

Outlook

The three parts of the dissertation have discussed ring-fencing both theoretically and in practice. While the first part established a concept of ring-fencing as well as a definition, clearly delimiting it against other bank structural reforms, and identified its different methods, the second part addressed developments on a European Union level. It discussed the various legislative steps taken and the failure of the file. It then turned to discuss remaining options for the introduction of a union-wide ring-fencing requirement. The third part structurally compared bank structural reform legislation in the UK, Germany and Switzerland and assessed whether they match the concept and definition of ring-fencing established in the first part of the dissertation.

A number of interesting and valuable findings could be obtained. They are selectively reiterated at the end of each part of the dissertation. At this point, only a short outlook is considered beneficial. It shall flag up-to-date developments, which may have an effect on the ring-fencing rules discussed, and indicate developments one should keep an eye out for.

While UK banks are on track for fully implementing the separation of commercial banking from investment banking, attention should be paid to the banks' asset transfers via the ring-fencing transfer schemes, in particular the court decisions that will be made during 2018. An important and equally hard to foresee influence is Brexit: while regulators have not allowed for delay in the implementation of ring-fencing and claimed the combination of ring-fencing and Brexit to be "*perfectly manageable*",¹⁵³⁵ a number of important implications are linked to the UK's exit from the EU.¹⁵³⁶ How they will be dealt with in detail is to be seen.

1535 *Binham/Dunkley*, Regulators get ready to authorise 'ringfenced' UK banks, Financial Times (August 19, 2017).

1536 These implications include questions regarding the scope of ring-fencing, as it applies to all banks incorporated in the UK that accept core retail deposits in any EEA state exceeding 25 billion £ in total. Currently, branches of EU based banks are exempted from the application of ring-fencing. Questions will thus arise regarding a potential loss of passporting rights. Ring-fenced banks are furthermore prohibited from having branches and subsidiaries outside the EEA. How these questions will be resolved remains to be seen.

In Switzerland, banks are currently in the process of preparatively implementing measures of the Swiss emergency plan. As established in Part III of the dissertation, the scope of Switzerland's separation is remarkably similar to the UK's. The Swiss fence is furthermore of considerable height. It will be interesting to see whether regulators will maintain their stringent approach, in particular regarding the separation of commercial banking and investment banking and with regard to an increasing independence of the ring-fenced banks.¹⁵³⁷ Furthermore, it will remain to be seen whether the Swiss ring-fence will develop towards the UK's or take its own direction.

In Germany, it will be interesting to see whether and how the provisions of the German Ring-fencing Act will evolve. The number of open questions regarding the financial trading institution make necessary a comprehensive Interpretative Guidance of BaFin, for which one should keep an eye out. In addition, modifications of the provisions of the Act may be necessary, to make the trading entity more appealing. It will furthermore remain to be seen to what extent Frankfurt, Germany's financial centre, will profit from Brexit and whether an increased significance in international finance may also have implications for the German ring-fencing provisions. Decision-makers in Germany are, in any case, well advised not to lose sight of the comprehensive ring-fencing that is currently being implemented in the UK and Switzerland.

While the three countries above already adopted ring-fencing legislation, the common European Union approach suffered a major setback with the withdrawal of the bank structural reform file by the European Commission. It will be interesting whether the discussed legislative options and already existing potential gateways will be used in the quest to establish a union-wide ring-fencing requirement. In such a case, the question of what form it would take, would arise: with the withdrawal, a new hand has been dealt, proposals could thus orientate towards the Liika-

1537 Drawing from recent publications, it can be assumed that Swiss regulators are in the foreseeable future not planning to ease pressure on banks to further enhance resolvability and implement viable emergency plans. See SNB (2018) Financial Stability Report 2017, 5 (noting that “[f]urther progress must be made in drawing up robust resolution plans. [...] In particular, by end-2019, the big banks will need to demonstrate that they would be able to maintain their systemically important functions in Switzerland in the event of impending insolvency”); see also Schiltknecht (2018) Sanierungsmassnahmen, 310 (noting that it will require considerable efforts over the next years to allow for credible and feasible resolution and emergency plans for UBS and Credit Suisse).

nen Report, towards the Commission's draft regulation or in a completely different direction. They could also orientate towards the UK or Switzerland. Furthermore, several events lie ahead in the near future that have the potential to breathe new life into the EU's bank structural reform project: in 2019, elections for the European Parliament are held that may shift the distribution of votes towards proponents of structural reform. In addition, the European Commission's term ends in 2019, which may result in a new composition and potentially new initiatives.¹⁵³⁸

In summary, it can be stated that the setback on a European Union level should not obscure the fact that bank structural reform will not be completely off the table for years to come. Ring-fencing is in the process of becoming an integral part of European banking regulation: Europe's most important financial centres are at the forefront of its implementation. It will be critical for decision makers around Europe and in the European Union to use a clear-cut concept of ring-fencing and its methods, and to comparatively keep an eye on already adopted legislation and established practices. With above the developments pending, ring-fencing will remain a highly controversial topic.

1538 Also a potential ECB presidency of *Erkki Liikanen* may have an effect on the European Union's current position on bank structural reform. See *Jones*, European Central Bank's marathon man moves to front of the pack, *Financial Times* (April 3, 2018).