

Towards Single Supervision and Resolution of Systemically Important Non-Bank Financial Institutions in the European Union

- Danny Busch & Mirik van Rijn

OUR CORE MESSAGE

- **Ensuring that systemic risk is properly monitored in the EU, and ensuring that non-bank SIFIs in the EU are properly designated, regulated, supervised and, if necessary, resolved**
 - **would help to eliminate supervisory and regulatory gaps,**
 - **reduce regulatory arbitrage activities,**
 - **enhance the level playing field and**
 - **contribute to the stability of the financial system as a whole.**

MONITORING OF SYSTEMIC RISK & DESIGNATION OF NON-BANK SIFIS

- **The European Systemic Risk Board (ESRB) is already tasked with systemic risk monitoring, although restrictions regarding information flows should be removed.**
- **In addition, we propose that the ESRB should be equipped with powers similar to those of the US Financial Stability Oversight Council (FSOC) to designate non-bank financial companies as systemically important and, consequently, deserving of additional prudential regulation and supervision.**
- **But is it legally feasible?**

SUPERVISION OF NON-BANK SIFIS

- **Following the example set by the FSOC, a designation by the ESRB should have the consequence of pulling a financial institution within an appropriate prudential regulatory perimeter and related supervision.**
- **Possible supervisors:**
 - ECB
 - the ESA which has most affinity with the designate institution would operate as direct prudential supervisor
 - a new ESA.
- **But is it legally feasible?**

RESOLUTION OF NON-BANK SIFIS

- **Inspiration can, again, be drawn from the resolution regime created by the Dodd-Frank Act in the US.**
- **This regime, known as the Orderly Liquidation Authority (OLA), captures any non-bank financial institution whose failure would seriously impact financial stability in the US.**
- **A possible way of strengthening the European resolution regime and mitigating the systemic risks stemming from non-bank entities would be to widen the scope of the Single Resolution Mechanism (SRM) to include all financial institutions that pose systemic risk.**
- **But is it legally feasible?**

Thank you for your attention!

Prof. Dr. Danny Busch
Chair for Financial Law

Institute for Financial Law

Faculty of Law | University of Nijmegen

T +31 24 361 2190 | M +31 6 1463 4994 | F +31 24 361 1583

E d.busch@jur.ru.nl | <http://www.ru.nl/english/people/busch-d/> | <http://www.ru.nl/ifl>

P.O. Box 9049 | 6500 KK Nijmegen | Montessorilaan 10 | The Netherlands

Think before you print

Visiting Professor at Università degli Studi di Genova

Visiting Professor at Università Cattolica del Sacro Cuore di Milano