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Merger Control as Barrier to EU Banking Market Integration

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Centre for European
Economic Research

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First Version: June 2007
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Non-Technical Summary

In 2005, the President of the Bank of Italy blocked the acquisition of *Banca Antonveneta* and *Banca Nazionale de Lavoro* by the Dutch bank *ABN Amro* and the Spanish bank *Banco Bilbao Vizcaya Argentaria*, respectively, for '*prudential reasons and formal errors*'. Because it became later public that both deals were not blocked for prudential reasons, but to protect domestic banks from foreign investors, the EU Commission brought actions against Italy for infringement of the principle of the free movement of capital and the freedom of establishment. The Commission complained that the prudential assessment of potential investors lacks procedural transparency and creates legal uncertainty. This, as was argued, could lead to a situation in which the supervisory authority can refuse authorization based on opaque concerns. A survey of the EU Commission (2005b) indicates that interference by supervisors and politicians is not only a problem in Italy. The survey identifies the supervisory approval process, the 'misuse' of supervisory powers and political interference as important barrier to cross-border consolidation in the EU financial sector (European Commission, 2005b).

However, although there is anecdotal evidence that merger control might constitute a barrier to cross-border consolidation in the EU banking sector, empirical evidence is missing. The main problem is the lack of data on the scope for politicians and supervisors to block M&A during merger control. The main contribution of this paper is to collect this data and to construct indices on the political independence of the supervisory authorities and the transparency of merger control. The main source of information is a questionnaire that was sent to the supervisors in the 25 EU member countries between October 2006 and March 2007.

The descriptive analysis of the indices shows that the degree of political independence of the supervisory authority and the transparency of merger control varies across EU countries. Owing to less independent supervisory authorities and a less transparent merger control the scope for politicians and supervisors to block M&A for protectionism is particularly high in Western Europe. Central and Eastern European countries usually have more independent supervisory authorities and a more transparent supervisory approval process. Descriptive statistics suggest that this might have facilitated cross-border consolidation in Central and Eastern Europe and lowered the probability of cross-border M&As in Western Europe. The results, furthermore, indicate that the proposal of the EU Commission to increase the legal certainty and transparency of merger control should promote cross-border consolidation in the EU financial sector.

Merger Control as Barrier to EU Banking Market Integration

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Centre for European Economic Research (ZEW)

First Version: June 2007
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Abstract

In 2005, the President of the Bank of Italy blocked the cross-border acquisition of two Italian banks for prudential reasons and formal errors. Because it became later public that both deals were not blocked for prudential reasons, but to protect domestic banks from foreign investors. A survey of the EU Commission indicates that the misuse of supervisory powers and political interference is not only a barrier to cross-border consolidation in Italy, but in other EU countries as well. Systematic empirical evidence on the role of merger control as barrier to M&A is, however, still missing. The main problem is the lack of data on the scope for politicians and supervisors to block M&A during merger control. The main contribution of this paper is to collect this data and to construct indices on the political independence of the supervisory authorities and the transparency of merger control. The main source of information is a questionnaire that was sent to the supervisors in the 25 EU member countries between October 2006 and March 2007.

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1 Introduction

In 2005, the President of the *Bank of Italy* blocked the acquisition of *Banca Antonveneta* (BA) and *Banca Nazionale de Lavoro* (BNL) by the Dutch bank *ABN Amro* and the Spanish bank *Banco Bilbao Vizcaya Argentaria* (BBVA), respectively, for prudential reasons and formal errors. Because it became later public that both deals were not blocked for prudential reasons, but to protect domestic banks from foreign investors, the EU Commission brought actions against Italy for infringement of the principle of the free movement of capital and the freedom of establishment. The Commission complained that the supervisory approval process lacks procedural transparency and creates legal uncertainty. This, as was argued, could lead to a situation in which the supervisor can refuse authorization based on opaque concerns, e.g. regarding the '*stability of governance*' (European Commission, 2005a). A survey of the EU Commission on the barriers to cross-border consolidation in the EU financial sector indicates that protectionism is not only a problem in Italy. According to banks with previous experience in M&A, the misuse of supervisory powers and political interference are one of the main barriers to cross-border consolidation in the EU financial sector (European Commission, 2005b).

However, although there is anecdotal evidence that the supervisory approval process might constitute a barrier to cross-border consolidation in the EU financial sector, systematic empirical evidence is missing. The main problem is the lack of data on the scope for politicians and supervisors to block M&A during merger control. The main contribution of this paper is to collect this data and to construct indices on the independence of the supervisory authorities and the scope for supervisors and politicians to block M&A during the merger review process. The main source of information is a questionnaire that was sent to the supervisors in the 25 EU member countries between October 2006 and March 2007. The survey indicates that the degree of transparency of merger control still differs across countries despite the legal and regulatory harmonization in the EU in the past. While merger control is usually more transparent in Central and Eastern Europe, it is less transparent and gives politicians and supervisors more scope to block M&A in Western Europe. This may might have facilitated cross-border consolidation in Central and Eastern Europe and lowered the probability of cross-border M&A in the banking sectors of Western Europe.

The paper is organized as follows. Section 2 presents different indicators for the degree of banking market integration and shows that EU banking markets are still far from being integrated. Section 3 identifies potential barriers to cross-border consolidation in the EU banking sector, while Section 4 concentrates on the role of merger control as potential barrier to M&A in EU banking markets. In Section 5, we construct indices based on a survey among the supervisory authorities in the EU banking sector to measure the scope for politicians and supervisors to block M&A during merger control. To find out whether the supervisory approval process constitutes a systematic barrier to cross-border consolidation, we present descriptive statistics on the link between EU banking sector integration and merger control in Section 6. Section 7 concludes.

2 Banking Sector Integration in Europe

Financial markets are integrated if domestic and foreign financial institutions face the same set of rules that regulate the financial sector and are treated in a non-discriminatory manner when they operate in the market (Baele et al., 2004 and Hartmann et al., 2003). The most accurate and direct way to measure the degree of banking market integration would, hence, be to list all frictions and regulations in the banking sector and to check if they apply differently to domestic and foreign banks. This is, however, impossible (Baele et al., 2004). The degree of financial integration can, hence, only be measured indirectly by using price and quantity indicators.

Quantity indicators measure the degree of financial integration based on quantities like, for example, the volume of cross-border retail operations (Gual, 2004 and Perez et al., 2005). These data suggest that cross-border retail flows are generally much less important than wholesale or money market flows in the euro area. Data from the *Bank for International Settlement* suggests that while wholesale and money market flows are large across border within the euro area, retail flows are generally less than one percent. This not necessarily indicates that there is a lack of retail-banking integration if retail business is local and cross-border business limited. For this reason, the number of cross-border M&A is often used as an additional indicator for integration in the retail field and the absence of such deals is often taken as evidence for the fragmentation of retail-banking markets (Cabral et al., 2002). Problematic is that a large number of cross-border acquisition need not necessarily indicate a higher degree of banking market integration if the acquired bank continues to operate as before in the local market so that the pricing conditions does not converge across local markets (Cabral et al., 2002). For this reason, quantity indicators are often supplemented by price indicators of integration. Such indicators are based upon the law of one price and measure the degree of financial market integration based on the degree of convergence of interest rates. The idea behind these indicators is that identical products should cost the same price in perfectly integrated markets. If this is not the case and some financial products have a higher interest rate in one country than in another, customers will move from the high-interest rate country to the low-interest rate country and drive down interest rate differentials in the short to medium term. Persistent price differentials for the same products across countries, hence, indicate that financial integration is still incomplete. Price indicators suggest that retail prices still differ across countries, while wholesale prices have already reached a high degree of convergence. This suggests that retail-banking markets are still fragmented along national lines, whereas wholesale markets have already reached a high degree of integration (Adam et al., 2002, Baele et al., 2004 and European Commission, 2009).

Problematic is that the prices of retail-banking products often consist of different components like the interest rate and a fixed service charge (European Commission, 2009). Moreover, some products can often only be bought as a package. Certain products may, hence, be under-priced to attract new clients, while other products are over-priced (European Commission, 2009). The bundling of services is particularly widespread in EU retail-banking markets (European Commission, 2009). Because data on interest rates is often highly aggregated and not broken down into its components, products differ so that the prices of retail-banking products are not easily comparable across countries (Cabral et al., 2002). For this reason, it is difficult to establish the law of one price in retail-banking markets. Gropp and Kashyap (2009), furthermore, argue that perfect price convergence is neither necessary nor sufficient for integration, since price indicators are not based on an equilibrium concept. Hence, they propose a new test of financial integration based on the convergence in banks' profitability. Their test emphasises the role of an active market for corporate control and of competition in banking integration. Gropp and Kashyap (2009) demonstrate that European listed credit institutions' profitability appears to converge to a common level. There is also weak evidence that competition eliminates high profits for these banks, and underperforming banks tend to show improved profitability. Unlisted banks differ markedly. Their profits show no tendency to revert to a common target rate of profitability. For this reason, Gropp and Kashyap (2009) conclude that EU banking markets are still far from being integrated.

3 Barriers to Cross-Border Consolidation in the EU Banking Sector

Besides the difficulties of measuring financial integration in the retail field, the lack of integration in EU retail-banking markets might also be explained by the fact that retail markets are, in contrast, to wholesale markets still local and cross-border business limited (European Commission, 2009). This suggests that the most effective way for foreign banks to get access to local retail-banking markets is the acquisition of or the merger with a local bank (Cabral et al., 2002). This is consistent with the literature that analyzes foreign bank expansion. It usually finds that subsidiaries are the dominant entry mode for banks that operate with local clients, while branches are more often chosen to provide financial services to local clients when they operate abroad (Foccarelli and Pozzolo, 2005 and Cerutti et al., 2007).

Subsidiaries are usually established via the acquisition of local banks. However, M&A in the non-financial sector still by far outnumber cross-border M&A in the banking sector (European Commission, 2009). This suggests that there is a link between the fragmentation of retail-banking markets and the low level of cross-border consolidation in the EU banking sector. Furthermore, the small number of cross-border M&A indicates that there are still barriers to cross-border consolidation. These barriers are differentiated into market entry and efficiency barriers.

Efficiency barriers refer to factors that make it difficult to own and operate a bank in a foreign country (Berger et al., 2000). Cultural diversity, different languages and corporate cultures as well as a great physical distance between the subsidiary and the parent bank are examples for efficiency barriers. They make the post-merger integration process more difficult because different cultures and languages make the communication between banks more complicated and delay or even prevent an efficient restructuring and reorganisation of the target. This leads to organizational diseconomies and reduces the potential of banks to reap benefits from economies of scale and scope and increased X-efficiency from cross-border M&A (Berger et al., 2000). Efficiency barriers also arise from differences in the regulation and supervision of banks. Different regulations limit cross-border consolidation because multinational banks have to comply with regulations at home and abroad, while domestic banks only have to comply with regulations in their home country. This gives domestic banks cost advantages because complying with two different sets of regulations imposes additional costs on foreign banks. Efficiency barriers, hence, lead to considerably lower efficiency gains and might offset most of any potential efficiency gains from cross-border M&As (Berger et al., 2000). Consolidation across borders is, hence, likely to be limited as long as barriers exist that prevent that foreign banks can take the full advantage of potential efficiency gains from this consolidation (Berger et al., 2001). This is consistent with a recent survey of the EU Commission on the barriers to cross-border consolidation in the EU financial sector (EU Commission, 2005b). The survey identifies multiple reporting requirements, different product mixes and non-overlapping fixed costs as important barriers to cross-border M&A in the banking sector. They prevent that mergers generate sufficient cost synergies to offset M&A costs and to create a sufficient return on investment. The potential for cost synergies is a key driver for consolidation in financial sector, since the proportion of fixed costs in total costs has increased rapidly as a result of profound changes of the business economics (EU Commission, 2005b).

Cross-border consolidation in the EU financial sector is also limited by market entry barriers. Such barriers make it harder or even impossible for banks to enter foreign banking markets and to take over or merge with foreign credit institutions. They arise from limits on foreign ownership and restrictions on international capital flows.

Since many explicit barriers have been lowered over time, implicit barriers may be more important to cross-border consolidation in the EU banking sector at present (Berger, 2007). In contrast to explicit barriers, they do not single out foreign banks in a formal way. Implicit barriers to foreign entry arise when politicians and supervisors take actions to prevent foreign entry and expansion in favour of domestic banks. These include delaying and denying foreign M&A and encouraging domestic banks to merge with each other to become larger and more difficult to acquire (Berger, 2007). This was demonstrated in Italy in 2005 in case of the acquisition of *Banca Antonveneta* (BA) and *Banca Nazionale de Lavoro* (BNL) by the Dutch *ABN Amro* and the Spanish *Banco Bilbao Vizcaya Argentaria* (BBVA). Both deals were blocked by the Bank of Italy. Although the acquisition of BA was finally approved, the merger review process considerably delayed the deal and increased uncertainty and risk for *ABN Amro*. The second deal, however, failed after BBVA withdrew its takeover bid in response to a counterbid by the Italian insurer *Unipol* for BNL. Because it became later public that both deals were not blocked for prudential reasons, but to protect local banks from foreign investors, the EU Commission brought actions against Italy for infringement of the principle of the free movement of capital and the freedom of establishment. A survey of the EU Commission on the barriers to cross-border consolidation in the EU financial sector suggests that merger control is not only a barrier to cross-border M&A in Italy, but that it constitutes a systematic barrier to cross-border consolidation in Europe. In particular, market participants with previous experience in cross-border M&A regard merger control, the misuse of supervisory powers and political interference as important barrier to cross-border M&A in the EU banking sector (EU Commission, 2005b).

Although the anecdotal evidence suggests that merger control has the potential to restrict cross-border consolidation in Europe, the number of studies that analyze the role of merger control in the banking sector is limited and systematic empirical evidence missing. An exception is Carletti et al. (2007). They analyze whether changes in merger control legislation toward a greater focus on competition instead of financial soundness affect bank stock-prices in the EU banking sector. Their results suggest that a stronger focus on competition and efficiency in the merger review process leads to a positive reaction of bank stocks. Positive stock market reactions are particularly strong if the merger review process is more transparent and the authority in charge of merger control more independent. Both reduces the discretion of the regulatory process and enhances the efficiency of envisioned M&A in the banking sector (Carletti et al., 2007). This paper focuses on merger control in the EU banking sector as well. However, in contrast to Carletti et al. (2007), we do not concentrate on the efficiency effects of merger control, but on the effect of a greater degree of transparency of merger control on domestic and cross-border consolidation in the EU banking sector. Since politicians and supervisors have greater scope to block cross-border M&A if merger control lacks transparency, we expect that cross-border consolidation should be less advanced in countries where merger control is intransparent. Domestic M&A may, in turn, be more likely if supervisors and politicians promote mergers among domestic banks to make them larger and more difficult to acquire. Since such interventions are usually not driven by efficiency considerations, a greater degree of transparency of merger control and less scope for political interference should not only make cross-border M&A more likely, but should also improve efficiency and boost bank valuation. This is what Carletti et al. (2007) find. Together with the anecdotal evidence this suggests that merger control may constitute a systematic barrier to cross-border consolidation in the EU banking sector.

4 Merger Control in the EU Banking Sector

The main objective of merger control is to maintain competition in the market. Merger control is, hence, part of competition control. In the EU, merger control is regulated in decree No. 4064/1989. The decree determines that the EU Commission is responsible for the control of cross-border M&A if the transaction reaches certain turnover thresholds (also called '*Community dimension*'). Furthermore, it requires that all M&A that create or strengthen a dominant position which impedes effective competition shall be declared incompatible with the common market (Art. 2, p. 2). M&A between foreign and domestic firms whose turnover exceeds the predetermined thresholds and which do not restrict competition in the single market should, hence, be approved by the EU Commission. This is, however, not the case for M&A that involve banks, because Article 21 of decree No. 4064/1989 grants member states the right '*to take appropriate measures to protect legitimate interests*' (Article 21, p. 3). Legitimate interests are defined as public security, plurality of the media and prudential rules (Article 21, p. 3, s. 3). Since prudential rules relate, in particular, to financial services (European Commission, 1998), Article 21 grants member states the right to block cross-border bank takeovers on prudential grounds if supervisors are not satisfied with the soundness and prudence of the potential investor. Dewatripont and Tirole (1994), Goodhart et al. (1998) and Herring and Litan (1995) list the potential instability and the key role the financial sector plays in the economy as reasons for the special regulatory treatment of banks. For this reason, merger control in the banking sector is usually focused on the soundness and prudence of the new entity and takeovers are approved based on a prudential assessment.

4.1 Prudential Assessment of Bank Mergers

Because takeovers in the banking sector are subject to a prudential assessment, mergers can be blocked by national regulators if they deem the potential investor as not suitable to ensure the sound and prudent management of the target. This allows EU member states to block M&A even if they reach '*Community Dimension*'. This is also regulated by the existing EU legal framework. It grants supervisors the right to veto ownership transfers in the banking sector, if they are '*in view of the need to ensure sound and prudent management of the credit institution, […] not satisfied as to the suitability [of the potential investor]*' (Article 19, p. 1, s. 2 of Directive 2006/48/EC).

Problematic is that the current regulatory framework does not provide specific criteria that supervisors have to use for assessing the suitability of potential investors. Regulators, hence, have considerable latitude in accepting, discouraging or rejecting a proposed acquisition. This could lead to undue interference by the member states that frustrates investors and makes cross-border M&A impractical. This has recently been confirmed by a survey of the EU Commission on the obstacles to cross-border consolidation in the EU financial sector (EU Commission, 2005b). According to market participants with previous experience in M&A, the supervisory approval process, the misuse of supervisory powers and political interference as barrier to cross-border consolidation are an important barrier to cross-border consolidation in the EU financial sector (European Commission, 2005b).

Besides this survey evidence, there were also cases in the past in which regulators tried to block cross-border M&A for other than prudential reasons. The first case that became public was the acquisition of the Portuguese financial group *Champlinaud* by the Spanish bank *Banco Santander Central Hispanio* in 1999. The acquisition was vetoed by the Portuguese government. The grounds for opposing the deal included not only '*late and incomplete notification*' and the '*absence of a transparent structure*' in the new group, but also the '*necessity to protect the national interest*" (European Commission, 1999a). The veto was overruled by the EU Commission, since it was not justified on prudential grounds (European Commission, 1999b). A more recent example is the acquisition of the *Banca Antonveneta* (BA) by the Dutch bank *ABN Amro*. The deal was announced in March 2005 and came one day after the Spanish bank *Banco Bilbao Vizcaya Argentaria* (BBVA) announced to take over *Banca Nazionale de Lavoro* (BNL). Because both deals were blocked by the Bank of Italy for prudential reasons and formal errors, *Banca Popolare di Lodi* (BPL) and the insurer *Unipol* had time to take over a significant shareholding in BA and BNL, respectively. Both deals were promoted by the Bank of Italy. Although the acquisition of BA by *ABN Amro* was approved in September 2005, the supervisory approval process considerably delayed the deal and increased legal uncertainty and risk for *ABN Amro*. The acquisition by BBVA, however, failed after *Unipol* announced to take over BNL. Together with the results from the EU survey these examples demonstrate that the merger control has the potential to restrict cross-border M&A and to prevent efficiency enhancing M&A in the EU banking sector.

4.2 Directive Proposal of the EU Commission

Initiated by the events in Italy and the survey the EU Commission proposed to change Article 16 of the EU Banking Directive in September 2006 (European Commission, 2006a). Article 16 regulates the transfer of ownership in the EU banking sector. The proposal's aim is to considerably improve the legal certainty, clarity and transparency of merger control in the EU banking sector (European Commission, 2006a). The proposal modifies the existing framework with regard to the criteria and the procedure used by the supervisor to assess the suitability of the proposed investor.

The directive proposal sets a list of non-discriminatory criteria according to which supervisors have to assess the soundness and prudence of proposed investors. The criteria proposed are (1) the reputation of the investor, (2) the experience of the future management, (3) the financial soundness of the proposed acquirer, (4) the ongoing compliance with EU directives and (5) no connection to money laundering and terrorism finance (European Commission, 2006b). These criteria should allow courts to decide on the legality and correct application of the merge review process in case of the refusal of an application. To control if the supervisory authorities fulfil their obligations, they should provide the EU Commission with all relevant documents on which they have based their assessment. This should reduce the scope for supervisors to block M&A during merger control for reasons that are not justified on prudential grounds. Moreover, the EU Commission proposed that the reasons that led to the denial of a proposed acquisition should be made public (European Commission, 2006b).

To decrease legal uncertainty and risk, the directive proposal, furthermore, aims at reducing the time period supervisors have to veto an acquisition. Under the current directive, regulators have three months to veto an acquisition (Article 19, p.1, s.2). According to the proposal, the EU Commission plans to reduce the assessment period to 30 working days for intra-EU mergers (European Commission, 2006b). If the supervisor requests additional information to assess the potential investor, this period shall be extended only once and shall not exceed 10 working days. M&A involving banks from third countries shall be assessed within a period of maximum 50 working days (European Commission, 2006b). If the supervisor does not oppose the proposed acquisition within this period, the transaction shall be deemed to be approved. The reform proposal was implemented in 2007 by Directive 2007/44/EC.

5 Indices

To find out whether merger control constitutes a systematic barrier to consolidation in the EU banking sector, we made a survey among the supervisors of the 25 EU member countries between November 2006 and March 2007. The aim of the survey was to measure the scope for politicians and supervisors to block takeovers in the banking sector. The supervisory authorities were asked to provide detailed information on ownership limits, reporting and approval requirements for ownership transfers in the banking sector as well as the criteria that are used to assess the suitability of potential investors during merger control. The questionnaire is presented in Table A1 in the *Appendix*. The questionnaire was filled out by the supervisory authorities in the Czech Republic, Italy, Germany, Greece, Latvia, Lithuania, Luxembourg, Malta, Portugal, the Slovak Republic and Sweden. In case that supervisors did not fill out the questionnaire, we use other sources of information like, for example, national banking laws and various reports of the *International Monetary Fund*. We also use these sources of information to cross-check the information obtained from the questionnaire if possible. Additional information comes from the *Banking and Supervision Database* of the *World Bank* (Barth et al., 2001 and 2006). For a complete list of data sources see Table A2 in the *Appendix*. Based on information from these sources we were able to construct indices that measure the scope for politicians and supervisors to block M&A in the banking sector for the following 20 EU member countries for the period between 1997 and 2005: Austria, Finland, Germany, Greece, Portugal, Sweden, Spain, the Netherlands, Luxembourg, France, and Italy, as well as Malta, the Czech and Slovak Republic, Slovenia, Estonia, Latvia, Lithuania, Hungary and Poland. The indices constructed are:

1. *Independence of the Supervisory Authority Index*
2. *Transparency of Merger Control Index*
3. *Frequency of Merger Control Index*

Each of these indices measures different aspects of merger control in the EU banking sector. The *Independence of the Supervisory Authority Index* measures the degree of independence of the supervisory authority from banks and politicians. If supervisors are more independent, politicians and banks are less able to put pressure on the supervisory authority to block or promote M&A during the merger review process for opaque concerns. The *Transparency of Merger Control Index* measures the degree of transparency of merger control. Regulators are assumed to have more scope to protect domestic banks from foreign investors and to block cross-border M&A if merger control lacks transparency. Finally, the *Frequency of Merger Control Index* focuses on how often ownership transfers require approval by the supervisor. This index, hence, measures how often regulators have the opportunity to block ownership transfers for reasons that are not related to the prudence of the proposed investor.

5.1 Independence of the Supervisory Authority

The *Independence of the Supervisory Authority Index* measures the degree of independence of the supervisory authority. The index is constructed based on data from the *Banking and Supervision Database* of the *World Bank* (Barth et al., 2001 and 2006). Additional information comes from national banking laws and other sources of information. This is necessary since data from the *Banking and Supervision Database* is only available for the years 1998, 1999, 2000, 2003 and 2008. The index consists of two components. The first component measures the degree to which the supervisory authority is independent from the government.

- If the head of the supervisory authority is only accountable to the Prime Minister, the Minister of Finance or any other member of the cabinet, the index gets a value of zero.

- If the head of the supervisory authority is accountable to a legislative body, such as parliament or congress, the index gets a value of one.

This corresponds to the *Independence of the Supervisory Authority Index-Political* (Barth et al., 2006). The second component is the *Independence of the Supervisory Authority Index-Banks* (Barth et al., 2006). This index measures whether supervisors are legally liable for damages to a bank caused by its actions. It, hence, measures the degree to which the supervisory authority is independent from banks. Both indices are used by Carletti et al. (2007) to measure the degree of political independence of the supervisor as well.

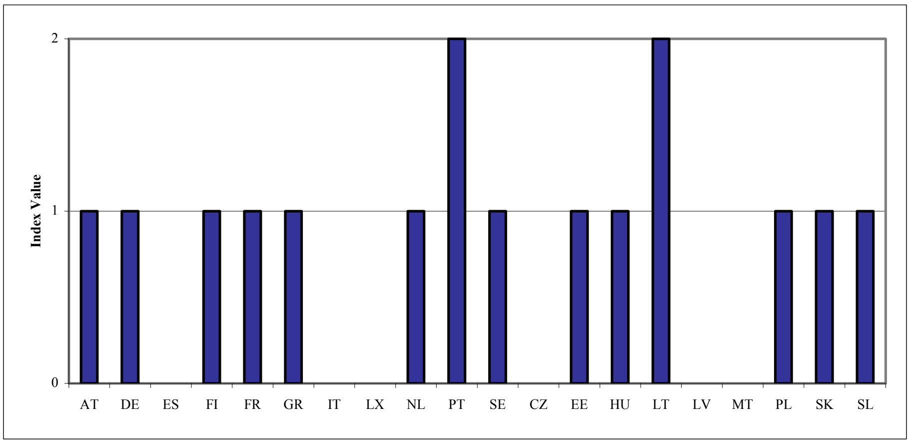
- If the supervisory agency can be held liable for damages to a bank caused by its actions, the index gets a value of zero.

- If the supervisory agency <u>cannot</u> be held liable for damages to a bank caused by its actions, the index gets a value of one.

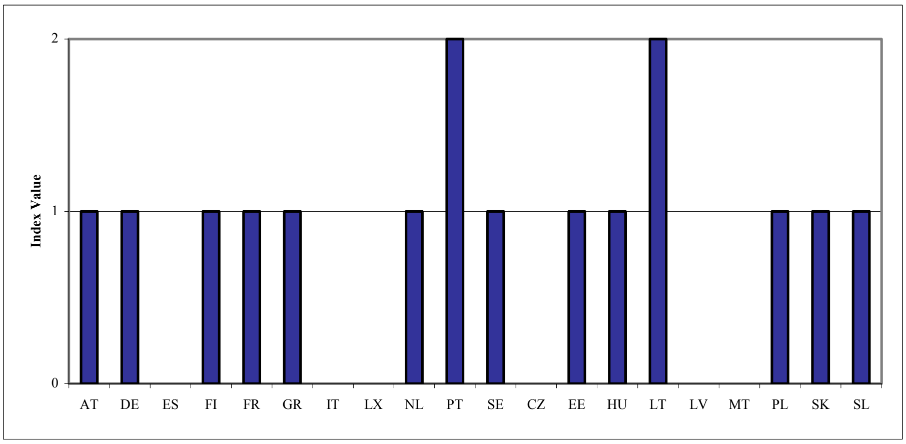
The *Independence of the Supervisory Authority Index* is calculated as the sum of the first and the second component. The index, hence, ranges from zero to two with higher values indicating greater independence of the supervisory authority. Figure 1 shows the index for the years 1997, 2001 and 2005. Descriptive statistics are presented in Table 1. The degree of independence of the supervisor varies across countries and years. In general, the supervisory authorities have become more

Figure 1: Independence of the Supervisory Authority Index

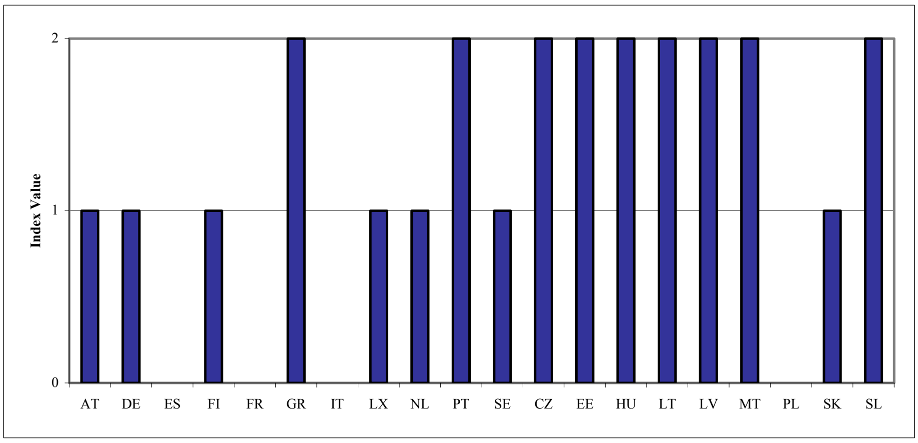
1997



2001



2005



Note: EE-Estonia, CZ-Czech Republic, HU-Hungary, LI-Lithuania, LV-Latvia, MA-Malta, PL-Poland, SK-Slovak Republic, SL-Slovenia, AT-Austria, DE-Germany, ES-Spain, FI-Finland, FR-France, GR-Greece, LU-Luxembourg, PT-Portugal and SE-Sweden. Bulgaria, Belgium, Cyprus, Denmark, Ireland, Romania and the United Kingdom are not included.

Table 1: Summary Statistics for the *Independence of the Supervisory Authority Index*

	Obs.	Mean	Median	Max	Min	Std. Dev.
All Countries	180	1.10	1.00	2.00	0.00	0.35
Western Europe	99	0.95	1.00	1.00	0.00	0.22
Central and Eastern Europe	81	1.29	1.50	2.00	0.00	0.39

T-test statistic on the sample mean: Western Europe vs. Central and Eastern Europe: -6.9417***

Note: ***/**/* indicates significance at the 1-/5-/10-percent level. Descriptive statistics are calculated for the period between 1997 and 2005. Western Europe includes Austria, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain and Sweden. Central and Eastern Europe comprises the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia. Bulgaria, Belgium, Cyprus, Denmark, Ireland, Romania and the United Kingdom are not included.

independent over time. In particular, the supervisors in Central and Eastern Europe have become more independent. The only exception is Poland where the supervisor has lost some of its independence over time. In general, however, the Central and Eastern Europe countries have significantly more independent regulators than the EU member countries located in Western Europe. The lowest degree of independence is reported in France, Italy and Spain. In these countries, the supervisory authority is both accountable to the government and the banks supervised.

5.2 Transparency of Merger Control

The *Transparency of Merger Control Index* measures the degree of transparency of merger control in the EU banking sector. The degree of transparency is measured based on the idea that the merger control is more transparent if regulators have to assess the soundness and prudence of potential investors based on public criteria like the reputation or the financial soundness of the proposed investor. This is in line with the proposal of the EU Commission (2006a). The proposal aims at increasing the transparency and legal certainty of the supervisory approval process by introducing a list of non-discriminatory criteria into national banking laws which are known in advance and according to which the regulator has to assess the soundness and prudence of a proposed investor. This should reduce the scope for supervisors to refuse authorization for reasons that are not related to the prudence of the proposed investor.

The index is constructed as follows:

- The index gets a value of zero if no specific criteria are listed in national banking laws according to which the regulator has to assess the soundness and prudence of proposed investors. In this case, the merger review process lacks procedural transparency and supervisors are able to refuse authorization based on opaque concerns.

- If the supervisor assesses the soundness and prudence of a proposed investor based on either (1) the reputation, (2) the financial soundness of the proposed investor or (3) the experience/skills of future managers and directors, the index value is 0.33. Each of these criteria has been proposed by the EU Commission (2006a) in its recent reform proposal.

- If the supervisory authority uses two of these criteria to assess the soundness and prudence of proposed investors, the index gets a value of 0.67.

- If all of these criteria are listed in banking laws, the index gets a value of one.

The index, hence, ranges from zero to one with higher values indicating that merger control is more transparent. Figure 2 shows the *Transparency of Merger Control Index* for the years 1997, 2001 and 2005. Descriptive statistics are presented in Table 2. In most countries, merger control lacks procedural transparency. This could lead to a situation in which the supervisors can refuse authorization based on opaque concerns (European Commission, 2005a). The reform proposal of the EU Commission (2006a) intends to change this. It requires the EU member countries to provide specific criteria in national banking laws according to which the regulator has to assess the soundness and prudence of the proposed investor. This should increase legal certainty and reduce the scope for supervisors to block or to push for specific M&A. If the proposal is implemented, all EU member states should have an index value of one. Some member countries already use part of the proposed criteria. These countries are mainly located in Central and Eastern Europe. The most frequently used criterion is the financial solidity of the proposed investor. The only countries from this region that do not provide any public criteria in their banking laws are the Czech Republic and Poland. In general, however, merger control is significantly more transparent according to the *Transparency of Merger Control Index* in Central and Eastern Europe than in Western Europe giving supervisors considerable more latitude in accepting, discouraging or rejecting a proposed acquisition in the latter region.

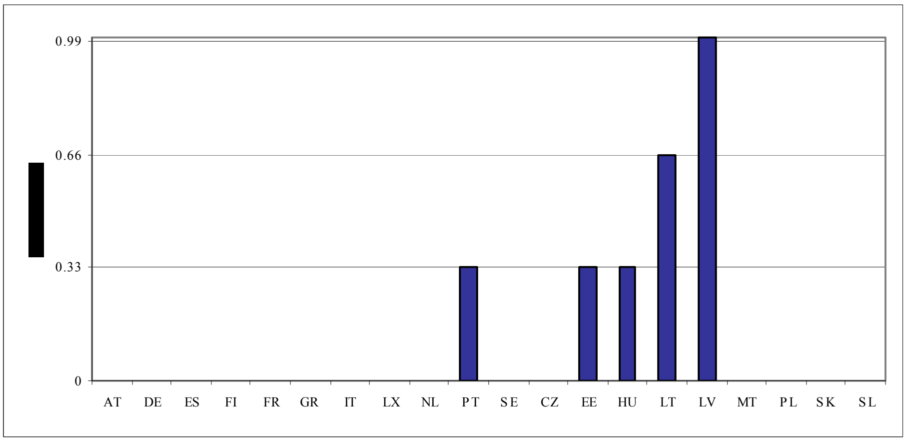
5.3 Frequency of Merger Control

The *Frequency of Merger Control Index* measures how frequently ownership transfers in the banking sector have to be approved by the supervisory authority. The first component of the index measures how large the initial shareholding (in banking laws mostly defined as '*qualified holding*') has to be to become subject to approval by the regulator.

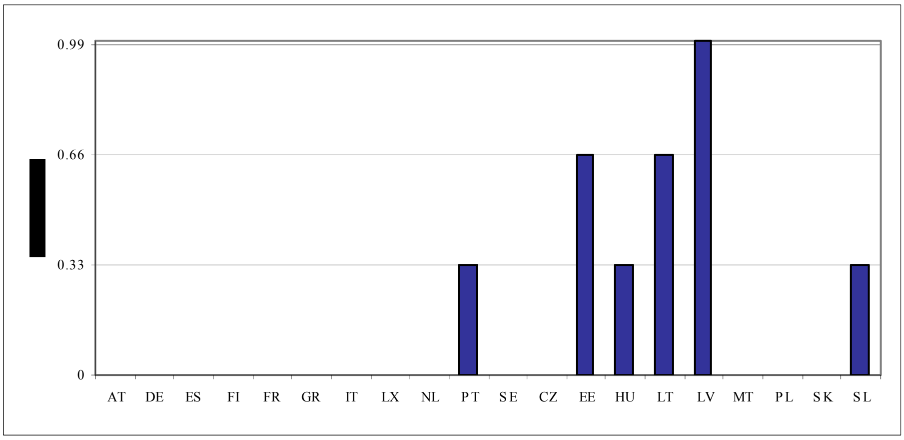
- If the initial shareholding that requires supervisory approval is less than 5 percent, the index value is zero.

Figure 2: Transparency of Merger Control Index

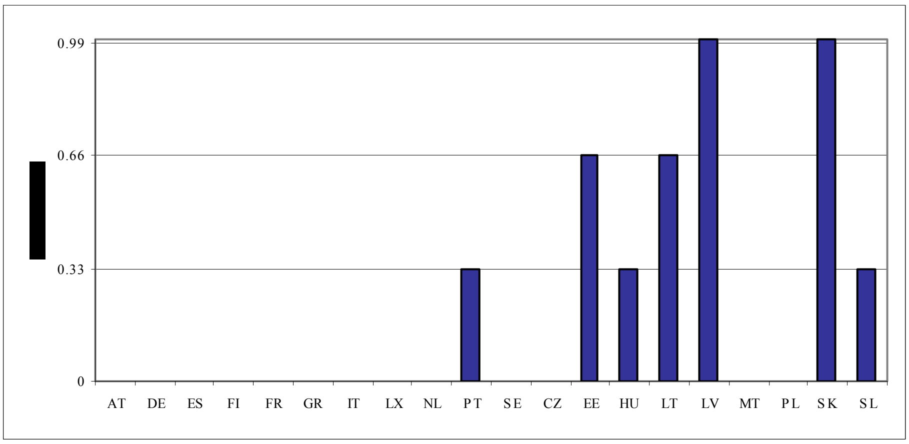
1997



2001



2005



Note: EE-Estonia, CZ-Czech Republic, HU-Hungary, LI-Lithuania, LV-Latvia, MA-Malta, PL-Poland, SK-Slovak Republic, SL-Slovenia, AT-Austria, DE-Germany, ES-Spain, FI-Finland, FR-France, GR-Greece, LU-Luxembourg, PT-Portugal and SE-Sweden. Bulgaria, Belgium, Cyprus, Denmark, Ireland, Romania and the United Kingdom are not included.

Table 2: Summary Statistics for the *Transparency of Merger Control Index*

	Obs.	Mean	Median	Max	Min	Std. Dev.
All Countries	180	0.18	0.00	1.00	0.00	0.31
Western Europe	99	0.03	0.00	0.33	0.00	0.95
Central and Eastern Europe	81	0.37	0.33	1.00	0.00	0.38

T-test statistic on the sample mean: Western Europe vs. Central and Eastern Europe: -7.8523***

Note: ***/**/* indicates significance at the 1-/5-/10-percent level. Descriptive statistics are calculated for the period between 1997 and 2005. Western Europe includes Austria, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain and Sweden. Central and Eastern Europe comprises the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia. Bulgaria, Belgium, Cyprus, Denmark, Ireland, Romania and the United Kingdom are not included.

- If the initial shareholding is equal to or larger than 5 percent, but less than ten percent, the index gets a value of 0.5.

- If the initial shareholding that requires approval is equal to or larger than ten percent, the index value is 1.

The ten percent threshold is consistent with the EU norm (Art. 4, p. 11 of Directive 2006/48/EEC). The EU member countries are, however, allowed to set lower limits, since the ten percent threshold is only a minimum requirement. Because the scope for regulators to block ownership transfers decreases as the size of the initial holding that does not require approval increases, a larger value indicates fewer opportunities for supervisor to block ownership transfers in the EU banking sector. More important than the size of the qualified holding may be how often the increase of an existing shareholding has to be approved. The EU norm is that every ownership transfer that leads to an increase of a qualified holding so that the shareholding exceeds 20, 33 and 50 percent requires additional approval (Article19, p. 1 of Directive 2006/48/EEC). The same holds if investors want to reduce their shareholding below these thresholds. The EU member states are, however, free to set more than three thresholds. The second component of the *Frequency of Merger Control Index* measures whether the EU member countries have used this option.

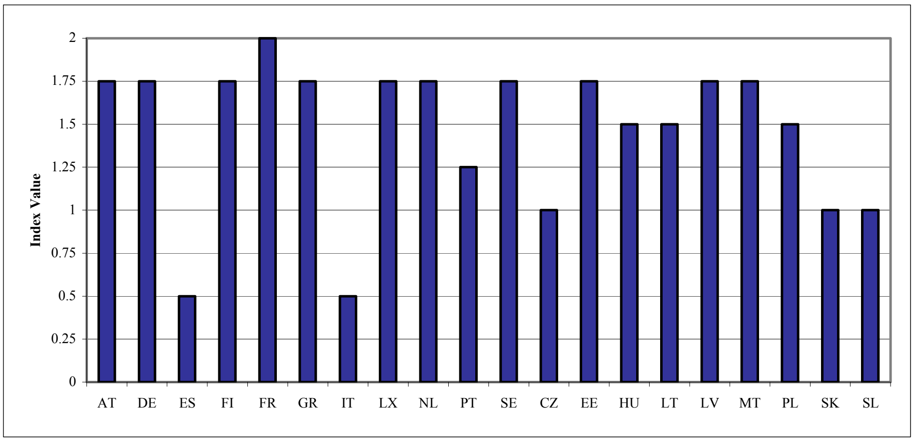
- If there are more than or equal to six thresholds that require additional approval by the regulator, the index gets a value of zero.

- If there are 5/4/3 or less than 3 thresholds, the index has a value of 0.25/0.5/0.75/1, respectively.

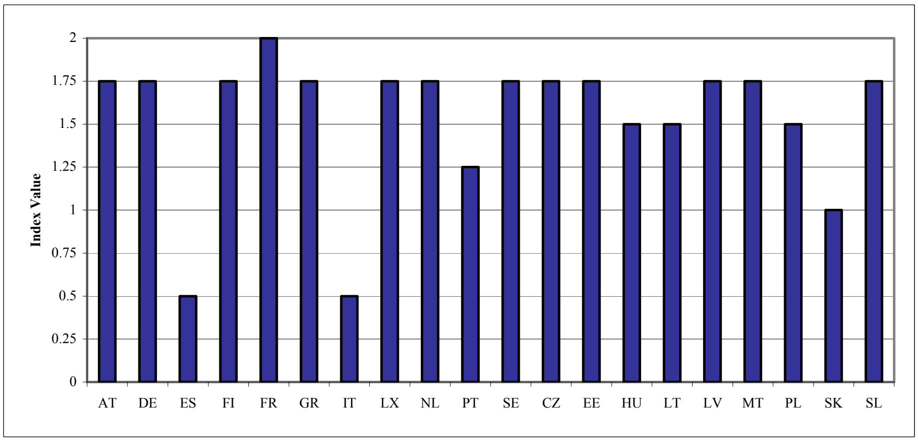
The *Frequency of Merger Control Index* is calculated as the sum of the first and the second component. The index, hence, ranges from zero to two with higher values indicating fewer thresholds and, consequently, fewer opportunities for supervisors to

Figure 3: Frequency of Merger Control Index

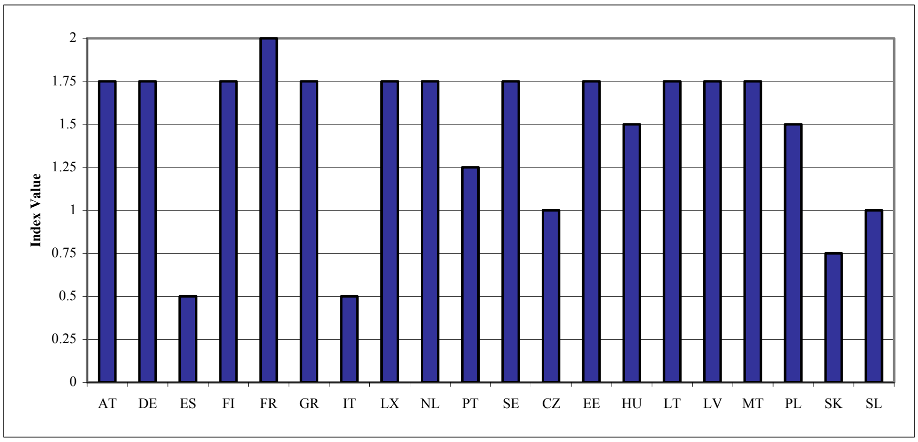
1997



2001



2005



Note: EE-Estonia, CZ-Czech Republic, HU-Hungary, LI-Lithuania, LV-Latvia, MA-Malta, PL-Poland, SK-Slovak Republic, SL-Slovenia, AT-Austria, DE-Germany, ES-Spain, FI-Finland, FR-France, GR-Greece, LU-Luxembourg, PT-Portugal and SE-Sweden. Bulgaria, Belgium, Cyprus, Denmark, Ireland, Romania and the United Kingdom are not included.

Table 3: Summary Statistics for the *Frequency of Merger Control Index*

	Obs.	Mean	Median	Max	Min	Std. Dev.
All Countries	180	1.52	1.75	2.00	0.50	0.40
Western Europe	99	1.51	1.75	2.00	0.50	0.47
Central and Eastern Europe	81	1.54	1.75	1.75	0.75	0.30

T-test statistic on the sample mean: Western Europe vs. Central and Eastern Europe: -0.4354

Note: ***/**/* indicates significance at the 1-/5-/10-percent level. Descriptive statistics are calculated for the period between 1997 and 2005. Western Europe includes Austria, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain and Sweden. Central and Eastern Europe comprises the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia. Bulgaria, Belgium, Cyprus, Denmark, Ireland, Romania and the United Kingdom are not included.

block takeovers. Figure 3 shows the index for 1997, 2001 and 2005. Descriptive statistics are presented in Table 3. The Spanish supervisor has the most opportunities to accept, discourage or reject a proposed acquisition, since it not only has to approve every ownership transfer that exceeds 5 percent, but also every ownership transfer that increases an existing shareholding above the 10, 15, 20, 25, 33, 40, 50, 66 and 75 percent threshold. Italy, Portugal, Poland, Slovenia, the Czech and the Slovak Republic also report low index values indicating greater opportunities for supervisors to block ownership transfers in the banking sector for opaque concerns. In general, the *Frequency of Merger Control Index* does not indicate significant differences in the extent of approval requirements between Central and Eastern and Western Europe.

6 Merger Control and Cross-Border Consolidation in the EU Banking Sector

To find out whether merger control constitutes a systematic barrier to cross-border consolidation in the EU banking sector, we analyze the relationship between our indices and different indicators of banking market integration. The first indicator is the total number and the total deal value of domestic and cross-border M&A in the EU banking sector. Table 4 indicates that domestic deals are more important than cross-border transactions in Western Europe. The largest number of domestic deals is reported in the United Kingdom, Italy, Germany and France. These countries also record the largest number of cross-border M&A. However, relative to domestic deals cross-border deals are less important. Cross-border consolidation is more advanced in Central and Eastern Europe indicating that these countries are more integrated in the EU banking market in terms cross-border M&A than Western Europe. Central and Eastern Europe and Western Europe not only differ in terms of the total number of deals and the total deal value, but also in terms of the average deal size. While domestic and cross-border deals are of almost equal size in Western

Table 4: Total Number of Deals and Total Deal Value of Domestic and Cross-Border M&A in the EU Banking Sector between 1997 and 2005

	Domestic M&A		Cross-Border M&A	
	Number of Deals	Deal Value (Mio. Euro)	Number of Deals	Deal Value (Mio. Euro)
Austria	23	7,826	13	9,997
Belgium	73	26,912	26	12,065
Denmark	38	9,001	20	4,890
Finland	73	3,372	11	17
France	162	76,384	67	15,801
Germany	190	42,586	52	21,864
Greece	47	2,357	4	429
Ireland	18	1,625	19	3,670
Italy	259	51,491	34	5,295
Luxembourg	19	129	31	5,405
Netherlands	43	8,054	43	4,543
Portugal	32	8,097	15	4,105
Spain	58	30,196	39	1,041
Sweden	37	1,730	17	485
United Kingdom	563	106,917	184	43,382
Western Europe	*1,635*	*376,677*	*575*	*132,989*
Cyprus	6	29	6	115
Czech Republic	17	309	34	4,946
Estonia	8	0	27	2,062
Hungary	39	106	30	602
Latvia	4	0	27	53
Lithuania	9	86	15	285
Malta	0	0	1	205
Poland	45	1,256	54	4,430
Slovak Republic	5	37	14	1,003
Slovenia	6	3	4	350
Central and Eastern Europe	*139*	*1,826*	*212*	*14,051*

Source: Zephyr (2008)

Europe, cross-border transactions are much larger than domestic M&A in Central and Eastern Europe. Table 5 indicates that there are large differences across countries. While the average cross-border deal is always larger in size in Central and Eastern Europe, cross-border M&A are larger only in half of the Western European countries. Except of Germany all of these countries belong to the group of smaller Western European countries. In contrast, domestic deals are much larger than cross-border transactions in the larger Western European. This is in line with Boot (1999). He argues that in some EU countries central banks, ministries of finance and domestic banks operate in close concert to block cross-border and to promote domestic M&A because they want the largest banks in their country to be domestically owned.

Table 5: Average Deal Si ze of Domestic a nd Cross-Border M&A in the EU Banking Secto r between 1997 and 2005

	Domestic M&A		Cross-Border M&A	
	Number of Deals	Average Deal Size (Mio. Euro)	Number of Deals	Average Deal Size (Mio. Euro)
Austria	23	340	13	769
Belgium	73	369	26	464
Denmark	38	237	20	245
Finland	73	46	11	2
France	162	472	67	236
Germany	190	224	52	420
Greece	47	50	4	107
Ireland	18	90	19	193
Italy	259	199	34	156
Luxembourg	19	7	31	174
Netherlands	43	187	43	106
Portugal	32	253	15	274
Spain	58	521	39	27
Sweden	37	47	17	29
United Kingdom	563	190	184	236
Western Europe	*1,635*	*230*	*575*	*231*
Cyprus	6	5	6	19
Czech Republic	17	18	34	145
Estonia	8	0	27	76
Hungary	39	3	30	20
Latvia	4	0	27	2
Lithuania	9	10	15	19
Malta	0	.	1	205
Poland	45	28	54	82
Slovak Republic	5	7	14	72
Slovenia	6	1	4	88
Central and Eastern Europe	*139*	13	*212*	66

Source: Zephyr (2008). The average deal size is calculated by dividing the total deal value by the total number deals.

A second indicator for the degree of banking market integration is the market share of foreign branches and subsidiaries in the EU banking sector. Subsidiaries are usually established via the acquisition of local banks and are the dominant entry mode for banks that operate with local clients (Foccarelli and Pozzolo, 2005 and Cerutti et al., 2007). This is reflected in Table 6. Table 6 indicates that foreign subsidiaries while having a large market share in Central and Eastern Europe usually only have a small market share in Western Europe. Notable exceptions are Luxembourg and Ireland reflecting their position as international financial centres. The large market share of foreign subsidiaries in Finland is the result of a consolidation process in the Nordic countries (EU Commission, 2005b). The main outcome of this regional consolidation process is the emergence of a large financial services group operating in the Nordic and Baltic Sea region. Since Sweden is the

Table 6: Market Share of Foreign Banks in the EU Banking Sector (2005)

	Total Assets of Credit Institutions (Mio. Euro)	Total Assets of Foreign Branches (Mio. Euro)	Total Assets of Foreign Subsidiaries (Mio. Euro)	Market Share of Foreign Branches	Market Share of Foreign Subsidiaries
Austria	720,534	6,427	137,729	0.01	0.19
Belgium	1,055,305	49,583	196,620	0.05	0.19
Denmark	722,096	34,932	114,310	0.05	0.16
Finland	234,520	12,781	124,175	0.05	0.53
France	5,090,058	145,951	445,360	0.03	0.09
Germany	6,826,558	103,346	623,494	0.02	0.09
Greece	281,066	28,489	49,401	0.10	0.18
Ireland	941,909	94,974	314,093	0.10	0.33
Italy	2,509,436	138,996	99,343	0.06	0.04
Luxembourg	792,418	145,477	603,701	0.18	0.76
Netherlands	1,697,708	15,827	23,345	0.01	0.01
Portugal	360,190	19,542	62,009	0.05	0.17
Spain	2,150,650	159,862	87,319	0.07	0.04
Sweden	653,178	55,034	3,677	0.08	0.01
United Kingdom	8,320,254	3,260,000	1,049,000	0.39	0.13
Western Europe	32,355,880	427,1221	3,933,576	0.13	0.12
Cyprus	60,366	4,319	12,338	0.07	0.20
Czech Republic	104,950	9,694	88,336	0.09	0.84
Estonia	11,830	1,161	10,573	0.10	0.89
Hungary	74,653	112	43,871	0.00	0.59
Latvia	15,570	0	8,276	0.00	0.53
Lithuania	13,099	0	9,797	0.00	0.75
Malta	27,195	0	8,802	0.00	0.32
Poland	152,086	1,385	100,674	0.01	0.66
Slovak Republic	36,399	8,055	27,383	0.22	0.75
Slovenia	30,049	523	6,234	0.02	0.21
Central and Eastern Europe	526,197	25,249	316,284	0.05	0.60

Source: ECB (2008)

home base of the group, the market share of foreign subsidiaries is zero in this country. This suggests that the small market share of foreign banks in some EU member states can at least partly be attributed to the fact that these countries serve as home base for large internationally active banking groups (ECB, 2006). Since branches are the main entry mode for banks that enter foreign banking markets to provide financial services to local clients when they operate abroad, they usually have a much smaller market share than foreign subsidiaries (Foccarelli and Pozzolo, 2005 and Cerutti et al., 2007). They only exceptions are Italy, Spain, Sweden and the United Kingdom. In the EU, market entry via branches is easier than via subsidiaries, since branches of banks from other EU countries do not need prior approval by the supervisor in the host country.

To find out whether merger control constitutes a systematic barrier to cross-border consolidation in the EU banking sector, we calculate piecewise correlation coefficients between different indicators of banking market integration and our indices. Since the indices are ordinal-scaled, Spearman rank correlation coefficients are used. Rank correlations require at least one ordinal-scaled variable. An additional advantage is that Spearman rank correlation coefficients do not require normally distributed variables. The results of the correlation analysis are reported in Table 7. The correlation analysis suggests that degree of political independence of the supervisory authority and the degree of transparency of merger matter for domestic and cross-border consolidation in the EU banking sector. The correlation between the proportion of domestic and cross-border M&A and the *Independence of the Supervisory Authority Index* and *Transparency of Merger Control Index* is positive and significant. Both indices are also positive and significantly correlated with the market share of foreign subsidiaries. Since subsidiaries are usually established via the acquisition of or the merger with a foreign credit institution, this is in line with our expectations. This is also reflected by the significant and positive correlation between the market share of foreign subsidiaries and the proportion of cross-border deals. Interesting is that the market share of foreign branches is negatively correlated with the *Independence of the Supervisory Authority Index* and *Transparency of Merger Control Index*. Although the correlations are not statistically significant, this may indicate that credit institutions choose branches as entry mode in countries where the supervisor is less independent and merger control less transparent. This makes sense, since branches of banks from other EU member countries have the '*Single Passport*' and do not need prior approval by the supervisor in the host country and, hence, are less likely to be blocked for opaque concerns. The frequency of approval requirements, in contrast, does not seem to matter for the cross-border consolidation in the EU banking sector. The correlation coefficient between the *Frequency of Merger Control Index* and the proportion of domestic and cross-border M&A is almost zero. The correlation between the *Frequency of Merger Control Index* and the market share of foreign subsidiaries is not significant as well.

To summarize, the correlation analysis confirms the picture that greater independence of the supervisory authority and a larger degree of transparency of merger control promotes cross-border consolidation in EU banking markets. This suggests that the proposal of the EU Commission to increase the legal certainty and transparency of the merger control should facilitate cross-border M&A in the EU financial sector. Since foreign subsidiaries are used to penetrate the local banking market and to provide services to local retail customers, this should given that the pricing behaviour of the acquired institution changes in response to a change in the ownership structure ultimately lead to a higher degree of retail-banking integration in Europe.

Table 7: Correlation Analysis

	Independence of the Supervisory Authority Index	Transparency of Merger Control Index	Frequency of Merger Control Index	Proportion of Domestic Deals (Number)	Proportion of Cross-Border Deals (Number)	Proportion of Domestic Deals (Deal Value)	Proportion of Cross-Border Deals (Deal Value)	Market Share of Foreign Branches (Assets)	Market Share of Foreign Subsidiaries (Assets)
Independence of the Supervisory Authority Index	1.00								
Transparency of Merger Control Index	0.7917*	1.00							
Frequency of Merger Control Index	-0.0419	-0.1852	1.00						
Proportion of Domestic Deals (Number)	-0.4651*	-0.6522*	0.1628	1.00					
Proportion of Cross-Border Deals (Number)	0.4651*	0.6522*	-0.1628	-1.0000*	1.00				
Proportion of Domestic Deals (Deal Value)	-0.4960*	-0.6873*	0.007	0.8403*	-0.8403*	1.00			
Proportion of Cross-Border Deals (Deal Value)	0.4960*	0.6873*	-0.007	-0.8403*	0.8403*	-1.0000*	1.00		
Market Share of Foreign Branches (Assets)	-0.1077	-0.205	-0.1006	0.1677	-0.1677	0.1979	-0.1979	1.00	
Market Share of Foreign Subsidiaries (Assets)	0.3174	0.5641*	-0.1219	-0.6392*	0.6392*	-0.6722*	0.6722*	0.0198	1.00

Note: Table 6 reports Spearman rank correlation coefficients between the merger control indices and different indicators for banking sector integration in Europe.* indicates significance at the 10-percent level. The merger control indices are average values for the period between 1997 and 2005. Statistics on domestic and cross-border deals are based on data on takeover activity in the EU banking sector between 1997 and 2005. The market share of foreign branches and subsidiaries in the EU banking sector is calculated based on data for the year 2005.

7 Conclusions

In 2005, the President of the *Bank of Italy* blocked the acquisition of *Banca Antonveneta* and *Banca Nazionale de Lavoro* by the Dutch bank *ABN Amro* and the Spanish bank *Banco Bilbao Vizcaya Argentaria* to protect them from foreign investors. A survey of the EU Commission indicates that political interference is not only an Italian problem. According to the survey, one of the main barriers to cross-border consolidation in the EU financial sector is the supervisory approval process of M&A, the misuse of supervisory powers and political interference (European Commission, 2005b).

However, although there is anecdotal evidence that merger control constitutes a barrier to cross-border consolidation in the EU banking sector, systematic empirical evidence is missing. The main problem is the lack of data on the scope for politicians and supervisors to block M&A for protectionism during merger control. The main contribution of this paper was to collect this data and to construct indices on the political independence of the supervisory authorities and the scope for supervisors and politicians to block M&A during merger control for opaque concerns. The main source of information is a questionnaire that was sent to the supervisory authorities in the 25 EU member countries between October 2006 and March 2007.

The survey shows that the degree of political independence of the supervisory authority and the transparency of merger control still varies across the EU despite the legal and regulatory harmonization in the EU in the past. Owing to a lower degree of political independence and a lower degree of transparency of merger control the scope for political interference and the misuse of supervisory powers is particularly high in Western Europe. Central and Eastern European countries, in contrast, usually have a more independent supervisor and a more transparent merger review process. Spearman correlation coefficients indicate that this might have facilitated cross-border consolidation in Central and Eastern Europe and lowered the probability of cross-border M&A in the banking sector of Western European countries. This suggests that the proposal of the EU Commission to increase the legal certainty and transparency of merger control has the potential to promote cross-border consolidation. This may ultimately lead also to a higher degree of retail-banking integration in Europe and improve the efficiency of the EU banking sector.

However, the low importance of the cross-border dimension in some EU member states may also be the result of comparatively higher efficiency barriers in Western Europe than in Central and Eastern Europe. This suggests that cross-border consolidation will likely to be limited in Western Europe as long as efficiency barriers exist that offset most of the potential efficiency gains from takeovers. Furthermore, the survey of the EU Commission suggests that cross-border M&A in the EU banking sector are limited by employees' reluctance and consumer mistrust in foreign entities (European Commission, 2005b). Furthermore, a large number of domestic deals not necessarily indicate a lack of integration if domestic M&A are motivated by the desire to strengthen the market position of banks with view to competing effectively in an integrated market (Padoa-Schioppa, 2000). This suggests that a more thorough empirical analysis of the determinants that affect the decision to take over or merge with a foreign bank is necessary to find out which barriers hinder cross-border consolidation and to come to final policy conclusions which barriers have to be removed to increase the degree of EU banking market integration.

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Appendix

Table A1: The Questionnaire

1. Restrictions on Ownership

a) Was there a **maximum** percentage of bank capital that could be owned by a **single domestic** investor (legal entity or natural person) between 1990 and 2005?

Yes □ No □

If **yes**, please fill out:

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Ownership limit (in % of total capital)																

b) Was there a **maximum** percentage of bank capital that could be owned by a **single foreign** investor (legal entity or natural person) between 1990 and 2005?

Yes □ No □

If **yes**, please fill out:

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Ownership limit (in % of total capital)																

c) Was there a maximum percentage of bank capital that could **collectively** be owned by **foreign** investors (legal entities or natural persons) between 1990 and 2005?

Yes □ No □

If **yes**, please fill out:

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Ownership limit (in % of total capital)																

2. Approval and Reporting Requirements

a) Did the transfer of bank ownership between **domestic** investors have to be reported to the supervisory authority and/or any other institution (e.g. government, competition authority, central bank) in your country between 1990 and 2005?

Yes □ No □

If **yes**, please explain what percent of bank capital had to be transferred between domestic investors to be subject to **reporting** to an institution in your country between 1990 and 2005:

Percent of Bank Capital:	**Name of the Institution to be informed:**	**Time Period:**

b) Did the transfer of bank ownership between **domestic and foreign** investors have to be reported to the supervisory authority and/or any other institution (e.g. government, competition authority, central bank) in your country between 1990 and 2005?

Yes ☐ No ☐

If **yes**, please explain what percent of bank capital had to be transferred between domestic and foreign investors to be subject to **reporting** to an institution in your country:

Percent of Bank Capital:	Name of the Institution to be informed:	Time Period:

c) Did the transfer of bank ownership between **domestic** investors require **approval** by the supervisory authority and/or any other institution (e.g. government, competition authority, central bank) in your country between 1990 and 2005?

Yes ☐ No ☐

If **yes**, please explain what percent of bank capital had to be transferred between domestic investors to be subject to **approval** by any institution in your country:

Percent of Bank Capital:	Name of the Institution that gives Approval:	Time Period:

d) Did the transfer of bank ownership between **domestic and foreign** investors require **approval** by the supervisory authority and/or any other institution (e.g. government, competition authority, central bank) in your country between 1990 and 2005?

Yes ☐ No ☐

If **yes**, please explain what percent of bank capital had to be transferred between domestic and foreign investors to be subject to **approval** by any institution in your country:

Percent of Bank Capital:	Name of the Institution that gives Approval:	Time Period:

3. Transparency of the Supervisory Review Process

a) Bank supervisory authorities in the EU are allowed to block mergers in the banking sector to ensure sound and prudent management of credit institutions, if they are not satisfied with the "suitability and qualifications of the proposed investor" (Article 19 of the EU Banking Directive). Please note what **criteria** (e.g. financial solidity, reputation of the investor, potential benefits of a merger for customers in your country) your institution used between 1990 and 2005 to assess the suitability and the qualifications of the proposed investor:

Criteria to assess the suitability of the proposed investor:	Time Period:

b) Was the institution in your country legally required **to publish the decision and the reasons**, if it is **not** satisfied with the suitability and the qualifications of the proposed investor?

Yes □ No □

If **yes**, please specify (X) in which years the supervisory authority in your country was legally required to publish the decision and the reasons for blocking a proposed merger in the banking sector in your country:

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Publication of the decision and the reasons																

Table A2: Data Sources

Country	Source	Date
AT	Bundesgesetz über das Bankwesen (BWG)	1993
CZ	Questionnaire	2007
CZ	Czech Republic, Act of the Czech Republic No. 21/1992 Sb. on banks	1992
CZ	New York University School of Law, Conditions for the Establishment of New Banks in the Czech Republic	1994
CZ	New York University School of Law, The Act of July 8, 1994 passed by the Czech Parliament	1994
CZ	Matoušek, R.: The Czech Banking System in the Light of Regulation and Supervision, Selected Issues WP, No. 5.	2005
DE	Questionnaire	2007
DE	Federal Republic of Germany, Kreditwesengesetz	1988
EE	IMF, Report on the Observance of Standards and Codes (ROSC) Estonia	2000
EE	Republic of Estonia, Eesti Pank, Law on Credit Institutions	1994
EE	Eesti Pank, Credit Institutions Act	1999
EE	Republic of Estonia, Credit Institutions Act	2005
ES	Republic of Spain, Law 26/1988: Discipline and Intervention of Credit Institutions	1988
ES	Bank of Spain, Law 13/1994: Law of Autonomy of the Banco de España	1994
ES	Republic of Spain, Royal Decree 1245/1995	1995
ES	IMF, Country Report No. 06/218: Financial Sector Assessment Program	2006
FI	Republic of Finland, Act on the Operation of a Foreign Credit Institution or Financial Institution in Finland	2001
FI	Republic of Finland, Act on Credit Institutions	2005
FR	Banque de France, Comité des Établissements de Crédit et des Entreprises d'Investissement, Annual Report	2005
FR	Banque de France, Comité de la Réglementation Bancaire et financière, French Banking Act 24 January 1984	1984
FR	Republic of France, Regulation 96-16 of December 1996	2001
FR	Republic of France,Regulation 92-13 of 23 December 1992	2005
FR	IMF, Country Report No. 05/186	2005
FR	Republic of France, Regulation 92-14 of December 1992	2006
GR	Questionnaire	2007
GR	The Impact of the Banking Directives on the Greek Banking System	2004
HU	Act CXII of 1996 on Credit Institutions and Financial Entreprises	1997
HU	Act CXII of 1996 on Credit Institutions and Financial Entreprises	2006
HU	Barsi, T., Overview on Banking Regulations. International Law Office Internet Publication	2000
HU	Budai, J. und H. Bozsonyik, Preperation for Single Market Supervision Tasks	2001
HU	IMF, Country Report No. 05/348	2005

HU	Hungarian Financial Supervisory Authority: Authorization guidelines (Money Market).	2006
IT	Questionnaire	2007
IT	Banca of Italy, The 1993 Banking Law	1993
IT	Republic of Italy, The 1993 Banking Law	2000
IT	IMF Country Report No. 04/133	2004
IT	IMF, Financial System Stability Assessment	2006
LI	Questionnaire	2007
LI	New York University School of Law, Law on Commercial (Joint Stock) Banks	1992
LI	Bank of Lithuania, Operations of Credit Institutions in 2000	2000
LI	Bank of Lithuania, The Law on the Bank of Lithuania	1994
LI	Republic of Lithuania, Law on Commercial Banks	1994
LI	Republic of Lithuania, Law on Banks	2004
LI	Republic of Lithuania, Law on Commercial (Joint Stock) Banks	2005
LI	Operations of Credit Institutions in 2004	2005
LI	Republic of Lithuania, Law on Financial Institutions	2005
LU	Questionnaire	2007
LV	Questionnaire	2007
LV	Bank of Latvia, Regulations on granting licenses to perform banking transactions	1993
LV	Republic of Latvia, Law of National Republic of Latvia	1998
LV	Bank of Latvia, Credit Institutions Supervision Department, Annual Report 1999	2000
LV	Bank of Latvia, Operations of Credit Institutions in 2000	2000
MA	Questionnaire	2007
MA	Banking Act, Act XV of 1994	1994
NL	Credit System Supervision Manual, Act on the Supervision of the Credit System 1992	2005
NL	De Nederlandsche Bank, Bank Act 1998	2000
PL	New York University School of Law, The Banking Law of January 31, 1989	1992
PL	New York University School of Law, Act of December 19, 1992	1993
PL	Republic of Poland, The Banking Act of August 29, 1997	1998
PL	National Bank of Poland, The Polish Banking System in the Nineties	2001
PT	Questionnaire	2007
PT	IMF, Financial Sector Assessment Program	2006
SK	Questionnaire	2007
SK	National Bank of Slovakia, European Banking Directives and Their Implementation in the Slovak Republic	2000
SK	Republic of Slovakia, Act on Banks	2001
SL	Republic of Slovenia, Law on Banks and Savings Banks	1991
SL	Republic of Slovenia, Banking Act	1999
SL	Republic of Slovenia, Official Gazette of the Republic of Slovenia, Banking Act	1999
SL	Republic of Slovenia, Act on the Amandements and Additions to the Banking Act	2001
SL	Bank of Slovenia, Annual Overview	2004
SL	Bank of Slovenia, Law on the Bank of Slovenia	1991
SL	Bank of Slovenia, Bank of Slovenia Act	2002
SL	Bank of Slovenia, Regulation on the Harmonisation of the Amounts of the minimum inital capital of a bank and a savings bank	2004
SL	Republic of Slovenia, Act on the Amandements and Additions to the Banking Act 2	2004
SL	New York University School of Law, Law on Banks and Savings Banks	2007

SE	Questionnaire	2007
SE	Republic of Sweden, The Banking Business Act (SFS 1987:617)	1987

Note: EE-Estonia, CZ-Czech Republic, HU-Hungary, LI-Lithuania, LV-Latvia, MA-Malta, PL-Poland, SK-Slovak Republic, SL-Slovenia, AT-Austria, DE-Germany, ES-Spain, FI-Finland, FR-France, GR-Greece, LU-Luxembourg, PT-Portugal and SE-Sweden. Bulgaria, Belgium, Cyprus, Denmark, Ireland, Romania and the United Kingdom are not included.