# OPENING REMARKS

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As a professor at LUISS University with longstanding engagement in initiatives this institution promotes for young scholars in legal-economic disciplines, I am pleased to welcome participants and inaugurate the second day of the International Conference, "The Impact of EU Regulation on Models of Banking and Finance".

This conference acknowledges the critical role of young researchers in identifying and rigorously analyzing issues in economic law.

The current global landscape requires a critical reassessment of entrenched doctrinal paradigms that have historically guided this field. The transition to the digital economy, coupled with the European regulatory approach to environmental sustainability -which is currently being reconsidered[1] - constitutes a pivotal focus of contemporary research. Additionally, profound geopolitical transformations are reshaping the trajectory of globalization, prompting a reexamination of the fundamental principles underpinning the capitalist system. These shifts, which scholars have characterized as heralding the decline of an 'anarchic' economic logic,[2] contribute to what Montedoro describes as an increasing state of disequilibrium between law and economics.[3]

It is important, therefore, to outline some key themes that will be explored

[1] European Commission, *An EU Compass to regain competitiveness and secure sustainable prosperity*, 29 January 2025, available at the following link, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_339.

[2] CAPRIGLIONE, *Non luoghi. Sovranità, sovranismi. Alcune considerazioni*, in *Rivista Trim. Dir. Econ.*, 2018, 4, p. 1 ff.

[3] MONTEDORO, *Il giudice e l'economia*, Luiss University Press, 2015.

during this session. The interplay between law and economics in the governance of banking and financial markets is inherently twofold: the legal framework delineates parameters within which market participants operate, while market structures and behaviors must be understood in light of economic dynamics and financial instruments at play. The prevailing disciplinary paradigms in banking and financial markets have undergone rapid obsolescence, necessitating an adaptive regulatory approach. The financial industry, increasingly subject to political influence, must navigate a transformative process with prudence and foresight, ensuring a nuanced understanding of the intersection between politics and finance.

These changes have wide-ranging implications, requiring a strategic recalibration of economic-financial sector interactions to facilitate resource management and investment allocation in a manner that balances efficiency with regulatory adequacy. This underscores the need to disentangle complexities inherent in formulating an operational paradigm that reconciles - striking a rational balance - equity and economy.

The emergence of digital finance and heightened emphasis on sustainability - the so-called 'twin transition' - are redefining the objectives of banking and financial markets. This transformation necessitates careful scrutiny of geopolitical reconfigurations that are altering macro-level power structures and micro-level financial intermediation strategies. In this context, investment funds and institutional investors play a particularly influential role in shaping market dynamics.

At the heart of these developments lies EU financial regulation, which is tasked with channeling and harmonizing these evolving market forces through a calibrated mix of command-and-control measures, private regulatory initiatives, and principle-based strategies. The European legal framework is thus expected to foster integration of economic markets while simultaneously safeguarding social rights.[4] This latter aspect is particularly relevant in assessing the evolving role of the Court of Justice of the European Union, which is increasingly asserting its influence in the realm of banking and finance.

This Conference, like the inaugural session held in Oslo last July - a city that captivated me with its bright summer evenings - has generated productive dialogue, extending and refining discussions initiated during the first day at Marconi University. The multifaceted nature of topics addressed reflects the inherent complexity of devising a unified theoretical framework while necessitating a methodologically rigorous approach to delineating its contours. In this regard, as demonstrated in Oslo, insights from young scholars provide a valuable contribution to scholarly dialogue.

The themes examined in today's Conference converge upon a central objective: fostering a resilient, inclusive, and sustainable financial system within the European Union.[5] This area of inquiry gains heightened significance at a juncture where the EU is compelled to engage in self-reflection, particularly in response to economic and financial developments in the United States.[6] The need to move beyond a regulatory harmonization approach, which has historically characterized EU financial intervention, towards a framework that effectively addresses emerging

[4] E.g. this is well captured by the judgments Case C-617/10 Åkerberg Fransson ECLI:EU:C:2013:105; Case C-144/04 Mangold ECLI:EU:C:2005:709; Case C-438/05 The International Transport Workers' Federation and The Finnish Seamen's Union ECLI:EU:C:2007:772. On the topic, see POULOU, *The CJEU as guardian of social rights? The legacy of the European financial crisis*, in GONZÁLEZ PASCUA - TORRES PÉREZ (edited by), *Social Rights and the European Monetary Union*, Edward Elgar, 2022, p. 143 ff.

[5] This is also consistent with what has been influentially stated by BUCH, *Building a resilient future: how Europe's financial stability fosters growth and competitiveness*, Chair of the Supervisory Board of the ECB, at the Eurofi Financial Forum 2024, Budapest, 12 September 2024, available at https://www.bankingsupervision.europa.eu/press/speeches/date/2024/html/ssm.sp240912~72bbc94da5.en.html

[6] See MOLONEY, *EU securities and financial markets regulation*, Oxford University Press, 2023; CHARI, *Global risk, non-bank financial intermediation, and emerging market vulnerabilities*, in *Annual Review of Economics*, 2023, 15, 1, 549-572.

techno-autocratic economic models is increasingly pressing. Such evolution is essential to preserving foundational values, traditions, and freedoms that define the European project.

Today's presentations, as can be grasped from the abstracts I had the chance to review, offer compelling insights into contemporary debates in economic law. Special attention is devoted to digital finance, particularly its intersection with sustainability considerations [Unterstell-Ansideri]. Additionally, discussion of Islamic finance—which plays a significant role in shaping certain banking models—provides a comparative perspective that enriches broader discourse on financial intermediation [Arafa-De Donno-Benarafa].

The analysis of ESG principles and stakeholder interests is also of considerable relevance, as it allows for critical inquiry of regulatory frameworks governing sustainable practices (e.g., with regards to corporate governance) and challenges posed by EU harmonization efforts in this domain [Mitrovic-Bernabei]. In the same context, attention is paid to green exposures of banks and their implications for prudential regulation, aimed at favoring the channeling of lending towards green projects without causing damage to financial stability [Nordin-Vita].

Sector-specific considerations, such as those arising in energy and environmental sectors, highlight potential distortions that geopolitical and economic volatility may introduce into consumer decision-making processes. They raise questions about weaknesses of legislative interventions (particularly in the context of the Green New Deal) in the face of changing scenarios, as well as 'ideologically motivated' choices not based on objective data [Milli-De Chiara]. The evolving regulatory framework governing wholesale energy and derivatives markets further illustrates the interplay between financial stability and geopolitical shocks, particularly in light of the EU's response to the ongoing war in Ukraine [Affinito].

Closely related to these discussions is research on bank governance in the

European regulatory landscape, which delves into implications of recent EU directives on board suitability and integrity requirements [Alfano-Rodio Nico]. The integration of ESG criteria into bank governance structures, particularly under Directive 2024/1619 (CRD6),[7] raises critical questions regarding regulatory effectiveness of rules on ESG (collective) suitability criteria on board functionality.

In the context of evolving financial models, the role of artificial intelligence demands particular attention as well. AI-driven innovations have transformed various aspects of the sector, from creditworthiness assessments—in relation to which the authors highlight complexities in compliance with the GDPR and EU Directive 2023/2225 [Bruzzese-Lener]- to Insurtech applications [Pagano-Pellini].

Within a logic aimed at examining integration of technological tools in credit operating systems, a study is proposed on the impact of EU regulations on crypto-assets and the strategic relevance of banking and financial sectors from a screening perspective of foreign direct investment [Jena-Locci]. It identifies risks that characterize this type of investment contract, also taking into account that they are still immature and pose legal ambiguities as to, e.g., whether cryptocurrencies can be legally qualified as investment contracts.

Likewise, looking at other challenges for the banking system, the relationship with the so-called shadow banking system[8] is then explored, as the combination of banking-like functions, outside the banking regulatory perimeter, could lead to regulatory arbitrage. This is the setting in which the regulation of crowdfunding services fits in. The presentation of a comparative study [Lorenz-Vernero] between the Italian model - where an express regulatory framework was in place even before

[7] Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, PE/79/2023/REV/1, *OJ L, 2024/1619, 19.6.2024.*

[8] LEMMA, *The Shadow Banking System. Creating Transparency in the Financial Markets*, in Palgrave Macmillan Studies in Banking and Financial Institutions (SBFI), Palgrave MacMillan, 2016.

EU Regulation/1503/2020[9] and EU Directive/1504/2020[10] came into force - and the German model (where it was lacking), provides an opportunity to highlight the differences in national regulations and to grasp the pitfalls of the model.

Lastly, growing relevance of sustainability issues calls for reflection on mechanisms to ensure credibility of sustainability commitments, focusing on safeguards and their effectiveness. Taking the perspective of investment contracts reveals possible different nature (and binding nature) of sustainability commitments, which are suitable for generating immediate benefit for issuers, but-at times-little protection for investors. In the current context of fragmentation of private enforcement tools, a cross-sectoral approach to remedies is proposed [Foà-Castellano] aimed at ensuring full compensability of damage suffered in cases of non-compliance with sustainability pledges, so to prevent opportunistic behaviors. In conclusion, the wealth of diverse perspectives captured in today's presentations underscores valuable contributions of young scholars to ongoing evolution of banking and financial regulation within the EU.

[9] Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937, PE/37/2020/INIT, *OJ L 347, 20.10.2020*, p. 1-49.

[10] Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive 2014/65/EU on markets in financial instruments, PE/36/2020/INIT, *OJ L 347, 20.10.2020*, p. 50–51.