Studien zum
Bank-, Börsen- und Kapitalmarktrecht

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Konstantin Oppolzer

Ring-Fencing in Europe

The EU's Bank Structural Reform and a Legal Comparative Look at National Legislation in Europe's Three Financial Capitals

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Abstract

This dissertation explores structural reforms for banks that stipulate the separation of deposit-taking and other services considered vital to the real economy from certain investment banking activities deemed particularly risky with the aim of, *inter alia*, mitigating systemic risk and the too-big-to-fail problem. These structural reforms can collectively be referred to as "ring-fencing". The focus of the dissertation is on the legal developments on a European Union level and in the United Kingdom, Germany and Switzerland, which are home to Europe's most important financial centres.

The dissertation is divided into three parts: In its first part, it establishes a concept and a definition of ring-fencing that allow to distinguish it from related bank structural reforms. In its second part, it assesses legislative steps already taken in the European Union and the withdrawal of the file by the European Commission and discusses potential alternatives for installing a union-wide ring-fence. In its third part, a legal comparative analysis is conducted, discussing conceptual differences in national bank structural reform legislation in the United Kingdom, Germany and Switzerland and exploring whether the countries adopted legislation that matches the concept and definition of ring-fencing established in the first part.

Altogether, the dissertation contributes to the terminology and classification of existing and future ring-fencing initiatives and paints a comprehensive picture of current developments and prospects on EU level. It furthermore highlights structural differences of national approaches of Europe's three most important financial centres, and casts light on Switzerland's unique yet barely recognized ring-fencing efforts.

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Zusammenfassung

Die vorliegende Dissertation befasst sich mit Bankenstrukturreformen, welche eine Trennung des Einlagengeschäfts und anderer für das Funktionieren der Realwirtschaft unentbehrlicher Dienstleistungen von bestimmten als besonders risikoreich erachteten Aktivitäten des Investmentbanking vorsehen. Sie können zusammenfassend als „Ring-Fencing" bezeichnet werden und bezwecken es unter anderem, systemische Risiken und das Too-Big-to-Fail Problem zu reduzieren. Das Hauptaugenmerk der Dissertation liegt auf den einschlägigen rechtlichen Entwicklungen in der Europäischen Union sowie auf den Regelungen Europas wichtigster Finanzplätze: dem Vereinigten Königreich, Deutschland und der Schweiz.

Die Dissertation ist in drei Teile gegliedert: Im ersten Teil werden ein Konzept und eine Definition von Ring-Fencing erstellt, welche es erlauben, Ring-Fencing von anderen verwandten Bankenstrukturreformen zu unterscheiden. Im zweiten Teil, werden die bereits erfolgten Gesetzgebungsschritte der EU-Bankenstrukturreform sowie ihr Scheitern im europäischen Gesetzgebungsprozess diskutiert und mögliche Alternativen für die Einführung eines unionsweiten Ring-Fencing ausgelotet. Im dritten Teil werden konzeptuelle Unterschiede zwischen nationalen Bankenstrukturreformen im Vereinigten Königreich, Deutschland und der Schweiz aus rechtsvergleichender Perspektive erarbeitet und es wird überprüft, ob die in den Staaten erlassenen Rechtsakte das im ersten Teil erfasste Konzept und die Definition von Ring-Fencing erfüllen.

In Ihrer Gesamtheit trägt die Dissertation zur Abgrenzung der Begrifflichkeiten und der Systematik von bestehenden und zukünftigen Ring-Fencing Regelungen bei und zeichnet ein umfassendes Bild der gegenwärtigen Entwicklungen sowie möglicher Perspektiven auf Ebene des Unionsrechts. Weiters beleuchtet sie strukturelle Unterschiede zwischen bestehenden nationalen Regelungen in Europas drei wichtigsten Finanzplätzen und wirft Licht auf die einzigartigen aber international wenig beachteten Schweizerischen Ring-Fencing-Bestrebungen.

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Résumé

Cette dissertation explore les réformes structurelles prisent par les banques prévoyant de séparer la collecte de dépôts et d'autres services considérés essentiels pour l´économie réelle de certaines activités de banque d'investissement considérées particulièrement risquées, avec le but, *inter alia*, de diminuer le risque systématique et le problème corollaire de « too-big-to-fail ». Ces réformes structurelles peuvent être collectivement désignées de « ring-fencing ». Cette dissertation se focalise essentiellement sur les développements légaux au niveau de l'Union Européenne, de l'Allemagne, du Royaume Uni et de la Suisse, où se trouvent les centres financiers les plus importants d'Europe.

La dissertation est divisée en trois parties : Dans la première partie, elle établit un concept et une définition de « ring-fencing », qui permettent de le différencier d'autres réformes structurelles voisines. Dans la seconde partie, elle examine les étapes législatives que l'Union Européenne a déjà entamées ainsi que le retrait du dossier par la Commission Européenne et évalue ensuite des alternatives potentielles pour une réalisation d'une « ring-fence » au sein de l'Union Européenne. Dans la troisième partie, une comparaison juridique est établie permettant de discuter les différences conceptuelles existant dans les législations concernant les réformes structurelles des banques du Royaume Uni, de l'Allemagne et de la Suisse. En outre, elle explore si les pays en question ont adopté une législation se rapprochant du concept et de la définition de « ring-fencing » qui fut établie dans la première partie.

En somme, la dissertation contribue à la terminologie et à la classification des initiatives actuelles et ultérieures de « ring-fencing » et donne une présentation globale des développements présents et futurs au niveau de l'Union Européenne. De plus, elle souligne les différences structurelles existant dans les démarches nationales des trois centres financiers les plus importants d'Europe et met en lumière les uniques, mais à peine reconnus, efforts en matière de « ring-fencing » pris par la Suisse.

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