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Paving the way for the EU

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7. **S**ubstantial, successful, sustainable business base already in place across the primary, secondary and tertiary sectors. It's a case of functional magnetism – companies like to be located synergistically, with more than 65% of the Province's GGP produced in Durban, along with the Durban Chamber of Commerce being the largest Metro Chamber nationally. Business is clustered around the manufacturing, tourism, services, maritime, logistics and agricultural industries. Having the second largest business and industrial base in SA provides many options for suppliers, support services, customers and employees, which are all important factors of production.

These are the 'ALL HITS' Super 7 key reasons that make Durban attractive to both residents and visitors alike.

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Muddling through

Week by week, there have been more pluses than minuses on the economic front. In America, Japan and Germany there are further signs of an improvement in business conditions and sentiment. Are these signs of improvement a genuine and sustained upturn? Huge risks still overhang the economies of Europe and America. Growth has slowed in many emerging economies, from China to Brazil, so the world economy overall is still likely to show slower growth this year.

There are still major economic and financial vulnerabilities that need to be addressed. The financial system is still fragile, burdened by high public and private debt in the advanced economies. Some of the problem has been dealt with, but how much? A strengthening oil price has also put a question mark over the robustness of recovery. And, third, there is a growing risk that activity in emerging economies will slow over the medium term.

But, have the problems that caused the crisis been adequately fought, or have they merely been 'swept under the carpet' for future policy makers to fight? There is still a continuing lack of transparency in the financial system, global imbalances are a problem (as the continuing eurozone crisis testifies; in the eurozone there is an increasing balance of payments problem and a lack of adjustment mechanisms to deal with it), and a new regulatory system to ensure that the mistakes of the past do not recur has not yet been developed.

France's Nicolas Sarkozy was quick to declare Europe's debt crisis "solved" after the Greek deal. Europe's policy-makers are implicitly relying on a fresh cycle of global growth to do their work for them, and lift Greece, Portugal, Spain et al from the depths they have plummeted to. If recovery flags again, the strains will become intolerable. With Spain's youth unemployment already hitting over 50%, how much more will it take before the political fuse detonates?

For all the talk, the EU has not yet embraced fiscal union, debt-pooling, or budget transfers, or put in place a viable political structure to overcome the deformities of monetary union, or even diagnosed the problem properly. The Greek saga has been a long-drawn exercise in evasion.

A full global recovery this year may disguise this for a little longer. Any relapse will bring matters to a head yet again within months.

"We are all interconnected and we are all affected by each other's policy actions. We need to prepare for success together. If we stand together, the whole will be more than the sum of the parts," Christine Lagarde, Managing Director International Monetary Fund (IMF), said recently. The global economy may be on a path to recovery, but there is not a great deal of room for manoeuvre and no room for policy mistakes. Is muddling through enough? ■

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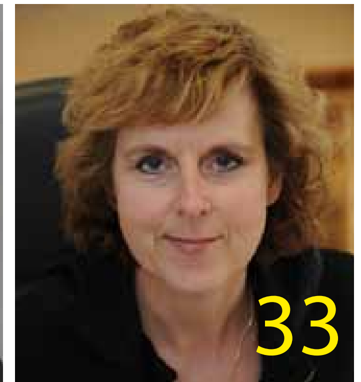

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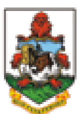

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Cyprus: paving the way for its first Presidency of the Council of the EU

Andreas Mavroyiannis is Deputy Minister to the President for European Affairs, Republic of Cyprus

It is an undeniable fact that presiding over the Council of the EU is a challenge in itself, when one considers the demands of steering discussions within and outside the Council on behalf of all the member-states, the skills required to be a successful mediator, negotiator, as well as participating member state, and representing the Council and negotiating on its behalf with other institutions and in particular with the European Parliament which, under the Lisbon Treaty, is the co-legislator in most cases, all at the same time. It will have also to regulate and ensure consistency among the various poles of political power within the Union while respecting fully the prerogatives of each and everyone. Cyprus is called upon, for the first time, to take up this endeavour. It is the third in line of the running Trio Presidency, following Poland and Denmark, and will host the Presidency of the Council of the EU for the second half of 2012.

The Presidency is a milestone for the Republic, constituting both an opportunity and a challenge for Cyprus: an opportunity since Cyprus will be able to contribute towards European integration and, at the same time, enhance its image as a credible and responsible member of the Union assuming fully the obligations and competences of membership, and taking its stride in the Union, in spite of the persistence of its national problem; and an even greater challenge in light of the current situation in the EU. The ongoing economic crisis has had a deleterious impact on growth, employment, social cohesion and, by extension, to the quality of life of EU citizens. The crisis has created significant political challenges for the EU and its member states that will most certainly remain high on the agenda during the Cyprus Presidency.

"The mission ahead of us is not an easy one, but the dedication and motivation of all people involved is fuelling the entire state engine forward"

The mission ahead of us is not an easy one, but the dedication and motivation of all people involved is fuelling the entire state engine forward. Just four months before the beginning of this unique experience and things have finally started to take shape and fall into place.

Who's behind the wheel?

Given its small public administration, Cyprus has had to go through an internal and, mainly administrative, restructuring in order to mobilise all resources towards a more efficient and effective coordination of preparations both at an organisational and a policy-building level.

One of the first actions taken was the establishment of the Cyprus-EU Presidency Secretariat, whose main mission is to ensure the timely preparation, cohesion and consistency in the work required for the Presidency by all ministries/services. The next step involved a series of additional arrangements to ensure effective decision-making and synergy at a political level that included the setup of a Ministerial Committee on EU affairs, chaired by the Minister of Foreign Affairs and composed by the Minister of Finance, the Deputy Minister for European Affairs and with the participation of the Permanent Secretary of the Planning Bureau and the Permanent Representative of Cyprus to the EU; the appointment of the Deputy Minister for European Affairs, responsible for the overall political supervision of the Presidency preparations and who also, in cooperation with the government spokesperson are responsible for the formulation of the communication strategy. The actual preparation of the proposals for the communication strategy and their eventual implementation are under the responsibility of the Press and Information Office.

In addition, given the fact that the Cyprus Presidency will be "Brussels-based", the role of the Permanent Representation, and of course, that of the Ministry of Foreign Affairs, is more than essential. Nothing, however, could be achieved without the contribution of the rest of the ministries themselves. For that reason, separate units for European affairs were set up in each ministry, with the task of acting as a liaison between the secretariat and their various departments, as well as coordinating each ministry's respective policy.

A glance behind the scenes

As mentioned before, holding the Presidency of the Council of the EU is both stimulating and demanding. One could compare it to a highly complex organisational project with a two-fold mission: to achieve an effective six-month term and upon the completion of which to be recognised as an efficient, well organised and successful Presidency.

Cyprus had a first taste of the task at hand, when cooperating with Poland and Denmark for the formulation of their common 18-month programme, which, also serves as the basis for the drafting of the Programme of the Presidency that is currently underway.

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Another project of great significance that is currently being prepared is the Presidency calendar of events. Apart from the regular 2,000 or so meetings, at all levels and formations that take place in Brussels, more than 180 events will take place in Cyprus, during the 6-month period, 15 of which, at least, will be at ministerial level. Undoubtedly, the task of organising such a large number of events is daunting both in terms of resources and capabilities. Nonetheless, the eagerness of all relevant departments, combined with the overall value of hosting these events, makes the process both interesting and motivating.

Enthusiasm and goodwill are not enough, however, for such a venture to be successful. Additional people had to be recruited – both in the Ministries and in the Permanent Representation – and specialised training had to be offered. A multi-dimensional training strategy was adopted part of which involves activities planned in cooperation with the European Union institutions, as well as other member states.

The inherited agenda and the wish-list

Cyprus will be assuming the Presidency of the Council of the EU at a particularly difficult juncture, in light of the current economic situation and of the rather recently implemented Lisbon Treaty, for which there are ongoing interpretation debates. It's at times like this that there is need for a truly honest broker and Cyprus is committed to maintaining a neutral and objective stance, minimising national interests to the greatest extent possible, always working within the limits of the Council's mandate and in rigorous collaboration with previous Presidencies, the Council Secretariat, the European Commission and, of course, the European Parliament, seeking successful negotiations and conclusions.

During its Presidency, Cyprus intends to promote policies that will enhance the effectiveness of the EU and will promote solidarity at all levels, via more targeted policies in order to achieve a *Better Europe, a vision that acquires a special significance in the current economic and social environment, offering hope and positive energy*. One of the key issues to be dealt during the Cyprus Presidency will be the negotiations of the new Multi-annual Financial Framework covering the period 2014-2020, aiming to contribute to the successful completion of the MFF negotiations that will further strengthen economic, territorial and social cohesion. In light of the continuing economic crisis, Cyprus will give emphasis to the implementation of a new enhanced framework of economic governance and to the carrying out of the Six-Pack, in an effort to reinforce the surveillance of fiscal and macroeconomic policies, and to the promotion of any new additional measures that may be required.

Focus will also be placed on policies for European citizens, while addressing societal challenges and, thus, achieving more inclusive growth for the union. Within this framework, particular emphasis will also be placed on providing employment opportunities and a more secure future to young people. Another priority will be the implementation of the Europe 2020 Strategy, in order to help the EU to achieve high levels of employment, social cohesion and sustainable growth.

The Cyprus Presidency will also continue its efforts to achieve sustainable growth and resource efficiency, highlighting the importance of a more competitive Union based on a low carbon and green economy and enhancing the ambitious efforts of the European institutions for more concrete results. An essential issue will also be the enhancement of the 20-year-old single market. The re-launching of the Integrated Maritime Policy, the further implementation of the Stockholm Programme for an open and secure Europe and the completion of the Common European Asylum System by 2012 will also be high on the Cyprus Presidency agenda.

After the recent developments in neighbouring countries, following the Arab Spring, Cyprus while pursuing the enlargement agenda, will also seek to bring Europe closer to its neighbours and work for the empowerment of the Union in the world.

In conclusion

Although it's not possible to accurately predict how things will evolve, given the particularities of the times, Cyprus Presidency will seek to promote the idea of working towards a *Better Europe*; that is a union more relevant to its citizens and in the world. In doing so, Cyprus will emphasise the need for adherence to the fundamental values of the EU, ensuring social cohesion and better quality of life for the EU citizens and especially for the young people, through the creation of job opportunities with long-term prospects, in an effort to ensure that future generations will inherit a better Europe.

Modestly and humbly, but resolutely, Cyprus will work towards this direction, fully aware of its responsibilities as well as the magnitude of the challenge lying before it, but also confident that it's positive attributes as an open, dynamic, welcoming and hospitable European space will shine through, reflecting its ambition for an EU Presidency that is united in organisation and purpose.

At the heart of this ambition lies the Greek word "filoxenia", a word combining the notions of "love" for strangers/foreigners, giving rise to a moral obligation to welcome and provide for guests in one's home. "Filoxenia" of the people and for the people; "filoxenia" of services; "filoxenia" of cultures and ideas, of excellence and innovation, of exchanges and of changing the framework of problems, in line with Jean Monnet's precept; "filoxenia" at all levels and in all respects. Cyprus as a bridge of civilisations and culture, a crossroad of flavours, ideas and beliefs. A notion that, when combined with the readiness and willingness of the people, will render Cyprus a successful host.

Cyprus is on its way to its first Presidency of the Council of the European Union. The countdown has started and in less than four months Cyprus will be at the helm of the EU, in a conceptual journey from the geographical periphery, but from an area that is part of the cradle of European civilisation, to the inner circle of Europe, striving for a sustainable contribution to European integration and the further consolidation of the values on which the union is founded, and which remain for us more relevant than ever. ■

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The eurozone crisis: what the Treaty does not say

Daniel Dăianu is Professor of Economics at the National School of Political and Administrative Studies, Bucharest, and former Finance Minister of Romania, former MEP and a CASE fellow.

European leaders signed *The Treaty on Stability, Coordination and Governance* recently. How does it fit into the European dynamic of crisis management and governance reform? The Treaty refers to EU governance in general and to the eurozone in particular, and focuses on strengthening fiscal discipline[1]; it has to be seen in conjunction with *"the six pack"* legislation that the European Parliament approved last year and Europe 2020 strategy. But, essential links are unclear in this new architecture.

The Treaty may be a pragmatic stage on the road to setting up a solid monetary union, for the German chancellor, Angela Merkel, underlines the need of deeper political integration. And it may also be meant to provide a stronger alibi to the European Central Bank (ECB) for energetic intervention as a lender of last resort, as well as to assuage fears among the German electorate and politicians that money is going into an endless pit. Nonetheless, there is still much vagueness on how this deepening of integration would proceed. And can incrementalism work when markets are putting pressure on constantly? These are issues policy-makers have to address in a more transparent manner.

"Dealing with economies menaced by default is the most visible piece in the crisis management exercise in Europe"

The Treaty and crisis management

Mario Draghi, the president of the European Central Bank (ECB), highlights that the atmospherics in the eurozone have calmed down lately, which is validated by various signs, including the fall of sovereign bond spreads in recent months. But this is due, primarily, to the ECB's huge injection of very cheap (1% interest rate) longer term liquidity (LTROs) in the European banking sector; without it the situation in the eurozone and on world markets would have been much worse by now. It is true that what the new governments in Italy and Spain do is also of relevance. Nevertheless, it is too early to give a verdict in this respect. Moreover, money is not moving around inside economies and much of what banks have borrowed from the ECB via LTROs (almost €1 trillion) has been parked back there; mistrust is still ubiquitous.

Dealing with economies menaced by default is the most visible piece in the crisis management exercise in Europe. There is an interplay between trying to put the fire out and reforming the flawed design of the eurozone, which the Treaty tries to address. Bailing out Greece, Portugal, Ireland, the ECB's intervention in secondary markets to buy sovereign debt of various countries (including Italy and Spain), the setting up of the European Financial Stability Facility and the European Stability Mechanism belong, basically, to crisis management.

There is also the enormous task of bringing back to reason a financial system that has gone astray. It is worthy to mention that all these efforts are taking place while power redistribution in the world economy entails many losers in Europe and makes the competitiveness challenge ever more salient.

Saving Greece from a disorderly default and preventing contagion in the eurozone have been a huge concern since Spring 2010. The second bailout agreement (and debt restructuring) for Athens buys more time only. The Troika's own numbers indicate that it is accident prone and suggest that a third assistance package may be in the offing. And measures to get Greece on a growth path (enhance its competitiveness) are quite feeble, while most of the new money goes into servicing debts. This country, whether it stays in or, will have, in the end, to exit the eurozone, needs a sort of a Marshall Plan, to give it some hope. Because, without hope, despair undermines even sensible policies.

Greece is the most blatant case of playing foul with the rules of the eurozone, and can be seen as a *"failed state"* in the industrialized world. But, to be fair, the very inadequate rules of the EMU have nudged Greece into losing its way. Had Greece been outside the eurozone its public debt would not have, very likely, reached the danger level of 2008; markets would not have allowed it. The same could be said of a few other countries that are members of the eurozone. European politics played a major role in the creation of the eurozone, the way it was done, at the expense of economic arguments.

Politicians point out that the euro is very much a political device, that its introduction was meant to consolidate the European project. But how it was done, the risks embedded

in the EMU's institutional and policy underpinnings, are important too[2]. It should be said that the Greek drama is only one piece in the much larger picture of what is not going well in the eurozone.

Structure: budget discipline is a must, but not sufficient

The impact of the Treaty on EU economies can be examined on two tracks. One is the functioning of the eurozone as a whole, as a structure, which can be understood in terms of rules, networks, institutional arrangements and common policies; the other track looks at national policy making in the EU framework.

The Treaty is a step forward in reforming the governance of the eurozone, for fiscal rigor has been sidelined in its functioning by member countries since its debut. But, in spite of its name, the Treaty sounds as a one-sided reading of the eurozone crisis. For a deep cause of this crisis is rooted in the sub-optimality of the European Monetary Union (what some analysts pointed out long ago) and in inadequate institutional and policy arrangements[3].

A one size fits all monetary policy (which enhanced bubbles in the less affluent members of the EMU), no mechanisms for dealing with asymmetric shocks at the supranational level, no lender of last resort, lacking burden-sharing arrangements, and no joint regulation and supervision of financial markets epitomize a flawed design.

This inadequate construction should be judged in conjunction with a simplistic view on how financial markets operate (the efficient markets hypothesis) and a surprising disregard for systemic risks before the crisis erupted. The way financial intermediation evolved, following waves of deregulation, has increased systemic risks enormously. Governments and central banks rediscover financial stability now as a basic, if not an overriding policy concern, but at a terrible economic and social cost.

Against the backdrop of the financial crisis there is growing concern about the rising indebtedness of eurozone governments – many of which had to step in and rescue banking sectors by taking over private debt. And the Treaty tries to deal with it by limiting structural deficits constitutionally and via semi-automatic sanctions. But to overlook the over-borrowing by the private sector (including households) skews the crisis narrative unjustifiably. For private sector borrowing underlies large external imbalances inside the eurozone, as well as precarious bank balance sheets. As a matter fact, intra-eurozone current account imbalances have turned to be so threatening because of the incompleteness of the EMU, of a lack of trust in its adjustment mechanisms.

The debate in Germany, the concerns expressed by the Bundesbank about imbalances in the eurozone's central payment system, called Target 2, is quite telling in this regard[4]. For, in a genuine economic and monetary union such imbalances should be of pure statistical interest. This is what prompts some to consider that the way the EMU does function makes it resemble rather a *"loose"* single currency area, than an actual monetary union[5]. Likewise, low inflation and low levels of public debt are not enough to judge economic stability. And low structural budget deficits may not signal an incoming disaster. Spain illustrates this situation quite well, because its structural budget deficit hovered around 1% of GDP in the pre-crisis years (the IMF measured even a structural surplus for Spain in 2007).

In view of this complex picture the European Commission has come up with a scoreboard of macroeconomic indicators (as part of the six pack) that examine internal and external imbalances, private and public indebtedness, banks' leverage and, not least, the evolution of unit labour costs. But one gets a feeling that this monitoring and making of policy recommendations would be extremely strenuous and fraught with a lot of uncertainty. There will be ample room for bickering among governments in questioning the suitability of pieces of analyses, the measurement of structural deficits and policy recommendations on adjustment paths.

A balanced budget over the cycle is a basic rule in order to make a monetary union function properly. This is the lesson one draws from federal states in Europe and elsewhere. However, the overhaul of the EMU's design and rules must go beyond the enforcement of budget discipline and the operation of the golden rule; this reform has to give member states scope for adjustment (of imbalances) at both national and supranational levels. There is thus need for a lender of last resort, and it is commendable that the ECB has filled in this role, be it in a *sui generis* way – owing to its mandate constraints and moral hazard.

There is a need for tools, at the eurozone level, which should consider highly diverse conditions among the member countries. There is convincing evidence that doubts the adequacy of national automatic stabilizers as a means to tackle asymmetric shocks. The Treaty mentions 3% limits for effective budget deficits, but for some countries these may be pretty constraining in enabling an adequate counter-cyclical action against adverse shocks. An EMU scheme in this field, such as unemployment insurance, would be a sensible option. Likewise, big disparities in development and competitiveness demand a richer policy toolbox. Otherwise, we are likely to see a deepening of the fracture between north and south.

Years before the introduction of the euro a likely *"mezzogiornification of the south"* was figured out[6]. Life has proved such predictions accurate. This fracture is likely to grow, because of diverging routes for the north and the south, unless negative dynamics are arrested.

A big challenge: policy space

Being devoid of autonomous monetary and exchange rate policies, economies in the eurozone have a pretty narrow adjustment policy space; this leeway is more constraining the less capable they are of registering appropriate productivity gains. When diversity and competitiveness gaps are large, policies can easily bring about bad equilibria, which can have nasty social consequences.

Political leaders realize that there is a big threat here, that something has to be done in order to mitigate social costs and cope with rising unemployment (in Spain and Greece

unemployment has reached about 20%, and among the youth it has mounted to a mind-boggling 50% at the end of 2011).

For instance, the recent summit, where the Treaty was signed, emphasized the need to find ways to stimulate growth and create jobs. One should bear in mind that social cohesion can be lastingly impaired by years of austerity and vanishing hopes of better times. And without social cohesion democratic politics can fall victim. But this wake-up call is not enough, for the diagnosis of the eurozone crisis has to be rounded up.

Structural reforms have been initiated in Italy and Spain by the new governments, and this a piece of great news for the EU as a whole. But these reforms take quite a while to come to fruition, and time is of the essence in order to stem vicious circles, not to mention the pressure coming from structure. Therefore, Union level policies are necessary in order to mitigate the pains of economies which are mired in major austerity programs. Forcing some governments to bring deficits down very quickly can be self-defeating; fiscal consolidation has to be tailored to specific circumstances.

Where there is fiscal space it should be used to boost aggregate demand at the eurozone level. A speedier disbursement of EU funds for good investment projects would also help. And what the ECB can do in terms of discouraging speculative attacks and bring bond yields down can make a hell of a difference. The Italian Prime Minister Mario Monti and others are quite right in this regard.

There is a train of thought worrying that, although enhancing policy space does makes sense during a period of structural reforms, it may dent the determination to pursue them[7]. And this is an argument not to overlook. However, one never knows where putting a country under a lot of pressure crosses a dangerous line, when it can cause a social breakdown and political disarray. This is why EMU level policies are needed, as an offset element to painful internal adjustment programs.

The way the eurozone is constructed now and what comes out of the Treaty and other governance reform measures make one think that, in spite of the operation of national automatic stabilizers and the transfer of some funds via the EU budget, the EMU is functionally more rigid than the gold standard regime of the inter-war period, during the last century. That regime was named, quite suggestively, the *"golden fetters"* by Barry Eichengreen[8]. What happened during those years, not least because of inadequate economic policies and post-war arrangements (the reparations imposed on Germany), is quite ominous.

There is also the issue of growing uncertainty and proliferation of extreme events *("black swans"*, as Nassim Taleb calls them). Demographic pressures, too, have to be factored in, for aging is putting additional pressure on welfare programs. The European social model is in trouble and its thorough reform is badly needed (which does not imply that it has to be dismantled). Consequently, more *"fiscal space"* better be available in the years to come. This should prod governments to be cautious about budget (expenditure) policies even in years of economic growth. This said, however, too rigid rules and an uneven distribution of tasks among adjustment instruments, in view of their effectiveness at national and supranational levels, can harm policy-making; it would lead to sub-optimal outcomes, to a deflationary bias throughout the Union.

Developing the single market has merits in helping resource allocation and making markets more flexible; this is the gist of the *Monti Report* which was made public by the European Commission in 2010. But market rigidities can not be done away with by decree; they are embedded in social, cultural and regional contexts. And in an increasingly large and diverse Union making national milieus more compatible among themselves is time consuming. Again, the experience of federal states indicates that what national policies cannot do, because of constraints imposed by joint rules and structural features of national economies, should be compensated by instruments at the supranational level.

This logic implies adequate fiscal underpinnings, that can not be simply equated with budget discipline. A budget of the EMU, funded by joint bonds, seems to be an inescapable way forward, although it clashes with prevailing views in some countries[9]. It is noteworthy, though, that a partial mutualization of public debt in the eurozone was suggested by economic advisors who work for the German government.[10] And raising the firepower of the ESM would work in the same direction.

Fiscal consolidation in emerging economies

EU emerging economies (NMSs) are strongly influenced by the EU structure. The heavy presence of foreign banks on their markets, the dependency of their exports on EU markets and, not least, the very deep integration of financial markets in the EU make pretty obvious why structure matters so much for them. For some NMSs a 0.5% structural deficit is restrictive. Where economies have the potential to grow faster a larger than 0.5% of GDP structural budget deficit would not entail menacing public debts. For instance, a budget deficit of 1.5% (above the limit envisaged by the Treaty for countries with public debts below 60% of GDP) and an average nominal growth of GDP (that includes inflation) of 4.5%, would make public debt converge to 33% of GDP.

Among NMSs Hungary, which has a public debt that comes close to 80% of GDP, does not have much leeway in putting off fiscal correction. Poland's and Latvia's public debts were close to 58% in 2011, whereas for other NMSs it was either around, or lower than 45% of GDP at the end of last year. NMSs can grow faster provided there is solid capital formation, highly productive investment (oriented toward tradables), more domestic saving and a constant focus on education. *Nota bene*: massive absorption of EU funds and better use of public funds can offset the recessionary impact of fiscal consolidation and raise the economic growth potential.

The regulation and supervision of the financial industry is also key

The reform of the EU governance includes the financial industry. There have been moves to reform it in the EU by

raising capital and liquidity adequacy ratios and overhauling regulation and supervision, but the *"too big to fail"* syndrome has hardly been touched upon. And systemic risks continue to pose so big threats that policies seem to be geared, often, rather toward taking care of this industry's needs than of wider concerns. What is extremely bad is that the very logic of market economy is seriously perverted when losses of the financial industry are recurrently socialized, at the expense of tax-payers, due to *"systemic risks"*. This state of affairs is hardly acceptable morally.

Besides, a rising collision between financial industry's self carved out rationale and the erosion of middle class in western societies, the downsizing of Europe's manufacturing base (despite Germany's industrial prowess in global markets) and ensuing social effects, is corroding trust in democracy. One can be cynical and argue that financial crises are always the same, that *"this time is different"*[11] is a naiveté. But this would be a hardly convincing argument for not trying to reform the regulation and supervision of financial markets; light touch regulation has been a clear failure, with enormous economic and social costs.

Taming financial markets is badly needed in order to bring back a sense of fairness in society, which is critical for the functioning of democracy, especially during times of duress. As American leaders changed the legislation on banking industry after the Great Depression similar reforms should occur now. Financial markets' complexion is not God given; reform attempts analogous to the Glass Steagal Act, as, for instance, the Volcker's rules in the US and the Vickers Commission's recommendations in the UK, should be pursued firmly. The interests of financiers have to be aligned with the interests of citizens.

A social and political dimension

When the capacity of governments to respond to crisis is reduced because of social strain, fairness, equitable burden-sharing, are critical in protecting social cohesion; these ingredients of social ethos are essential also for diminishing the propensity of not a few to reject Europe, to make the European project (EU) a scapegoat for all that is not going well in their societies[12].

This crisis has highlighted an increasingly strained relationship between major segments of the political and business elites, on one hand, and citizens, on the other hand; there is a sentiment spreading around that policy has been captured by vested interests. An excessive power exerted by vested interests, to their own benefit, and the erosion of middle class are undermining the functioning of checks and balances, are bad for securing the social glue and the social capital which underpin a democratic order. Moreover, when society gets increasingly polarized[13] prerequisites are created that favour social fragmentation, compress the public space (as a medium for social dialogue and reaching compromises) and foster political extremism.

This can be seen in Europe nowadays against the backdrop of the current crisis. The rise in intolerance (xenophobia and chauvinism), growing political polarization, are harbingers of worse to come unless policies are formulated to counteract them. Needless to say, domestic social crisis in Europe has to be cast in the wider frame of fragmentation tendencies in the EU.

Final remarks

The Treaty is a significant move forward in overhauling EU governance. But it still looks as a one-sided reading of the causes of the eurozone crisis. Budget indiscipline is a culprit in the current mess, but this crisis is due no less to over-borrowing by the private sector (that resulted in large external imbalances), disregard of systemic risks and malpractice in the financial industry, and, not least, inadequate institutional and policy arrangements in the eurozone. There is an acute social dimension to this crisis, that brings the issue of fairness to the fore.

The reform vision for dealing with the eurozone crisis needs, therefore, to be rounded up. It is true that there is a political reality in the Union, that integration fatigue is of longer vintage, and that there is a cognitive dissonance between politicians and citizens which complicates policy-making. But, statesmanship has to prove itself during times of duress. Unless a thorough reform of its governance is undertaken fragmentation forces would further undermine the Union. ■

1. Some call it the Fiscal Compact
2. The artisans of the eurozone area were aware of its design flaws, but did not find a solution to economic integration without political union, as Jean Pisani Ferry observes in "Le Reveil des Demons" (The Rise of the Demons), Fayard, Paris, 2011
3. I elaborate on this in "The eurozone crisis and EU governance: tackling a flawed design and inadequate policy arrangements", CASE Network Studies and Analyses, no.433, January, 2012
4. See Hans Werner Sinn, "The ECB's Stealth Bail-out", Voxeu, 1 June 2011
5. Wolfgang Munchau, "The Bundesbank has no right at all to be baffled", Financial Times, 5 March, 2012, p.9
6. Paul Krugman, Geography and Trade, Cambridge (US), MIT Press, 1993, p.80
7. Jacob Kirkegaard, "Brinkmanship in Brussels, Sturm and Drachma for Greece and Europe", Voxeu, 1 March 2012
8. Barry Eichengreen, 'The Golden Fetters", London, Oxford University Press, 1992
9. For Germany see the insightful analysis made by Sebastian Dullien and Ulrike Guerot, 'The Long Shadow of Ordoliberalism: Germany's Approach to the Euro Crisis", Policy Brief, ECFR, February, 2012
10. Bofinger, Peter, Lars P Feld Wolfgang Franz Christoph M Schmidt and Beatrice Weder di Mauro, "A European Redemption Pact", Social Europe Journal, 10 November 2011.
11. To use Carmen Reinhart and Kenneth Roggof's book title (Princeton, Princeton University Press, 2009)
12. As Giles Merritt puts it, Europe's crisis is also about fairness. ("Europe's fairness crisis", Project Syndicate, 27 February 2012
13. OECD data regarding the rise in income inequality in the western world, in the last couple of decades, are quite worrisome

Youth unemployment in Europe – mobilising, motivating and making use of the next generation

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The financial crisis and the subsequent sovereign debt crisis are taking their toll on the population in most European countries. Policy-makers have struggled to contain the fallout from these crises and to find a road ahead, and the man on the street is increasingly feeling the pain of necessary reforms and austerity programmes. Unfortunately, the crisis environment also threatens to lay the foundation for a large problem that will potentially weigh on the European Union for years to come: youth unemployment has increased sharply – in some countries to levels not experienced in a generation or more – and there is no sign of it abating in the near future.

The unemployment rate for the 15-24 year olds in the European Union stood at around 22% in October 2011, compared to approximately 10% for the 15-64 year olds. The number of young people without employment in the euro area rose by around 38% between 2008 and 2011. The picture differs across countries depending upon the severity with which the crisis hit them: in Spain and Greece the increase has been between 70% and 100%. In Spain close to a million young people are now unemployed – almost one unemployed young person for each one in employment.

"The young do have an important place in the labour market, however, and we have an obligation to invest in their future"

On a rare positive note, Germany has seen a slight decrease in youth unemployment in the same period. Other countries particularly hard hit are Ireland, Italy, Portugal and the Baltic states, all displaying youth unemployment levels above the 20% mark, while the Netherlands and Austria – as well as Germany – have weathered the crisis without any significant rise in youth unemployment.

Adding to this disconcerting picture is the fact that an education – not even a degree-level qualification – is no longer an effective insurance against being unemployed once out of university. By the end of 2011, the unemployment rate of young graduates for the European Union as a whole was 18% – close to one person in five with a degree-level qualification.

While employment prospects are still generally increasing with education, most countries have seen a steady increase in unemployment among well educated young people. And, having better access to jobs than low-skilled individuals is small comfort when – as in Spain – one in three young graduates are unemployed. This is to some extent a result of people with a degree-level education being better able to afford to prolong their search for jobs that match their skills; it nevertheless remains a waste of skills and human capital.

The young do have an important place in the labour market, however, and we have an obligation to invest in their future. The picture of all Europe's young workers on the street is not correct – the young are the most mobile, malleable and rapidly adaptive part of the workforce. Some high-skilled sectors, eg. within life sciences, even thrive on young employees – due to the fact that there is a rapid change in the skills needed, or that the skills needed simply are not available in the older part of the workforce. In these sectors the vast majority of new employees are under 30 years of age. The life science sector is of considerable interest in the light of the ambitious targets for R&D activities set out in the Europe 2020 strategy.

A dynamic generation is inactive – what are the consequences?

Youth unemployment has dire consequences – apart from the fiscal effects of increasing unemployment benefit payouts and foregone tax revenues.

Generally, at the individual level, unemployment has been associated with such ills as an increased incidence of health problems, lower levels of happiness and self-esteem and a higher prevalence of depression. For the young, with limited work experience and in the process of establishing a foothold in society, the risk is a vicious circle: they are more likely to become de-motivated and a climate of hopelessness, stress and negative projections does not help. This diminishes the expectation of actually finding a job and this in turn decreases their motivation to find work.

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Another consequence of the problem is a phenomenon sometimes referred to as the *"full-nest syndrome"*: 46% of the 18-34 year old population in the European Union still live at home and are more likely to be unemployed than the 18-34 year olds living on their own. This phenomenon is strongest in Southern European countries, where it was found that 7 million 18-35 year old Italians still live at home. High unemployment rates increase the probability that the young need to stay at home, but living at home also at the same time decreases the pressure for finding a job. A benefit is that it allows the young to wait out the crisis by remaining in education for a longer period of time.

Even health problems seem to be more serious for the younger than for the older-age unemployed, as a recent Gallup survey shows. Also, at the level of society, idle youth is likely to affect rates of crime, drug abuse and other social ills.

"Europe, with its demographic outlook, can ill afford to lose cohorts of young people, which end up with limited affiliation with the labour market"

These negative effects are amplified when individual unemployment turns into long term unemployment. While the share of young unemployed in long-term unemployment – defined as being unemployed for 12 months or more – has not risen significantly in most EU countries, it is now affecting many more people due to the general rise in unemployment rates. In a number of countries, between one-third and one-half of all unemployed young people has been unemployed for more than a year. Of course, as the crisis drags on, these numbers are bound to rise.

There are other, longer-term consequences too: permanent lower earnings and a higher risk of experiencing later unemployment spells. These effects have been shown to last for decades, probably due to a permanently lower productivity level than would otherwise have been the case if a first working experience had been available. Unemployed workers do not use their acquired skills and are likely to partially lose them or miss out on learning-on-the-job. At worst, discouraged young people may quit the labour force altogether or acquire only a remote attachment to the labour market. Previous experiences with recessions show that such effects are lasting and not easily overcome. Europe, with its demographic outlook, can ill afford to lose cohorts of young people, which end up with limited affiliation with the labour market.

These effects on the supply side of the labour market spill over into longer-term business performance. In the present situation hiring may mean having lots of qualified candidates to choose from. However, further down the road, the loss of human capital in the young generation will spell trouble; and lack of skills for businesses will be sorely missed when the economic engine starts up again.

Causes: can only the crisis be blamed?

The increase in youth unemployment is to a large extent the result of the effects of the financial crisis on overall economic activity. Slow growth or stagnation in private sector activity has been aggravated by the shedding of jobs in the public sector – traditionally a 'youth-friendly' sector for some levels of education in a number of countries. In some countries, other sectors that tend to employ many unskilled young people – such as construction, have been hit hardest.

However, labour market policies can also be blamed, in particular in the South of Europe, where the young are often in a particularly vulnerable position in the labour market. The young still seem to be those who get laid off first. This is often due to mandated large severance payments associated with laying off older workers with long work experience.

The 15-24 year olds is the group that is most likely to be employed on a temporary or part-time contract and thus most likely to be laid off in an economic downturn. In Spain, Greece, Portugal and Italy (but not France), the number of young people in temporary employment has fallen drastically since 2008.

In Spain the number of temporary jobs in this age category has been almost halved. The so-called *"last in first out"* principle clearly works to the disadvantage of those with limited work experience, either because their contracts are easier to end, because employers need to invest in them or because they lack experience.

Against this background, the issue of youth unemployment is high on the European political agenda: it was one of the main issues of the European Council meeting in late January. Funds are to be mobilised in order to support young people's way into work or training and their mobility. It is a policy challenge for policy-makers of the member states and of the European Commission.

What can and should be done?

Cost-effective solutions to youth unemployment with short-term effects are naturally in short supply. However, the young are more malleable and mobile, and can be motivated to re-skill and to up-skill. Skilled job searchers are still those with the highest probability of employment: the number of job finders with post-secondary non-tertiary and tertiary education levels has increased the most, compared to those with lower skill levels.

Up-skilling and re-skilling should happen in a targeted way rather than in a *"one-size-fits-all"* approach to ensure that the labour market can absorb the more highly skilled workforce.

To this end apprenticeship and education systems targeted towards professional skills have proven useful – as for instance in Germany and Austria. However, Denmark with a similar system of apprenticeship has seen the youth unemployment rate double, thus showing that no particular catch-all solution exists. Vocational training is an also asset compared to general education. Innovation and creativity should be fostered in curricula.

The European Union can play a role in fostering mobility programmes. The different demographic developments among EU countries should give rise to more cross-border worker mobility. A case in point is Germany which, given the level of the economic crisis, is enjoying moderate unemployment rates. Large cohorts of older workers are going to retire within the next decade and the cohorts entering the labour market will be much smaller, creating a potential large shortfall of workers.

When economic growth gets going in the rest of Europe, the German labour market is likely to be able to absorb a large number of workers coming from other parts of the European Union. Language barriers remain a problem, but in many, particular high-skilled sectors, these are not too difficult to overcome.

To ensure both quality and quantity of jobs for the young, a two-fold policy approach should be envisaged: On the one hand, employers should be encouraged to invest in the young keeping in mind a long-term perspective. To increase the probability of investment in youth, financial incentives for employing young workers could be helpful, and to lower the probability that the young are the first to be fired, it should be ensured that suitable and qualified young workers should be occupied on the basis of long-term or at least more secure contracts.

On the other hand, the design of labour market policies should ensure enough flexibility to make space for a young worker: for instance firing costs are found to increase youth unemployment and decrease old-age unemployment. Sectors depending somewhat on the young – with quickly changing occupational requirements or with typically low wages – such as life sciences and ICT, tourism, catering, sales, and restaurant services – could benefit particularly from policies of this type.

Conclusions

It is becoming clear that today's young generation is being hit very hard indeed by the financial crisis. The root causes are relatively well known and are not qualitatively different from the causes of persistent youth unemployment in calmer economic times. Thus, sensible policies and reforms are important, but it will likely take a return to economic growth to make a significant dent in the youth unemployment rate.

A number of countries particularly in the South of Europe could benefit from labour market reforms (and such reforms are being pursued or are on the table in a number of countries). Reforms should include:

- changes in labour market policies, such as financial incentives for employers to invest in the young,
- programmes to up-skill, re-skill and mobilise the young and
- re-thinking attitudes and perceptions and motivating the young.

The conclusions of the European Council meeting at the end of January in fact show that policy thinking is moving in that direction: it was proposed to increase mobility, to invest in apprenticeship programmes and in general to direct funds towards this issue.

In the meantime, it is important to avoid potential policy mistakes with adverse long-term consequences. Chief among these would be a return to the notion that older workers should leave the labour market in order to make room for a new generation. This *"fixed amount of work"* mindset proved detrimental to public state coffers and longer-term growth prospects when introduced in many countries in the late 1970s, because it left an older but qualified share of the labour force on costly early retirement schemes when the economy picked up. And once such programmes are entrenched in peoples' expectations, it is very hard to remove or reform them.

With the EU's demographic outlook of today – a shrinking force labour and an increasing number of pensioners for each worker – repeating this mistake would be costly indeed. Fortunately, such proposals have not surfaced in the debate. However, with no immediate economic recovery in clear sight, and once the planned or proposed increases in the retirement age start to take effect this may change. The argument for *"letting the young have their turn"* may then find a more receptive audience.

It is therefore important to stress that in all but the worst of imaginable future growth scenarios there will in all likelihood be work to find for all motivated young and older people. The cohorts entering the labour market in the European Union are now smaller as a whole than the ones leaving it. Of course, building skills during the crisis will only help when economic growth returns.

Finally, the practice of labelling the current young generation as *"lost"* is best to be avoided: it can only aggravate negative stereotyping and risks creating a vicious circle of de-motivation and withdrawal from the labour force. ■

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Dual learning – an answer to youth unemployment

Maxime Cerutti is Director of Social Affairs at BUSINESSEUROPE

Access to qualified labour is at the core of companies' competitive strategies. It is an important condition for companies' decision to produce in a given country. A labour force with the appropriate and increasingly high qualifications is therefore very important for attracting investments, securing growth and jobs and thus securing society`s prosperity.

At the same time the alarming figures of youth unemployment in many EU member states stand in sharp contrast to the potential of the young generation. These figures suggest that something is seriously wrong in both the functioning of our education systems and our labour markets in Europe.

"The effects of a lost generation will undermine Europe's innovation potential and competitiveness for the next decades"

Even before the current economic and financial crisis many countries had very high levels of youth unemployment, already indicating an underlying structural problem. The crisis has hit young people particularly hard, especially in those countries. Transition of young people from education to the labour market has become increasingly difficult.

These days 5.5 million young people under 25 years of age are unemployed in Europe. The youth unemployment rate at 22.4% is twice as high as for the whole working population and nearly three times as high as the rate for the adult active population. In Spain and Greece in particular, youth unemployment has reached almost 50%.

To make matters even worse: if we add those who are not in education to the high number of young unemployed, there are a total number of 7.5 million people who are neither in employment nor in education or training. This share increased from 10.8% in 2008 to 12.8% in 2010 for the EU as a whole. In Bulgaria, Estonia, Greece, Ireland, Italy, Latvia, Romania, Slovakia and Spain over 14% of the young generation is not in education (any longer) and not (yet) in employment.

This is an unacceptable situation. We risk losing a generation to social exclusion and if this risk materialises, European economies would be scarred in the long run. The effects of a lost generation will undermine Europe's innovation potential and competitiveness for the next decades.

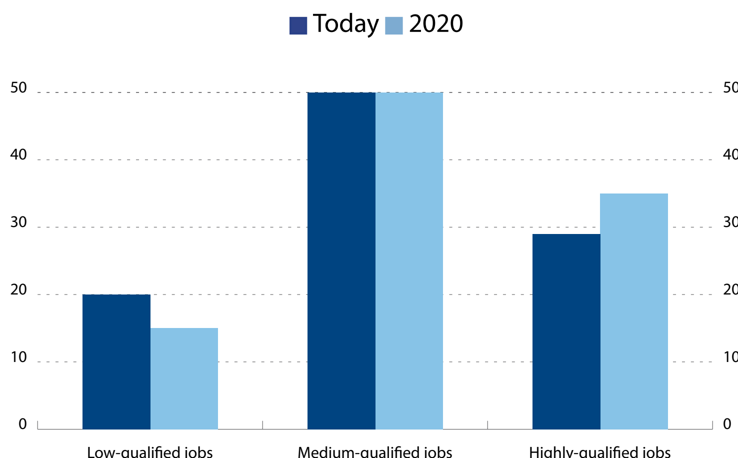
To facilitate youth integration into the labour market, labour market rigidities must be reduced to stimulate job creation. Also part of the answer is to find ways to close the gap between labour market needs and young people's training and competences.

Earlier this year BUSINESSEUROPE commissioned a special taskforce to look into the reasons of youth unemployment and put concrete recommendations on the table. The taskforce submitted its report in Brussels to the Tripartite Social Summit on 1 March 2012.

Future skill needs

Europe is facing major challenges if growth and living standards are to be maintained. The changing demographic structures in the coming years will lead to a significant ageing of the population in Europe.

By 2014 the working age population of men and women (20-64) will start to shrink. In 2020, it will have declined by around 3 million people. The decline will be increasingly steady after that and by 2050 40 million less people will be of working age while the number of persons over 65 will increase by approximately 60 million. Therefore it will be more important than ever to tap the full potential of the smaller EU working age population.



Data: Skills Needs and Supply, CEDEFOP 2010

At the same time, though, the share of jobs employing those with high-level qualifications will increase from 29% in 2010 to about 35% in 2020. The share of jobs requiring medium-level qualifications will also remain very significant (around 50% but the share of jobs for people with low qualifications will drop from 20% to less than 15%.

The unemployment rate of the EU now stands at 10.1% but at the same time, there were 2.2 million unfilled vacancies in the EU member states in the first quarter of 2011. More than a million in Germany and more than 450,000 in the UK. These conflicting figures highlight the clear mismatch between the supply and demand of skills. The fact that educational systems' outputs often do not correspond to labour market needs contributes to unemployment, in particular among the young.

Europe's response

European policy makers are aware of the graveness of the situation and reckon that with both the debt crisis and with an ageing population, the integration of young people into the labour market is one of Europe's most urgent concerns if Europe wants to be a prosperous region in the future.

The Europe 2020 strategy targets two categories of young people. First: the most vulnerable ones who face the most serious difficulties. The objective here is to reduce the number of early school leavers to 10% by 2020. The other objective is to increase the number of higher education graduates to 40% by 2020.

In addition, on 30 January 2012 the European Council has agreed to step up efforts to promote first work experience and participation in the labour market by ensuring that young people receive a quality offer of employment, continued education, apprenticeship or traineeship within a few months of leaving school.

A key objective shared by European business is to increase the number of apprenticeships and traineeships where possible and in cooperation with the national educational systems.

Improving the quality and image of apprenticeships

There is a broad diversity of apprenticeship systems and cultures in EU Member States. In some countries, well-functioning dual apprenticeship systems already exist. In many countries, however, existing systems need improvements. Either because apprenticeships are not an attractive option for companies. Or because the image of apprentices in some public perceptions is negative. Or because the educational system does not give young people the basic competences for companies to build on.

European companies call for a new European effort to ensure that their needs in terms of medium/qualified jobs in the next ten years are met. They urge that vocational education and training and apprenticeships should be put at the centre of this new European effort.

Building upon existing good practices in some countries, the objective is to find cost-effective ways for EU member states to establish, reform or expand the apprenticeship approach. This is in the interest of companies and of young people.

Because they have an interest in having access to a sufficiently skilled workforce, companies in some European countries pay for a significant share of the costs of education, especially in vocational education and training. In Germany, for example, companies invest heavily in their part of the dual training system, to the tune of €24 billion a year.

In return, enterprises expect a reliable system. They must be able to count on the skills acquired by young people in the general school system as well as in the apprenticeship system. This requires putting in place adequate framework conditions for the development of vocational education and training. In many European countries, however, these framework conditions are lacking.

Early labour market experience is a useful icebreaker for young people to enter the labour market. Apprentices, in addition to theoretical knowledge acquired in the educational systems, develop skills which are relevant for the labour market. This experience is extremely valuable when they start looking for their first job, or when they are continuing their career.

In order to attract apprentices the quality of learning in vocational schools and in companies shall meet the highest standards. Two key aspects of their success are the permeability of educational systems and effective institutionalised cooperation between the relevant actors. And let's not forget: well functioning apprenticeship systems are those which provide good earning potential and career opportunities. It is also necessary to ensure a more positive perception of vocational education in the EU.

Finally, it has to be clear for all the stakeholders that the apprenticeship agenda is not a social agenda for school dropouts. Vocational skills and competences are just as important as academic skills and competences and both are necessary for a well-functioning labour market. Moreover, the principle of acquiring company experience is also relevant for higher education.

A dual learning system

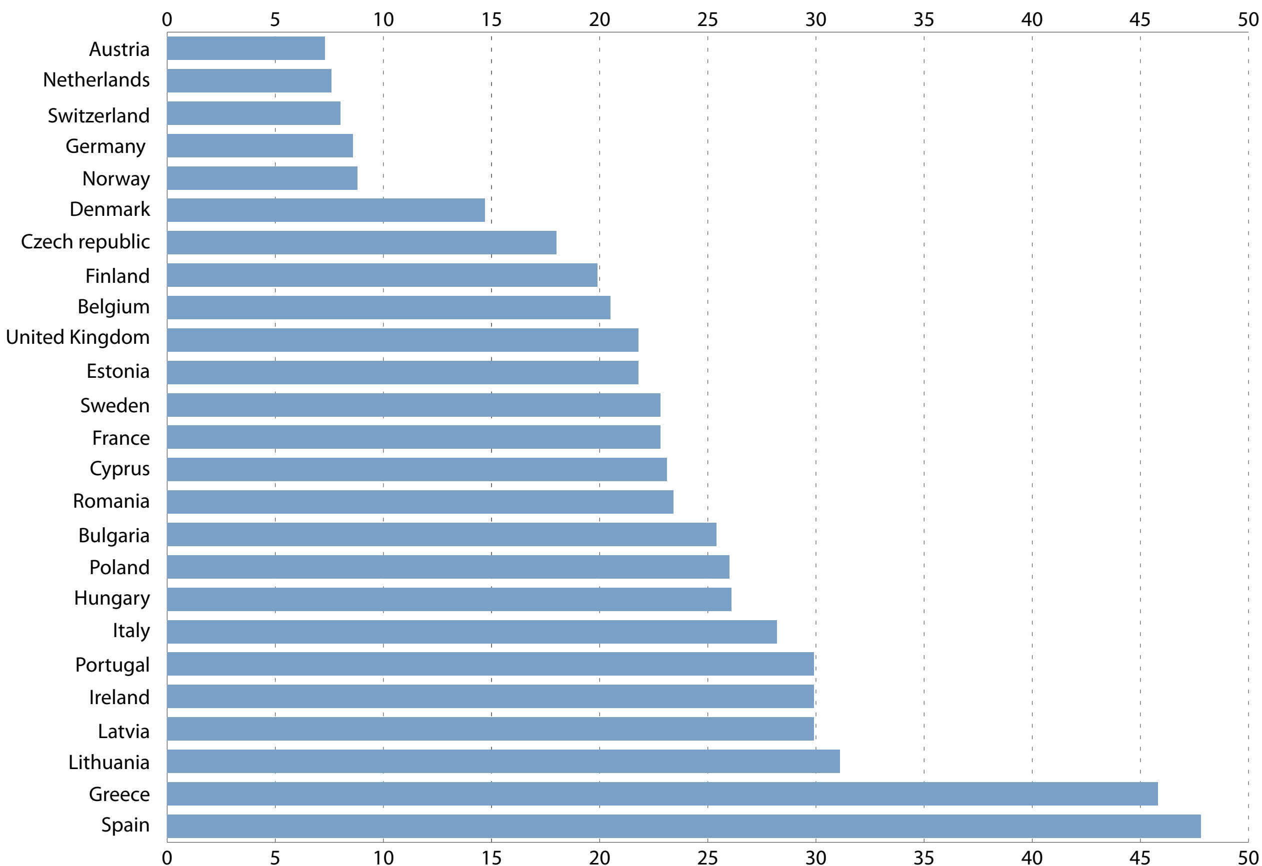
In successful dual systems, learning in schools and learning in companies are linked and tuned closely thanks to the strong involvement of companies/employers in the system.

Driven by a fruitful social dialogue Germany, Austria, Norway, Switzerland, Denmark and the Netherlands have established efficient dual learning systems over a long period of time. This has certainly contributed to their good performance in terms of youth employment.

All these countries have in common the practice of work-based vocational education, where apprentices alternate between being at school and being in a company. A large share of the education takes place working and learning in a company. There is a contract between company and apprentice as well as a strong involvement of employers in the system in general (eg. participating in establishing

Youth unemployment

Unemployment rates (percentage), 2011 ■ Unemployed 15-24



Data: Eurostat LFS 2011

curricula, taking on strong financial and organisational responsibility). Inspired by these successful examples, some countries like France have reinforced their priorities concerning apprenticeship.

In other words there is an indication of a correlation between practicing a dual system (where apprentices spent a great share of their education in a company) and low youth unemployment.

What can be done to foster and expand apprenticeships in Europe?

EU funding should finance part of the initial costs in setting up or reforming a dual system at national, regional or branch level as part of member states' EU 2020 reform programmes. Member states, regional and local governments play an important role when apprenticeship systems are established. Especially, they have to set the right framework conditions, including the legislative framework and an institutionalised cooperation between relevant stakeholders. Companies need a system on which they can rely to assess the qualifications of workers while adapting curricula to changing market needs.

Achieving a well-functioning dual learning system requires companies to take responsibility for educating young people. But governments should in turn provide the framework conditions for apprenticeships to be attractive for companies. The involvement of employers is crucial to ensure the adequacy of the training provided to apprentices and to serve companies' skills needs. It is a key for efficiency. Dual systems are an important way to give young people easier access to the labour market and interesting career opportunities over a working life. At the same time, it contributes to lower youth unemployment, higher employment participation rates and economic growth in Europe.

With the new European Social Fund and *'Erasmus for All'* programme, the European Commission has the means to help member states find cost-effective ways to set up, reform or expand their dual learning systems. This opportunity should not be missed.

The effects of the malfunctions in the labour market are felt by all European citizens and companies. Not least the more than 24 million men and women unemployed. Or the younger generation of Europeans who are looking at forecasts of exceptionally high youth unemployment rates also for 2012.

Improving the situation in countries where youth unemployment is high cannot happen overnight. This is because the reasons behind high youth unemployment are numerous and complex. However, we must do everything we can and as quickly as possible to provide Europe's youth with good education and well functioning labour markets. We must help them realise their potential because Europe's future depends on its youth. ■

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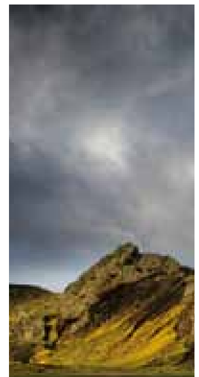

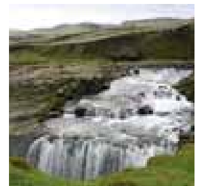

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The gender dividend: an urgent economic imperative

Charles P Heeter is the Managing Principal of the Global Public Policy Group at Deloitte Touche Tohmatsu Limited. Mr Heeter is also Chairman of the Business and Industry Advisory Committee to the OECD

The biggest issue facing many of the world's economies today is economic growth and job creation; yet it is with mixed results that governments and business are tapping into arguably the largest emerging market in the world and the greatest natural resource for knowledge, talent and investment: women. There is a strong imperative to move quickly and harness this potential.

There is a long way to go with respect to improving women's economic opportunity and in particular at executive leadership levels. According to current data, only 14 percent of senior executive positions at the *Fortune* 500 are held by women, a number that has barely budged since 2005. A global study of the number of women on boards is even more dismal – only 9.4 percent globally, up marginally from 9.2 percent in 2009 according to Governance Metrics International. This is despite the fact that economic studies show that corporations with women on their boards and in leadership positions have a higher return on equity. In Europe, the return has been estimated at more than 10 percent[1].

"Getting more women in the workplace, including in senior decision-making roles, who understand the buying preferences of their cohorts makes business sense"

Furthermore, a Deloitte study citing data from the *Harvard Business Review* forecast the income and global spending power of women at US$18 trillion and US$28 trillion respectively by 2014. Women typically spend money differently from men, with different buying patterns and preferences. Thus, companies should invest in understanding women as consumers and fully capitalizing on their purchasing power. Getting more women in the workplace, including in senior decision-making roles, who understand the buying preferences of their cohorts makes business sense.

A 2010 global survey of executives found that 72 percent agree that there is a direct connection between gender diversity and business success, but only 28 percent say it is a top-10 priority for senior leadership[2]. Institutional investors, however, increasingly identify gender as a key determinant in their investment decisions, banking on the gender dividend in the long term.

What can be done to improve opportunity for women, which will benefit business performance, the economy and society as a whole? Focused government policy and business engagement at all levels is needed to support women at work. Sound socioeconomic policies must underpin and encourage action, and governments, along with business, must innovate, support community investment, and remain committed to making the difference as it relates to women.

Gender equality may be on the agenda of the G20, but it can be argued that this should be elevated to a higher priority, given the economic and community benefits of empowering women. The OECD, a key advisory body to the G20, is undertaking an extensive project on Gender Equality which is rightly focusing on the *"Three E's: Employment, Education and Entrepreneurship."* These elements represent key pathways for women in the economy and society in both developed and developing countries alike. The OECD analysis will help identify and develop better indicators necessary to inform key policy decisions that surround these issues. There is a lot of anecdotal evidence supporting the need and benefits to empowering women, but clear data can be a significant motivator.

Business too has a role to play. Change requires measurable, management-led policies and practices that drive female leadership, across management roles and divisions, on boards, at the highest executive levels (the C-suite), and throughout the talent and supply chains. Many companies worldwide are making significant strides in addressing, not so much the glass ceiling, although this does continue to present a hurdle for many, but the stubborn problem of the leaking pipe of female talent. Retention rates for women dramatically decrease with seniority and advancement.

Business implements countless formidable approaches and statistics suggest that these seem to be making a difference. For example, there is Mass Career Customization™ (MCC), the brainchild of two women at Deloitte. Developed and piloted in 2004 and rolled out across Deloitte in the US between

2007 and 2010, MCC enables employees to collaborate with their managers to design career paths responding to their specific needs and those of the business. Not solely designed for women, but recognizing women as major beneficiaries, it has improved satisfaction of Deloitte's professionals with work-life balance, contributed to improved retention, and is correlated with employee engagement.

Another case study of the gender dividend in action is the Deloitte Initiative for the Retention and Advancement of Women (WIN). Started in 1993 at Deloitte US, its results tell the story. In 1993, women comprised only 7 percent of partners, but in 2011 there are more than 1,000 women partners, principles and directors, representing 23 percent of management, one of the highest amongst its peers. It has also changed the culture to one of where both men and women can succeed, and positively impacted the Deloitte brand. The success factors of this initiative are strong leadership from the top; 5 CEOs have spearheaded the initiative since it started; the positioning of WIN as a business strategy; and innovation to allow WIN to evolve and grow. When businesses far and wide recognize gender diversity as a critical business enabler and a strategic imperative, we will see even more positive developments in the economic empowerment of women.

At the end of the day, there is no silver bullet. Progress is being made, but ongoing commitment, leadership and innovation are required for economies to benefit from the tremendous potential women represent. This is not just a question of trillions of dollars of untapped consumer demand, but the potential for better, more informed decision making in our societies, an educated and diverse source of talent for private and public institutions, and role models who can be an inspiration to billions of women and men worldwide. Government, business and society must continue to integrate women's experiences, perspectives and voices into the fabric of their organizations and systems. Only then will we truly benefit from the gender dividend. ■

1. Columbia Business School: The Sanford C Bernstein & Co Center for Leadership and Ethics, December 2010
2. McKinsey Quarterly, 10 October 2010

This article was previously published in the OECD Yearbook 2012
http://www.oecd.org/document/42/0,3746,en_36734052_36734103_47715434_1_1_1_1,00.html

Merits of mediation – ICC's International Mediation Week

Mediation can help companies settle disputes quickly and cheaply through creative, win-win solutions that often leave positive business relationships intact – a situation more difficult to achieve after a contentious arbitration or court battle. Best yet, using mediation can derive demonstrable economic benefits for businesses if integrated into their dispute resolution policy.

Mediation involves a neutral third party using a structured process to facilitate negotiations and allows companies to limit risks by providing a neutral forum for disagreements and a pre-planned resolution procedure, in which parties control the outcome in the place of a legal determination imposed by a third party.

As a world leader in administered international mediation, the International Chamber of Commerce's International Centre for ADR appoints mediators and supervises mediation proceedings in commercial disputes from all over the world. The range of disputes which are submitted to the Centre for mediation proceedings, give it a unique insight into even the most complex cases, including those involving states and state entities.

ICC's International Centre for ADR endeavours to ensure that every solution fully addresses a parties' interests. ICC's ADR Rules came into force in 2001 offering businesses a procedural framework for settling matters in a way which takes into account both parties' business interests, while minimizing loss of time and costs. Since then, cases have been filed and administered involving parties from over 65 countries – approximately 90% of which used mediation as the settlement technique, the standard approach for parties that do not select another method. The Centre reports to date that around 80% of the cases submitted to a mediator are successfully settled, on average within four months after filing of the request for mediation.

In February, the International Chamber of Commerce (ICC) hosted its annual Mediation Week to highlight the merits of this form of amicable dispute resolution (ADR).

Staged annually by the ICC Centre for ADR, Mediation Week comprises the ICC International Mediation Competition and Mediation Conference, an event tailored to the interests and needs of business and business professionals to help them take advantage of mediation.

The Competition is the only international mediation moot worldwide. It was established in 2006 to train law and business students to better meet the dispute resolution needs of today's global market; to know how and when to efficiently use mediation and how to deal with the cultural sensitivities that can become evident in the process.

"... around 80% of the cases submitted to a mediator are successfully settled, on average within four months after filing of the request for mediation"

Law and business school teams from all over the world relish the opportunity to test their problem-solving skills in international commercial cases, in which they take on the role of client and counsel under the conduct of some of the world's leading commercial mediators.

The 2012 Competition was won by the South Texas College of Law (USA) who beat off competitors Bar Ilan University (Israel), in the most challenging mediation competition to date.

The two schools thrilled an international audience of over 250 people in the Competition final, which took place at the Maison du Barreau in Paris.

Geoff Sharp, a leading commercial mediator from New Zealand, who regularly mediates large international commercial disputes, mediated the final and showcased some of the interventions top class mediators use to facilitate the parties' settlement discussions.

Over 120 professional mediators and 66 teams from 32 countries took part in the Competition, which featured over 140 mock mediation sessions, based on real cross-border commercial disputes.

Elayne Greenberg, Coach for a team from St John's University School of Law, USA, and Director of the Hugh L Carey Center for Dispute Resolution said: *"Participating teams left with invaluable lessons about the importance of collegiality, an expanded knowledge of advocacy skills and an optimism about their future contributions as lawyers in our global community."*

The Competition is ICC's biggest educational event and received support from KPMG, Jones Day, Vinci Construction, Gide Loyrette Nouel, Clifford Chance, Siemens, Fidal, Squire Sanders, Shell, Heuking Kuhn Luer Wojtek and Taylor Wessing. Prizes included a cash award, publication subscriptions and internships with sponsor organizations.

Renowned mediators and dispute resolution professionals from companies such as Shell, Telefonica, GE, Bombardier Transportation, VINCI and Societe Generale de Surveillance also took part in ICC's annual international Mediation

The International Chamber of Commerce (ICC) hosted its annual Mediation Week in February 2012

Conference, which opened the ICC Mediation Week. The one-day conference gave insight into the strategic, financial and logistical aspects of resolving commercial disputes by mediation using real case studies.

The mediation conference series combines dynamic discussion and workshops inviting enlightening exchanges between corporate viewpoints and sophisticated, experienced international dispute resolution professionals from around the world. Past conferences have focused on establishing holistic in-house dispute management systems, the business value of effective mediation for commercial disputes and effectively overcoming the hurdles to successful mediation proceedings. As a testament to the conference's relevance to the needs of in-house counsel, it receives support from organizations such as the American Bar Association (ABA), the Association of Corporate Counsel Europe (ACCE), the Corporate Counsel International Arbitration Group (CCIAG), the International Institute for Conflict Prevention and Resolution (CPR) and a German conflict management organisation that comprises 17 companies including Siemens, Audi, Areva, Bayer and Deutsche Bahn. ■

The 2012 Competition was won by the South Texas College of Law (USA)

The Financial Transactions Tax: Europe needs it

Algirdas Šemeta is European Commissioner for Taxation, Customs, Anti-fraud and Audit

For 40 years, the idea of a *"Tobin Tax"* has been hotly debated: in Europe and worldwide. Finally, today, we find ourselves no longer discussing hypothetical ideas and theoretical assumptions on this matter. We have a concrete proposal for an EU financial transactions tax, which I put forward last September. It is a proposal for a tax which I consider to be well-designed and extremely workable; a tax which offers many benefits.

This proposal has now become the focal point for the lively debate on the merits, as well as potential risks, of introducing such a financial transactions tax. It can't be denied that some people have found it hard to extract themselves from old notions and pre-conceptions of what a financial transaction tax would mean.

We have seen opponents argue on the basis of assumptions that date long before our proposal and that are not at all related to the actual tax we have designed. Others have misused or misunderstood aspects of our impact assessment to try to build a case against an EU FTT. But I am glad to say that there are many who are taking a serious look at the issue, and contributing constructively to discussions on how to best introduce an EU FTT. Many member states are aligned behind the proposal, and keen to see fast progress made in pushing it forward.

"Citizens across Europe understand the benefits that the FTT has to offer: a fairer distribution of the tax burden, greater stability in the financial sector, and considerable revenues"

In parallel, a huge popular momentum has built up around the financial transactions tax. In fact, two in every three persons came out in favour of it in a *Eurobarometer* survey last year. Citizens across Europe understand the benefits that the FTT has to offer: a fairer distribution of the tax burden, greater stability in the financial sector, and considerable revenues.

Even at global level, G20 leaders are gradually converging towards the possibility of an FTT. They may not (yet) have agreed to set up a global financial transaction tax. But there is certainly no dispute that the financial sector should contribute fairly to the costs of recovering from the world economic crisis that it helped to create. I believe that the FTT is a good way to achieve this, and I have certainly not given up on the idea of a worldwide approach. The Commission will continue to work towards this goal. But in the meantime, Europe has the chance to lead the way. We can implement a viable, successful FTT within the EU, and prove its benefits to our international partners.

There are many extremely good reasons to go forward with a European financial transactions tax. An FTT at EU level can help address many of the major challenges that we are confronted with as a Union today, not least finding our way back to growth and financial stability. The tax will generate significant revenues for member states – an estimated €57 billion a year for the whole EU. In times of budgetary constraint both member states and the Union need resources to invest in growth-friendly policies and contribute to wider goals such as development or fighting climate change. The financial transaction tax offers an alternative to further hikes in income or corporate taxes, for example, or further cuts in public spending.

The financial transaction tax is also designed to encourage the financial sector to engage in more responsible activities, more geared towards the real economy. As such, it will complement the changes the Commission is proposing in the regulatory framework for a more stable and more responsible financial sector. Together the tax and regulatory measures should help prevent a crisis like the current one from ever happening again. The proposed financial transaction tax will not undermine the strength of the financial services industry in Europe.

The financial sector plays an essential role in providing funding to the productive economy, a role that will be essential to our common efforts to create growth in Europe. However the financial sector was rescued at high costs for public budgets in a crisis that was in part due to the excesses of the sector. At the same time, it benefits from a situation of under-taxation due to its VAT exemption. Setting up a tax on the financial sector is about establishing fairness in taxation.

A strong single market is the foundation on which we must rebuild our economies and create a vibrant economy for business. And a strong single market relies on coordinated tax policies. An EU FTT will prevent a patchwork of national approaches from creating burdens to businesses and competitive distortions.

A European Financial Transactions Tax can achieve the objectives outlined above without compromising the Union's competitiveness. On that subject, there has been much speculation about the impact the FTT would have on jobs, growth, citizens and the financial sector itself. I welcome this opportunity to once again clarify the situation, and counter some of the most pessimistic claims that have been made, frequently on false assumptions.

First, contrary to some claims, our impact assessment does not say that the FTT we have proposed will have a massive negative impact on jobs or on GDP. The objective of an impact assessment is to look at the various options and evaluate their consequences. We then design proposals accordingly. As a result of our careful analysis, we have designed a proposal that will allow €57 billion to be collected per year with an impact on GDP and employment lower than other taxes or public cost cuttings. All sources of additional public finances, when looked at in isolation, carry an economic cost. But the cost of the FTT is small, and it is legitimate compared to the huge volume of support that the financial sector has received in recent years.

When looking at the global picture one needs to take into account the positive impact that the use of the receipts can generate when they are intelligently invested in projects to boost growth or used to meet consolidation needs. Without pre-empting the choices of member states governments, if the projected revenues are put towards consolidating national budgets, reducing other taxes or investing in public services and infrastructure, the financial transaction tax could be positive for growth and employment in Europe.

The proposal has been carefully designed to address the risks usually associated with financial transaction taxes. The two principal accusations that are usually brandished against the financial transaction tax are the risk of relocation of financial activity, and the risk that the tax would be borne by someone other than the sector it targets.

On the issue of relocation, the Commission proposal includes very strong mitigating measures to limit this risk. First, the European financial transaction tax has a very wide scope, which includes all financial transactions taking place between financial institutions. This will ensure that the trading will not be able to avoid the tax by moving to markets outside the scope of the tax or by creating new products.

Second, the rate of the tax is very low. With 0.1% on stocks and bonds and 0.01% on derivatives and structured products, the tax will in reality represent a very small portion of most transaction costs. Third, in line with the residence principle, the tax will be levied at the place of establishment or deemed place of establishment of the parties to the transactions rather than at the place where transactions are booked.

It is often said that relocating a transaction outside Europe can be done in one click. But this is a moot point with the FTT we have designed. To avoid the EU FTT, it would be necessary to move the whole business outside Europe and abandon all European clients. This would be a very unlikely response to such a small tax. I don't deny that some transactions could become pointless after the introduction of a Financial Transaction Tax. However, the transactions in question often take place in trading schemes for which the economic added value is highly dubious.

The financial sector will have to adapt to the new tax environment of course. But the financial sector has to adapt to new realities all the time. In fact, it is part of their competitive strategies to constantly to adapt to novelty with new products and investment schemes. Adjusting to this tax should not be a problem for them. Putting a price signal on transactions should lead financial actors towards more concrete, less speculative business. In overall it should create a more stable financial environment.

"When looking at the global picture one needs to take into account the positive impact that the use of the receipts can generate"

With regard to concerns that the FTT would be borne by citizens or ordinary businesses, rather than the financial sector, the Commission has again included elements in the design of the tax that would prevent this. Our proposal aims to ensure that the tax is on the financial sector and not on other actors of the economy.

For a start, the day-to-day financial activities of citizens, such as credit card payments or loans, will not be subject to the financial transaction tax. Similarly, ordinary financial transactions of businesses, as well as the primary issuance of shares, are not included in the scope of the tax. Of the transactions that are subject to the tax, 85% take place purely between financial institutions.

These factors, in themselves, are robust enough to provide assurances that it will be the financial sector that pays, and not participants in the real economy. If, in some cases, the financial sector does try to pass on some of the costs to its clients, the outcome would still not be catastrophic, thanks to the low tax rate. Any citizen buying, for example, €10 000 in shares can surely afford a €10 tax on the transaction.

In conclusion, the merits of the financial transaction tax fully justify its introduction at EU level. It offers revenues, stability and even the possibility to contribute to growth, at a time when these are so desperately needed in Europe. It also offers a way of rebalancing the tax burden, so that those who can afford to pay do, and so that the financial sector pays its fair share to public finances.

Over the coming weeks and months, I am sure that the debate on the financial transactions tax will reach new heights. I look forward to this, so long as it is based on fact and reason, and I am optimistic that we can implement a financial transactions tax in Europe to the benefit of all citizens. ■

Thoughts on the financial transactions tax

Carolina Coelho da Silva is a Senior Associate at Raposo Bernardo, Lisbon

Taxes always create interesting and vivid discussions as, let's be honest, no one really wants to pay them. Even the existence of taxes is subject to different opinions. The issue is even more important when we are talking of a levy tax on financial entities such as banks and insurance companies, especially if we consider that until now it was customary that these entities benefited from tax exemptions, and were not subject to a specific tax.

Until recently a lot has been said about financial transactions tax scrutinizing all the pros and cons of this "new tax".

The idea of a financial transactions tax, also called the Tobin tax or even the Robin Hood tax, consists in taxing all financial transactions between 0.01 and 0.05 per cent.

Despite the recent discussion of the concept of a financial transactions tax, the truth is that the original idea - the Tobin tax - was developed in the 70's. This tax, named after its creator, the Nobel Prize-winning economist James Tobin, was originally defined as a tax on all spot conversions of one currency into another (Tobin suggested a rate of 0.5 per cent). The purpose was to put a penalty on short-term financial round-trip excursions into another currency. This tax would therefore reduce destabilizing currency speculation, and inhibit speculative cross-border flows in foreign exchange markets.

"The consequences would be wider that the immediately observable effects, as market transactions are not just exchanges of goods or services, but also contain vital market information"

In short, it was conceived as a small tax on conversions of one currency into another. In a historic context, the intention of this tax was, after the removal of the gold standard, to prevent huge swings in currency valuations, reducing volatility and mispricing.

Forty years later, Tobin tax is again at the top of the political agenda in Europe. One of the reasons for this is that the European Commission has proposed a turnover tax on all financial transactions, varying from 0.1 per cent on stocks to 0.01 per cent on financial derivatives like futures and credit-default swaps.

We cannot say it is a surprise, considering the financial crisis that we are living through, and the need of funds by the governments.

After all this financial crisis, considered by some as the worst financial crisis since the 1930's Great Depression, was caused by valuation and liquidity problems due to an over optimistic and risk-addicted financial institutions. When the so-called "bubble" exploded the result was the collapse of large financial institutions, the bailout of banks by national governments and downturns in stock markets all around the world, particularly in Europe.

Therefore, in a Europe deeply affected by the crisis, the need for changes in order to obtain more liquidity is immense. Suddenly a new tax over financial operation seems to be the solution for all our problems.

In a difference from the original Tobin tax the intention of this new tax is to tax all financial transactions, not just currency trades, but also including instruments such as financial derivatives like futures and credit-default swaps.

After the European Commission proposal, the discussion was launched between supporters and opponents of the Tobin tax. The supporters believe that it could raise a great amount of money that would help the countries to overcome these difficult times.

Also it is felt that those who led us into the crisis should pay for it, as the revenue for such a tax would be helpful to restore the government treasuries (the same governments who bailout the banks). Also, the tax exemptions of the financial intuitions have become an issue. We cannot ignore that this tax proposal has also been called the Robin Hood tax.

Those who are against say that market makers will merely change their method of handling risk in any of a variety of ways that significantly reduce the volume and total value of transactions.

The consequences would be wider that the immediately observable effects, as market transactions are not just exchanges of goods or services, but also contain vital market information such as prices that are representative of profits and losses. Thus, the lower volume and total value of transactions would cause a lack of liquidity, that would cripple the economy as companies and entrepreneurs will

be unable to acquire the necessary funds to enhance their current business or seek other ventures.

Within the European Union there is also a geographical division (think of the historic opposition between France and United Kingdom, usually taking opposite sides in the discussion).

France's government has been very keen on the idea of this new tax, willing to proceed with it in France despite what the other European members decide. On the other hand, the United Kingdom has been opposing this 'solution' since the very beginning, saying that it would do more harm than good.

It seems that the idea of a united Europe, or at least the Europe in the eurozone, applying this tax is far from likely.

And the question is; is it really that relevant?

We believe that we do face a grey area, and regardless of what economists or legal experts may say, the final word is a political decision. Nevertheless, more than an immediate and short term solution, this time of severe crisis should constitute an opportunity for a careful and critical overview of the financial system. The markets are not national anymore, but globalized, and the "*butterfly effect*" should be considered. One should pursue a long-term vision of our financial system, envisaging a solid and sustainable growth arising from an economic restart that has learned from past mistakes.

Regarding a purely legal point a view, the core question would be around the terms of the enforcement of this tax, and how would governments be able to control all the taxable operations and the tax evasion? Surely, tax evasion will also still be an issue, and the discussion must be extended to this point also.

After this financial crisis, and whether the Tobin tax goes forward or not, financial operations will be reinvented and new instruments pushed by financial engineers, who are always a step ahead. Multiple changes are indeed expected in the short-term, but not many will prevail in the long-term, such is the pressure installed to take decisions which are far for being consensual. ■

De-fragmenting Africa

Paul Brenton is Lead Economist (Trade and Regional Integration) in the Africa Region of the World Bank

Africa trades too little with itself. This column argues that what is needed is an approach that reforms policies that create non-tariff barriers; puts in place appropriate regulations that allow cross-border movement of services suppliers; delivers competitive regionally integrated services markets; and builds the institutions that are necessary to allow small producers and traders to access open regional markets.

Regional integration in Africa has long been recognised as essential to address the issues of the small economic size of many countries and the often arbitrarily drawn borders that pay little heed to the distribution of natural endowments. But, as is often noted, Africa trades little with itself, at least to the extent that is recorded in official customs statistics.

For example, the share of intra-regional goods trade in total goods imports is only around 5% in the Common Market for Eastern and Southern Africa, 10% in the Economic Community of West African States and 8% in the West African Economic and Monetary Union. This compares with over 20% in the Association of Southeast Asian Nations, around 35% in the North American Free Trade Agreement and more than 60% in the EU. On the other hand, intra-regional trade in MERCOSUR is about 15% of total imports and less than 8% in the Central American Common Market.[1]

It has been commonly argued that regional integration can only play a limited role in Africa because of the similarity of endowments between countries. However, the various contributions to a recent report from the World Bank called *De-Fragmenting Africa: Deepening Regional Trade Integration in Goods and Services*[2] highlight the enormous scope for increased cross-border trade in Africa. Regional trade can bring staple foods from areas of surplus production across borders to growing urban markets and food-deficit rural

areas. With rising incomes in Africa there are emerging opportunities for cross-border trade in basic manufactures such as metal and plastic products that are costly to import from the global market. The potential for regional production chains to drive global exports of manufactures, such as those in East Asia, has yet to be exploited, and cross-border trade in services offers untapped opportunities for exports and better access for consumers and firms to services that are cheaper and provide a wider variety than those currently available.

"The potential for regional production chains to drive global exports of manufactures, such as those in East Asia, has yet to be exploited"

The various papers covering trade in goods and services also discuss why Africa is not achieving its potential for regional trade. The report digs down below official trade statistics and measures of trade barriers to show that while there has been some success in eliminating tariffs within regional communities, a range of non-tariff and regulatory barriers raise transaction costs and limit the movement of goods, services, people and capital across borders.

The end-result is that Africa has integrated with the rest of the world faster than with itself. This is of particular relevance now that traditional markets in Europe and North America are stagnating and recent export growth in Africa has been driven primarily by commodities with limited impacts on employment and poverty.

The costs of non-tariff and regulatory barriers

The incidence of these barriers to regional trade fall most heavily, and disproportionately, on poor small traders, preventing them from earning a living in activities where they have a comparative advantage – catering for smaller, local markets across borders.

Most of these small scale, poor traders are women and their trading activities provide an essential source of income to their households. Their profit margins are small, and are reduced by every delay or extra charge they face. They are also vulnerable to abuse.

For instance, the majority of traders who cross from the DRC to Burundi, Rwanda, and Uganda are women carrying staples – 85% report having to pay a bribe and over 50% report physical and sexual harassment. One trader reports: *"I buy my eggs in Rwanda; as soon as I cross to Congo I give one egg to every official who asks me. Some days I give away more than 30 eggs!"* This experience is not unique to this group of countries.

If the residents of San Francisco faced the same charges pro rata in crossing the Bay Bridge to Oakland as do residents crossing the Congo River between Kinshasa and Brazzaville, a similar distance, they would pay more than $1,200 for a return trip. As a result passenger traffic at this obvious focal point for cross-border exchanges between the two Congos is around five times smaller than that between East and West Berlin in 1988 – well before the dismantling of the Wall!

In southern Africa, a truck serving supermarkets across a border may need to carry up to 1,600 documents as a result of permits and licences and other requirements. Slow and costly customs procedures and delays caused by other agencies operating at the border, such as standards, raise the costs of trading. For example, the supermarket chain Shoprite reports that each day one of its trucks is delayed at a border costs $500 and it spends $20,000 per week on securing import permits to distribute meat, milk, and plant-based goods to its stores in Zambia alone.

Firms that have access to professional services, such as accountancy, engineering, and legal services, tend to have higher productivity, but many governments in Africa limit the pool of such services that are available to their firms through restrictions on the movement of professionals across borders and regulations that constrain the conduct of service providers.

Hence non-tariff barriers associated with the design and implementation of regulations continue to limit the growth of trade throughout Africa, imposing unnecessary costs on exporters that limit trade and raise prices for consumers, undermine the predictability of the trade regime, and reduce investment in the region.

The main message of this work is that to deliver integrated regional markets that will attract investment in agro-processing, manufacturing, and new services activities, policymakers have to move beyond simply signing agreements that reduce tariffs to drive a more holistic process to deeper regional integration.

A regulatory reform agenda

What is needed is an approach that reforms policies that create non-tariff barriers; puts in place appropriate regulations that allow cross-border movement of services suppliers; delivers competitive regionally integrated services markets; and builds the institutions that are necessary to allow small producers and traders to access open regional markets. This is a different approach to one that proceeds within the straightjacket of specific sequential steps to integration, ie. free trade area, customs union, common market, and economic and monetary union.

For example, there are enormous opportunities from trade in services in Africa that are not dependent on a common external tariff being in place. Countries can work to improve trade facilitation at the border and to remove non-tariff barriers with neighbours while free trade agreements are being designed and implemented. Countries that are not members of the same free trade agreements can work to disseminate information on market prices to producers and traders.

This is consistent with recent work that shows that the recipe and toolkit for successful regional integration in the 21st century is quite different from that pursued in the 20th century. Old regionalism focused on the mutual exchange of

tariff preferences and trade in goods. The new regionalism concerns a wide range of regulatory issues and is about the *"trade-investment-services nexus"*.[3]

Our analysis suggests that the returns to a regulatory reform agenda for trade will be substantial while the direct financial costs are small relative to other aid for trade interventions and investments in infrastructure. However, there is a large information-gathering and knowledge-building agenda to support regulatory reform. Better information on non-tariff barriers and their impact is required in many countries to identify priorities for reform. Effective regulation typically requires sector-specific knowledge. The knowledge required to regulate open markets for accountancy services is quite different from that to define standards for milk.

This knowledge agenda can be enhanced by learning from other countries and regions of what has and has not worked elsewhere. Nevertheless, in addition to being sector-specific, regulation must also take into account local demand and supply conditions and simply importing standards from outside may not be appropriate.

Finally, the regulatory reform process must be open and inclusive to ensure that all stakeholders are involved and that the regulatory outcomes are not unduly influenced by particular stakeholders, such as incumbent firms.

A successful programme of policy reform that seeks to address these constraints to intra-regional trade in Africa will have to confront powerful interests that may be adversely affected. While measures to open up African markets to regional trade will increase the opportunities for businessmen and women and especially poor traders to earn higher returns from their activities and at the same time reduce prices for consumers, some often politically well-connected individuals will lose the high profits they are currently able to earn from the relative lack of competition.

In some cases there may be important distributional impacts that will need to be addressed if poor people are employed in the activities that were previously protected. At present there is very limited analysis of these political economy issues and few mechanisms in existing agreements for supportive policies, such as retraining schemes for affected workers.

The appropriate metric for successful regional integration is therefore not the extent of tariff preferences but rather reductions in the level of transaction costs that limit the capacity of Africans to move, invest in, and trade goods and services across their borders. ■

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A version of the editorial was previously published on www.VoxEU.org

Economic growth 2.0

Connie Hedegaard is the EU Commissioner for Climate Action

When I was born, we were 3 billion people on this planet. A child born today is one of seven billion, and more will come during its life time.

By the time this child will turn 18 in 2030 more than three billion more people will have entered the middle class. This can be good news, but not if we continue business as usual: the world will need at least 50 per cent more food, 45 per cent more energy and 30 per cent more water by then.

But a child born today will see supplies of natural resources diminish and prices go up by then; and it will increasingly feel the consequences of climate change.

These are the challenges we address in the new report of the Global Sustainability Panel, of which I had the honour of being a member. UN Secretary-General Ban Ki-moon launched this Panel and invited us to prepare a long-term vision in view of the Rio+20 sustainable development conference in June in Brazil.

And our recommendation is clear: only a sustainable growth model can ensure a decent life in the 21st century for the children born today.

We have named the report "*A Future Worth Choosing*". And we still have a choice: instead of going on with the costly business as usual, we can invest now in a smarter, greener future.

We all want a world where the economy grows while environmental and social impacts diminish and the climate is protected.

Of course, as the world recovers from the financial crisis, our focus is on growth and jobs. But which kind of growth and which kind of jobs? Restructuring is unavoidable, so why not choose a path that makes long-term sense; a path that replaces overuse with sustainability?

Anyone can see that we cannot deal with the challenges of the 21st century with a growth model from the 19th and 20th century.

"The good news is that going sustainable does not have to happen at the expense of economic growth"

But a new mindset is emerging. Since 2004, one trillion dollars was invested in clean energy globally, according to a recent study. This market is set to double, or even triple between 2010 and the end of this decade.

In Europe alone more than 300,000 new jobs were created in the renewables sector in just five years; and it is estimated that meeting the EU's 2020 climate and energy goals would result in another 1.5 million new jobs.

Many good ideas are already out there. Businesses don't need telling that resource efficiency means business. Procter and Gamble introduced a detergent designed to work in cold water and thereby reducing the amount of energy needed to wash cloths.

The Danish shipping giant Maersk aims to cut energy consumption by half thanks to new, bigger container ships and reduced sailing speeds; and Umicore reckons almost 100% of the precious metals it uses for its production have been retrieved from secondary materials. It pays off to be resource efficient, as these few examples show.

The good news is that going sustainable does not have to happen at the expense of economic growth.

Going sustainable is about maintaining and improving our quality of life while ensuring pollution does not undermine economic growth. It is about more intelligent ways of producing, and it is about smarter cities with cleaner air and less pollution, less noise and less congestion. It is about building energy efficient homes. It is about lower energy bills.

The world's leaders must use the Rio+20 summit in June to bring sustainable development to the heart of the global economic agenda. This is where it belongs rather than in the environment silo isolated from the key economic decisions. Only then can we bring the actions to the scale we need with the speed we need.

Nothing should be more urgent right now. Not for politicians. And certainly not for business. Time is our most scare resource. In 2010, global greenhouse gas emissions reached the highest level ever.

The EU is already moving in the right direction, domestically and abroad. We have binding targets for emissions reductions and renewables, a price on carbon, and energy efficiency measures. And we are looking at smarter ways of taxing.

But developed countries cannot tackle environmental challenges on their own. This is no longer possible in the reality of the 21st century, where emerging economies account for the biggest growth, also in energy consumption and emissions. We are at a point where all countries must act, in line with their respective capabilities and responsibilities.

And we need to join hands with the private sector; we need to price environmental pollution. Private capital seeks profitable grounds. The cost of production is not the only thing that determines the value of a product. The harm it makes to its surroundings must be priced as well. Only this way can we give the incentive to turn investments sustainable.

Economic growth must be measured beyond GDP. It must capture the natural wealth of a country, of a clean environment, of social cohesion. A sustainable growth to guarantee children born in 2012 a decent life.

Our actions today have to reflect the kind of society we want tomorrow. We can't afford inaction. Let's use the upcoming Rio+20 summit to kick off this global transition towards a sustainable growth model for the 21st century that the world so badly needs. ■

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Giving the City a voice on regulation

International law firm Eversheds recently canvassed the opinions of senior City executives on the ongoing reform of the City's regulatory framework - changes that could affect London and its position as a major financial centre. While the City is broadly in favour of compulsory regulation, the findings highlight a general view that the current uncertain and challenging international regulatory landscape is creating a problematic working environment for the City. Michael Wainwright, partner at Eversheds, discusses the content of this in-depth study and unveils the 'Regulation in the City' Charter.

The financial services sector around the globe is facing a changing regulatory landscape, with the consequences of proposed UK, EU and US reforms currently on the minds of many City businesses that operate across borders. To interrogate this further, Eversheds offered key players in the City the opportunity to provide informed opinion about the current status of the legislation they face in various markets as part of its 'Regulation in the City' research study. It can be clearly seen from the findings that the City has concerns in a number of areas, including the role of international regulatory control.

"The main concern expressed by many is the perceived lack of joined-up thinking between UK, EU and US regulatory regimes"

The main concern expressed by many is the perceived lack of joined-up thinking between UK, EU and US regulatory regimes, particularly at a time when a raft of regulatory changes are being considered and implemented across markets. This, according to the research, is placing increasing pressures and costs on businesses as companies try to satisfy the demands of three regulatory regimes, each with separate remits.

Though the City generally acknowledges the requirement for tight control - with 80% in favour of a compulsory rules-based system - the research pointed to a significant degree of frustration about the UK regulatory regime. With a feeling that some areas of regulation are onerous and purposeless, 34% believe that a lack of collaborative thinking means that complying with one piece of legislation can often mean contravening another. Worryingly, two thirds (61%) stated that the uncertainty around legislation had led to their organisation delaying business activity.

For many in the City, the belief that recent regulatory changes are merely a reaction to current financial difficulties holds sway. The research highlights the practical impact of continual tweaks to regulation and the difficulties in managing such a situation. Indeed, some indicated that highly experienced professionals are being forced out of the sector as a result of changes, with the FSA Retail Distribution Review cited as a prime reason for this occurring.

To get a detailed insight into the regulatory framework affecting the City, views were canvassed concerning specific pieces of legislation. It is clear that the growing number of separate pieces of legislation offers a challenge to the UK financial services industry, presenting an uncertain and problematic regulatory landscape.

UK regulation

The research asked for views on the Bribery Act, the Remuneration Code, the FSA Retail Distribution Review and the Vickers Report. Many felt the Bribery Act was too complex, lacked transparency and a clear definition. Tellingly, only 7% think it will be effective in reducing systemic risk in the UK financial services industry.

The Remuneration Code was generally welcomed, with 48% of the City thinking the legislation does not require change and more than a quarter believing it would be an effective policy going forward.

However, the FSA Retail Distribution Review raised a number of concerns. More than half of those questioned (51%) believe the review will place unnecessary administrative burdens on the sector, with concerns around the broad brush nature of the regulation itself clearly expressed by the City.

Finally, the highly publicised Vickers Report does not appear to have whole-hearted support from the City. The majority (59%) believe it has not struck the right balance between

managing risk and the need to grow the economy. A lack of guidance concerning detail and implementation is highlighted in the research.

EU regulation

The research touched upon a number of key pieces of EU legislation affecting the UK financial services sector including Solvency II, the Alternative Investment Fund Managers Directive, the EU Savings Directive and Basel III.

The majority of City businesses think Solvency II requires simplification, which is in contrast to the smaller number (27%) who stated that in their opinion it does not require any further changes.

The Alternative Investment Fund Managers Directive received broad support and 17% of those questioned said that they believed it will be effective in helping to reduce systemic risk in the UK financial services sector. However, a fifth (21%) are calling for simplification of the EU Savings Directive, believing it places increased administrative burdens on UK businesses. Finally, Basel III split opinion with a quarter (23%) thinking it did not require any further changes - but with an additional 15% calling for simplification.

US regulation

Across the Atlantic a number of pieces of regulation that impact on the UK are under scrutiny as well as undergoing change. So, as part of the study businesses were asked for their feelings about the Dodd-Frank Wall Street Reform, the Foreign Accounts Tax Compliance Act (FATCA) and the Foreign Corrupt Practices Act.

Many UK City firms have no idea how the Dodd-Frank Wall Street Reform will impact on the UK until matters are simplified. But, there are also fears it will be far-reaching and may make elements of business impossible going forward.

FATCA was felt by many to be intrusive, heavy handed and difficult to implement and while 47% believe it does not require any changes, many also said that it did not work well in its current format.

Finally, the Foreign Corrupt Practices Act is considered by the City to be very similar to the UK's Bribery Act in that it is not difficult to implement, but is open to interpretation. Just 35% believe it will be effective in helping to reduce risk, but again, one in five (21%) think it will place unnecessary administrative burdens on the UK.

Going forward – the City has its say

To address the frustrations shared above, we also asked those in the City to share how exactly they feel the City could be regulated most effectively. It has been possible to elicit broad consensus on how the changing landscape of regulation should take shape. This falls into six main categories and provides the basis for what Eversheds terms the *'Regulation in the City'* Charter:

1. The City is in favour of regulation – the respondents are not against red tape and 80% feel that regulation of the City should be compulsory and a rules-based system. However, only a small minority believe that the regulator should be able to intervene from a very early stage if it believes that a regulated company is not complying with legislation. Indeed, the majority feel the regulator is too focused on micro rather than macro issues.

2. Increased guidance from the regulator – UK businesses want the regulator to help them comply with regulation and provide more specialist guidance to assist them to more fully understand how to act in accordance with financial regulations.

3. Regulatory environment should reflect the City's structure – the City is calling for the regulator to be constructed of bodies/divisions that understand each sector of a complex industry more fully and regulate each one accordingly. The regulator should also employ people who have worked in the industry.

4. Establish a two-tier regulator – the majority in the City believe the UK should have a two-tier regulatory framework – one aimed at retail investors/consumers; the other for the institutional market place.

5. Regulate for the future not the past – the general view is that the current regulatory reforms focus too much on fixing past problems rather than legislating for the present day and the future.

6. Embrace EU legislation with a lighter touch – nearly two thirds of businesses feel that UK interpretation of EU law is more concerned with legal certainty than with upholding the original spirit of the law.

Regulation – the future

With many City-based UK financial businesses working across borders, the challenges of adhering to the various UK, EU and US regulatory controls either currently in place, under review or actively being changed is clearly at the forefront of their minds.

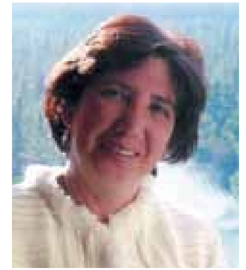
With confusion leading to delays in activity, it is imperative that clarity around the future international regulatory landscape is established speedily and that the views of the City are taken into account when decisions are being made that could affect the success of the UK financial services sector.

The research demonstrates that the City is not afraid of regulatory control, but wants any new structure to ensure that the City of London remains competitive on a global stage. Tellingly, the belief held by 50% of key decision-makers in the City, that they think businesses will move to other financial centres such as Hong Kong and New York in an attempt to avoid regulatory pressure, underlines the importance of getting the legislation right for everyone. ■

To request a copy of the full report go to:

https://www.eversheds.com/uk/home/publications/report/index.page.

Recent developments in collaborative communications, telepresence, mobility and the cloud



David Danto is Principal Consultant Collaboration, Video, and Multimedia at Dimension Data (Americas) and IMCCA Executive Board member, and Carol Zelkin is the IMCCA Executive Director

The last few years have seen dramatic changes in the worlds of visual communications, collaboration, unified communications and the related technologies. Here at the IMCCA we have been privileged to represent the industry at most of the major conferences and expositions and watch these changes from the equivalent of a front-row seat. Here are the most important recent developments in the space as we see them.

Telepresence is dead, long live telepresence

A few years ago the industry was buzzing with the new concept of telepresence. In the December 2007 issue of this publication[1] we provided a thorough background and analysis of this concept.

Firstly, we defined it:

> Telepresence represents the use of a number of technologies, aesthetics and acoustics that together allow a person or people in one location to meet and collaborate with a person or people in another location (or locations) where the experience simulates all people being in the same location. Implied in this experience is the understanding that the technologies, aesthetics and acoustics involved in the simulation are, or should be, practically invisible to the users.

Then we began to separate the myth from the reality. We pointed out that the elements that make-up a reliable telepresence experience could easily be applied to traditional

> **"When you are interested in a greater utilization of video to help transform your organization, don't start with the technology ... but instead start with the people"**

video conferencing solutions at a fraction of the cost. We questioned the universal applicability of telepresence to meet all user needs, and finally identified that there is really a second definition of telepresence, related more to product marketing than any technology.

The last four years has proven all of that to be true. Wainhouse Research recently published an analysis that corroborates our opinion. Firstly, they pointed out how the trends for purchasing multiple codec systems (telepresence as per our original definition) have been choppy, with no steady market growth visible. In fact, in the fourth quarter of 2011 sales of these systems were down considerably by their analysis.

Secondly, they pointed out how in surveys of end users, the number of firms that report they have no plans to even evaluate multiple codec systems has remained relatively steady in the last few years – at a whopping 50% of the respondents.

Wainhouse interprets this as "market saturation." To put this in context, these results are happening at the same time that single codec video systems and other modes of visual collaborations have exhibited steady growth.

The reality is that telepresence is now considered to be a marketing term representing everything that video conferencing was – but better. Most manufacturers now refer to all their video solutions as one form or another of "telepresence," giving even less meaning to the term. This is a good thing, as visual collaboration needs to be more than merely high-end-rooms connecting to other high-end-rooms – it needs to be any device to any device in order to be a true success. Cisco's 2010 purchase of Tandberg was a definitive milestone in the admission of this fact.

This aligns with the industry best practices that we have recommended all along. When you are interested in a greater utilization of video to help transform your organization, don't start with the technology (telepresence or anything else) but instead start with the people – define the users and use

cases, identify areas where improved communications will help your specific firm – then identify appropriate systems to meet those specific needs. Immersive telepresence is great tool… just like a hammer is a great tool - but only if you're working with nails. Just like the hammer, immersive telepresence only works well as part of a larger tool-set.

Our prediction for the next few years is that video will take three forms in the enterprise – Immersive, Meeting and Personal. Immersive – meaning what our original definition of telepresence covered; Meeting – meaning when video is used to bring a remote participant into a room where people are meeting (think the video equivalent of the tabletop speakerphone); and Personal – meaning everything from the high-end desktop appliance for high-reliability, high-quality performance, to PC based video for pervasive team collaboration.

Tablets, smartphones and other BYOD options

The explosion of "mobility" options for visual collaboration is a direct result of another trend, the "consumerization of the enterprise." In the past, the technology market driving buying power came from big businesses. They were the ones most responsible for investments like computers. This has now completely shifted to the general consumer, who has a flat panel TV in his house and expects one at his office. My first employer provided blackberry was great at email, but terrible at everything else. Now my personal smartphone can handle company email, personal email, video, presentations and can also entertain and provide personal utilities. Why would I agree to carry anything less?

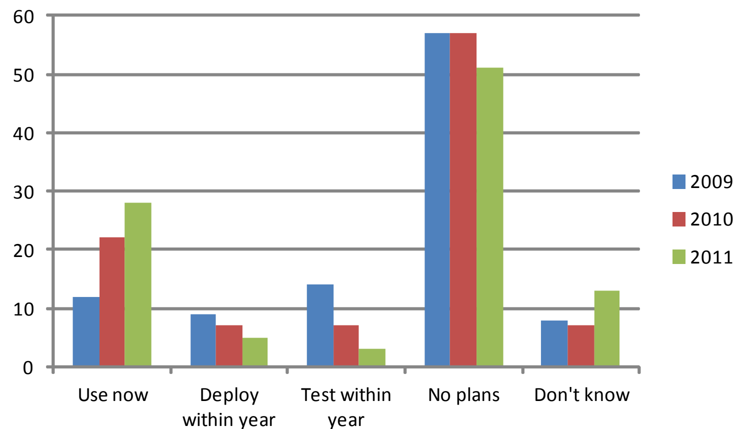
It is that expectation of the consumer getting whatever content he or she wants wherever he or she is on whichever device they happen to have which is the force behind the drive toward mobility.

Enterprises that once insisted on controlling every aspect of the devices that connect to their networks are slowly succumbing to the pressure and letting people connect from whatever device they own. Secure strategies around BYOD (bring your own device) enabled networks are being developed and implemented. As many more of the "personal" video collaboration situations we mentioned will not take place on traditional PCs, but rather on some of these mobile devices, the concept of connectivity anywhere becomes more important.

The target state is a world where one can move seamlessly between the office WAN, public WiFi hot-spots and direct mobile carrier connections while maintaining a connection with full capabilities. Or in a more concrete sense, start a video call at home, continue it as an audio call on your drive in, have it switch to the less expensive wireless network route while you're in the coffee shop buying your morning coffee, then to a video call again on the display on your desk when you get to your office – all without hanging-up and redialing. We're not fully there yet, but each segment of this seamless path has been demonstrated.

This explosion in the demand for rich media connectivity wherever one happens to be will continue to put market

Plans for telepresence 2009-2011



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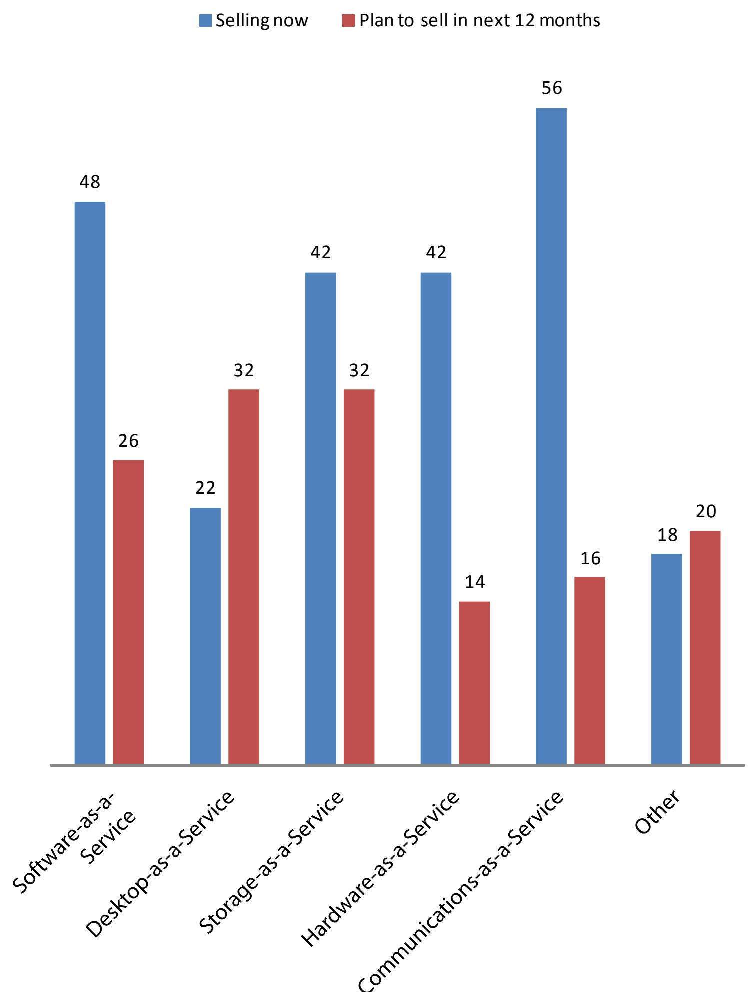
Cloud services partners are selling now, and plan to sell



Source: Channel Partners Cloud Computing Survey, December 2011

pressure on the global wireless carriers to find ways to increase available bandwidth. One method we'll see more of – the femtocell - allows a user to place a mobile service repeater in their own home or office and leverage their existing network connectivity (usually broadband from the home) to carry the mobile call.

This relieves the pressure on existing 3G and 4G networks in areas experiencing heavy saturation. It has not been a widely adopted model in the United States, as the wireless carriers charge individuals for having them. (It would make more sense for the carriers to offer a discount if a user is willing to use their already paid-for bandwidth to relieve a carrier's wireless network congestion.)

With only a limited wireless spectrum available, demand for rich media and smart devices going through the roof, progress toward deployment of 4G/LTE services slow, and broadcast and consumer electronics industries locked in battle over the best use of the public airways, don't expect the bottlenecks in major population centres to be addressed very quickly.

It's a cloudy future

As organizations look to reduce cost and increase business agility, the concept of 'cloud computing' offers an interesting service delivery option to achieve those goals. It is very interesting to take a step back and look at "cloud" as it relates to communications services from a historical perspective. All business telephone and computer systems used to be in the cloud, but instead of virtualization-ready data centres the cloud meant telephone company PBXs and mainframe computers. The age of minicomputers and PCs and premises based telephone systems for the most part ended these centralized services. Well, they're back – and collaborative communications is the hottest of them all. A recent *Channel Partners Magazine* survey showed that 56% of their respondent service firms said that communications as a service was currently in their portfolio – greater than any other service offered.

Manufacturer Vidyo showing their video conferencing software on most known tablets and smartphones at the 2012 Consumer Electronics Show Showstoppers event.

Video service provider Blue Jeans Network's cl videoconferencing is supported.

Communications as a service can take many forms, including hosting, endpoint registration, bridging, managed services, scheduling services, concierge services and packaged suites of every combination. Mixed-in with those are traditional deployments that are just creatively financed, where end-users don't even buy their endpoints, but instead pay a single, monthly invoice for the use of all their hardware and software – relieving the end users of any responsibility for the ecosystem that is technically still on their premises.

More innovative for communications offerings in the cloud are the growing number of firms that see video as a software business, not a hardware business. Many of them leverage the cameras and sound equipment built into today's PCs and smart devices, creating a portal for hosting meetings and collaborating with peers.

While these firms' video service offerings are less able to control the environment of users (such as ensuring good pictures, good audio, proper lighting, etc.) many have innovative products that begin to facilitate the concept of "any to any" video meetings. For years, industry professionals have wished that videoconferencing could be as easy as a telephone call, where the voice exchanges never cared what type of equipment was being used to make the call. Video conferencing as a service is the closest we have come to this level of full interoperability.

oud meeting room where "any to any" brand of

Three years from now

Since we did such a good job predicting the future in this publication three years ago, here's the summary of our best practice recommendations and trends to watch for the next three years.

Best practices:

- Get out of the silos – telepresence and videoconferencing should be viewed as key component of your unified communications planning. It needs to be considered along with all other aspects of the integrated technologies to reach its potential effectiveness for transforming your organization.

- Lead with people, not technology – stop speaking with industry manufacturers first. All they want to do is sell you a thousand of their shiny, new devices. Speak with your users. Identify true business needs and opportunities. Then seek out solutions to actually fit those use cases (instead of trying to find use cases for the product someone already convinced you to buy.)

- Look for mobile communications to just explode – as in so enormous and prevalent it will make our descriptions above seem timid. Be prepared for revolution by following the step above - identifying what use-cases will be the ones your organization will support and creating a catalogue of those solutions.

- Look for business partners that can help you throughout the entire lifecycle of your solutions – strategic advice, design planning, provision of hardware and software, maintenance and support, etc., and all of it with a global reach. The era of the "small neighbourhood VAR" is over. (Just exactly what value was added anyway?)

Trends to watch:

- Look for hardware based MCU's to give ground to software based systems. Big chunks of iron and banks of DSPs are not the way of the future.

- Look for every hardware codec manufacturer to develop a software only strategy.

- As BYOD becomes the norm look for firms that did a great deal of their business selling personal use technology (smartphones, notebooks) to the enterprise to struggle – and look for the successful ones to start marketing directly to the consumer.

- Look for a new form of "app store" to open up – with apps customized for specific enterprises to collaborate in the cloud.

And finally, look for our review and predictions three years from now to see if we got everything right again. ■

About the IMCCA

The IMCCA is a non-profit industry association resolved to strengthen and grow the overall conferencing and collaboration market by providing impartial information and education about people-to-people communication and collaboration technology and applications. Founded in 1998, the IMCCA membership is open to end users, vendors and other interested professionals who wish to share their disciplines and knowledge for the benefit of members and the interested general public.

David has over 30 years of experience providing problem solving leadership and innovation in media and unified communications technologies for various firms in the corporate, broadcasting and academic worlds including AT&T, Bloomberg LP, FNN, Morgan Stanley, NYU, Lehman Brothers and JP Morgan Chase. He recently joined Dimension Data as their Principal Consultant for the collaboration, multimedia, video and AV disciplines. He is also the IMCCA's Director of Emerging Technology. David can be reached at David.Danto@Dimensiondata.com or DDanto@imcca.org and his full bio and other blogs and articles can be seen at http://Danto.info.

The IMCCA offers an open and interactive environment for these activities, including participation in trade shows and industry events and the IMCCA website. If you are interested in more information about the IMCCA please visit our website www.imcca.org or contact the Executive Director, Carol Zelkin at +1 516 818 8184 or czelkin@imcca.org

1. http://www.worldcommercereview.com/publications/article_pdf/33

The next big thing: visual communications

John Poole is vice president of the Open Visual Communications Consortium. He also serves as Senior Director, Business Development, in Polycom's Global Cloud and Service Provider Group

Sometimes macro trends sneak up on us. How many people realized social networking would become so pervasive so quickly? When Facebook had 20 million users in the middle of 2007, did most people really expect it to grow by 4,000% (and reach 800 million users[1]) in less than five years?

On the other hand, some macro trends are inevitable. The rapid adoption of smartphones certainly isn't shocking. Cellphones have been ubiquitous for many years. The smartphone is simply a better version of a device that was already extremely popular. The emergence of smartphones was quite predictable.

That brings us to visual communication. Not only is visual communication poised to be the next big thing, its imminent explosion should shock nobody. All the fundamentals are in place for massive, rapid adoption. This is one trend that is absolutely inevitable. The technology is known and understood. The demand is well documented. The value is undeniable. All that remains is for the industry to execute and give customers the products and services they clearly want.

"... the demand for visual communications in the enterprise goes through the roof when mobile devices like tablets and smartphones are brought into the conversation. Linking mobile and remote employees to organizations via video is a very compelling proposition"

In fact, this is already starting to happen thanks to an organization called the Open Visual Communications Consortium (more on this in a minute).

Where do things stand right now?

In the business-to-business world, visual communication is taking off despite major headwinds. The biggest headwind of all is the fact that there is no universal way for people to simply make a video call to anyone, regardless of where they are or what device they are using.

Within an enterprise, it is fairly simple to make video calls. But when it comes to calling an outside number, it can be cumbersome to place a video call. The calls typically have to be scheduled in advance. IT staff are often required to make sure everything is configured properly, and test calls are frequently made to check for potential problems prior to the real call.

Imagine if mobile phones had the same limitations. How many people would even own a mobile phone?

In spite of this, video conferencing solutions are being adopted rapidly as businesses realize their value. In fact, the videoconferencing market reached $4.4 billion in 2011. That is expected to grow 43 percent over the next four years, reaching $6.3 billion in 2015.[2] It is not hyperbole to say that there may be no precedent for market demand on this scale for enterprise video networking services that are largely used with internal communications.

Moreover, the demand for visual communications in the enterprise goes through the roof when mobile devices like tablets and smartphones are brought into the conversation. Linking mobile and remote employees to organizations via video is a very compelling proposition.

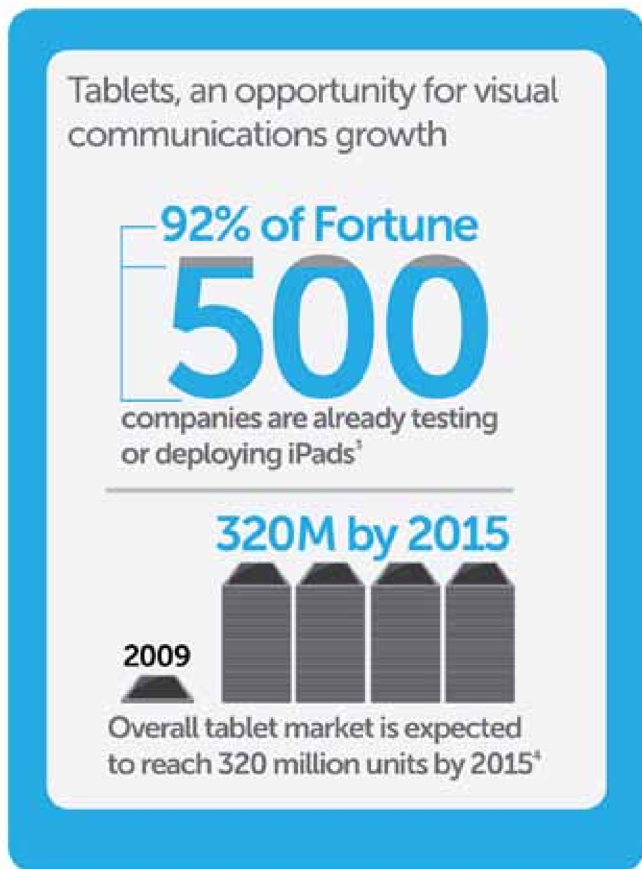
Telecommuters, employees in branch offices, and people who work in the field can feel disconnected from their co-workers. Connecting these employees to their colleagues via video is invaluable on many levels, from employee retention to productivity to morale.

According to Apple, 92 percent of *Fortune* 500 companies are already testing or deploying iPads[3], and the overall tablet market is expected to reach 320 million units sold annually by 2015.[4] Secure, enterprise-class video calling on tablets and smartphones will undoubtedly send these projections soaring even higher.

Clearly, businesses want visual communication. The value of visual communication is simply too great to ignore. It is worlds beyond voice-only interaction for knowledge sharing, team building, sales, personnel management, training, fostering a sense of camaraderie, and so much more.

How can the industry overcome its current limitations?

The good news is that we have nearly everything we need to make video calling as simple, seamless and universal as voice calling. The equipment is available. The software for mobile devices is ready for prime time. Standards are in place. Network bandwidth is good and getting better all the time.



The challenge is that not all equipment makers are building open, standards-compliant products, making it difficult for some devices and infrastructures to talk to other devices and integrate with solutions from other vendors.

This is extremely short-sighted and unfortunate and is keeping the market artificially depressed because, unfortunately, many organizations can't justify the expenditure for visual communication systems that only communicate with each other.

But now, customers are insisting on open visual communication solutions and refusing to invest in anything else. Within a short period of time, we will see demand for non-standards-based products begin an inexorable decline. Within a couple years, closed systems will see minimal demand.

It isn't only customers demanding openness, service providers demand openness, too. And this is critically important because the future of video calling rests with service providers. Just as traditional telephone service, internet service, mobile phone service and television service are all delivered by service providers, so too will reliable business-class visual communications.

The flexibility, scalability, capital expenditure reduction, variable cost structure and simplicity of using service providers will enable all types of businesses to embrace video calling. This service model will eliminate up-front financing, infrastructure and IT resources as barriers to adoption. From small businesses to large enterprises, there will no longer be any reason not to embrace visual communications.

The key is establishing the necessary ground rules so that every service provider can guarantee that its customers can make video calls to anyone, anywhere, at any time. This is commonly referred to as *"any-to-any calling."*

Many standards exist today, and others have been proposed. Which standards will everyone accept and support? Are additional standards needed? The industry is now working through these issues. It is moving quickly towards agreements on how it will ensure the call quality, reliability and security needed for mass adoption of video calling.

Open Visual Communications Consortium

The Open Visual Communications Consortium (OVCC) is a non-profit organization whose mission is to enable a new era of communication by facilitating cooperation among service providers around the world. The consortium is essentially a neutral body that is looking at all the equipment, standards and technologies that already exist for visual communications, and is creating a rulebook so that service providers can leverage the investments they've already made (and the new investments they are considering) to provide high-quality visual communications services.

Going forward, the agreements set forth by OVCC members will give service providers the guidance they need to make smart investments in their infrastructures so they can scale their inter-carrier video services, improve quality and reliability, and develop innovative new video services.

Among the issues that OVCC members are tackling are service coordination, interoperability, interconnection, and signalling and addressing.

- Service coordination is all about making sure everyone is using a common operational approach to scheduling, troubleshooting, billing and compensation, etc. This includes the coordination of common and simplified billing models and commercial terms between members. For example, when one service provider initiates a video call, there must be procedures and processes in place to ensure that any other service provider can (and will) support the completion of the call with the appropriate party being billed.

- Interoperability is about ensuring that every service provider's equipment, software and network can communicate with every other service provider's equipment, software and network. This includes the technologies used for security and privacy, user policies, and quality of service (QoS).

- Interconnection is focused on quality-assured, highly reliable connections between private corporate clouds. OVCC members want to offer guarantees to their customers that calls will be connected and won't be dropped.

- Signalling and addressing gets into the technical weeds. Service providers must agree on the communications protocols and other details that determine how everyone will connect and talk to each other. The important thing

to know about this issue is that SIP (session initiation protocol) is the standard interconnection protocol between OVCC members.

The key to making all of this effort pay off is to create an environment for global, visual communications that is truly seamless and transparent to the user. Today, when people make voice calls to friends, they have no idea which carrier their friends use. And, they probably have no idea what type of phone their friend is using. And that is perfect. Those details are irrelevant. As long as the call goes through and the quality is acceptable, everyone is happy.

OVCC members are dedicated to making video calling just as easy.

The consortium is moving quickly to make this happen. The organization was officially launched in the fall of 2011, and OVCC service-provider members are scheduled to launch the first set of OVCC services in September 2012. These initial services will be similar to *"meet me"* voice services that corporate customers have used for years. End users will be assigned permanent numbers that they can use on an ad hoc or scheduled basis. Users will be able to place video calls at any time, on any OVCC-compliant network, using any OVCC-compliant device.

In just its first six months of existence, the consortium's impressive list of members already includes:

AARNet	PCCW Global
Acme Packet	Polycom
Airtel	Sabre Travel Network
AT&T	SingTel
BCS Global	Tata
BT	Teliris
Dialogic	Telstra
Glowpoint	Verizon
Masergy	XConnect
Orange Business Services	Yorktel

This list is almost twice as long as it was last fall, and the consortium expects strong membership gains to continue between now and September when the first services are rolled out. And in parallel with preparations for the service rollout, the consortium has begun the important job of developing certification programs for equipment makers and service providers.

OVCC service certification will enable enterprise customers to make buying decisions about video services with confidence, knowing the certified services are open, standards-compliant and interoperable. OVCC technology certification will cover a broad spectrum of video systems, from immersive room systems to desktop devices to mobile applications. It will also include both high-definition and standard-definition audio and video technology as well as the service providers' enabling network infrastructure.

In addition, OVCC certification will cover a wide variety of services. Beyond ensuring that carriers have the correct nuts and bolts in place to talk to one another, the consortium will certify the compliance of features such as multi-vendor, multi-network conference calling, content sharing (eg, displaying a PowerPoint deck alongside the person who is speaking), encryption, and other differentiated and innovative services that will be developed in the years ahead.

What about consumers?

Video calling is nothing new to consumers. Microsoft recently spent $8.5 billion to acquire Skype, which has more than 65 million daily users.[5] In addition, many millions of people are using FaceTime for video calling on their Apple devices.

However, consumer services, which have helped fuel the tremendous demand for video calling, aren't necessarily well-suited for corporate deployments. Consumer services typically rely on the public internet, which means there is no guarantee of reliability or quality. Internet-based services offer a *"best effort"* service level. If there is too much traffic or insufficient bandwidth, calls may be dropped. When on a video call with grandma, this is an inconvenience, but in a critical business environment, the repercussions can be much more dramatic.

Much like the early days of cellphones, it is difficult to rely on internet-based video calls for important conversations. In addition, nobody can guarantee security and privacy for people who are placing video calls over the public internet.

Perhaps most importantly, there is limited interoperability with consumer solutions. It is difficult for users of internet-based services to make video calls to anyone except other users of the same proprietary service. In this regard, today's consumer solutions have the same fundamental limitation as current enterprise solutions.

That's why OVCC members are already planning to support peer-to-peer (P2P) video calling by the end of 2013 in Phase 2 of the OVCC service rollout. Through the adoption of OVCC members' inter-carrier video networking services, any consumer using an OVCC-compliant wired or wireless device on any OVCC-compliant network will be able to call any other person on any OVCC-compliant network.

That's the ballgame.

At that point, it will be nonsensical for any service provider, any equipment maker, and any customer to spend another penny on proprietary equipment. Service providers and equipment makers would be limiting their own value in the marketplace, and consumers would be limiting the usefulness of their own gadgets.

Mass adoption of universal visual communication is that close. Within 18 months, it will begin to become a reality. By 2015, experts are predicting that consumers will make

over 11 billion video chat calls.[6] That number will almost certainly be revised upward after interoperability comes to the consumer market. It is not a stretch to envision a world in which nearly every call – from landlines and mobile lines – is a video call.

While voice calls will never disappear completely, they will become analogous to radio after the TV was introduced. Voice calls will be used mainly when a video call can't be made (eg, while a person is driving and must watch the road).

Momentum is building

It's a very exciting time to be in this industry. I talk to customers everyday who are already using visual communications inside their companies. They can't imagine going back to voice calling. Communicating with colleagues halfway around the world via video is now a routine part of their day.

Not only is this valuable for all the reasons mentioned above, but it also saves companies billions of dollars in travel costs and lost time by enabling employees to have *"remote face-to-face"* conversations rather than having to fly from city to city (and country to country) whenever a live meeting is necessary. It also can support business continuity in the event of natural disasters or other business disruptors.

And the momentum is not limited to corporations and consumers. Healthcare and higher educational institutions are transforming patient care and the academic experience through video. The potential benefits of an OVCC framework are nearly limitless.

On the one hand, customers can't believe how fast visual communications is moving. On the other hand, things can't move fast enough. People want their intra-company video calling experience to be available all the time – to call their customers, to call their suppliers, to call their kids, to call anyone and everyone.

Fortunately for all of us, this is coming very soon. In the same way that we can walk into a store today and buy any cellphone without worrying about interoperability, tomorrow we will have the same choice and flexibility for video calling. It will just work. ■

1. Facebook, October 2011
2. Gartner, "Market Trends: Videoconferencing, Worldwide, 2011," April 28, 2011
3. Apple, Q4 2011 earnings call transcript, retrieved from http://seekingalpha.com/article/300433-apple-s-ceo-discusses-q4-2011-results-earnings-call-transcript.
4. Gartner, "iPad and Beyond: The Future of the Tablet Market," September 2, 2011, page 4
5. CNET, "Microsoft closes $8.5 billion Skype acquisition," October 14, 2011
6. GigaOM Pro, "The Consumer Video Chat Market, 2010-2015" Report, 2010

Bermuda - soon home to the *"next new thing"*

Almost all of us are familiar with email addresses such as 'xyz@hotmail.com' or visiting 'www.google.com' to perform a search of the internet. We give little thought as to what ".com" means although many will be aware that some other addresses have different endings. Well, the number of those endings is about to increase dramatically bringing into existence the next big version of the internet.

The jury is still out as to what effect these changes may have but several things are certain information will be further streamlined and we can expect a new round of internet business innovation.

Presently, the last letters of any website address are termed the 'top level domain' or "TLD". The list of TLD's is maintained by the 'Internet Assigned Numbers Authority' ("IANA"), a department of the 'Internet Corporation for Assigned Names and Numbers' ("ICANN"). Only domains authorized by IANA are permitted and to date these have been very limited. In 1984 a set of general purpose domains were authorized such as ".com", ".mil" and ".org". Country-code top level domains ("ccTLD's") are two letter TLD's reserved for sovereign states such as ".bm" for Bermuda. In 2000 there was a limited number of 'generic' TLD's granted including ".name" and ".aero" while in the next few years further grants were made such as ".pro" and ".asia".

In 2008 ICANN began a new process to take a *"significant step forward on the introduction of new generic top-level domains"*. This process is soon to reach its conclusion with applications for new gTLDs being accepted from 12 January 2012 to 12 April 2012. It is expected that up to 1,000 new gTLD's will be registered creating significant revenue for ICANN as applications cost US$185,000.00 with annual fees running at US$25,000.00. Many of these domains will be registered by companies wishing to protect their intellectual property and

create their own piece of 'real estate' on the internet. Other major applicants are likely to include geographic domains such as cities (ie. New York) and groups wishing to create 'communities' such as ".eco" or ".sport".

There is a lengthy application process that will reduce the number of speculative applicants who do not have sufficient financial and technical background to properly support the application. Further, any geographic or community application must have appropriate support from a recognized representative. The ability to now use non-Latin characters (such as Cyrillic, Arabic, Chinese, etc.) clearly further expands the opportunities this rapid expansion offers.

"Bermuda has long been able to hit above its weight in the IT field due to the sophisticated international companies, largely information-driven, that are located here"

This latest set of developments in the internet space will give rise to new business opportunities, not the least of which will be new registries coming on stream. Once again, Bermuda is well positioned to attract this next generation of e-business model entrants, as they look for a jurisdiction in which to domicile that offers the right combination of bandwidth capacity, an appropriate regulatory framework, first class hosting and security and is already a well respected ICT and international business centre.

Standing at the crossroads of North and South America and Europe, with a time zone 1 hour ahead of New York City and 4 hours behind London, this island is already home to many of the top *Fortune* 500 companies.

Bermuda ranks in the top countries in the world for e-readiness and digital economy, according to the Economist Intelligence Unit's (EIU) annual listing. The rating covers more than 100 separate criteria, both qualitative and quantitative, which are evaluated by EIU analysts. Bermuda ranks above many developed nations that are considerably larger but less advanced in the area of e-readiness.

In the last EIU rankings study taken in 2010, Bermuda came in at 22 – above Israel, Italy and Spain and just below Switzerland and France. This is a substantial achievement for a country the size of Manhattan with a population of approximately 55,000. It is one that the Government is proud of without being complacent.

As a jurisdiction, Bermuda was an early adopter of e-commerce and electronic communications and has one of the highest penetration of mobile devices in the world. A first-class telecommunications network links Bermuda directly with other countries around the world.

The network comprises diverse bandwidth routes through fibre optic and satellite networks, the highest quality hosting facilities with maximum security and full redundancy, as well as sophisticated software and hardware vendors. Competition amongst ISPs and mobile operators are as active in Bermuda as anywhere in the world, offering diversity.

Bermuda has long been able to hit above its weight in the IT field due to the sophisticated international companies, largely information-driven that are located here. As the majority of these companies operate globally in regulated industries, they have wide-ranging obligations in terms of information security, business continuity, data integrity, and data protection.

The island benefits from this activity as the skills cross over into local systems use, whether it's in technical skills or in the audit and legal support that goes along with them.

The Bermuda Government takes security seriously and is of the view that privacy and security go hand in hand. On the security side, the Government has a digital certificate programme in place and manages its own digital certificate authority.

Given that Bermuda is home to a meaningful number of multi-billion dollar insurance, banking and other ventures, data protection and security is critical to the jurisdiction and the companies that trade there.

The Government is also actively developing a unique model of privacy legislation which is viewed as an important piece of the legislative infrastructure for Bermuda, as it will enable closer economic ties with those countries that have already implemented such laws, while providing real protection for personal information held here.

The draft model has also taken into account the concerns of Bermuda's major trading partners by ensuring that the proposed regime focuses on the accountability of organizations rather than implementing an overly burdensome regulatory model that would be inappropriate for a small jurisdiction.

This is particularly good news with the advent of cloud computing, as many organizations are looking at cloud based solutions, but would prefer the cloud be hosted offshore in a jurisdiction which boasts suitable and relevant safeguards including a strong privacy regime.

In addition to a world class ICT sector, international businesses in Bermuda benefit from the tax environment, intellectual property protections and the host of seasoned management, financial and corporate service companies, basically the talent pool required to successfully run their day to day operations and business affairs.

Given Bermuda's success formula to date, we won't be surprised to see Bermuda's name attached to some of next new internet business success stories that will emerge. ■

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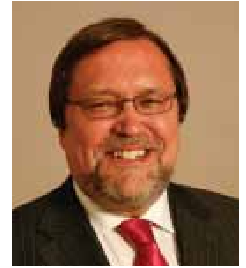
Why should you be concerned about transfer pricing?



Les Secular is a Partner at True Partners Consulting (UK) LLP

In a recent survey among Multi-National Companies ("MNC's") 75% of them were expecting a transfer pricing audit within the next two years but are they adequately prepared for them in the current economic climate in which tax authorities see their current tax take reduce.

Penalties

As the tax take drops tax authorities worldwide are beginning to move away from considering adjustments to a company's transfer pricing position solely for tax purposes to one that looks for penalties for failure to comply - tax based penalties are being replaced by specific , often fixed rate, penalties.

In the UK, for instance, prior to 2009 a MNC could have sheltered a tax liability with brought forward tax losses or group relief thereby mitigating or eliminating any penalty; now, though, a 10% penalty is applied irrespective of whether a tax liability arises or not – the use of tax losses or group relief has no bearing on the penalty. New rules were introduced in 2009 in Italy that can lead to penalties of between 100% and 200% for errors and failure to provide adequate documentation and, in some instances, can lead to a criminal penalty of up to 3 years imprisonment.

"Merely having a transfer pricing study that concludes that a company's transfer pricing falls within an acceptable range and affords penalty protection is not enough"

In the Netherlands, the failure to keep proper business records can lead to penalties of 100% of the correct tax and, in certain circumstances, criminal prosecution. In Spain, penalties can be from €750 to as much as 2% of a company's turnover on each item that has been omitted or is incomplete. In Korea, a penalty can be up to $100K for failure to have documentation.

Even Russia has introduced new transfer pricing rules effective from 1 January 2102 with a 20% penalty applying from 2014 (40% from 2017). Malaysia has also introduced new transfer pricing rules that update the 2003 guidelines, expand the types of transactions that can be reviewed by the tax authorities and introduce thin capitalisation considerations. A penalty of 45% of additional tax arising is applicable and all documentation must be retained for 7 years.

FIN 48

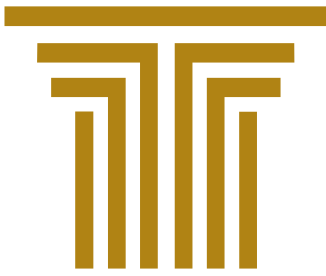
US companies are now more interested in their FIN 48 position and whether subsidiaries have identified any uncertain tax positions against which provisions should be made. Although initially aimed at public companies the reporting requirements have been extended to include private companies also. Merely having a transfer pricing study that concludes that a company's transfer pricing falls within an acceptable range and affords penalty protection is not enough. In undertaking a FIN 48 review a taxpayer is required to determine whether it is "more likely than not" that a position can be supported under audit and, if not, a reserve has to be made.

This becomes an effective disclosure to the IRS that there are potential issues and, with exchange of information clauses in double taxation treaties, other tax authorities become aware of a potential issue and could raise transfer pricing enquiries locally. There are also very short deadlines for supplying transfer pricing documentation (30 days in many jurisdictions) and penalties applied for failure to provide such documentation.

Specific focus of tax authorities

Tax authorities are also focusing their attention on specific areas such as the transfer, or exploitation, of intangibles and M&A transactions and there have been two specific cases in the US where significant figures are involved. One company faces a potential $525M adjustment for tax years 2001-2007 because of its technology license agreements with foreign subsidiaries; whilst another faces a potential adjustment of $849M relating to a transfer of intellectual property by a company it subsequently acquired.

Loans between connected companies, or inter-company guarantees of third party borrowings, are also potential areas for adjustment, particularly where there may be losses or the level of debt is considerably larger than the equity



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base - with interest or guarantee payments being treated as a dividend giving rise to withholding tax considerations as well as a non deduction.

Mutual Agreement Procedure

The shift in focus and more extensive reviews have naturally lead to a significant increase in the number of Mutual Agreement Procedures – a procedure under double taxation agreements whereby taxpayers claim double tax relief and seek corresponding adjustments for the additional tax arising on a foreign transfer pricing adjustment. For taxpayers based in the EU and transacting with connected parties in the EU, there is the Arbitration Convention which, arguably is better than the MAP as it lays down defined timings for agreement whereas there is no time limit for MAP's.

In Italy, there were 5 MAP's under consideration at the beginning of 2004 but by the end of 2010 there were 80 outstanding. In Germany, there have been on average 168 new cases in each of the last three years whilst in the US the average has been 295. For Spain, there have been no cases to date as the transfer pricing rules have only applied since 2009 but some are expected as the tax audits for 2009, 2010 and 2011 get underway.

Advance Pricing Agreements

One area where there is, perhaps, some respite for taxpayers and which can, hopefully, reduce the number of MAP's in the future, concerns the Advanced Pricing Agreement ("APA") regime. An APA allows MNC's certainty that they will not be investigated if they adhere to the various terms and conditions of an APA that has been negotiated and can apply for between 3 and 5 years.

However, the lack of resources at the various tax authorities, the length of time taken to agree APA's and cost – not just monetary but in terms of management time involved - restrict the ability of many MNC's to benefit from them. For instance, In Italy during the period 2004-2009 52 applications were made but only 19 were granted with the average length of time taken to reach consensus being 20 months; in Spain, primarily because of the absence of MAP claims, there were 22 APA's agreed in 2011 and, currently, the average length of time taken is less than one year; whereas in China there were only 12 bilateral agreements between 2004 and 2009 inclusive with two of those taking more than 2 years to be agreed.

Conclusion

In light of the movement to fixed based penalties, increasing focus on intangibles and a significant increase in MAP's not matched by a similar increase in APA's, it is essential that MNC's review their transfer pricing position and satisfy themselves that they are adequately protected should the tax authorities call. True Partners Consulting offers a free health-check of your position and can advise on a cost effective approach to resolving potential areas of concern. ■

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Germany: IP deals with distressed companies

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Since the financial crisis in 2008 the Chinese word for crisis - wei ji (危机) - has been frequently quoted by speakers on conferences all over the world. Because "wei" means danger (or risk) and "ji" means chance. In time of crisis, the acknowledgement that chances are somewhere waiting is very comforting and encouraging.

Knowing this, European companies should not be surprised that Asian companies, faithful to the wisdom of their ancestors, see the debt crisis in the EU as a chance for them to get the long craved intellectual property rights from the European companies, especially the companies in Germany.

Indeed, quite a few companies in Germany with globally famous brands are struggling on the verge of insolvency, because the banks have become overcautious with their credit. Under these circumstances, these companies are forced to sell or license the last asset left: the intellectual

property rights, including but not limited to trademarks, patents and know-how.

To buy or license the IP rights from a company on the verge of insolvency by way of asset deal is attractive: you get the best values out of the company and leave the problems with labour costs, debts, high rent and others to the insolvency administrator. However, risk must also be seen.

If the asset deal is made with the insolvency administrator, it is relatively safe. Risky are the asset deals made with companies on the verge of insolvency. According to the Insolvency Code, the insolvency administrator could rescind the deals made by the insolvent company before the application for insolvency, if these deals are disadvantageous. Hence the transfer of trademarks, patents and/or know-how may be null and void. The administrator as licensor can also terminate licenses discretionary. The purchaser and the licensee would have to wait and see if they would get back their money.

Notwithstanding this worst case scenario it must also be said there do exist real chances to get the asset deals done without problem. For example, when the company will thank the deal overcome the crisis or when the deal will be approved by the insolvency administrator because it could be regarded as a reasonable deal.

"Asian companies, faithful to the wisdom of their ancestors, see the debt crisis in the EU as a chance for them to get the long craved intellectual property rights"

Conclusion: in light of the strict insolvency laws it is recommended to carefully structure the purchase or license of intellectual property rights by way of asset deal in Germany from distressed companies. ■

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Debt equity swap in Germany

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Basic legal conditions and arrangement options

In recent years, a recapitalization instrument originally from the Anglo-American legal system has become of ever-increasing importance in Germany for the restructuring of companies in crisis – the debt equity swap. In a debt equity swap, the investor acquires non performing loans in order to then convert these into shares of the company.

This relieves the passive side of the balance sheets of the company and simultaneously increases the company's equity ratio. This enables the company to prevent a financial over-indebtedness in the event of a crisis situation. The debt equity swap provides the company with the ability to reorganize outside of a formal insolvency proceedings. A debt equity swap also offers enormous opportunities for the investors. The debt claims from the non performing loans are generally acquired at a value substantially inferior to that of their face values.

In the event of a successful restructuring, the investor directly profits via the share price from the increased company value. On the other hand, the investor also bears the entirety of the loss risk in the event of a failure of the reorganization. Therefore, the investor will strive to ensure that it has a substantial influence on the procedure of the restructuring of the company via, for example, (supervisory) board seats. The investor also often pushes for an exchange of the management.

Capital increase

The conversion of the debt claims acquired by the investor into shares takes place via an increase of the company's equity capital. For companies in need of reorganization, a nominal reduction in capital for the elimination of a financial adverse balance comes first (so called "capital cut"). In accordance with Supreme Court (BGH) decisions in Germany,

the contribution of the debt claims must take place as a contribution in kind.

"The debt equity swap provides the company with the ability to reorganize outside of a formal insolvency proceedings"

In German law, this is subject to substantial formal requirements, in particular an inspection of the intrinsic value of the claims to be contributed. If the value thereof does not correspond to the amount of capital increase or if the intrinsic value is not presented in due form, the court can refuse to register the capital increase. If a registration takes place and the intrinsic value of the claims is determined to be missing at a later point in time, the investor shall be held liable for the difference. The German Supreme Court (BGH) has rejected in various decisions legal arrangements in which the contribution of the claims acquired by the investor takes place in the form of a cash capital increase.

Legal arrangement options

A further difficulty arises from the fact that the original shareholders are entitled to subscription rights in the event of an increase of equity capital. Although these subscription rights can be excluded by a resolution of the shareholders' meeting of the company, the court rulings have significant formal and material requirements for the exclusion of subscription rights.

Apart from the majority requirement of at least ¾ of the voting rights present at the relevant shareholders' meeting this can especially lead to substantial litigation risks for listed stock corporations in potential shareholder lawsuits. Certain relief can be provided by the capital increase form of the authorized capital.

A simultaneous capital increase in kind and in cash is another possible legal arrangement. In this case, an increase of equity capital against contribution in kind takes place for the investor, which provides its contribution by converting the claims acquired by it. An increase in capital against contribution in cash takes place for the other shareholders at the same time in order to provide them with the possibility of maintaining their relevant investment ratio.

The third possibility is to provide the original shareholders with subscription rights within the framework of a cash capital increase. They are generally not willing to offer the company further equity in a crisis situation and therefore do not utilize their subscription rights. The unsubscribed new shareholdings are offered to the investor within the framework of a capital increase in kind following directly thereafter. The investor then contributes the acquired claims from the non performing loan against new shares of the company. ■

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Company formations in Cyprus

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Cyprus as an international financial centre

Cyprus is situated at the crossroads of three continents; Europe, Asia and Africa. This strategic geographic location, together with its excellent infrastructure, the strong pro-business attitude of the Cyprus people, the highly skilled human resources and the comprehensive double tax treaty network, have established Cyprus as a reputable International Financial Centre and an excellent place to establish tax efficient set ups.

The 2004 accession of Cyprus to the European Union (EU) resulted in the reformation of the Cypriot tax system and the relevant legislation; which became EU and OECD compatible. Consequently Cyprus is now recognised as not being a tax heaven, but rather a tax incentive jurisdiction. The corporate tax rate of Cyprus is the lowest in the EU and the Cypriot tax regime secures many exceptions.

Furthermore, the island's double taxation treaties with over 40 jurisdictions remain in force and continue to provide ample opportunities for international tax planning whilst also minimizing legally overall taxes for business and individuals. In addition the zero tax on inbound and outgoing dividends

enjoyed by non resident ultimate beneficial owners even from non treaty countries is a strong attraction for investors to use Cypriot holding and investment structures.

As a corollary a new gate to international investors has been opened. Cyprus is now firmly established as the ideal gateway for investment both in and out of the EU, something which is realized through the establishment and worldwide use of Cyprus companies.

Cyprus companies legislation

The legal system of the Republic of Cyprus was established when the island was a British colony. The Cypriot laws are heavily influenced by the British legal system; nevertheless, the current applicable legislation has been extensively amended and developed to meet the requirements and needs of the business community.

The legislation relating to company formation is Cyprus Companies Law, Cap. 113, which initially mirrored the provisions of the UK 1948 Companies Act. This law has been amended repeatedly in order to incorporate all relevant European directives; nonetheless it has not followed the subsequent amendments of the UK legislation exclusive to the UK.

The motivation behind many changes made to the said Companies Law was to enhance business efficiency by saving time, simplifying processes and increasing competitiveness.

The legal infrastructure of Cyprus is backed up by a modern banking and finance sector, which is able to support multinational enterprises operating here and offers a secure and well regulated environment to businesses.

The Cypriot Companies Law applies to both public (listed and non-listed) and private limited companies and includes a wide range of provisions covering the incorporation, functioning, administration and dissolution of a Cyprus company. It also contains the Table A regulations, which set model Articles of Association that can be fully or partially adopted by either private or public companies.

However when incorporating a company other laws may also be of relevance. For example, the Assessment and Collection of Taxes Law, provides that all newly incorporated companies are required to register with the Cypriot tax authorities immediately after their incorporation or the latest within 60 days from their incorporation.

Moreover since the enactment in 1996 of the Prevention and Suppression of Money Laundering Activities Law, which, as amended, is in conformity with the European Directives in the anti-money laundering field, all law firms, banks, accountants and other service providers in Cyprus have to comply with certain formalities and implement specific strict procedures intended to prevent the use of their services for money laundering.

These procedures relate inter alia to new clients identification, especially to new international clients and they are also performed in relation to natural or legal persons purporting to incorporate a new Cypriot corporate entity.

Procedure to incorporate a Cyprus company

The initial step when incorporating a new Cyprus company is to obtain the approval for the name of the company from the Registrar of Companies. The relevant application is filled electronically and the time usually required to obtain the corresponding approval is 3 to 4 working days.

"The benefits offered by the Cypriot corporate and tax legislation cannot be disregarded by potential international investors, who purport to take advantage of the relevant international tax planning and tax minimizing opportunities"

Upon receiving the approval for the name of the company, a hard copy of the Memorandum and Articles of Association, signed by the first shareholders of the company together with forms regarding the company's registered office address, directors and secretary, should be filed with the Registrar of Companies.

For this part of a company's registration process the paper filing method is still used. From the date of submission of the above-mentioned documents the time required for the completion of the registration procedure is normally 10 working days.

Once the formation process is concluded the Registrar of Companies issues a full set of corporate certificates, namely certificates of incorporation, shareholders, directors and secretary and registered office, together with the certified original copy of the Memorandum and Articles of Association.

Due to the fact that the process of forming a new Cypriot company requires some time to be completed, as described above, the majority of law firms and service providers in Cyprus maintain ready-made (shelf) companies that can be utilized immediately upon their acquisition.

In any case once someone obtains a shelf company, any necessary changes can be effected within a day, while the relevant certificates can be received by the Registrar of Companies in due course.

Therefore in cases of urgency the vehicle of an already incorporated shelf company provides the appropriate solution to those purporting to use a new Cyprus company for a proposed transaction.

Cypriot corporate tax regime

Cyprus has one of the most favourable corporate tax regimes throughout Europe. The corporate tax rate is 10%, which is currently the lowest in the EU, and it is imposed on net profits after deducting all business expenditure incurred. In any case expenses incurred wholly and exclusively for

business purposes – such as employees' fees and advertising, promotion and management costs – are allowable for deductions.

Note however, that where the company is involved both in activities producing taxable and non taxable income the expenses might be apportioned between the two activities and only partially allowed to be deducted from the taxable income.

"Cyprus is now firmly established as the ideal gateway for investment both in and out of the EU, something which is realized through the establishment and worldwide use of Cyprus companies"

Moreover, dividends and other profit distributions received by Cyprus tax resident companies from foreign subsidiaries are exempted from tax. In addition, Cyprus does not impose any withholding tax on dividends paid by a Cyprus company to non-tax resident shareholders, including both individuals and corporations.

Furthermore, any profits arising on the disposal by a Cyprus tax resident company of shares in a foreign company is exempted from any tax in Cyprus provided that the shares disposed qualify as *"titles"* under the relevant provisions of the Cyprus tax legislation.

"Titles" are defined as shares, bonds, debentures founder and other titles of companies or legal persons and rights thereon. In addition the disposal of the shares in the Cyprus company itself is completely tax exempt save, where the company holds immovable property in Cyprus.

An elaborate network of double taxation treaties usually results in a great leverage to reduce withholding taxes on incoming dividends. A sophisticated network of double taxation treaties is thus a key factor in the ability of a territory to develop as an attractive holding company jurisdiction; Cyprus is considered exactly that.

Cypriot holding companies can rely on its extensive and expanding network of now more than 40 double taxation treaties, the effect of which is to obtain a reduction in withholding tax rates on dividends remitted to Cyprus from the jurisdiction of a subsidiary thereof.

Furthermore the general effect of these treaties is the avoidance of the double taxation of income arising in either of the two countries. Once a Cypriot company obtains a Cyprus Tax Residency Certificate it can utilize such abroad for the purposes of avoiding double taxation.

Nonetheless for a company to take advantage of the corporate tax regime of Cyprus, it should be a Cypriot tax resident. A company is considered to be a Cypriot tax resident when its management and control is exercised in Cyprus.

No definition of *"management and control"* is provided by the Cypriot tax legislation, but this is rather a concept that developed through court decisions and the practice of the Cypriot department of income tax. In each case all the relevant facts are taken into consideration to determine where management and control actually is and there is no single requirement that would conclusively decide this.

According to the current criteria the effective management and control of a company is exercised in Cyprus when the majority of the directors are Cypriot residents, when the meetings of the Board of Directors are held in Cyprus, all issues pertaining to the strategic and operational management of the company are resolved here and in general all the significant decisions concerning the company are taken in Cyprus.

Moreover additional requirements may include that documents are signed in Cyprus, copies of all documentation are kept in Cyprus and that the company has real substance in Cyprus rather than merely having a postal address.

In any case no real economic activity is required to take place in Cyprus for the company to be considered as a Cypriot tax resident.

Conclusion

The advantages described above indicate that Cyprus is rightfully considered as a reputable international business centre. Besides, the straightforward and undemanding corporate and tax regimes of the island facilitate international investment through the formation and use of Cypriot corporate entities.

The benefits offered by the Cypriot corporate and tax legislation cannot be disregarded by potential international investors, who purport to take advantage of the relevant international tax planning and tax minimizing opportunities; especially amidst the current worldwide economic recession. ■

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Free standing relief: Black Swan orders

It has been almost 3 years since the substantial change to BVI law, brought about by the *Black Swan* case. Phillip Kite and Claire Robey set out where BVI law now stands in this important area.

Prior to 2010 freezing injunctions in the British Virgin Islands were only available ancillary to a substantive domestic cause of action against the respondent. It was not possible to seek an injunction ancillary to foreign proceedings. This was a result of a restrictive interpretation of Lord Diplock's speech in *The Siskina*.[1] In that case, the House of Lords was deciding a case where the defendant was not within the court's *in personam* jurisdiction and it was therefore a case concerning whether an injunction could form the basis for the grant of service outside of the jurisdiction. The English courts have never had to decide in the years since *The Siskina* whether it had jurisdiction to grant a freezing injunction against a defendant within the territorial jurisdiction in aid of foreign proceedings. This was due to the passing of (the English) section 25 of the Civil Jurisdiction and Judgments Act 1982 which gives the court express power to make orders in aid of foreign proceedings.

The restrictive British Virgin Islands approach was overturned by the High Court, Commercial Division in *Black Swan Investment ISA v Harvest View Limited*.[2] There the Commercial Court held that it was within its discretion to grant a stand alone freezing injunction in support of foreign proceedings where the respondent was within the *in personam* jurisdiction of the British Virgin Islands court.[3] The court followed the English decision of *Channel Tunnel Group v Balfour Beatty Ltd*[4] and held that *The Siskina*[5] did not prevent a court from granting an interlocutory injunction ancillary to a claim for substantive relief to be granted by a foreign court or arbitral body. *In Channel Tunnel Group v Balfour Beatty Ltd* Lord Mustill held that: *'… the court has power to grant interlocutory relief based on a cause of action recognised by English law against a defendant duly served where such relief is ancillary to a final order whether to be granted by the English court or by some other court or arbitral body'*.

Since there was no reason in principle why a claimant could not enforce a foreign money judgment in the British Virgin Islands courts, there was no logical reason why he should not be able to make a claim for relief which was ancillary to a foreign award or judgment which would lead to a money judgment.

It is particularly important to note that the injunction was in fact granted against a third party to the proceedings: the respondents were two BVI companies wholly owned by the wrongdoer who was being sued in South Africa. It was in fact the assets held by those two companies which were frozen, on the basis that a South African judgment could potentially be brought to the BVI and enforced against those assets by reason of the wrongdoer's sole beneficial ownership of the respondent companies.

"It is particularly important to note that the injunction was in fact granted against a third party to the proceedings"

Subsequently, in *Yukos CIS Investments Limited v Yukos Hydrocarbons Investments Limited*[6] the Court of Appeal has approved the decision in *Black Swan Investment ISA v Harvest View Limited*.[7] The Court of Appeal held that the following principles apply to the grant of *Black Swan* orders:

a. the jurisdiction to grant an interim freezing order is not ordinarily exercised unless it is necessary to do so in the aid of either relief the applicant is likely to obtain from the local court or from a competent foreign court;
b. the relief the applicant is likely to obtain from a foreign court must lead to a foreign judgment which may be enforceable by whatever means against British Virgin Islands assets owned or controlled by the defendant;[8]
c. in appropriate cases, interim relief might be granted to an applicant in support of a foreign claim against third parties to the foreign proceedings who are resident in the British Virgin Islands. However, it is difficult to envisage circumstances in which such relief would be available;[9]
d. a failure to seek equivalent injunctive relief in the foreign proceedings is a discretionary factor which mitigates against relief being granted. Ordinarily one would expect a freezing order to be obtained initially in the main litigation court with a duplicative application in satellite proceedings - the satellite court's role is to

assist the principal court by making an order designed to ensure that any judgment entered by that court would not be rendered nugatory.[10]

The BVI Commercial Court and Court of Appeal have therefore given very helpful guidance in this vital area for claimants seeking to freeze assets. However, the saying *"each case depends on its own facts"*, is more true than ever, especially in this area. There are cases which are presently going through the courts which might give further guidance and Harneys will keep you up to date on any new developments. ■

Further information

The foregoing is for general information purposes only and not intended to be relied upon for legal advice in any specific or individual situation.

HARNEYS

For more information on the subject please contact Phillip Kite (phillip.kite@harneys.com), Claire Robey (claire.robey@harneys.com) or your usual Harneys contact.

1. [1979] AC 210
2. BVI HCV (Com) 2009/399. This is in line with the modern decisions in other parts of the common law world, see Solvalub Limited v Match Investment 1996 JLR 361, a decision of the Jersey Court of Appeal.
3. Although not discussed in Black Swan Investment ISA v Harvest View Limited it is of note that the old equitable remedies of a Bill of discovery, a Bill to perpetuate testimony, and a Bill to take testimony de bene esse pending a suit (Story, Commentaries on Equity Jurisprudence 13th ed 1886 para [1480] ff) provide examples of remedies being available in Chancery in aid of proceedings in another court before the other court has heard a suit.
4. [1993] AC 334
5. [1979] AC 210
6. HCVAP 2010/028
7. BVI HCV (Com) 2009/399. This is in line with the modern decisions in other parts of the common law world, see Solvalub Limited v Match Investment 1996 JLR 361, a decision of the Jersey Court of Appeal.
8. HCVAP 2010/028, at [147]
9. HCVAP 2010/028, at [149]
10. Ibid., at [160]

Employment law in Cyprus

With the financial crisis still ongoing employment law questions are becoming increasingly important to businesses. The Q & A with Alexandros Tsirides, a Partner at Costas Tsirides & Co LLC, answers some of the major questions relating to the employment law regime in Cyprus.

What requirements must an employment contract fulfil with regard to the form it takes? Is it compulsory to have it in writing?

Under Cyprus law it is not compulsory for an employment contract to take any particular form. It can even be an oral contract. However the law stipulates that an employer should state in writing the terms of employment of any employee. This is usually done either by a written contract of employment or by a letter from the employer to the employee. Failure to comply with the provisions of this law does not invalidate the oral employment contract which is still valid and binding on the employer.

What is the minimum and maximum duration of temporary contracts?

The employment of an employee is considered temporary for an initial period of up to 6 months. The said period may be shortened or extended by the mutual agreement of the contracting parties. The extension of the probation period cannot exceed 24 months.

Also, it is possible for an employee to be employed for a fixed period. At the end of the fixed period the employment is automatically terminated without any right of compensation. A fixed period contract can be of any duration. However, if an

employee is employed by consecutive fixed period contracts then his employment is deemed to be converted into an indefinite period and he has the same rights as any other employee.

Is it possible to work part-time?

Yes it is possible to work part time.

Does a special type of employment contract exist for members of upper management? (Top Executive contracts)

No, there is no special type or form of contract for members of upper management.

Is there any kind of national minimum wage?

There is a minimum wage provision only for certain kinds of employment such us shop assistants, secretaries, nurses and child carers The current minimum age for this kind or work is €835 for the first six months and €887 thereafter. The minimum wage does not extend to all types of work.

Do wage/salary tables exist in collective employment agreements according to sector?

In some sectors there are collective agreements that include wage tables. These sectors include the tourism industry (hotel employees) and the construction industry (building and construction workers). These collective agreements do not extent to all sectors.

How many wage or salary payments are made per year? Is it compulsory to pay extra monthly salary payments over the year?

There are 12 monthly salary payments per year. In the majority of employment contracts a 13th salary is included and in rare cases a 14th salary is included as well. However the existence of a 13th or 14th salary depends on the employment contract and there is no compulsory statutory provision for its payment.

How long is the standard working day?

The standard working day is 8 hours and the standard weekly working duration is 40 hours per week. However in the civil service the weekly work duration is 38 hours.

Is it possible to work overtime? How is overtime paid?

Yes it is possible to work overtime. Overtime payments depend on the employment agreement and whether there are collective agreements in place. If there are collective agreements in place then the rate stipulated in the collective agreement is paid. In the absence of any collective agreement and any express provision in the employment contract the overtime is paid at the hourly rate of the employment contract.

How many days of bank holidays, apart from the annual holiday period?

There are 15 bank holidays in Cyprus.

How many days' holiday does a worker have per year? How are these holiday periods chosen?

The minimum holiday period is 22 days per year. An employee may take his annual leave when he chooses provided the employer gives his consent. Usually there are regulations by the employer as to how many consecutive days leave an employee may take.

How long does the weekly break last?

The weekly break is usually 2 days (Saturday and Sunday) but there are many sectors that do not follow this break. For example shop assistant who work on Saturday morning and have Wednesday afternoon off by law.

"... the law stipulates that an employer should state in writing the terms of employment of any employee."

What kinds of dismissals exist? Can workers be laid off if a company is undergoing financial difficulties?

There are three kinds of dismissal:

- Unfair dismissal
- Dismissal for good cause
- Dismissal for redundancy purposes (financial difficulties)

What compensation do workers receive in cases of dismissal? (days of salary or amount)

Compensation depends on the kind of dismissal'

Unfair dismissal

Employee is entitled to notice period or payment of salary in lieu of the notice period.

The notice period is as follows:

- From 26 to 52 weeks of employment -> one week notice
- From 52 to 104 weeks -> two weeks' notice
- From 104 to 156 weeks -> four weeks' notice
- From 156 to 208 weeks -> five weeks' notice
- From 208 to 259 weeks -> six weeks' notice
- From 260 to 311 weeks -> seven weeks' notice
- From 312 weeks and more -> eight weeks' notice

In case the trial period was extended by the mutual agreement of the parties to more than 26 weeks then the notice period starts from the date of expiry of the trial period.

In addition to the notice period the employee is entitled to compensation for unfair dismissal the maximum compensation for unfair dismissal is 24 months salary. The first 12 months salary compensation is paid by the employer and any compensation in excess of the 12 months is paid by the Redundancy Fund.

The minimum compensation in case of unfair dismissal is equal to the compensation an employee is entitled in case of redundancy as shown below. The Employment Tribunal has the option to award any amount between the minimum and maximum amounts depending on the nature of the case and the surrounding facts.

Dismissal for redundancy reason

An employer may dismiss an employee for redundancy reasons such as reduction of business and loss of income or in case a department closes. In such an event the employee is entitled to a notice period or payment in lieu of notice by the employer. The notice period is the same as the notice period described above.

In addition the employee is entitled to compensation by the Redundancy Fund (not the employer) as follows:

- For the first four years of employment -> two weeks salary for every year of employment.
- From the fifth year until the tenth year -> 2.5 weeks' salary for every year of employment.
- From the eleventh year until fifteenth year -> three weeks' salary for every year of employment.
- From the sixteenth year until the twentieth year -> 3.5 weeks' salary for every year of employment.
- From the twenty-first year until twenty-fifth year -> 4 weeks' salary for every year of employment.

In case the employee' salary is four times higher than the basic salary acceptable by the social insurance regulations for that type of employment is not taken into consideration.

Dismissal for good cause

The employer may terminate the employment of an employee based on one of the grounds allowed by the law.

Some examples are when the employee fails to perform his duties adequately or when his behaviour is inappropriate.

In case of dismissal for cause the employer needs to give the employee a notice in accordance with the table above. However if the behaviour of the employee is grossly inappropriate the employer may dismiss him without notice, for example when he commits a criminal offence.

What procedures must be followed in case of dismissal?

There is no particular procedure to be followed. In case of redundancy the Redundancy Fund must be informed of the grounds for redundancy to examine the application for redundancy payment.

Is there a special procedure for large scale dismissals? How does it work?

Yes in case of large scale dismissal there is a special procedure to be followed. The definition of large scale dismissal is as follows:

- At least 10 dismissals in businesses employing between 20 and 100 employees
- At least 10% of employees in businesses employing between 100 and 300
- At least 30 in businesses employing more than 300

In case the employer is planning to perform large scale dismissals the employer must first consult with the representatives of the employees and inform the representatives of the reasons for the dismissals, the number of dismissals and the time of dismissal as well as the method he will use to decide who will be dismissed.

The employer must also notify the authorities of his intention to make large scale dismissals. The notice periods for the dismissals in accordance with the table above start counting 30 days after the notice was given to the authorities.

What happens with regard to employment matters and debts in cases of bankruptcy?

In case of bankruptcy the employees are dismissed for redundancy reasons and are entitled to compensation from the Redundancy Fund in accordance with table above. Any salary not paid or any payment in lieu of notice is payable by the employer in bankruptcy and has priority over the unsecured creditors.

What is the approximate social security cost of each worker in relation to the corresponding wage/salary? (rate over the monthly salary)

The social security cost on the employer is 6.8% of the salary. In addition 6.8% is deducted from the salary of the employee.

Is it compulsory to have trade union representatives at the company?

No, it is not compulsory to have trade union representatives at the company. However in some sectors trade unions are strong and they impose their presence.

Do collective bargaining agreements exist according to company or sector?

Yes, in some sectors there are collective bargaining agreements such as the tourism and construction sectors.

What is the retirement age?

The retirement age is 65 years.

Is it possible to make the recruitment through an intermediary agency?

Yes, it is possible to make recruitment through recruitment agencies.

What obligations does the company have with regard to safety at work matters?

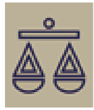
An employer must ensure that he enforces proper health and safety rules. He should supply the employee with proper and safe means to perform his duties.

He should have a compliance officer to monitor health and safety issues.

What happens with regard to employment liabilities in cases where a company is sold or its assets are sold to a third party?
In the event of sale of the business of the company the employee contracts are transferred to the purchaser and the employees continue with the same rights and obligations as with the previous employer.

However in such a case the new employer may make redundancy dismissals if as a result of this purchase there are synergies and there is no need for keeping all employees.

Both the seller and the purchaser are obliged to notify the employees of such transfer and their rights. ■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Disclaimer
The above only provides an overview of the general employment principles in Cyprus as at the time of writing and should not be relied upon without proper legal advice.

Positive changes in Bulgaria's commercial registration regime

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After two years of active involvement by Penkov Markov & Partners (and with the participation of the Bulgarian Chamber of Commerce and Industry, the Bulgarian Industrial Association and the Confederation of Employers and Industrialists in Bulgaria) in drafting and development of proposals for amendments to the commercial registration regime, directed at overcoming the omissions and inconsistencies in the current legislation, most of the amendments suggested by NGOs were adopted into the newest legislation.

A particularly striking shortcoming of the regulation of commercial registration was the absence of a possibility for giving additional time and instructions for eliminating omissions and incompleteness. For this reason it is extremely positive that with the latest amendments in the Commercial Register Act (*State Gazette*, No. 34 of 29.04.2011), at last an attempt is made to overcome this problem through provision of a period of time, although a rather short one, and instructions for the elimination of omissions and incompleteness in the documentation provided with the application, before a refusal is decreed. This essential amendment has entered into force as of 1 January 2012.

Of course, in this context the possible overcoming of some shortcomings in terms of wording can be considered, such as the obligation of the official to make a pronouncement on the application *"immediately after the expiry of three business days"*; this is a wording which not only contains an internal conceptual contradiction but also creates ambiguity with regard to the deadline within which the registration shall be actually made.

In any case, it can be expected that this legislative amendment will contribute to the acceleration and optimization of commercial registration, reducing the burden on the traders and procedural effectiveness.

A further positive feature of the latest amendments to the regulation concerning commercial registration is the introduction of additional protection of a *bona fide* registered business name in the Commerce Act. This is accomplished through envisaging the option of a motion for ascertaining submission or use of a name in bad faith, for discontinuing such use in bad faith and for compensation in case of damages, where the name is identical or similar to an already

registered name. The amendment to the Commerce Act also establishes a mechanism for protection of the holders of trademarks; a prohibition is introduced for the registration of a name identical or similar to a trademark over which the trader has no rights.

"An excellent cooperation between NGOs, the state and the professional approach of Penkov, Markov & Partners' team in the end led to the desired results"

Although the attempt to establish a more complete and efficient protection of company names, as well as a more adequate protection of trademarks registered in accordance with the procedures of the special Marks and Geographical Designations Act, indisputably deserves a positive assessment, there are still no accurate and clear criteria of identity and similarity of names. The formulation of such criteria is a necessary and mandatory next step towards achieving actual results and efficient and functioning protection.

Unfortunately, it has to be outlined that other solutions, adopted with the latest amendments to the regime, stir up astonishment and justified concerns. The envisaged submission of applications by joint-stock companies and partnerships limited by share is in gross contradiction with the principles of equal treatment and the applying of equal criteria. The adopted decision is not only inadmissible and inexpedient, but also discriminatory and thus unconstitutional.

In addition to establishing different rules with regard to commercial companies which should be subject to a completely identical regime, restricting the submission of applications by certain types of commercial companies only to electronic submission does not take into account the fact that there is an insufficient level of distribution and use of electronic signature, and thus establishes a regime which to a large extent would impede mainly investors related to small and medium-sized businesses, and especially those located in the smaller towns and settlements.

Finally, after the procurators were explicitly included in the list of individuals entitled to represent traders before the Commercial Register, which will undoubtedly overcome the inconsistent practice of the Register in this respect, an omission in the latest amendments to the regime of commercial registration that needs to be addressed is the impossibility for traders to be represented before the Commercial Register by a representative with a notarised power of attorney. The latter contradicts the general rules of civil law concerning representation.

An excellent cooperation between NGOs, the state and the professional approach of Penkov, Markov & Partners' team in the end led to the desired results. ■

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The Icelandic Investment Programme

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Introduction

In the fall of 2008 the Icelandic economy suffered an enormous blow when virtually the entire banking system became insolvent and needed immediate government assistance. The perils of the Icelandic banks is however not the topic of this article but rather the implications the banking collapse had on the Icelandic currency, the krona, and their owners, when the Icelandic Central Bank of Iceland (the "CBI") set capital controls on almost all monetary transactions to and from Iceland.

Capital controls

The Icelandic economy is no stranger to capital controls and certain legal provisions to control the flow of foreign currency have been in Icelandic law since before World War II, though seldom used. Today, Icelandic foreign currency exchange is governed by the Icelandic Act No. 87/1992 on Foreign Exchange (the "FX Act"). The FX Act was enacted inter alia to liberalize currency transactions in order to comply with European rules on the free flow of capital. Despite the main rule, the CBI had the right to restrict or even forbid

certain transactions, eg. securities transaction, withdrawals from bank accounts and lending activities. Prior to the banking collapse in 2008, the CBI had not used these rights to any effect. When faced with an unprecedented situation in the fall of 2008, and in order to secure funding from the International Monetary Fund, the CBI saw itself forced to issue rules on foreign exchange (the "FX Rules").

The FX Rules were issued with the aim of stemming the flow of foreign currency from Iceland in order to stabilize the krona, which had been dropping rapidly due to the economic crisis. As such, the FX Rules primarily aimed at restricting the flow of foreign currency from the country, rather than restricting the influx of foreign currency. As such the FX Rules placed a restriction on the conveyance of capital out of the country. The FX Rules banned investments in foreign denominated securities, larger lending transactions, derivatives between kronas and foreign currencies, transfers from foreign currencies accounts and ordered the repatriation of foreign currency held by Icelandic entities abroad. The FX Rules therefore basically prevented owners of kronas to convert the kronas into other currencies and transfer them abroad.

The FX Rules were, and still are, highly debated. Economists and the business sector criticized the FX Rules for deepening the recession and preventing new foreign investments in Iceland. This has caused various amendments to be made on the FX Rules, either to make investing in Iceland more accessible, further preventing the outflow of currencies or preventing the inflow of kronas which had been traded on the offshore market. In October 2009 the FX Rules were amended primarily to induce foreign investment by allowing all foreign investors investing with foreign currency after 30 October 2009 to freely transfer their investment from Iceland as they see fit. At the same time certain movements of kronas was specifically restricted to aid with enforcement of the FX Rules and prevent avoidance and abuse.

The FX Rules have since been amended regularly and were in September 2011 incorporated into the FX Act itself in order to further strengthen their position in Icelandic law. The FX Act now clearly states that the capital controls shall be removed by year end 2013.

Sanctioned by the EFTA Court

Though highly debated, the FX Rules were in December 2011 sanctioned by the EFTA Court in Luxembourg. The case was filed by an Icelandic national against the CBI which had denied the plaintiff from transferring kronas to Iceland. The individual claimed that the FX Rules were in breach of the EEA agreement. In the court ruling the EFTA Court stated that Iceland was permitted to take action to protect itself if there was a serious risk that payment balance difficulties would develop. The protective measures in question, the FX Rules restricting importation of offshore kronas, were adopted to prevent transactions which would cause serious and substantial monetary and exchange rate instability. The court stated that the FX Rules had stabilized the krona which suggested that the measures did not go beyond what was necessary to attain the objective pursued. Therefore the court ruled that the FX Rules were compatible with the EEA Agreement.

The Investment Programme

The CBI has now introduced a new plan with the aim of gradually removing/reducing the capital controls without causing major exchange rate or monetary instability or jeopardising financial stability. The plan, called the Investment Programme, was published by the CBI on 18 November 2011. The Investment Programme offers two options for foreign investors who wish to invest in Iceland, depending on whether they own offshore kronas or not. Investors who own foreign currency and wish to invest in Iceland are permitted to participate in the CBI's foreign exchange auctions, where they sell the CBI foreign currency at the auction rate provided that they sell an equal amount to an Icelandic financial institution. The investors therefore will receive kronas from an Icelandic bank and the CBI to use for domestic investment. Participation in the CBI auctions is anticipated to give investors a substantially better exchange rate compared to the onshore rate published by the CBI. Based on current market conditions investors could receive around 30% more kronas for their Euros then the CBI would usually offer.

"The Icelandic economy is no stranger to capital controls and certain legal provisions to control the flow of foreign currency have been in Icelandic law since before World War II, though seldom used"

Foreign investors that own offshore kronas and wish to use them in Iceland are now, for the first time since November 2008, offered to invest those kronas in other assets than government bonds, provided that the investor also brings an equal amount of foreign currencies to the country and exchanges them with an Icelandic bank at the exchange rate resulting from the CBI auctions. The investor will however have to have owned the kronas continuously since 28 November 2008. This finally gives foreign investors the opportunity to make use of their kronas with, however, the caveat of investing further fresh money in Iceland. The investor will however benefit from the CBI auction rate thus giving him a little more bang for his buck.

Restrictions

According to the terms and condition of the Investment Programme, the investments are not without restrictions and have to fulfil certain criteria to be eligible. First and foremost, the investment will have to be held for at least 5 years. In that 5 year period the investor will be restricted from selling the asset, including all mortgaging, forward contracts or other derivatives. This will of course limit the liquidity of the investment. The reason for this restriction is to stabilize the offshore kronas which have been a factor in Iceland´s monetary instability. Failure to comply with these restrictions could result in penalties implemented by the CBI.

The Investment Programme is also limited to certain types of assets. The eligible assets are: (i) dematerialized shares

in public limited liability companies, (ii) certain long term bonds issued by Icelandic entities, (iii) real estate in Iceland, and (iv) unit shares, or shares, in UCITS and investment funds in Iceland.

The investor's obligations shall not prevent him from being able to obtain a normal return on the investments such as dividends or rental income, provided that the return constitutes normal profitability and that the income accords with the nature and risk of the investment and is not contrary to the long-term encumbrances on the investment. The aim of this rule is of course to prevent abnormal, hidden or artificial payments which could be perceived as a disposition of the investment prior to the expiration of the encumbrances.

Summary

Though the Icelandic capital controls have been highly criticized for restricting foreign investment and the Icelandic economy, the CBI has been taking active steps to remove these monetary restrictions. Though not free from flaws, the Icelandic Investment Programme offers long term investors interested in Iceland an opportunity to invest in Icelandic securities and real estate at a considerably favourable exchange rate than the usually offered by the CBI. Investors must submit themselves to certain encumbrances and participate in a regular currency auction held by the CBI with the assistance of Icelandic banks. Nevertheless, investors will be able to reap normal returns from their investments during the course of the investment. ■

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'The Future of Nuclear Energy in the MENA Region'

The Middle East Association held a business briefing on the Future of Nuclear Energy in the MENA region on 26th January. Speakers were John Crawford, Energy Sector Group, UKTI; Michael Waite, Westinghouse Electric Company; Rakesh Maharaj, ARMSA Consulting; Claire Harvey, Prospect Law; and Chris Harrop, Deloitte.

Nearly every country in the region has expressed some level of interest in developing nuclear power, although the conditions and drivers vary greatly. Jordan, UAE, Saudi Arabia and Egypt are pursuing the option seriously. In Jordan, there are plans for at least one 1000mw reactor by 2019 and the Kingdom is looking to select a technology provider by March/April 2012. The UK is well engaged and there are good opportunities for UK content. In the UAE, work has started on a Korean led $4 billion project for four reactors, with WS Atkins acting as technical advisers.

"The drivers for nuclear power development in the region are diverse, and include the diversification and conservation of energy resources, growth, energy security, regional collaboration, desalination needs and the desire to lead in new technologies"

Saudi Arabia is at an earlier stage – the Kingdom is looking to build 16 reactors by 2030, with a budget of $100 billion and has signed MOUs with a number of countries – it is hoped an MOU with the UK will be signed soon. Egypt was working on developing nuclear power before the revolution, although the current political situation has cast uncertainty over these plans.

The drivers for nuclear power development in the region are diverse, and include the diversification and conservation of energy resources, growth, energy security, regional collaboration, desalination needs and the desire to lead in new technologies. In Saudi Arabia for example, massive population growth and economic growth, industrialisation and desalination plants and the need to maximise oil potential have acted as drivers. The King Abdullah City for Atomic and Renewable Energy (KACARE) was set up in 2010 to lead the nuclear project. Motivation is strong and enablers are in place. The Kingdom represents a sizeable and credible opportunity for nuclear power, delegates heard.

The health effects and control strategies for exposure to radiation at nuclear power plants, and the three control principles of justification, optimisation and limitation were discussed. There are opportunities in helping governments to develop optimisation and limitation programmes, with new and inexperienced generators needing support. There are also opportunities throughout the supply chain in preventing the risks arising from radiation.

Michael Hodges, Chairman, Middle East Association (second from right) with speakers

The briefing covered the role of regulation in preserving international safety and security in the nuclear industry, looking at questions such as, what is security? Where is the regulatory balance addressed? Who does the work? How long does it go on for? And when do lawyers play a part?

Also discussed was the question of whether the Chinese new build programme could be replicated in the Middle East. The Chinese have a strong commitment to moving forward with nuclear power and are using western technology and westernised models to reduce risk. However, in the Middle East there is still sensitivity around the likelihood of risk and a lack of a nuclear culture, with many complex areas still needing to be addressed. The lack of developers and regulatory systems is creating a demand for western technology and regulatory experience. Next steps could include seeking international and bilateral agreements, and addressing issues such as funding and the disposal of radioactive waste. ■

'Building the Knowledge Economy – Education and Training in the MENA Region'

Around 100 representatives from educational institutions, business and government attended the Middle East Association's conference on *'Building the Knowledge Economy - Education & Training in the MENA Region'*, held on 12 March at the BIS Conference Centre in London. The event, the Association's fourth annual conference focusing on this critical sector, explored the education and training needs of the region and the potential for further UK involvement.

Opening the conference, Charles Hollis, Middle East Association Director General, commented that the critical importance of this sector in the region has been thrown into sharp focus by the events of the past year. *"The search for dignity manifested by the Arab Awakening is also a search for jobs, skills and education,"* he said. He commented on the 'hunger' for assistance with education and training, which continues to be a key focus of the Association's activities. *"Only two weeks ago the MEA took a trade mission to Iraqi Kurdistan, which featured a higher education specific programme and met a substantial range of high profile contacts who were extremely keen to develop links with UK institutions,"* he said.

Susan Haird, Deputy Chief Executive, UK Trade & Investment, commented that the UK's education and skills exports are running at around £15 billion a year, and underlined the UK government's commitment to supporting education and skills development in the MENA region. UK Trade & Investment has recently supported trade missions to UAE, Saudi Arabia and Kuwait aimed at workforce development, received delegations from Tripoli and Kurdistan and organised an education showcase in Doha. *"If anyone tries to tell you that having a skill and a realistic prospect of using that skill in the workplace isn't important, tell them about a young and disaffected seller of fruit and vegetables in the streets of Tunisia,"* she said.

Baroness Morris of Bolton highlighted the affinity between the UK and the region in education, saying, *"Education links between Britain and the Arab world have the potential to yield benefits beyond the confines of academic achievements...these links can generate greater understanding between different cultures and traditions, and make conflict and tension less likely."*

She spoke about the establishment of the University of Bolton's campus in Ras Al Khaimah, which is educating students up to MA level in construction, civil engineering, IT and business. The collaboration is contributing to the economic development of Ras Al Khaimah, with students in placements at RAK Ceramics and other local companies, as well as supporting local lecturers and sharing best practice.

"This is an important aspect in driving up standards, which is essential throughout the region," she said.

Building schools

"Schooling is at the heart of the knowledge economy," said Geoff Millar, The Schools Network, introducing the first panel session on Building Schools.

Paul Wagstaff, CfBT Education Trust, commented that *"the biggest challenge Middle East schools face is improving standards and the quality of teaching"* with around 80% of students leaving school being unable to move directly to higher education, often necessitating a foundation year before the start of a degree course. A 'cultural shift' is required in moving from rote learning to the introduction of critical thinking and modern pedagogical methods.

The region also faces shortages of capacity, with a huge increase in demand for teachers, and the need for improved pre-service and in-service teacher training. There is a reliance on expatriate teachers and the need to encourage more male nationals into the teaching profession.

Tony Jones, British Council, highlighted the huge demand in the region for English language teaching and the need to increase and improve the teaching of English in state schools - this would lead to an overall improvement in the level of English in the region and would encourage more foreign investment.

"The search for dignity manifested by the Arab Awakening is also a search for jobs, skills and education"

The conference heard about various initiatives and partnerships to improve education in schools, such as the British Council's 'Connecting Classrooms' project, which builds partnerships between schools in the UK with those across the world, English language and ICT being key components. Over 600 schools in the MENA region are participating.

Also covered were the growth of private and international schools and the various issues they face, such as land ownership and setting fees. Delegates heard about the experiences of Sherborne School, which has set up in Qatar as part of the Outstanding Schools project. The conference also discussed the scope for British skills and expertise in designing schools that would facilitate new teaching styles and technology, and issues facing developers, such as complex approval processes.

Connecting universities

Introducing the second session on *Connecting Universities*, Amanda Selvaratnam, University of York and the Training Gateway, commented that the same need to improve quality and methodology also extends into higher education, with a consequence scope for sharing expertise in new teaching methods, curriculum development and capacity building. She highlighted the need for closer cooperation between the private and public sectors to produce work ready graduates, and the role of higher education in providing professional training courses aligned to business needs.

Nawal Karim, Kurdistan Regional Government London Office, spoke about the huge expansion of the higher education sector in Iraqi Kurdistan and efforts to build capacity, improve quality and reform the curriculum with the introduction of new courses such as IT and critical thinking, as well as to develop international research links. The KRG has a $100mn annual budget to provide scholarships for students to study Master's and PhD programmes at international universities, around 70% going to the UK. Partnerships have been concluded with a number of UK universities – Leicester University for example is collaborating with the University of Kurdistan Hawler on English language teaching. Collaborations and new partnerships are sought in areas such as archaeology, healthcare and engineering.

Professor Michael Worton, Vice Provost, UCL, underlined the focus in Qatar on university partnerships, and outlined UCL's new research focused partnership model with the Qatar Museums Authority and Qatar Foundation, which focuses on postgraduate, PhD and professional education in the field of archaeology, museum studies and cultural heritage. The vision is to establish a Qatar as a hub for museums and cultural heritage and create a new interdisciplinary graduate level profession to support the growth of museums in Qatar and the region.

Lisa Sadler, University of Durham, had some useful advice drawn from her experiences, such as the importance of contextualising the approach and knowing the market, as well as drawing on the strength of the institution - Durham University has acknowledged expertise in Islamic Studies and the Arab world.

The final session, moderated by Richard Parry, UK Trade & Investment, developed the debate on training and skills for employability, covering issues such as adapting models from the UK for the local market (eg. providing professional qualifications in Arabic); combining UK expertise with local capability; the thirst for lifelong learning; challenges in providing workplace experience; local trainer development; and the increasing demand for technical and vocational education with a practical focus in areas such as the oil industry.

Alan Stevens, Vector Consulting, speaking on his company's work in Egypt and Turkey, commented on the value of professional qualifications, which *"make people stand out from the crowd."* By working with the Chartered Institutes Vector has been able to develop a set of products that cut across various industries and has improved success rates by combining UK expertise with local delivery.

Also discussed were various considerations and practicalities that need to be taken into account by companies looking to work in the MENA region, such as the implications of the Bribery Act, the importance of relationship building, and cultural issues. The need to facilitate visas for students and business visitors was underlined, as was the importance of assistance for SMEs. ■

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