



Course Syllabus

19 November 2012

INTERNATIONAL AND EUROPEAN FINANCIAL LAW

PROFESSOR KERN ALEXANDER, Chair for Law and Finance, University of Zurich, is the course coordinator and principal lecturer.

Time: Mondays, 14:00-15:45

Venue: SOE-F-2

Language: English

The purpose of this course is to examine the international and European Union law and regulation of financial markets and to contribute to a critical understanding of the subject matter through the combined study of the theory of the public law of financial regulation and the private law principles governing financial markets. In particular, the course examines the public regulation of European and international financial markets with a particular focus on banking and securities market law and regulation. The course also examines European Monetary Union and the role of the European Central Bank. The recent Eurozone sovereign debt crisis raises important issues about sovereign bailouts and financial stability which will be covered in the course. International Monetary Law and the role of the International Monetary Fund will be covered in the course.

National, regional and global financial markets are at the epicentre of economic, political and social developments. They are shaped by their own internal dynamics but they are also at the receiving end of potent external forces, including fluctuating exchange rates and cross-border capital flows in national and regional financial systems. This course examines how EU/Eurozone and international financial and monetary law regulates the global financial system and the prospects for reform of the European and international financial architecture in light of the recent global financial crisis. The course is premised on the notion that the student should develop a sound understanding of the main principles of public and private law that drive the development of EU and international financial law and regulation. An important focus will be on the interaction between national, European and international dimensions with regard to the reform of financial regulation at the national, European and international level. The course also goes beyond the black letter law of financial markets to explain the underlying economic and political forces which bring the law into being.

Required Course Textbooks

ALEXANDER et al., *Global Governance of Financial Systems: the International Regulation of Systemic Risk* (Oxford: Oxford University Press, 2006), available at the student book store.

Selected Readings which will be published on our website.



Week 1 (17 Sept)

International law (and soft law) in financial markets. Basel Accord and Basel Concordats. International Organization of Securities Commissioners. International Association of Insurance Supervisors, and Financial Action Task Force. Recent developments in global financial crisis and the Financial Stability Board.

Readings:

ALEXANDER et al., *Global Governance*, Chapters 1, 2,3 and 4

Press releases - Basel Committee readings (2 pages)

ALEXANDER, *Rebuilding international financial regulation* (Sept. 2011)
Butterworths Journal of International Banking and Financial Law (online)

ALEXANDER, Global Financial Standard Setting, the G10 Committee and International Economic Law

Week 2 (24 Sept)

European Institutional structure of regulation and supervision

European Financial Action Plan 2001; Lamfalussy Committees; EU financial integration; the financial crisis and the new European architecture

Readings:

DE LAROSIÈRE ET AL., Report of the High-Level Group on Financial Supervision in the EU, (Feb 2009) (online)

KERN ALEXANDER, *Reforming European financial supervision: adapting EU institutions to market structures*, in: ERA Forum (2011) 12:229–252

Week 3 (1 Oct)

European Banking Law First and Second Banking Directives, Home Country Control. The evolution from Lamfalussy to De Larosiere. The Elements of Banking Supervision.

Readings:

Caixa Bank France, Case C-442/02, Opinion of Advocate General

Caixa Bank France, Judgement of the Court of Justice of European Communities

De Larosiere Report (Feb 2009) pp. 1-26 (executive summary & introduction)

KERN ALEXANDER, Report to the House of Lords EU Committee, available on the course website

Optional:

Caixa Bank France, Press Release to C-442/02

Week 4 (8 Oct)

EU Capital Markets, elements of securities regulation. Prospectuses, corporate governance, retail financial products, compliance and strategic issues in Europe.

Readings:

European Central Bank, '*Evolving Framework for Corporate Governance*' pp. 89-99



DIRECTIVE 2010/73/EU (2010 Prospectus Directive), Explanatory Memorandum regarding 2010 Prospectus Directive, 23/09/2009, p. 1-10.
ESMA Correspondence 19/01/2011

Optional: IOSCO Principles
MOLONEY, NIAMH (2008), *EC Securities Law* (Oxford University Press) (2008), pp. 84-123, 726-759 (Investor Compensation Schemes).
Slaughter & May Analysis of 2003 Prospectus Directive

Week 5 (15 Oct)

From MiFID I to MiFID II – The new Markets in Financial Instruments Directive and regulation of securities trading and exchanges.

Readings: EUROPEAN COMMISSION, Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC, Explanatory Memorandum, pp. 1-11
EUROPEAN COMMISSION, Proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation EMIR on OTC derivatives, central counterparties and trade repositories, Explanatory Memorandum, pp. 1-13
SHERMAN & STERLING, A Changing Landscape: The MiFID II Legislative Proposal
FINANCE WATCH, Investing not betting – A Position Paper on MiFID II and MiFIR, pp. 7-26 / 48-59
KERN ALEXANDER / ALEXANDRA SCHMIDT, The Markets in Financial Instruments Directive and Switzerland

Week 6 (22 October)

Market Abuse, Insider Dealing and Market Manipulation

Readings: BARRY RIDER ET AL., *Market Abuse and Insider Dealing*, Second Edition, Chapter 1
CLIFFORD CHANCE, Market Abuse: European Commission proposes new EU regime, Briefing Note, October 2011
EUROPEAN COMMISSION, Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation, Explanatory Memorandum, pp. 1-6
EUROPEAN COMMISSION, Proposal for a Regulation of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation, Explanatory Memorandum, pp. 1-13



EUROPEAN COMMISSION, Commission Staff Working Paper, Executive Summary of the Impact Assessment for the proposal for a Regulation and a Directive of the European Parliament and of the Council on Insider Dealing and Market Manipulation (Market Abuse), Brussels, 20.10.2011

The *Jabre* Case

- Optional:
- Market Abuse Directive - CESR/04-505b (1st set)
 - Market Abuse Directive - CESR/06-562b (2nd set)
 - Market Abuse Directive - CESR/08-274 (3rd set)

Week 7 (29 Oct)

EU Monetary Law / European Banking Union / European Bailout Fund.

The Maastricht Treaty, and the European System of Central Banks, and European Central Bank and European Financial Stability Facility.

Readings:

HANSPETER K. SCHELLER, *The European Central Bank – History, Role and Functions* (2d. ed., 2006) pp. 41-133, online available at <http://www.ecb.int/pub/pdf/other/ecbhistoryrolefunctions2006en.pdf?c0ef40c4b205727f0aae80041fe5f3b5>

ALEXANDER, *Sovereign Debt Restructuring in the EU: Lessons from the Recent Crisis* in DELIMATSI/HERGER *Financial Regulation at the Crossroads*

EUROPEAN COMMISSION, Communication from the Commission to the European Parliament and the Council, A Roadmap towards a Banking Union

EUROPEAN COMMISSION, Proposal for a Council Regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, Explanatory Memorandum, Brussels, 12.9.2012, pp. 1-8

- Optional. HANSPETER K. SCHELLER, pp. 15-40

Week 8 (5 Nov)

Reading Week / NO LECTURE

Week 9 (12 Nov)

Bank Recovery and Resolution /European Banking Union / European Bailout Fund

Readings:

EUROPEAN COMMISSION, Proposal for a directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms, COM(2012) 280/3, Explanatory Memorandum, pp. 1-19

FINANCIAL STABILITY BOARD, *Key Attributes of Effective Resolution Regimes for Financial Institutions*, October 2011



KERN ALEXANDER, *Enhancing European Bank Resolution and Recovery*, 19 MJ 3, 2012

NEW YORK TIMES, Spain forecasts it will use just part of bank rescue money

KERN ALEXANDER, European Banking Union and ECB, Essay available on course website

Optional: DAVID JOLLY, *Bailout funds may be next target* in International Herald Tribune 23/11/2012

Week 10 (19 Nov)

The Organization of Clearing and Settlement in securities trading.

Private law issues, Derivatives, ISDA, the Hague Convention on Indirectly Held Securities

Readings: ALEXANDER et al., *'Clearing and Settlement in the EU'*, IPIA/ECON/ST/2008-31, pp. 11-32

EUROPEAN CENTRAL BANK, *The Payment System, Part1: Key Concepts in Market Infrastructure– Derivatives*, pp. 93-113

SHERMAN & STERLING, OTC Derivatives Regulation and Extraterritoriality II

Optional: *Key Concepts in Market Infrastructure*, pp. 25-47

Key Concepts in Market Infrastructure, pp. 48-91

Week 11 (26 Nov)

International Monetary Law, The International Monetary Fund, the Articles of Agreement and the WTO General Agreement on Trade in Services and financial markets.

Readings: ALEXANDER et al., *Global Governance*, Chap. 3 and 5.

IMF, *Initial Lessons of the Crisis*, pp. 1-12

Optional: ALEXANDER, *International Monetary Fund's Role in Sovereign Liquidity Crises*, Current Issues in Monetary and Financial Law (Washington DC: International Monetary Fund Law Department), 2008, pp. 131-190

CARLO GOLA and FRANCESCO SPADAFORA, *Financial Sector Surveillance and the IMF*, Working Paper 247 (2009) Washington, IMF.

<http://www.imf.org/external/pubs/ft/wp/2009/wp09247.pdf>

Week 12 (3 Dec)

Rebuilding International Financial and European Law: The G20 and FSB – the Way Forward

Readings: ALEXANDER et al., *Global Governance*, Chap 5 & 10-11

ALEXANDER, *EU-US Regulatory Response to the Financial Crisis*, Summary Report, Central Bank Governors Meeting, 30 September 2009



Institute of International Finance Letter (13 March 2009)
G20 'Global Plan for Recovery and Reform (2 April 2009)
G20 'Toronto Summit Declaration (26-27 June 2010)

Week 13 (10 Dec)

UK and Swiss Financial Regulation Reform. The crisis and UK banks/Swiss banks. Too-big-to-fail banks and crisis management, competition issues, Swiss Regulatory reform, and the UK Draft Financial Services Bill and the new UK regulatory architecture.

Readings:

SWISS EXPERT COMMISSION ON TOO BIG TO FAIL, *Final Report*, Summary, pp. 3 – 6

INDEPENDENT COMMISSION ON BANKING (ICB), *Final Report Recommendations*, Executive Summary, pp. 7-18

TREASURY, *A new approach to financial regulation: the blueprint for reform*, June 2011, pp. 7-13

JACQUES DE LAROSIÈRE (2012): *Seductive simplicity of ringfencing*. In: Financial Times (UK), 26.09.2012

Optional:

ROLF SETHE, *Ein Indianer kennt keinen Schmerz – Reaktionen der Schweiz auf Finanzmarktkrise und Steuerstreit*, ZBB 2/11, pp. 106-129

Week 14 (17 Dec)

International Trade Law and Financial Regulation: The WTO GATS and the China – US Dispute / Exam Review