

# Out now: Zeitschrift für Vergleichende Rechtswissenschaft

The most recent issue of the *Zeitschrift für Vergleichende Rechtswissenschaft* (German Journal of Comparative Law; Vol. 117 [2018], No. 4) features the following contributions:

## **Basel – Ein gebrochenes Versprechen?**

### **Zur Entwicklung der Bankenregulierung in der Europäischen Union und in den Vereinigten Staaten**

*Ann-Kathrin Kaufhold\**

ZVglRWiss 117 (2018) 415-428

[Basel – a Promise Broken? – Regarding the Development of Banking Regulation in the European Union and the United States]

*The Basel Committee on Banking Supervision was founded in order to harmonize prudential regulation of banks internationally. Today the Basel standards, in fact, strongly influence national banking regulation both in the European Union and in the United States. Yet, at the same time, European and US regulatory requirements for banks still differ substantially. Against this backdrop the article examines the success and failure of the Basel Committee and asks for the consequences of divergences in international banking regulation.*

**Entwicklung und Vielfalt von Bank- und Finanzsystemen**

Reinhard H. Schmidt\*

ZVglRWiss 117 (2018) 429-439

[Development and Diversity in Banking and the Financial  
Systems]

*In its first part, the paper discusses the development of the banking systems and, more comprehensively, of the entire financial systems of Germany, Western Europe and other parts of the world under the aspect of diversity. In this discussion, the author distinguishes between, on the one hand, the diversity of the banking system of a given country or region and, on the other hand, that between countries or regions.*

*The overall finding is that banking and financial systems of different countries and regions differ more than it is generally expected. This raises the question addressed in the second part of the paper: Why do banking and financial systems differ so strongly or, in other words, why do we not observe a stronger convergence of these systems over time, and how can one assess the stunning degree of diversity of the banking and financial systems in different countries and regions? The author argues that from an economic policy perspective diversity of banking and financial systems not to be considered as a deficiency but rather a benefit.*

**National and International Banking Heterogeneity**

Axel Kind\*

ZVglRWiss 117 (2018) 440-454

*The costs of the Global Financial Crisis in terms of lost GDP growth have been higher in Europe than in the US. This is likely due to the outbreak of the European Sovereign Debt Crisis. To countervail its negative effects, the EU has made*

*considerable efforts to initiate the European Banking Union with its ideal of a level playing field among credit institutions. In spite of these harmonization efforts, the level of heterogeneity of banks across member states in terms of their average performance, capital adequacy, and asset quality remains high. Banks in the Southern and Eastern European periphery are found to be less profitable and riskier than their counterparts in other regions of the EU. Given that such differences can be traced back, at least partially, to country-specific factors – economic, legal, and institutional conditions – applying the same prudential rules to all EU banks may fail to comply with the level-playing-field paradigm and actually distort the competition among European banks. The European banking sector is characterized by a rich variety of governance structures – most notably the coexistence of shareholder banks and stakeholder banks. This abundance of governance systems should be viewed as valuable diversity rather than a sign of old-fashioned and outdated banking structures. In particular, the outperformance of cooperative and savings banks in several European countries – most notably in Germany – should induce regulators to reconsider the primacy of shareholder banks and motivate further discussions about optimal governance structures in modern banking.*

## **Differentiation and Convergence of Supervision in the European Banking Union**

*Günter Franke\**

ZVglRWiss 117 (2018) 455-477

*Empirical evidence suggests that SME funding is more difficult in countries with weaker legal and economic conditions. In these countries, additional bank lending may generate higher social benefits. Operating under the same set of bank regulation, transitionally milder bank supervision in “weaker”*

*countries might motivate banks to give more loans. This might reinforce economic growth, but also endanger financial stability. Depending on the objectives of regulation and supervision, transitional milder supervision might improve welfare. If such a policy is adopted, supervision should get stronger when legal and economic conditions improve. However, a deterioration in these conditions should not weaken supervision.*

## **Die extraterritoriale Regulierung von international tatigen Banken**

*Christoph Ohler\**

ZVglRWiss 117 (2018) 478-491

[The Exterritorial Regulation of Internationally Operative Banks]

*The contribution discusses the legal limits under public international law for states and the European Union when they regulate internationally operating banks. The business activity of such banks brings them in contact with many national legal orders. Once jurisdiction applies, they must comply with the prudential requirements of those states. In addition, the USA and the EU, in particular, claim the extraterritorial application of their supervisory laws in certain cases. Public international law, as it stands, does not prohibit the multiple regulatory burdens for the banks resulting from internationally concurrent regulatory powers. Neither the standards adopted by the Basel Committee on Banking Supervision nor the rules of the WTO or the principles under international customary law restrict significantly the jurisdiction of the states and the EU.*

## **Das Zusammenspiel von Regulierung und Profitabilität im Bankensektor**

*Johannes-Jörg Riegler\**

ZVglRWiss 117 (2018) 492-504

[The Interaction of Regulation and Profitability in the Banking Sector]

*The Association of German Public Banks (Bundesverband Öffentlicher Banken Deutschlands, VÖB) has quantified the relationship between regulation and profitability for Germany's top 17 banks since 2014. A sample bank which was formed as an aggregate of the institutions for the analysis shows the lack of profitability and the limits for the potential of accumulating and distributing profits, while the delta between profitability and capital costs complicates the access to the capital market. The finalisation of the Basel III reform package in December 2017 will impose additional regulatory requirements on banks.*

*The author warns of a loss of importance of the German and European banking industry in the face of international competition and pleads for a combination of necessary regulation and appropriate revenue opportunities for banks.*

## **Konflikte bei der Durchsetzung des europäischen Kapitalmarktrechts – Koordinierungsbedarf zwischen Aufsichts- und Zivilrecht**

*Dörte Poelzig\**

ZVglRWiss 117 (2018) 505-525

[Conflicts in the Enforcement of European Capital Market Law – The Need for Coordination between Regulatory and Civil Law]

*Recent European capital market law reforms have introduced a multitude of enforcement instruments, by both supervisory and civil law, all of which aim to enforce the law in accordance with the “effet utile”, i.e. in an effective, dissuasive and proportionate way. Frequently, supervisory and civil enforcement are treated as issues detached from one another. However, this separate treatment leads to tensions that are detrimental to the effective enforcement of capital markets law. The following article examines the underlying conflicts and their solutions, illustrated by three examples: the access to supervisory information by private individuals, the different interpretation of capital markets law by supervisory agencies and civil law courts, and the risk of multiple sanctions for the same cause of action.*

## **Die Herausforderung regulatorischer Vielfalt**

*Joachim Hoeck und Hans Christian Röhl\**

ZVglRWiss 117 (2018) 526-541

[The Challenges of Regulatory Diversity]

*Regulatory variety results in a variety of different legal regimes and implementation practices. Whether being subjected to this regimes or applying it, one will have to develop strategies to cope with the resulting challenges. The papers tries to explore different legal instruments (standardization, recovery and resolution, subsidiarization and market access) and to show how instead of efforts to a harmonization a more and more divergent legal setting takes places and stresses the resulting problems.*

## **Regulatorische Vielfalt aus der Perspektive einer Bank**

*Mathias Otto\**

[Regulatory Diversity from a Banking Perspective]

*The globalization of the financial industry as well as tightened regulation of the sector significantly increased the potential for cross-border regulatory conflicts. International bodies like the Basel Committee try to address such conflicts by improving cooperation between national authorities and in the meantime have evolved into global standard setters. This leads to unification of regulatory rules which, however, encounter different economic and social environments in the various countries. Moreover, national authorities applying these rules are accountable to their respective national governments and parliaments. As a result, practice will have to continue to deal with regulatory conflicts that are not resolvable as a matter of principle and therefore search for a practicable solution for the individual case at hand.*

**Komplexe Compliance bei Banken**

**Interne Organisation und Konzerngestaltung bei Geschäften im  
In- und Ausland**

Rüdiger Wilhelmi\*

[Complex Compliance in Banks – Internal Organisation and  
Corporation Organisation in Business Domestic and Abroad]

*This contribution discusses which laws the compliance related to business domestically and abroad has to observe and whether it is possible to allocate and isolate compliance duties and risk connected with this business by internal organisation or the design of groups of companies. It concludes that with regard to banking compliance the separation principle in the law of groups of companies does not apply and it is only*

*possible to allocate compliance duties but not to isolate compliance risk by the design of groups of companies.*

\* Prof. Dr. *Ann-Katrin Kaufhold* ist Inhaberin des Lehrstuhls für Staats- und Verwaltungsrecht an der Ludwig-Maximilians-Universität München. – Für wertvolle Unterstützung bei der Recherche danke ich herzlich meiner Mitarbeiterin Frau Dr. *Ann-Katrin Wolff*.

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Fragmentierung und Territorialisierung“ am 20./21.04.2018 in  
Konstanz.