

Article

## Explaining the EU’s Uneven Influence Across the International Regime Complex in Shadow Banking

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### Abstract

This article shows that the EU has exerted uneven influence within the global regime complex in shadow banking. Why? We seek to explain the variation in the EU’s ability to exert influence across different elemental regimes—those on hedge funds and securitization—in the broader regime complex over time. In hedge funds regulation, the EU has pursued more stringent international rules, to no avail. In securitization, the EU has been more successful in promoting more lenient regulation at the international level. We focus on the EU’s internal cohesiveness (which can change over time) as the key explanatory variable.

### Keywords

Bank of England; EU cohesiveness; European Central Bank; finance; hedge funds; international regime complexity; securitization; shadow banking

### Issue

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### 1. Introduction

The EU is generally considered to be a strict regulator, for example, in food, chemicals, data privacy, environmental, and labour regulation (Bradford, 2020; Vogel, 2012; Young, 2014). However, finance is a notable exception. In some cases, such as hedge funds regulation, the EU has pursued more stringent international rules, to no avail. In other cases, such as securitization, the EU has been more successful in promoting more lenient regulation at the international level. Both the “elemental regime” on hedge funds and that on securitization are part of the broader global “regime complex” on shadow banking, which suggests that the EU has exerted uneven influence within the regime complex. What accounts for the variation in the influence of the EU across two elemental regimes in the shadow banking regime complex? We conceptualize EU influence as the ability to shape the international standards (the dependent variable) negoti-

ated in the distinctive elemental regimes of the complex according to its preferences. We observe high influence if the EU is largely able to shape the international standards according to its preferences and, conversely, low influence if the EU’s preferences are not reflected in the adopted international standards.

Our starting point to examine the influence of the EU in a regime complex is the extent of EU cohesiveness—a key variable identified in the literature on the EU as an international actor. We conceptualize EU cohesiveness (the independent variable) based on Conceição-Heldt and Meunier’s (2014, p. 966) definition of “whether the member states can formulate a common position in spite of their divergences” (see also Moschella & Quaglia, 2016; Quaglia, 2014). We expect that EU cohesiveness will be higher if the EU has exclusive policy and negotiation competences in a certain policy area. On the other hand, EU cohesiveness will be lower if the EU has mixed competences in a policy

area or if it has a coordinating role in areas where national competences prevail (Conceição-Heldt, 2014; Conceição-Heldt & Meunier, 2014). Furthermore, based on the EU external relations literature, we expect that EU cohesiveness will be shaped by the extent of member state preference homogeneity, especially regarding states with large financial sectors, as high preference heterogeneity affects the EU's ability to "speak with one voice" (Meunier & Nicolaidis, 1999, p. 478) in international negotiations. Pronounced preference heterogeneity among the member states undermines the EU's ability to "speak with one voice" and usually results in "agreements at the lowest common denominator" (Macaj & Nicolaidis, 2014, p. 1074; see also Hodson, 2011).

We aim to leverage the findings of the literature on the EU as an international actor in a novel context—that of international regime complexity in shadow banking. Furthermore, the article sheds light on how EU supranational actors seek to foster a more cohesive EU position over time and to overcome diverging member state preferences both within elemental regimes as well as across the shadow banking regime complex as a whole.

Concretely, while the EU pursued more stringent hedge funds regulation, it was not internally cohesive on this matter which, in turn, undermined its influence. By contrast, the EU prioritized more lenient global rules on securitization and it was internally cohesive, which resulted in greater EU influence. It is also worth noting that in finance the EU still sees prospects for advantageous multilateral regulatory agreements at the global level and pursues its preferences through established international bodies, such as the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO), the Financial Stability Board (FSB), the Bank for International Settlements (BIS), and the International Monetary Fund (IMF). Moreover, our research design allows us to study changes in cohesiveness over time, which in turn leads to a different outcome in the EU's influence on the international regime complex.

This article is part of a thematic issue that brings together the literature on the EU as an actor in international fora and on international regime complexes. Our article contributes to the literature on the EU as an international actor by stressing the importance of *internal* EU cohesiveness in order to achieve *external* influence in regime complexes. While previous research on the external relations of the EU has demonstrated that EU's cohesiveness has analytical leverage in explaining the EU's impact on international negotiations, it is not a foregone conclusion that the EU will be able to "speak with a single voice" across a larger regime complex. This article also contributes to the literature on regime complexity by pointing out how institutional fragmentation in a regime complex compounds the problems for states and international actors to navigate effectively the entire regime complex. Namely, states might be pace-setters in one elemental regime, while acting as foot-draggers in another.

This is particularly challenging for multi-level jurisdictions, such as the EU, because the EU supranational actors need to forge a cohesive EU position both within each elemental regime and across the regime complex as a whole in order to exert influence at the international level.

This article is structured as follows. Section 2 presents the state of the art on international regime complexity in finance and the research design. Section 3 examines the role of EU cohesiveness in the hedge funds elemental regime, while Section 4 investigates the impact of EU cohesiveness in the securitization elemental regime and explains how EU cohesiveness increased over time. Section 5 engages with alternative explanations of the observed outcome and Section 6 summarizes the main findings.

## 2. State of the Art and Research Design

An international regime complex is present when multiple institutions and fora interact to govern a single issue, or a set of related issues (Alter & Meunier, 2009; Breen et al., 2020; Eilstrup-Sangiovanni, 2022; Heldt & Schmidtke, 2019; Keohane & Victor, 2011; Raustiala & Victor, 2004). The introduction to this thematic issue focuses on two overarching features of a regime complex: the overlapping fora and the actors participating therein (see Delreux & Earsom, 2023). In addition, relevant to the regime complex analyzed in this article, sometimes, regime complexes are marked by the existence of subsets of interlinked "elemental regimes" where the constitutive fora and actors focus on the negotiation and design of specific subsets of international standards or rules, based on their policy mandate and technical expertise. Furthermore, the "elemental regimes" form distinctive configurations of fora and actors working together within the broader regime complex (Orsini et al., 2013).

Several recent contributions have highlighted the challenges posed by international regime complexity in finance (Breen et al., 2020; Heldt & Schmidtke, 2019; Quaglia, 2020; Quaglia & Spendzharova, 2022). Yet, we still know relatively little about how multi-level actors, such as the EU, navigate different elemental regimes in the broader regime complex over time. This is a compelling area for investigation due to the augmented technical complexity of shadow banking, and the growing number of cross-sectoral issues in the elemental regimes, adding up to an over-crowded regulatory space (Quaglia, 2022).

In terms of research design, as shown in Table 1, we argue that the influence of the EU across elemental regimes in a regime complex depends on the EU's cohesiveness. We operationalize cohesiveness with two indicators: EU competences and member state preferences. First, to gauge EU competences, we examine the relevant EU legal and policy documents that stipulate which EU bodies have the mandate to negotiate at the international level on behalf of the EU (and whether such a mandate exists). Second, we measure the "revealed"

**Table 1.** Research design.

**Units of analysis**

International standards on hedge funds and securitization 2009–2018

<b>International standards (issuing body and date)</b>	<b>Hedge funds</b>	<b>Securitization, mark I</b>	<b>Securitization, mark II</b>
	Key Hedge Funds Principles (IOSCO, 2009)	Revision Basel II (BCBS, 2009)  Basel III Securitization Framework (BCBS, 2014)	Revision Basel III—Capital rules on simple transparent and comparable securitization and on short term simple transparent and comparable securitization (BCBS, 2016, 2017, 2018)  Criteria on simple transparent and comparable securitization and on short term simple transparent and comparable securitization (BCBS & IOSCO, 2015, 2018)
<b>Empirical patterns to be explained</b>			
EU influence	EU (minus UK) low	EU low (achieved some concessions)	EU high
<b>Main explanation</b>			
EU Cohesiveness	Low	Low	High

preferences of the key EU supranational and member state actors through a systematic review of the policy papers produced by the relevant international, EU, and member state actors. We triangulated this information with findings in the secondary literature about what those preferences are, and how they may have changed over time.

Based on prior research in EU external relations, we expect that in elemental regimes where member states' preferences are homogenous (hence, aligned), the EU is likely to be influential. Vice versa, in elemental regimes where member states' preferences are heterogenous (hence, misaligned), the EU is unlikely to be influential. Moreover, we consider the time dimension, which has been partly overlooked by the EU external relations literature so far. Our analysis shows that, in fact, the degree of EU cohesiveness can change over time, as it happened in the securitization elemental regime, whereas there was no change over time in EU cohesiveness on hedge funds. In addition, the literature on EU external relations, in particular, that on EU foreign and security policy points out that inter-institutional coordination can play a significant role in fostering EU's internal cohesiveness and external influence. Therefore, we also consider this variable in our analysis.

Several potential explanations for the EU's external influence have been put forward by focusing on factors at the international and at the EU level (see, for instance,

Bach & Newman, 2007; Goldbach, 2015; Mügge, 2014; Newman & Posner, 2015; Quaglia & Spendzharova, 2017; Young, 2015). At the international level, one could argue that the EU's influence depends on whether it is able to forge an alliance with the US or has similar preferences concerning international standards (Helleiner, 2014; Simmons, 2001). Similar dynamics could be at play if the EU is able to form a coalition with third countries (other than the US), especially if they have a sizable financial sector. At the EU level, one could argue that the EU's influence on an elemental regime depends on the size of its domestic market, whereby jurisdictions with large domestic markets have more influence in international negotiations (Bradford, 2020; Damro, 2015; Drezner, 2007) and its regulatory capacity, whereby jurisdictions with advanced regulatory capacity in a given sector are better able to use their domestic rules as a template to shape the international ones (Posner, 2009; Quaglia, 2014; Rixen, 2013). We discuss these alternative explanations against the empirical record in the penultimate section.

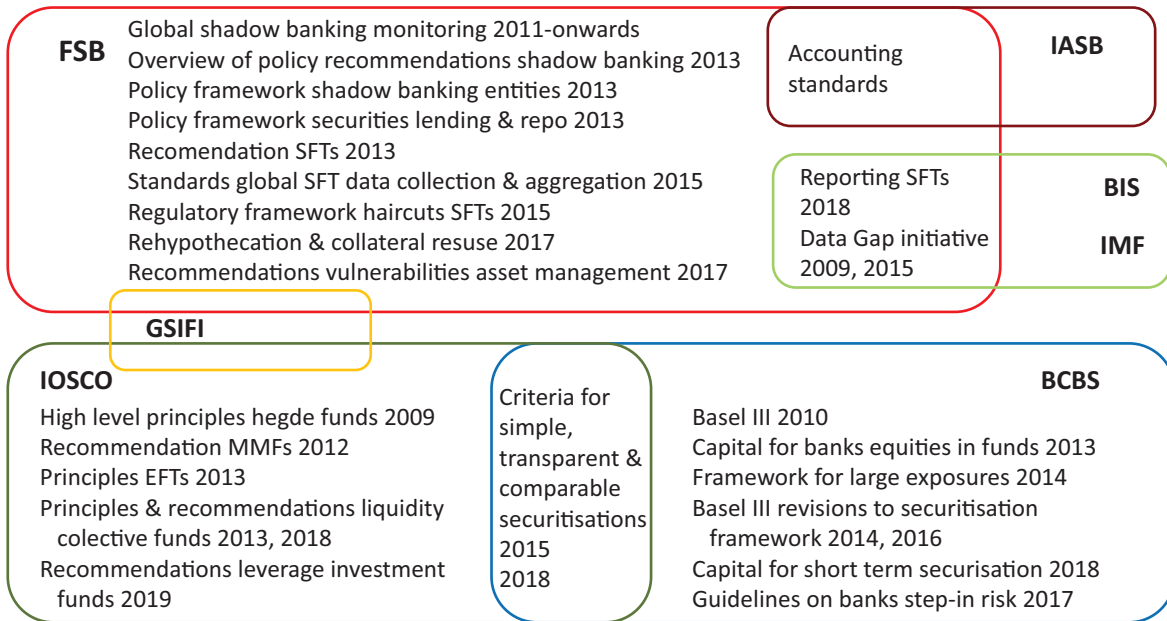
Turning to the exploratory case study design used in this article (George & Bennett, 2005), we now explain why the international governance of shadow banking can be characterized as a regime complex, comprised of fora and actors arranged in a configuration of several elemental regimes. After the 2008 crisis, various international financial institutions issued "soft law" concerning

different aspects of shadow banking as well as traditional banks that interacted with shadow banks (see Figures 1 and 2).

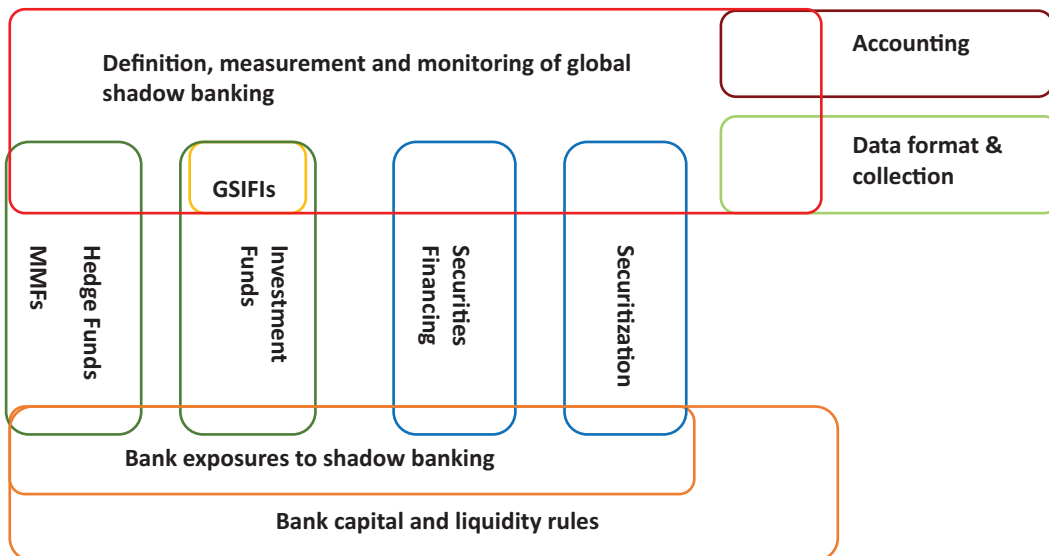
Although there is not a universally agreed definition of shadow banking, it refers to the “system of credit intermediation that involves entities and activities outside the traditional banking system” (FSB, 2011, p. 3). Shadow banking entities include “money market funds (MMFs) and investment funds that provide credit or are leveraged, such as hedge funds” (FSB, 2011, p. 3). Shadow banking activities refer to securitization and securities financing transactions. More generally, securitization is the process whereby certain types of assets (such as mortgages or credit card obligations) are pooled so that

they can be repackaged into interest-bearing securities (Jobst, 2008).

The entire regime complex on shadow banking summarized in Figure 2 is too broad for the purposes of our analysis. We conduct a comparative study of two sectoral elemental regimes on hedge funds and securitization within the larger regime complex. The adopted international standards in these two areas cover important entities in shadow banking—hedge funds—and a crucial activity—securitization. We examine these two areas in greater detail in the next section as we investigate the impact of EU cohesiveness on the EU’s ability to influence the international rules on hedge funds (Section 3) and on securitization (Section 4).



**Figure 1.** International standards on shadow banking, adapted from Quaglia (2022). Note: G-SIFIs stands for global systemically important financial institutions and IASB for international accounting standards board.



**Figure 2.** Elemental regimes in the shadow banking regime complex, adapted from Quaglia (2022).

### 3. Low Cohesiveness and Limited EU Influence Regarding Hedge Funds Regulation

The first elemental regime that we examine within the shadow banking regime complex concerns an important entity—hedge funds. Securities markets regulators led the discussions and IOSCO was the main international institution where global standards on this matter were set. The EU was represented by the European Commission and European Securities and Markets Authority (ESMA) as observers, with the member states' securities regulators also present. Notably, the EU was internally divided and lacked cohesiveness in international negotiations. Specifically, Germany, France, and other continental countries (notably, Italy and Spain) called for new post-crisis rules on hedge funds in the EU and internationally, acting as pace-setters, whereas the UK and, to a more limited extent, Ireland and Luxembourg, resisted hedge funds regulation, acting as foot-draggers (Quaglia, 2022). Eventually, new rather stringent rules were issued in the EU, but not internationally, where the UK in coalition with the US prevented meaningful international standards. As we show below, the EU had significant problems forging a cohesive position on this matter and, consequently, it had very little influence in shaping the elemental regime on hedge funds within the global shadow banking regime complex.

#### 3.1. International Standard-Setting on Hedge Funds

Prior to the international financial crisis of 2008, there were no international standards on hedge funds. To be precise, the IOSCO (1999) and the BCBS (1999) recommended regulating hedge funds indirectly by regulating the banks that did business with hedge funds—and by relying on private sector governance (Pagliari, 2013; Quaglia, 2011). In the wake of the crisis, France and Germany, in particular, advocated the adoption of more stringent rules on hedge funds both internationally and in the EU (Fioretos, 2010; Woll, 2013). By contrast, US and UK policy-makers supported an alternative approach, which focused on the disclosure of information to regulators and greater transparency (Pagliari, 2013).

After a heated debate, the Group of Twenty (G20) agreed in April 2009 that hedge funds should be subject to appropriate regulation to manage the risks they posed to the international financial system. Subsequently, the IOSCO's Task Force on Unregulated Financial Entities focused its work on hedge funds. Within the Task Force, a coalition of regulators led by the US and the UK resisted meaningful international rules on hedge funds, for instance, opposing the introduction of capital requirements for these funds. By contrast, a competing coalition, led by regulators in France, Germany, and Italy, where hedge funds were already regulated at the domestic level, promoted relatively stringent international rules, similar to those already in place for banks and other

types of investment funds. The hedge fund industry sided with the Anglo-Saxon coalition. None of the measures supported by the continental EU member states made it into the final IOSCO report, which was rather brief and general: it put forward six high-level principles for hedge fund oversight (Quaglia, 2011).

#### 3.2. Low EU Cohesiveness

In the EU, the regulation of hedge funds was very controversial both before and after the 2008 international financial crisis, pitting continental European countries against the UK. The EU did not regulate hedge funds or fund managers before the crisis, despite the fact that certain member states, first and foremost, France and Germany, had called for the adoption of EU rules on this matter (Fioretos, 2010; Quaglia, 2011). The UK, which hosted the vast majority of hedge funds managers in the EU, blocked any pre-crisis attempts to regulate hedge funds. However, the global financial crisis spurred new efforts to regulate hedge funds in the EU. France and Germany (Fioretos, 2010; Quaglia, 2011; Woll, 2013), with some support from Italy and Spain, sponsored new EU legislation on hedge funds, arguing that “Europe should play an instrumental role in shaping a global regulatory regime for hedge funds through the creation of a ‘European label’” (European Commission, 2009, p. 84).

The UK, instead, opposed the adoption of EU rules arguing that they would be detrimental to financial sector competitiveness and would trigger international regulatory arbitrage (“UK slams EU,” 2009). After a heated and protracted internal debate, the EU issued the Alternative Investment Fund Managers Directive in 2011, which also applied to hedge funds (the main category of alternative investment funds). The directive set rules for the authorisation and supervision of alternative investment fund managers, including hedge fund managers, in the EU. Alternative investment fund managers were also subject to reporting requirements, and a minimum level of capital, which indicates a more stringent regulatory approach. However, the EU was unable to include similar rules as part of the relevant international standards on hedge funds discussed in IOSCO, which we explain with its limited internal cohesiveness. We observe a different outcome in the next case regarding international rules on securitization.

### 4. High Cohesiveness and Significant Influence of the EU in Securitization

Unlike in the elemental regime on hedge funds, the EU adopted a more cohesive position and was highly influential in shaping the international rules on an important activity within the shadow banking regime complex—securitization. However, the EU only managed to achieve internal cohesiveness over time. Importantly, the main international institution in this elemental regime was the BCBS, where the EU is represented by the European

Central Bank (ECB) as the Single Supervisory Mechanism and the euro area “speaks with a single voice.” In addition, representatives of the central banks of the EU member states which are members of the G20 are also present. Thus, central bankers led the policy discussions on securitization, with significant input from IOSCO and securities markets regulators.

In the wake of the 2008 crisis, the EU was internally divided also on securitization. Some member states, notably, the UK, sided with the US in advocating higher bank capital requirements for securitized products, whereas continental member states preferred lower bank capital requirements. From 2014 onwards, the EU actively sought to relaunch “safe” securitization also by lowering bank capital requirements. As we show below, eventually, the UK aligned its position with the rest of the EU, and EU and UK central bankers were very influential in the relevant international fora that set global standards on “safe” securitization (see also Engelen & Glasmacher, 2018).

#### 4.1. International Standard Setting on Securitization

Following the 2008 financial crisis, the US, with some support from the UK, acted as a pace-setters in tightening up the international standards on securitization. Central bankers and bank regulators took the lead in setting bank capital rules for securitization. In 2009, the BCBS (2009) revised its securitization framework by issuing the so-called Basel 2.5 accord, increasing bank capital requirements for “re-securitization” (collateralized debt obligations comprised of asset-backed securities), which were more highly correlated with risk than traditional securitization. In 2014, the Basel III accord was supplemented by a revised framework for securitization that substantially increased bank capital requirements on securitized products.

Afterwards, the EU, including the UK, acted as pace-setters at the international level in an attempt to revive the securitization market. As early as 2013, ECB President Mario Draghi noted that “asset-backed securities market is dead and has been dead for a long time” (“ECB’s Draghi,” 2013) and launched an initiative to revive this market as a way to finance an economic recovery. Yet, other central bankers, notably, those in the US, where post-crisis securitization market was buoyant, warned that the industry had not yet learnt the lessons of the crisis and called for more stringent international rules (“Sliced and diced,” 2014).

Importantly, the BCBS and the IOSCO established a joint task force on securitization, which the FSB asked to identify the factors that hindered the development of securitization and to develop criteria for simple and transparent securitization. The aims of the criteria proposed by the task force were threefold. First, to assist investors, according to the “what you see is what you get” principle. Second, to assist issuers by making risk transfer more robust. Third, to assist regulators to set

risk-sensitive capital requirements for securitization on the basis of a differentiation based on criteria to identify safe securitization (Rule, 2015). The BCBS and the IOSCO issued about a dozen of criteria to identify simple, transparent, and comparable securitization. These criteria were remarkably similar to those outlined by documents previously issued by the Bank of England and the ECB (2014a, 2014b) and the European Banking Authority (EBA, 2014). Thus, the international standards for securitization were heavily informed by the regulatory discussions that had taken place within the EU.

In parallel to the work undertaken by BCBS and IOSCO concerning criteria for safe securitization, the BCBS worked on lowering bank capital requirements for safe securitization. Despite the fact that the ECB had called for these reforms for more than a year, the BCBS did not begin working on this matter until when the ECB and the Bank of England jointly urged the reduction of bank capital rules on securitised products. At a meeting of the IMF, the ECB and the Bank of England jointly intervened to make their case. Yves Mersch, a member of the ECB’s Executive Board, explained that these central banks had a “common analysis and a common suggestion” and argued that existing international standards did not take into account that European securitization performed better than US equivalents during the global financial crisis (“Europe’s top two,” 2014). This comes to show the ECB’s concern that EU asset-backed securities were treated inappropriately by the existing international rules.

The BCBS revised capital requirements for securitization exposures in 2016, aligned with EU preferences on this matter, including the regulatory capital treatment for simple, transparent, and comparable securitization and set additional criteria for differentiating the capital treatment of simple, transparent, and comparable securitization from other forms of securitization. Then, the same process was repeated, under the impulse of EU and UK regulators, with reference to short-term securitization, resulting in the BCBS and IOSCO (2018) *Criteria for Identifying Simple, Transparent and Comparable Short-Term Securitizations*. Eventually, simple, transparent, and comparable short-term securitization received the same reduction in capital requirements as simple, transparent, and comparable securitization.

#### 4.2. From Low to High EU Cohesiveness Over Time

In contrast to the hedge funds case, where EU cohesiveness was low, the securitization case is characterized by achieving higher EU cohesiveness over time and well-performing coordination mechanisms both among the main jurisdictions, including the UK and among the main EU actors in this area, such as the European Commission, the ECB, as well as ESMA and the EBA.

Approximately half of all securitization activities in Europe took place in the UK (Quaglia, 2022). In response to the 2008 crisis, British policy-makers advocated more

robust rules on securitization and higher bank capital requirements for securitised activities. More generally, during the negotiations on the Basel III accord, the first part of which was eventually signed in 2010, the UK, together with the US, called for more stringent (i.e., higher) bank capital requirements. It was widely acknowledged that the US Federal Reserve together with the Bank of England and the British Financial Services Authority were the “intellectual driving force” during the Basel negotiations (James & Quaglia, 2020). By contrast, continental EU regulators, in particular in France and Germany, wanted a broader definition of capital, lower capital requirements, less stringent liquidity rules, no leverage ratio, and a longer transition period (Howarth & Quaglia, 2016).

Following market reactions and more stringent public regulation, the level of securitization dropped significantly in the EU, also because banks preferred to tap central bank facilities for funding (“ECB’s Draghi in,” 2013). As time went by, European policy-makers looked for new ways to overcome low economic growth and the downturn caused by the sovereign debt crisis. They sought to revive securitization in an attempt to boost economic recovery while safeguarding financial stability (Montalbano, 2020). Securitization was seen as potentially advantageous for the predominantly bank-based financial system in the continental EU because it would allow banks to increase lending to the real economy without facing higher capital requirements. At the same time, the relaunch of securitization could also encourage small and medium enterprises to bypass banks and access the corporate debt markets directly (Quaglia, 2020).

In particular, European central bankers were keen to revive securitization because they partly relied on it for the conduct of their monetary policy (Braun, 2020; Braun et al., 2018). The ECB supported favorable capital treatment for safe securitization, as this was seen as necessary to restore the liquidity of this market. To name one important reason, asset-backed securities were a crucial component of the collateral framework of the eurosystem. The ECB was also keen to relaunch securitization as a way to transfer risk away from the banking sector, freeing up bank capital to extend as credit to the real economy. Like the ECB, a few years after the crisis, the Bank of England also advocated the relaunch of securitization on the ground that banks could use securitization to diversify their funding and transfer risk on the underlying loans. A senior official at the Bank of England and co-chair of the BCBS and IOSCO task force on securitization, Rule (2015) emphasized that banks and non-banks could use securitization to provide credit to the real economy.

An early intuition of the Bank of England and the ECB was that lack of transparency acted as an obstacle to the revitalization of the securitization market (Mersch, 2013). In a nutshell, the Bank of England and the ECB (2014a) argued that the potential benefits of securitization depended on its purposes: it could be used to fund

assets, to transfer risk, or both. Hence, this market had advantages, but also posed potential risks to financial stability. For these reasons, the involvement of regulators was seen as beneficial to “support its revitalization in a more robust form” (Bank of England & ECB, 2014a, p. 4). Both the Bank of England and the ECB argued in favor of lowering capital requirements for safe securitization on the grounds of its lower risk (Bank of England, 2013; Rule, 2015).

Showcasing a high degree of EU cohesiveness after 2014, the EU and the UK engaged in concerted pace-setting to reform the regulation of securitization by increasing the transparency and standardization of securitized products, while reducing bank capital requirements for less risky securitization (Quaglia, 2022). In fact, the Bank of England and the ECB published a joint paper that lamented the malfunctioning of the securitization market in the EU, whereas the EBA (2014) promoted the use of simple and transparent securitization. The ECB, the EBA, the Bank of England, and the European Commission were all eager to re-launch securitization, which had been stymied by the international financial crisis (Braun, 2020; Braun et al., 2018; Gabor & Vestergaard, 2018).

Subsequently, securitization was included in the proposals for an EU Capital Markets Union, put forward by the European Commission (2015) and supported by several member states, most notably, the UK (Quaglia et al., 2016). The European Commission was eager to “harness financial markets as macro-economic stabilization tools,” while ensuring fiscal discipline at the EU level (Braun et al., 2018, p. 104). In 2015, it prioritized two legislative proposals concerning securitization in the broader framework of the Capital Markets Union. First, a regulation on securitization set criteria to identify “simple, transparent and standardised” (European Commission, 2015, p. 21) securitization (the notion used in the EU). Second, the regulation on capital requirements for banks was amended to make the capital treatment of safe securitization more risk-sensitive (and also less stringent) for banks and investment firms (Hale, 2015). Both pieces of EU legislation were eventually adopted in 2017.

Importantly, inter-institutional coordination mechanisms are a new variable identified in this case study, fostering more cohesiveness in the EU position over time. To begin with, since 2015, the European Commission was the main “political entrepreneur” pushing ahead more integrated capital markets across the EU through the Capital Markets Union action plan, but it relied heavily on technical expertise in the realm of securitization provided by other EU institutions and agencies, such as the ECB, the ESMA, and the EBA.

For example, during the preparation of the securitization regulation, the ECB provided important technical advice to the European Commission about the criteria for simple and transparent securitization. The active institutional involvement of the ECB was in line with its new mandate in financial supervision, especially concerning

the monitoring of systemic risks in the euro area. For example, since 2015, the ECB has been collecting and publishing statistics on loans adjusted for sales and securitization, providing more complete information on loans that were granted by euro area banks but were no longer recorded on their balance sheets (ECB, 2015). The ECB's in-depth monitoring of euro area loan securitization enabled a more comprehensive view of securitized lending to the real economy originated by euro area banks, and it improved comparability across the member states, which was previously lacking. Furthermore, since 2018, the ECB has been coordinating the joint working group involving the ESMA and contributing to the implementation of safe securitization of assets, not only in the euro area but also in the EU as a whole (ECB, 2018). ESMA has also been in charge of the implementation and monitoring of the EU's securitization regulation adopted, liaising with its EU agency counterparts in banking and insurance on cross-sectoral matters in the framework of the Specific Committee on Securitisation of the Joint Committee of the European Supervisory Authorities (ESMA, 2021). At the same time, it is worth noting that this extensive inter-institutional coordination requires investment of effort and organizational resources by all EU and member state actors involved.

Highlighting the finding that in finance the EU pursues its preferences through the established global standard-setting bodies, at the time of launching the Capital Markets Union, Jonathan Hill (European Commissioner for Financial Stability, Financial Services, and Capital Markets Union) repeatedly pointed out that EU initiatives on securitization were part of a broader international effort. In fact, in parallel to the discussions on Capital Markets Union and the re-launch of securitization in the EU, the BCBS and IOSCO consulted on criteria for simple and transparent securitization and the BCBS considered how to incorporate these criteria in its revised securitization framework.

In terms of significance for the broader regime complex, less stringent securitization rules weakened the effectiveness of the shadow banking regime complex and promoted the growth of the shadow banking sector, which the ECB (2016) had identified as a potential financial vulnerability also when it came to hedge funds regulation.

## 5. Alternative Explanations

This section considers several alternative explanations for the variation in the EU's influence across the shadow banking regime complex to consider at the international and at the EU level. First, at the international level, one could argue that the EU's influence depends on whether it is able to forge an alliance with the US or has similar preferences concerning international standards. Whereas the EU (excluding the UK) and the US had different preferences on the regulation of hedge funds (which undoubtedly weakened the EU's ability to influence inter-

national standards), the EU and the US also had different preferences concerning the relaunch of securitization. Yet, the EU succeeded in influencing these standards from 2015 onwards. Second, one could argue that the EU's influence depends on its ability to forge an alliance with third countries other than the US. Yet, both in the case of hedge funds and securitization, there were weak preferences and limited mobilization by third countries on these matters because the majority of hedge funds and securitized products are located in the US and in the EU.

At the EU level, one could argue that the EU's influence on an elemental regime depends on its domestic market size and/or regulatory capacity. Regarding both hedge funds and securitization, the EU market size was smaller than that of the US, hence it cannot account for the different outcomes of interest in these two elemental regimes. Likewise, both in the cases of hedge funds and securitization, EU (and US) regulatory capacity was in the making and almost proceed in parallel to the activity of international standard setting bodies, hence it cannot account for the different outcomes of interest.

With that said, the two varying elements of the shadow banking regime complex—one being an entity (hedge funds) and the other one being an activity (securitization)—display different market configurations within the EU. Securitization activities tend to be evenly distributed across the EU, at least amongst the member states with substantial financial sectors, whereas the hedge funds sector is heavily concentrated in the UK. It is also worth noting that the EU is represented by different institutions in two studied elemental regimes, and central banks were more in the lead in the securitization one. In this respect, the alliance between the ECB and the Bank of England in favor of lower capital requirements (to foster securitization) played a crucial role in forging a more cohesive EU position on this matter. By contrast, we did not find evidence of a similar alliance among regulators in the hedge funds' elemental regime. Furthermore, our case studies confirm previous findings that central bankers and securities regulators form two distinct professional communities in international financial regulation (see James & Quaglia, 2022; Quaglia & Spendzharova, 2019).

To sum up, considering plausible alternative explanations, one could argue that the EU's influence on an elemental regime depends on its domestic market size and/or regulatory capacity. Yet, both in hedge funds and in securitization, the EU market size was smaller than that of the US, hence it cannot account for the different outcomes of interest in these two elemental regimes. Likewise, in both cases, EU (and US) regulatory capacity was in the making and proceeded almost parallel to the activity of the international standard-setting bodies, hence it cannot account for the different outcomes.

## 6. Conclusions

This article set out to explain the influence of the EU in the shadow banking regime complex by focusing on two



elemental regimes within this complex—those on hedge funds and securitization. We argue that the EU’s internal cohesiveness to a large extent determines its external influence across elemental regimes in the regime complex. At the same time, EU cohesiveness is costly. It requires the alignment of the preferences of the main EU financial jurisdictions as well as an investment of effort and resources by the main EU supranational actors in the policy area, such as the ECB and the European Commission. In this regard, our analysis shows that the leading EU supranational actors are rather selective in investing finite institutional resources to achieve greater cohesiveness, taking into account the main priority areas for joint EU action, which can also change over time.

Our findings about the importance of EU cohesiveness and internal preference alignment among the member states with large financial sectors can travel to other regime complexes within and outside finance, with the caveat that they are based on a limited number of observations. Although, for reasons of space, we examined only two elemental regimes in the shadow banking complex, we are also able to tease out several broader implications. First, the EU’s influence is uneven across the regime complex and varies over time, depending, *inter alia*, on the EU’s internal cohesiveness and its ability to speak with one voice. Second, there is no clear evidence about the EU engaging in forum shopping or venue shifting, but that might also be the case because the EU and its member states are well represented across all elemental regimes in the shadow banking regime complex. Third, in finance, the EU pursues its global regulatory preferences through the established international institutions rather than through bilateral agreements with other jurisdictions or regional actors, as is increasingly the case in trade. In sum, the EU pursues strategies to manage regime complexity in finance rather than to bypass it.

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### Conflict of Interests

The authors declare no conflict of interests.

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