

*Questions of methodology in regulatory  
conceptions when the banking world and  
the world are becoming digital*

***Competition and Regulation in  
the Financial Sector***

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- I. What **style of regulatory method** for this new financial world ?
  
- II. Do the **rules** need to be **common** between the old-world banking players and the digital players ?
  
- III. What to adopt as principles for the new immaterial gold: **data** ?

# I. What **style of regulatory method** for this new world ?

- **Institutions-based v/activities based**

New world = not only new business, such as in payment services, but continuum between sectors through data (health/insurance/credit by one player)

- Digital is a world without Institutions....., but has so many new and cross-organized activities
- Activities-based regulatory system seems more adequate

# I. What **style of regulatory method** for this new world ?

- **Principles based v/rules-based**
- Rules-based method suppose we know the problems (it's a sort of Ex Post in advance)
- We don't know this wonderful inventive digital world
- Rules-based method is only technical texts running after technologies
- Principles-based is the sole Ex Ante method
- It is also a more political method : the pillars of a « new policy conduct » must be made by Legislators

II. Do the **rules** need to be **common** between the old-world banking players and the digital players ?

- **Two sorts of digital players**
  1. New little players offering new services (aggregation) around classical banks : lighter supervision (new European rules about them) and regulation in favor of competition
  2. Very powerful digital players that decide for example to create, as Facebook does, cryptomoney (for its marketplace)

## II. Do the **rules** need to be **common** between the old-world banking players and the digital players ?

- The role of the banking regulatory mechanism is not to protect the old-world players, even less to promote « European banking champions » but as the president of ESMA said about cryptomoney, it is difficult to let financial instruments invented by digital players which only know freedom, competition and ethics as rules
- Need to impose same systemic obligations to all players

### III. What to adopt as principles for the new eldorado: **data** ?

- Data is the new immaterial gold, transformation of information in private goods and creation of new private goods (big data) by technology
- Data could be the best and the worse
- First of all, competition perspective considers the best:
- We speak such as the principal question of « regulation » is how to « regulate access to property of data », in the goal of innovation

### III. What to adopt as principles for the new eldorado: **data** ?

- But this conception of data as an object of property is more an American conception
- In Europe, maybe because of the World War II, we try to never forget the link between data and the humans concerned by the data
- This is why the famous GDPR of 2016 was adopted with a regulatory Ex Ante principle : never use an information about a person without his or her real consent



### III. What to adopt as principles for the new eldorado: **data** ?

- Maybe it is not good for innovation, maybe neither for competition, but it is very important for people
- For example, in January 2019 the French Regulatory Authority about Data (*Commission Informatique et Libertés – CNIL*) adopted a sanction of 50 million euros against *Google*, for lack of transparency in information and lack of real consent of users.

Principles of *Google* case are not a simple question of *privacy*:

transparency, information, consent = same principles in the banking and financial regulatory system, with a same purpose:

**Trust**

## Conclusion of the three questions

The protection of humans in the digitalisation of the world could be a core Ex Ante principle in a « new public policy » in the financial sector