanism for coordinated learning from local experimentation through disciplined comparison of different approaches to advancing the same general ends, which can be used to generate new policy solutions and regulatory frameworks that may then be applied in contextually specific ways across the Union as a whole. Third, the same processes of mutual monitoring, peer review, and

joint evaluation that support learning from diverse experience also provide dynamic, non-hierarchical mechanisms for holding both central and lower-level actors accountable for their actions in pursuit of agreed goals. Finally, because both the goals themselves and the means for achieving them are explicitly conceived as provisional and subject to revision in light of experience, problems identified in one phase of implementation can be corrected in the next iteration. Hence experimentalist governance is particularly suited not only to conditions of high diversity, but also and above all of strategic uncertainty, where policy makers cannot define their precise goals ex ante, but must instead discover both in the course of problem solving, because they are operating in a turbulent, rapidly changing environment (Sabel & Zeitlin 2012: 174-5; Rangoni & Zeitlin 2021: 823-4).

Although experimentalist architectures of this type are neither universal nor ubiquitous in the EU, they are widely diffused across a variety of policy domains. Well-documented examples include: regulation of competition, energy, telecommunications, and finance; food, drug, chemicals, and maritime safety; environmental protection; employment promotion and social inclusion; justice and home affairs; data privacy, anti-discrimination, and fundamental rights (Sabel & Zeitlin 2008, 2010). These architectures also play a growing part in EU external governance, where the revisable framework rules they generate are frequently extended to third-country actors (Zeitlin 2015).

Under certain conditions, however, experimentalist governance in its classic form may also face a uniformity-diversity dilemma. Beyond strategic uncertainty, a key scope condition for the iterative, multi-level experimentalist architecture outlined above is an intermediate level of interdependence, which must be sufficient to motivate actors to collaborate in seeking joint solutions to common problems, but not so high as to preclude decentralized experimentation by local units. Yet where high levels of interdependence among participating units raise concerns about negative externalities that may threaten the integrity of integrated markets, uniform rules may be required at any given moment to prevent regulatory arbitrage and ensure a level playing field, thereby narrowing the discretion of lower-level actors.

But to respond to uncertainty and legitimate diversity, as we will show, such uniform rules must also be provisional and contestable, open to regular revision through ongoing monitoring and review of their implementation in different local contexts. These cross-cutting demands of high uncertainty and high interdependence thus raise the possibility of the emergence in such cases of simplified experimentalist architectures, combining synchronic uniformity with diachronic revisability, to which we now turn.

### **Towards a Simplified Experimentalist Architecture? The Cases of Electricity and Banking**

EU electricity and banking regulation differ on several salient dimensions.<sup>1</sup> Thus, for example, banking as an industry is more global and the standards agreed by the Basel Committee form the

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<sup>1</sup> All references to the electricity and banking cases analysed in this section can be found in Zeitlin & Rangoni (2023), unless otherwise indicated.

point of departure for EU regulation, while both the electricity market and its regulation are more 'Europeanized'. Most importantly for our current purposes, we find differentiated integration in banking but not electricity regulation. In electricity, EU-wide policies and rules for cross-border exchange and management of interconnected power grids apply equally to all member states, with no possibility for opt-outs. In banking, by contrast, supervision of Eurozone credit institutions has been integrated into a single authority under the aegis of the European Central Bank (ECB), nested within EU-wide financial regulation. Participation in the Single Supervisory Mechanism (SSM) is mandatory only for the Euro Area, though other EU member states may also apply to opt in under a system of 'close cooperation' with the ECB. Although energy policies are likewise historically linked to core state powers and remain highly sensitive politically, it has nonetheless proved possible to extend European integration of electricity regulation step-by-step, without dividing member states into separate groups of 'Ins' and 'Outs'. Beyond this crucial difference, however, as we have sought to show in a series of recent papers, the evolution of EU regulatory governance displays a similar trajectory across these two major sectors (Zeitlin & Rangoni 2023; Zeitlin 2023; Rangoni 2020).

In both electricity and banking, the integrated rules themselves and the methodologies for their application have become progressively more uniform and detailed. In electricity, EU regulation clearly shows a trend toward increasing uniformity, which, nonetheless, still leaves some space for discretion. Thus network access and tariffication, identified from the late 1990s as crucial to market integration, have seen general rules mandating non-discriminatory conditions and tariffs gradually becoming much more precise rules. Today, they respectively require a specific type of auction and arrangement, and a distinctive arrangement to compensate Transmission System Operators (TSOs) for costs regarding cross-border electricity flows as well as harmonized network charges levied on generators. In other cases, such as the detection and deterrence of insider trading and market abuse with which the Agency for the Cooperation of Energy Regulators (ACER) was tasked right after its entry into operation in 2011, rules have been detailed and uniform from the start. Most recently, a vast number of binding 'terms and conditions or methodologies' (TCMs) is currently pushing the degree of granularity of EU rules to unprecedented levels, even when compared to the generally one hundred pages-long network codes and guidelines, produced since 2009 and from which TCMs originate.

In banking, the European Banking Authority (EBA), created after the global financial crisis to promote stronger convergence of national supervisory practices and improve coordination among national competent authorities (NCAs), is empowered to propose binding technical standards for the elaboration of the EU's 'Single Rulebook', which the Commission must endorse or present compelling reasons not to do so. The EBA is likewise empowered to develop a body of formally non-binding guidelines for the implementation of EU banking regulation, with which supervisory authorities are required to 'make every effort' to comply, subject to peer review of national practice. The SSM was explicitly designed as a more centralized and hierarchical institution than the EBA, in order to break up the 'cozy relationships' between banks and national supervisors, which were deemed to have contributed through lax oversight to the financial crisis, as well as to cut the 'doom loop' between banks and sovereigns, which had become a key source of contagion during the euro crisis. The ECB has final authority to grant and withdraw banking licenses within the Eurozone, and is directly responsible for supervising the largest and most

systemically significant institutions (SIs). It can also take over supervision of less significant institutions (LSIs) from NCAs where it deems this necessary to 'ensure consistent application of high supervisory standards'. The SSM is committed to 'intrusive, hands-on' supervision of SIs, through Joint Supervisory Teams (JSTs) of ECB and national officials, supported by on-site inspection missions and central benchmarking. Through its annual Supervisory Review and Evaluation Process (SREP) decisions, the SSM can require SIs to hold additional capital to cover specific risks, as well as to revise their governance arrangements, planning processes, controls, and other internal systems. The SSM has created a large body of detailed and prescriptive internal manuals, operational guides, and guidance documents to promote harmonization and convergence of supervisory approaches across participating units. It has likewise sought to develop 'joint supervisory standards' to steer and harmonize national supervision of LSIs. The ECB has consistently sought to enhance the uniformity of EU banking regulation and harmonize its implementation at national level, notably by restricting the use of options and discretions provided to NCAs under EU legislation. Such harmonization and supervisory convergence is considered crucial to advance the SSM's mission and strategic aims of 'contributing to the safety and soundness of credit institutions and the stability of the financial system' while 'promoting European financial integration', by reducing opportunities for regulatory arbitrage, removing national barriers to cross-border operations, and ensuring a level playing field for all Eurozone banks.

At the same time, however, these increasingly uniform and detailed rules and methodologies always leave room for local adaptation and contextualization. In electricity, despite the impressively detailed EU uniform rules, lower-level actors still retain some discretion. Thus for example, only certain types of network charges levied on generators have been harmonized, and national regulatory authorities (NRAs) continue to enjoy autonomy on distribution tariffs, which are tightly connected to renewable energy and thus play a major role in climate transition. Nor do the EU rules on insider trading and market abuse tell member states and NRAs how harshly to punish the firms breaching such rules. Even within the TCMs, which as described currently epitomize the push towards detailed uniformity typical of EU electricity regulation, one often finds room for contextual variation to take account of differences in local circumstances (e.g. in the complexity of capacity allocation within regions), including through nesting of national and regional TCMs within a common European TCM (Jevnaker *et al.* 2022a: 3-8). In short, EU electricity regulation has been narrowing discretion, not eliminating it.

In banking, contextual adaptation of increasingly uniform rules and methodologies to local conditions occurs through a number of interrelated channels. Despite the SSM's emphasis on regulatory harmonization and supervisory convergence, it does not seek to homogenize banks' business models or impose a one-size-fits-all approach to their supervision. Instead, it seeks to accommodate banking diversity across the Eurozone by using 'a common methodology to provide a level playing field' for assessing each bank, while 'tailor[ing]...supervisory expectations to its specific situation.' Within the annual SREP process for SIs, frontline supervisors are empowered to challenge standardized assessment procedures on the grounds that they do not fit the bank in question, which may lead not only to an exception in that case, but to the revision of the procedures themselves to take account of national differences, e.g. in bank board structures. For LSIs, which are directly supervised by the NCAs, the joint supervisory standards

developed in collaboration with the ECB for conducting the SREP provide for enhanced flexibility in adapting EU regulations to ‘national peculiarities’ and the specific situation of smaller public and cooperative banks, such as their participation in institutional protection schemes (IPS) for mutual support in case of financial distress.

In both electricity and banking, moreover, common policies, rules, and methods are not centrally designed and hierarchically imposed by the EU institutions, but are instead developed collaboratively by polyarchic networks of European and national officials, with varying degrees of participation by other stakeholders.

In electricity, for example, before being codified, reforms of network access and tariffication were agreed in the Florence Forum, a multi-stakeholder structure that since 1998 has brought together a variety of actors ranging from NRAs and ministries, through TSOs, generators, suppliers, traders, power exchanges, and large consumers, to the European Commission, European networks of NRAs and the EU networked agency. Similarly, the detailed network codes and guidelines produced since 2009 have been jointly elaborated by the European Commission, ACER, and the European Network of Transmission System Operators for Electricity (ENTSO-E), plus additional stakeholders; with ACER and ENTSO-E themselves being networked bodies bringing together NRAs and TSOs respectively. Equally, the even more detailed TCMs stemming from such guidelines are drafted by TSOs and in some instances power exchanges (Nominated Electricity Market Operators, NEMOs), and then adopted by NRAs and, since 2019, ACER. Here it is worth underlining that, although ACER has gained an enhanced role in the drafting and approval of TCMs, the Agency’s board consists of NRAs, who also comprise its preparatory working groups (cf. Jevnaker *et al.* 2022b).

In banking, all major decisions of the SSM must be approved by its Supervisory Board, where NCA representatives account for 21 of 27 votes.<sup>1</sup> Hence all important SSM initiatives and policies are developed through joint working groups, task forces, and drafting teams convened by ECB divisional networks, but often led by NCA officials, thus facilitating agreement and social acceptance of decisions within the Supervisory Board. The ECB has never exercised its powers to take over supervision of LSIs from national authorities, and prefers co-development of joint supervisory standards to the imposition of binding instruments, which are slow and difficult to change. NCAs themselves retain an independent voice on EU banking regulation through their dominant position in the EBA, which they value as a means of ensuring that distinctive national preferences and concerns are taken into account in framing the rules the SSM is expected to apply.

In both electricity and banking, finally, the increasingly uniform policies, rules, and methods developed through experimentalist comparisons of different national and regional approaches,

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<sup>1</sup> Article 26 of the SSM Regulation explicitly states that ‘The planning and execution of the tasks conferred on the ECB shall be fully undertaken by an internal body composed of its Chair and Vice Chair...and four representatives of the ECB...and one representative of the national competent authority in each participating Member State (“Supervisory Board”).’ Thus for operational purposes, the SB collectively exercises the powers assigned to the ECB, subject only to potential objection by the ECB Governing Council, which has never occurred.

are then regularly updated and revised through joint review of their implementation in different local contexts.

In electricity, rules on network access and tariffication were revised multiple times, building on reviews of national and regional implementation experiences debated notably in the Florence Forum. The frequency of revisions is especially impressive when one looks at guidance documents on market integrity and particularly the definitions of insider trading and market abuse, redrafted by ACER a half dozen times in response to feedback from NRAs and additional stakeholders on their implementation experiences as well as legal and market changes. While no substantive amendment has yet been proposed, the harmonized network codes and guidelines did witness the creation of a joint implementation and monitoring group. This consists of ACER, ENTSOs, and the Commission and, in consultation with multi-stakeholder committees, has issued procedural guidance on the identification of problems encountered as well as lessons to be drawn from implementation. As for TCMs, finally, this latest generation of rules has already seen several revisions. In some instances, these have stemmed from amendments already scheduled in the ‘mother’ guideline (e.g. implementation frameworks for balancing platforms) or in the TCM itself (e.g. methodology for coordinating operational security analysis). In others, revisions responded to changed circumstances (e.g., amendment of the TCM on the single allocation platform for long-term transmission rights to accommodate inclusion of Finland). But in any case, these processes involved NRAs (either directly or via ACER) and TSOs (and possibly also NEMOs), just as more generally, TSOs (and/or NEMOs) can themselves propose amendments to existing TCMS, or be required to do so by NRAs or ACER (Jevnaker *et al.* 2022c: 9-10).

In banking, the design of the SSM’s supervisory model was itself the outcome of joint deliberation and comparison of national practices by mixed ECB-NCA teams. The development of the JSTs and on-site inspection missions has similarly involved an intensive process of cross-fertilization and ‘learning from difference’ among supervisors from different national systems. To foster this multi-perspectival approach to bank supervision, the SSM systematically combines multiple forms of comparison both nationally and cross-nationally through ongoing peer review and benchmarking within and between JSTs, onsite inspectors, and ECB divisional networks. Systematic peer review and benchmarking play crucial roles in resolving disagreements between ECB and national officials about the SREP decisions on individual banks, and in ensuring consistent outcomes across the SSM. From the outset, moreover, the SSM has sought to engage in ‘forward-looking’ supervision, aimed at identifying emerging prudential risks and threats to financial stability, rather than ‘looking backward towards audited accounts’. Its manuals and guides are therefore regarded as ‘living documents, subject to continuous review and improvements’ in light of implementation experience and new developments. Peer review and benchmarking at multiple levels serve as powerful mechanisms for clarifying reasons for disagreement, exposing blind spots, and identifying opportunities for improvement, which should be addressed in subsequent iterations. In this process, as noted earlier, frontline supervisors can and regularly do propose revisions to rules, procedures, and methodologies based on problems and possibilities revealed by local application, which are then taken up through joint ECB-NCA networks. The EBA, whose own peer review and supervisory convergence activities are likewise conducted on experimentalist lines, provides a complementary framework

for learning from difference among NCAs across the Banking Union divide in drafting, overseeing, and revising the EU's Single Rulebook.

Thus in both electricity and banking regulation, we find clear evidence for the emergence of simplified experimentalist architectures, combining synchronic uniformity with diachronic revisability. In such simplified experimentalist architectures, framework rules and procedures may be progressively specified and discretion for lower-level actors at any given moment narrowed, but the rules and procedures themselves remain contestable in light of local application, while revisions over time based on learning from comparative review of implementation experience provide a crucial source of improvement and adaptability for the governance system as a whole.

In both sectors, the emergence of such governance architectures appears to be a functional response to the conjunction of high interdependence with high uncertainty. In electricity, the need to keep demand and supply in balance at all times (due to currently very limited storage possibilities) and the risks of negative externalities and cascading effects create high interdependencies, which have intensified over time as European markets have become more interconnected and unscheduled flows of electricity from renewable sources have increased. At the same time, moreover, electricity is also a complex and rapidly changing sector, characterized by high levels of uncertainty about the future development of markets, technologies, and consumer behavior, while within the EU the challenges of managing interconnected cross-national power grids on a continental scale have raised a series of regulatory and operational problems to which no ready-made solutions were available in advance. Like electricity, banking regulation is subject to a high level of interdependence, especially within the Eurozone, but also within the EU internal market, as the global financial and European sovereign debt crises graphically exposed the dangers of regulatory arbitrage and cross-border contagion in open, interconnected banking markets with incompletely harmonized rules and weak arrangements for supervisory cooperation and crisis management across member states. But banking regulation likewise operates under conditions of high uncertainty, which demand continuous updating and revision of supervisory policies, rules, and practices in the face of volatile and rapidly changing financial markets, technologies, and business strategies.

The cases of electricity and banking regulation support the view that while conditions of high interdependence coupled with high uncertainty require efficient rules and practices to be both uniform and revisable, these can be accepted as legitimate by diverse EU member states, provided they are applied in contextually sensitive ways and regularly revised on the basis of local implementation experience, through deliberative review processes in which national officials themselves participate. In this sense, these two cases further suggest that far from uniformity and experimentalism being antithetical to one another, diachronic experimentalism may be a necessary condition for synchronic uniformity of regulation within a heterogeneous polity like the EU.

### **An Agenda for Future Research: How Far Does the Model Travel?**

In future research, we plan to explore how far such simplified experimentalist architectures of this type may also be emerging in other sectors of EU regulation subject to rapid and

unpredictable changes in markets and technology, where concerns to promote a level playing field and prevent rule arbitrage are similarly strong. Such architectures have previously been identified in sectors like chemicals, where there is at any given time a single harmonized list of authorized substances whose commercialization member states are obliged to accept, but which is open to challenge and regularly revised through review processes involving not only national and European regulators, but also a wide range of stakeholders within and beyond the EU (Biedenkopf 2015). Similarly, innovative medicines (such as those for HIV/AIDS and cancer) are regulated in the Union through a ‘centralized’ procedure granting marketing authorizations that are directly valid across all member states. But despite this procedure’s name, in practice, the European Commission has almost always adopted these uniform decisions by following the opinions delivered by the European Medicines Authority (EMA), itself drawing on national experts, firms, and additional stakeholders. Once adopted, moreover, marketing authorization decisions are regularly revised in the light of ‘pharmacovigilance’ activities, which monitor adverse effects that might arise when larger and more diverse populations than in clinical trials use medicines (Rangoni 2023).

But these simplified experimentalist architectures do not appear to be confined to the regulation of health, safety and environmental risks. Thus, for example, in competition regulation, which applies to all sectors and historically has been one of the most centralized EU policy domains, the latest governance reform has continued to foster harmonization. However, such harmonization concerns the powers and capacities of lower-level actors and namely national competition authorities. Notably, the ‘ECN+ Directive’ ensures that national competition authorities in all member states are empowered to consider, review, and possibly revise commitments that are offered directly by regulated companies, a typical – and increasingly used – experimentalist approach to address competition problems, distinct from the conventional imposition of stable remedies from the top (Svetiev 2020). In capital markets regulation, similarly, the European Security Markets Authority (ESMA) has been subject to similar pressures as in banking to intensify supervisory convergence in the implementation and enforcement of the EU’s Single Rulebook for this sector. As in banking, however, ESMA’s extensive peer review program has progressively evolved from an initial emphasis on verifying national authorities’ compliance with EU rules and adoption of standardized best practices towards an experimentalist focus on understanding the comparative effectiveness of different local supervisory approaches and the reasons for divergence between them, while identifying shortcomings in regulatory practice and possible routes to improvements, increasingly also in consultation with affected stakeholders (Moloney 2018; Galán & Svetiev 2022).

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