The Barnier proposal on banking regulation: whence the wrath?

By Jean-Paul Pollin (Université d'Orléans) and Jean-Luc Gaffard

This time the evidence is there and it's irrefutable: the reaction of the French "authorities" to the proposed structural reform of Europe's banking sector proves that their law on the so-called "separation of banking activities" was nothing but a false pretence, a ruse to head off the European Commission's initiatives in this field (see this OFCE blog). It was also an occasion for them to smoothly undercut the report by Bourget, whose most striking passage was the denunciation of finance as the "invisible enemy", followed by its promise to create distance between deposit banks and trading banks (finance and investment banks). At the time this declaration was well received – the innumerable eccentricities of deregulated finance were held, rightly, to be responsible for the "Great Recession" and it was considered necessary to prevent the predatory and destabilizing dynamics of the financial markets from returning to pollute the traditional activities of lending and managing means of payment, whose impact on the economy is significant and lasting.

But these ambitions were buried a few months later by legislation that separates almost nothing, as was agreed by the bankers themselves: virtually all trading activities thus remain closely linked to the commercial bank operations which serve to strengthen them. During the debate on this law, one of the arguments in defence of its feeble character was that our banking system should not be put at a disadvantage relative to the Anglo-American institutions. MPs, including Karine Berger, the law's rapporteur, pretended to believe that to preserve the City the British government would never dare implement the recommendations of the Vickers report, which advocated a strict separation of activities. It is curious to see now that the UK has actually legislated in the manner recommended, resisting the pressure of the financial lobbies, whereas the French government not only capitulated to the "invisible enemy" but now is battling against a less stringent proposal than that adopted across the Channel.

Thus the Minister of the Economy expressed his wrath (cf. *Le Monde* of 30 January 2014 and *Le Monde* of 5 February 2014) at European Commissioner Michel Barnier, whose fault was to propose a text that intends to follow the conclusions of the Liikanen report and the recommendations of a report of the European Parliament approved by a large majority last July. But there is nothing shocking about this text: it merely prohibits trading for own account (directly, or indirectly through exposure to the entities doing this) and imposes the separation of trading activities (with the specific exception of transactions in government securities) in institutions for which these activities reach a certain absolute and / or relative size (as a percentage of assets). This should affect only some thirty European banks which, it is true, include the four largest French groups. In the end, France has become one of the most determined opponents of a reform that was the subject, less than two years ago, of one of the main campaign promises of the President-elect.

Equally shocking is the incongruous intervention of the Governor of the Bank of France, Mr. Noyer, who took it upon himself to label Mr. Barnier's project as irresponsible and assert that it ran counter to the interests of the European economy. It is rather improper to label the European Commissioner as irresponsible, when he has actually demonstrated a great deal of prudence in this matter. This criticism is also indirectly targeted at the Working Group chaired by the Governor of the Bank of Finland and composed of well-known figures (including Mr. Louis Gallois) who could be said, with due respect to Mr. Noyer, to be no less competent or less familiar with the state of European interests than he is. In reality their report offers a serious analysis and thoughtful conclusions. It is an example of a well-documented work, clearly argued and non-partisan, which should be a source of inspiration for the administration, and in particular the Bank of France. Yet Mr. Barnier's recommendations largely reflect the proposals in this earlier report, while leaving even broader margins of appreciation to the supervisor about possibilities for the separation of the main trading activities, with the exception of own account trading. This should not displease Mr. Noyer.

Nor are there any grounds to claim that the Barnier proposal could undermine the financing of the European economies or otherwise damage them. Nobody can seriously believe that this financing can be performed efficiently only by universal banks – particularly since we took so much pleasure recently in recalling the importance of bank credit for the economies of continental Europe. What actually worries Mr. Noyer (as well as Mr. Mestrallet, the head of Paris Europlace) is the future of trading, and more specifically the potential role of the French banks. But the separation principle obviously does not imply the disappearance of the finance and investment banks. What Mr. Noyer needs to explain is why he believes that, to be competitive, the finance and investment banks should not be separated from commercial banking, including through subsidiarization:

- – Is it because this allows for possible economies of scale? The existence of synergies between the different types of activities is not proven, but even if it exists, then subsidiarization should preserve them. For example, information that is useful for financing trading or for bank loans to finance a company can easily circulate between the separate entities of a banking group. More generally, to market a range of services that customers consider complementary, there is no need to produce these within the same entity.

- – Is it because the existence of cross-subsidies between activities helps to build a more profitable and more robust model? But this would mean that the strength of universal banking resides in the violation of the rules on competition. This is of course unacceptable, and it should not be forgotten that what defines efficiency is not that one or another product or service has a lower price, but that all these products and services have a "fair price". The subsidizing of trading operations by commercial banks can lead to excessive risk-taking, with the reverse true as well. In this sense, if separation leads to a differentiation in ratings between group entities, this should benefit the commercial bank and therefore the cost of credit. On the other hand, it may be that this would increase the cost of market transactions and thus reduce the volume of transactions. But is it reasonable to manipulate the relative prices of financial services in order to stimulate activity on Europe's financial markets?

- – Is it because the possibility of transferring cash or equity between activities also helps to make the bank more stable and reduce its operating costs? But in part this would be covered by what has just been raised about competition and efficiency, since this assumes that transfer prices would differ from market prices. Above all, it is likely to endanger the commercial bank when losses or liquidity problems occur on the markets. It would no longer be possible to guarantee the protection of lending or the management of payments. The decrease in the commercial banks' equity could constrain the flow of credit, and the investment of deposits in market transactions could subject them to excessive risk.

- – Or finally is it because the constitution of banks that are “too big to fail” and / or “too interconnected to be subject to an orderly resolution” would protect the national champions? But this would end up perpetuating the implicit subsidy that benefits these institutions – which once again poses the problem of distorting competition and encouraging the growth of these institutions, and hence the concentration of the industry, thus continuing to endanger the public finances. As for the entanglement of activities, this would prohibit the establishment of a credible resolution mechanism. In this sense the separation of activities is an essential complement to the provisions envisaged under the European Banking Union.

It is really important that this type of question be answered precisely and consistently, otherwise the French protests will remain ineffective because they will appear to be based solely on defence of the interests of the national financial lobbies, as if this would be worth the sacrifice of the efficiency and stability of the financial systems; this is not in the interests of Europe’s economies.

In fact, the many arguments from a variety of backgrounds (including the OECD Secretariat in 2009) in favour of separation have never been convincingly refuted. Without going into detail (*cf*. *OFCE Note* no. 36/November 2013), it seems that separation is the best if not the only solution to the problems to be solved: to protect commercial banking activities, which have the character of a public service; to avoid distortions of competition; to control systemic risk; to ensure the efficient governance and management of the large banking groups in a transparent manner; and to provide for a possible orderly “resolution” –all of which generally corresponds to the explicit list of the Barnier proposal’s objectives.

While awaiting these explanations, the remarks by the Minister of the Economy and the Governor of the Bank of France only reinforce suspicions of the possible complicity in our country between the banking sector and part of the high public financial administration. It also demonstrates how the argument often heard in France that what is needed is to focus on supervision rather than regulation is full of ulterior motives and devoid of all credibility. Even if the supervision of the large banks must now be entrusted to the European Central Bank, it is evident that some work will still be carried out at the national level. And following the declarations by the Governor of the Bank of France, who is also President of the ACPR, France's Prudential Control and Resolution Authority, who can seriously believe that the supervision of our institutions will be carried out with the rigor and independence needed?

Is it pointless to separate banking activities?

Jean-Luc Gaffard and Jean-Paul Pollin

It is at the European level that the last chance for a structural reform of the banking system can be found, that is to say, a separation between investment banking and retail banking. If we are to believe the banking industry and certain academic circles, such a separation is at best useless and at worst harmful. Separating risky activities from non-risky activities, or non-speculative activities from speculative activities, would, it is held, prove illusory. All banking activity is risky, if not speculative. After all, the subprime crisis in the United States, the crisis of the savings banks in Spain, and the crisis of Northern Rock in the United Kingdom were all the result of reckless risk-taking in the granting of property loans to households. Furthermore, universal banks have to some extent helped to save overly specialized institutions. In these conditions, a minimalist law on separation such as the French law or a more binding law such as proposed in the Vickers report in the UK or like the one envisaged by the Liikanen Group would be of little use in terms of achieving stability. It would be better, then, to trust to prudential regulation, which should indeed be strengthened. This is particularly true since commercial banks should be able to develop market activities to meet the needs of their customers.

First of all, the existence of economies of scope that would justify bringing together commercial banking and investment banking have never been proven. Moreover, the “business models” of the two are very different, to the point that joining them may involve a risk of weakening the commercial bank’s capacity to do its job. Furthermore, the argument set out above ignores in particular the systemic dimension of the financial and banking crisis. When the savings banks went bankrupt in the United States in the early 1990s, the consequences were circumscribed because the financial system was relatively closed. With the subprime crisis, the real problem came from contagion that was directly related to the close connectivity that had arisen within the financial system.

This is not a matter of simply recognizing that any banking activity entails risk, but rather of taking into account the impact of the contagion that market activity is primarily responsible for. It is especially transactions in derivatives that give rise to the interconnections between financial intermediaries. These are multiple, poorly identified connections created by market activities, which have had devastating consequences on the traditional lending activity of banks because of reckless risk-taking and losses in market transactions (and not just in “proprietary trading” operations).

Naturally, in the face of systemic risk, prudential regulation does need to be strengthened. But however important it may be to regulate functions, this is undoubtedly less important than regulating the financial institutions themselves. Revenues from commercial banking are de facto relatively regular, apart from periods of severe crises, while those from an investment bank are much more volatile. An investment bank needs a commercial bank to withstand market fluctuations (and enjoy any available government guarantee), but the reverse is not true. The problem comes down to whether it is appropriate to take the risk of destabilizing the heart of the banking system in order to strengthen the pursuit of activities whose social utility is not always clear, and which should find their own means of survival.

Wisdom would thus have it that the financial system should be compartmentalized so as to limit any contagion. Regulations should specify the types of assets in which each category of institutions could invest as well as the type of commitments that they can make. This is what stands out from the legislative and regulatory arsenal developed in the United States and Europe following the Great Depression, an arsenal that was largely dismantled in France in 1984 and the United States in 1999 when the Glass-Steagall Act was terminated. This is what should be put on the agenda again by returning to an effective separation between commercial banks and investment banks. Not only would this separation create a certain seal between the various compartments of the financial system, but it would also help to avoid the dilemma associated with institutions that are “too big to fail”. The aim is to protect the commercial bank from market risk. It is also to put an end to the implicit subsidies that universal banks have from the State, which are no longer really justified by separation and which can endanger the public purse. All these measures should be conducive to growth.

For more on this subject, please read *OFCE Note* no. 39 of 19 November 2013 [in French] by Jean-Paul Pollin and Jean-Luc Gaffard, “Pourquoi faut-il séparer les activités bancaires?” [Why banking activities need to be separated].