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American oil from American soil
Q&A with Chris Faulkner, President & CEO of Breitling Energy Corporation

Neelie Kroes argues that copyright needs to be reformed for the sake of the future economy

Taming financial markets is a must for achieving stability
Writes Daniel Dăianu

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Ukrainian prospects

As a new 'Unity Government' gets down to work in Kiev, the factors determining the political and economic trajectory of Ukraine will be determined less by a tug of war between Russia and the West than by the actions and decisions of the leadership that emerges in Ukraine. The new leadership has to unify the opposition and build effective political and economic institutions. This opportunity was missed following the Soviet collapse in 1989 and the 2004 Orange Revolution.

Ukraine's economic indicators over the past generation tell the story. In 1989 Ukraine's GDP was slightly larger than its neighbour Poland. Today the economy of Poland is almost three times greater, following early and painful economic reforms. Regarding corruption, Poland ranks in the top quartile of Transparency International's Corruption Perception index, Ukraine is on a par with Nigeria and Iran.

Ukraine's politicians have spent these years playing off the West and Russia, and extracting resources from both sides. Corruption amongst this group has been pervasive. One has to remember that the deposed President Yanukovych was elected following corruption accusations.

Some European and Ukrainian officials have suggested that the EU Association Agreement should be signed immediately. This would be a mistake. Implementing the EUAA demands years of legislative work that are designed to bring Ukraine's laws closer to Europe's legal framework.

There need to be elections for the presidency and the parliament. And there need to be negotiations involving the EU, US, Russians and of course the Ukrainians over how these elections will be managed so they are fair and ensure representative government. This will probably need constitutional reform.

The West should also save Ukraine from default and prepare an emergency package of aid and credits. Longer-term help will have to be conditional on reforms similar to those undertaken by Poland over 20 years ago.

This will not be enough to create a dynamic and prosperous Ukraine, but at least it should reduce corruption and ensure a representative and elected government is in place. ■

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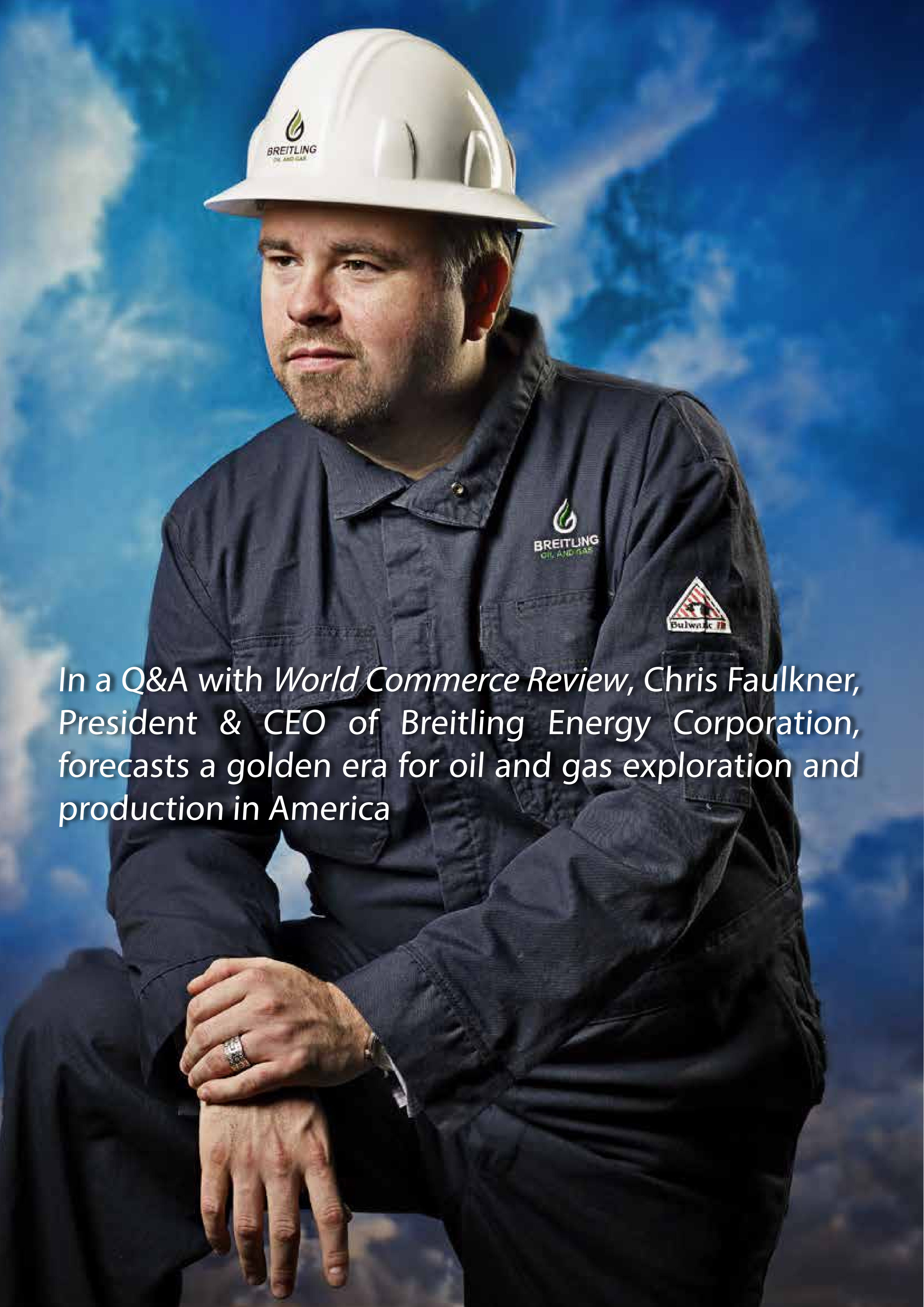


In a Q&A with World Commerce Review*, Chris Faulkner, President & CEO of Breitling Energy Corporation, forecasts a golden era for oil and gas exploration and production in America*

AMERICAN OIL FROM AMERICAN SOIL

Please describe the history of Breitling Energy Corporation

Breitling actually began with an advanced exploration software program I developed to help identify resource plays that would typically go undetected with traditional methods. After designing the patent-pending Geo3D Seismic Filtering technology, I established Breitling Oil and Gas in 2004. The company has doubled in size every year since 2009.

Applying state-of-the-art petroleum and natural gas exploration and extraction technology to the development of onshore oil and natural gas projects, Breitling is engaged in the acquisition, development and production of crude oil, natural gas and natural gas liquids throughout North America.

In January 2014, Breitling Oil and Gas officially became Breitling Energy Corporation and went public under the ticker symbol BECC, trading on the OTC. Breitling has been named Best Independent Oil and Gas Company, North America by *World Finance* in 2011, 2012 and 2013. Awarded for Exploration and Production in the Southwest region in 2013 by the Oil & Gas Awards, Breitling was also named to the 'Dallas 100 List' in 2013, ranking fourth among the top 100 companies in the Dallas-Fort Worth area.

What is the philosophy of the company?

Breitling's exploration activities are focused on adding profit-generating production to existing core areas and developing potential new core areas. Breitling's primary goal is to increase the value of acquired properties through a combination of exploitation, drilling and proven engineering extraction practices, with its most significant emphasis on CO^2 tertiary recovery operations.

What is the strength of the management team?

Breitling's management team is deep in industry experience and expertise. Our SVP of Exploration, for example, has been evaluating and drilling oil and gas prospects for 38 years and in 1986 was responsible for generating some of the first horizontal drilling ventures in the Pearsall and Giddings Austin Chalk Fields. Our COO and CFO both have extensive knowledge in the exploration and production, midstream and oil field services industries, with decades of legal and corporate finance and experience in oil and gas.

Coming to the industry from an entrepreneurial and techie background, I apply strategic analytic skills to driving our long-range economic and energy outlook while tirelessly serving as an industry advocate through community outreach, speaking engagements, media engagement, and government outreach.

How is Breitling Energy Corporation helping to drive local and national economies?

Every Breitling operation employs hundreds of people. With the average salary of oil and gas workers of around $120,000, our operations inject a lot of capital into every community where we operate. In addition, Breitling approaches every operation with the belief that we must secure not only the usual required approvals and licenses and permits, but also what we call a 'social license.'

We introduce ourselves, personally, through town hall meetings and just good old conversation, in cafes, stores, gas stations, at the actual drill site, or wherever people are interested in discussing our plans and learning more. We feel that by asking for and receiving the social license to operate in a given community, we're helping to educate people, one at a time, about the true nature of oil and gas operations, so they can make informed decisions for their families and communities.

What steps do Breitling Energy Corporation take to ensure safety in fracking?

In 2010 introduced its EnviroFrac™ program, designed to evaluate the types of additives typically used in fracking to determine their necessity and environmental impact. Under the EnviroFrac program, any additive not critical to the successful completion of a well is eliminated, and Breitling works to find greener alternatives for all essential additives. To date, Breitling has eliminated 25 percent of the additives used in its shale play frack fluids.

Even additives such as pH-adjusting agents and chlorine-based sanitation aids that would be found in about the same concentration as a backyard swimming pool are evaluated for replacement with more environmentally-friendly options under the EnviroFrac program.

Breitling's EnviroFrac program is also used to work toward a 100 percent reuse or recycling of water used in fracking to minimize water usage, and establishes simple guidelines for drill companies and vendors to ensure the safe and proper handling of chemicals.

Breitling also employs directional drilling techniques to reduce its drill pad footprint, drilling dozens of wells through a single rig site. This greatly reduces the impact of truck and heavy equipment traffic by concentrating operations into one area while maximizing each rig's efficiency.

How will these technologies develop over time?

Like all oil and gas technologies, the future will bring greater efficiencies.

Where do you see the US shale revolution going?

America is in the first inning of a very long baseball game when it comes to the future of the US oil and gas industry. New basins will continue to be found. Technology will drive the industry further and further and Breitling plans to play a major role in this renaissance.

We're at the start of a truly golden era for oil and gas exploration and production in America. Our current shale oil plays will continue to deliver for decades to come, and as new technologies and approaches are developed, the future will only get brighter. The economic application of fracking and horizontal drilling was the revolution and now I think we'll see a long term evolution of the industry and the resources still awaiting discovery.

The industry's biggest challenge will continue to be public perception and opposition. It sounds almost irrational to say that, given the mountains of historical data and research supporting our practices and the huge boost we give to the economy, but misguided public pressure can have such a detrimental effect on public policy.

We as an industry need to do a much better job telling our story and getting community buy-in every step of the way. I think we'll be hard pressed to ever win the media battle, but we can win one community at a time.

Breitling Energy fracking crew working in the Bakken Shale in North Dakota

What opportunities does the industry give to investors?

There have always been great investment opportunities in oil and gas, but this is a new era of exploration and development with enhanced oil recovery (EOR) processes that are removing much of the risk for investors. In the past, an average success rate of 1 in10 for an exploratory well and 1 in 4 for a developed well was accepted risk. With EOR processes, the risk of drilling a dry hole is nearly zero. So, whether investors choose direct participation, stocks, mutual funds, or royalties, the oil and gas industry has a lot to offer.

At what price level does shale production become unattractive?

The break-even point is about $50 in the US, so bankers start to worry at about $65. But I don't expect prices to fall below $90 through at least 2020, so I don't see low prices hampering shale operations.

What does the future hold for Breitling Energy Corporation?

In the near-term, Breitling Energy will continue to develop and operate its assets in Texas, Oklahoma and Kansas and will continue to develop joint venture relationships

"The industry's biggest challenge will continue to be public perception and opposition"

to further participate with our partners in the Bakken and Three Forks plays in North Dakota. In the mid- to long-term, Breitling will be looking beyond our borders for joint venture relationships and investments abroad.

Do you think the shale revolution could be replicated in Europe?

I don't know that the shale revolution can be replicated in Europe, per se. America is so different in every aspect - geology, terrain, population density, mineral rights, regulation - that I would be very careful not to draw direct comparisons between our energy boom and Europe's potential. That's not to say that Europe shouldn't develop its shale resources.

On the contrary. In some areas, like the UK, the infrastructure is there, the regulatory structure is nearly in place, and the

incentive is strong: like us, they want to loosen the grip of export nations over their energy and economic future. I'm certain we'll see many European countries developing their shale resources and reaping considerable benefits.

What effect have companies like Breitling Energy Corporation had in helping on shoring jobs back to the US?

The oil and gas industry has had a huge effect on making the economics attractive enough that many manufacturers can bring their work back to the U.S. With low natural gas prices producing lower energy costs, basing operations in the US now makes more sense than sending that work to China.

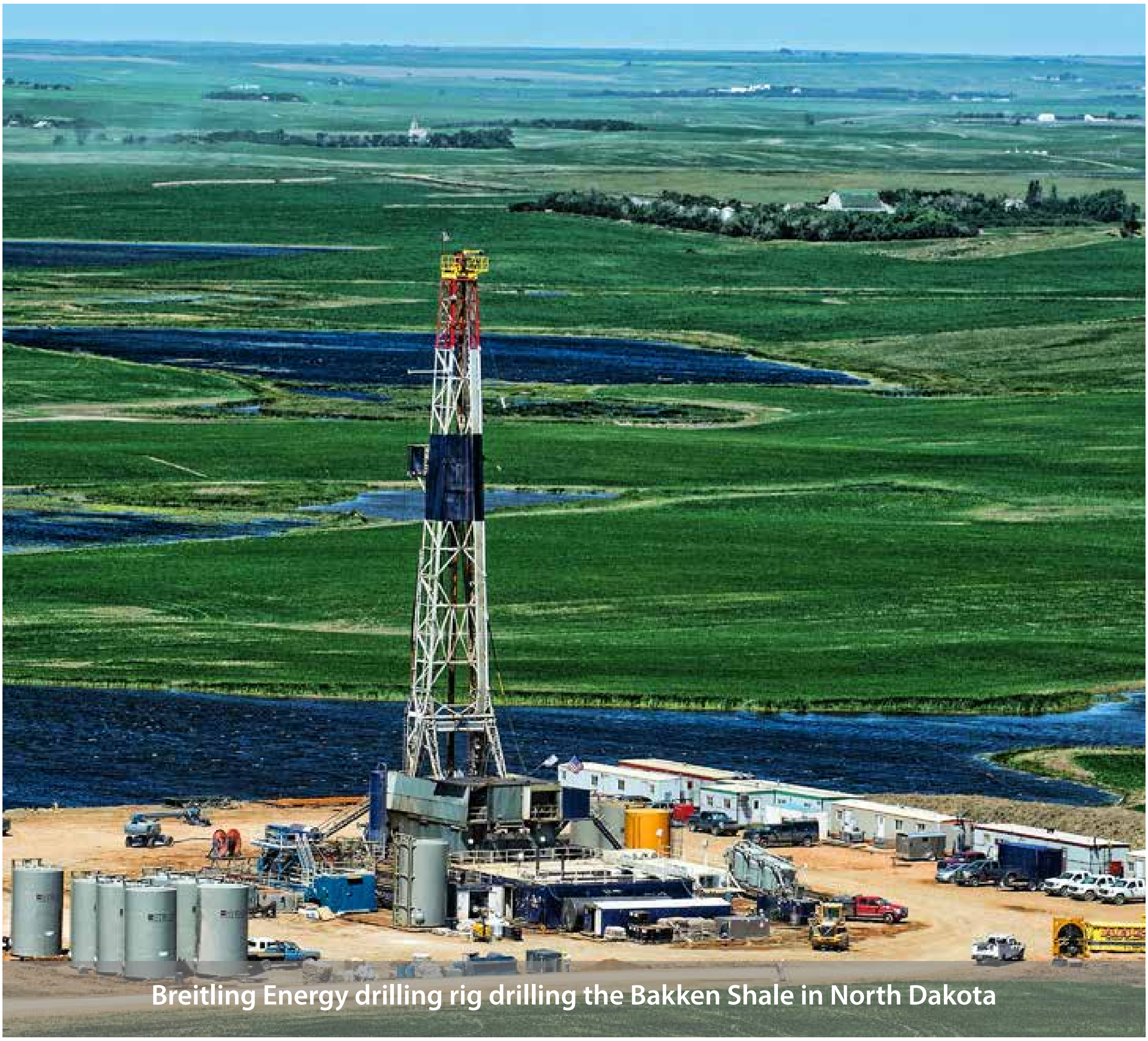
Natgas liquids are such important feedstocks in chemical production that domestic chemical production is expected to increase annually by 7.8 percent through 2020 as a result of the increased supply. This will translate to upwards of $80 billion in chemical industry investment over the next 10 years, resulting from increased production of shale gas.

What message do you have to investors and consumers?

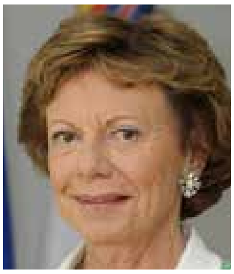
The oil and gas sector is huge - the world's largest industry in terms of dollar value - and it isn't going anywhere soon. America's new growth engine offers tax benefits, the promise of an early payout, and long-term income.

The US International Energy Agency (IEA) estimates that global oil demand will climb from 87 million barrels per day in 2011 to just under 100 million barrels per day in 2035. This is mostly due to sky rocketing oil demand for transportation in rapidly growing economies such as those of China and India.

Natural gas faces an even more bullish growth outlook, nearly doubling in demand over the next 25 years, thanks to its value as an affordable, low-carbon replacement for coal in generating electricity while the world grapples with concerns over possibly disruptive climate change. ■



Breitling Energy drilling rig drilling the Bakken Shale in North Dakota



Modernising copyright for the digital age

Neelie Kroes is Vice President of the European Commission responsible for the Digital Agenda for Europe

Of the issues people encounter online, few seem to be as visible or irritating as copyright[1]. A system that started as a way to support artists and other creators to do what they do best, has become something complicated that many people don't understand and don't respect.

That's a problem for creators, for companies that help share their work and for you and me as users and consumers. I hear about problems all the time: from citizens unsure if they can upload their own wedding video to social networks, to scientists unable to carry out live-saving research using text-mining. It seems clear to me that there is a great opportunity from modernising the EU copyright framework to make it fit for an ever-changing digital world.

The EU has already acted in this area, agreeing two new important laws: a Directive on so-called Orphan Works[2], and one on Collective Rights Management[3] to support cross-border access to online music.

But we need to go further to remove the current obstacles, promote rapid digital developments and make copyright fit for the online age. We are completing a consultation in February 2014 that will help us take the next legal steps.

An effective, modern copyright system could play a significant role ensuring a vibrant single market for online content in Europe: not to mention supporting education, science and our economy. It also needs to stimulate innovation, and promote the production of new creative content.

That is one of the reasons why we developed the Licences for Europe[4] process in 2013. It is one track of our approach on copyright[5]; covering a number of issues, from audiovisual heritage, to text and data mining for research, to online TV and film. Some of which groups had great success; others less so.

The point behind these initiatives is for copyright to be an enabler, not an obstacle, to the selling and sharing of content.

For example, agreement was found on how to ensure European film heritage remains the envy of the world. This cooperation showed that different groups can come together, and unite around a common objective and a common way forward. Even though they would have preferred legislative exceptions, which we still don't exclude for the future.

Every day scientists find they can't conduct life-saving research. People can't yet watch their favourite TV or films across borders, when they have paid for it. Not legally anyway. Meanwhile people aren't even sure if they are allowed to upload their own wedding video online!

And all because of dated copyright rules. Come on. Let's move with the times.

Now that we have spent a year considering non-legislative ways to achieve progress, it is time to consider new legislation.

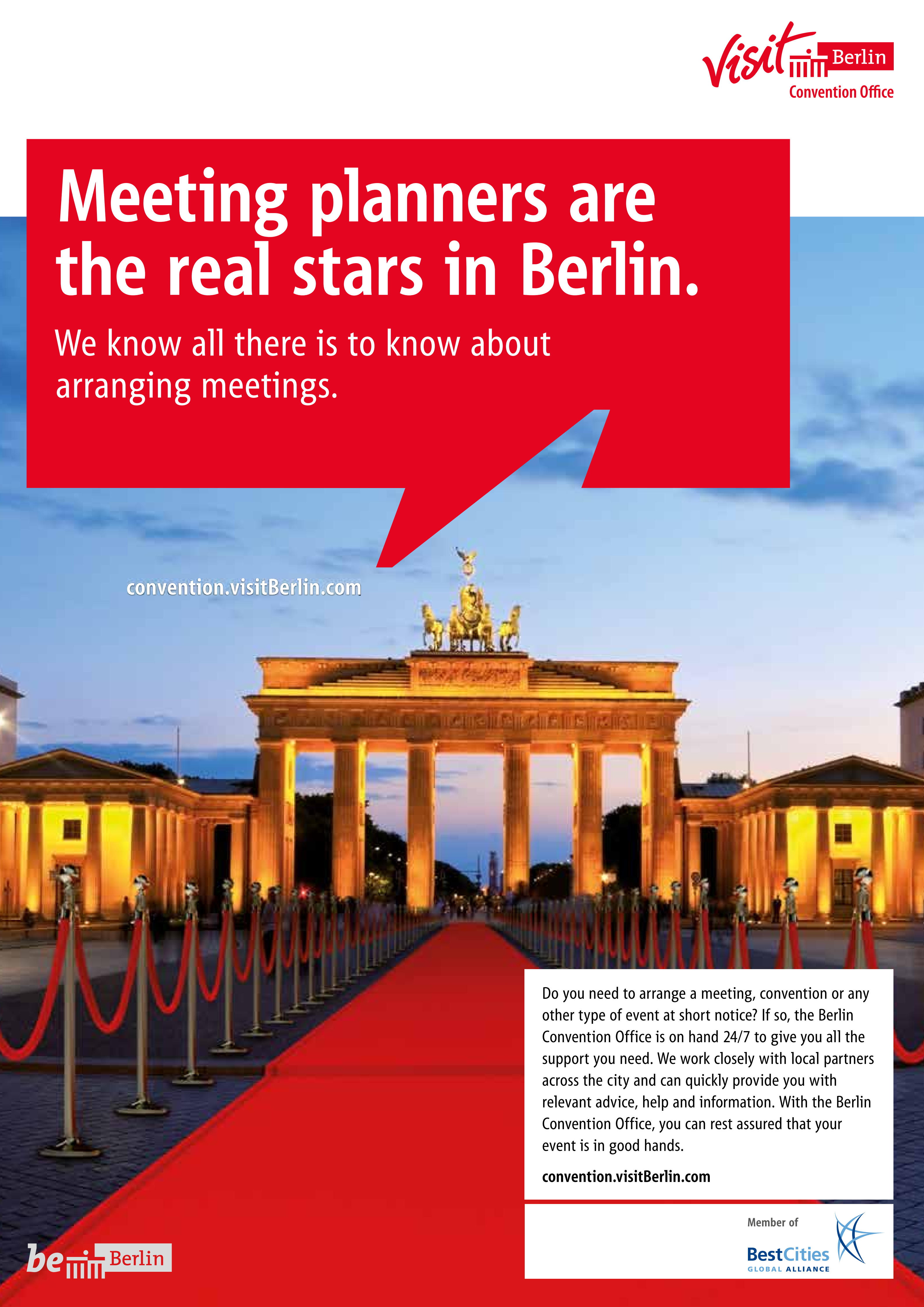
Copyright needs to reform for the digital age. This is important for our future economy.

Every day we don't reform viewers lose out, science loses out, artists lose out, our shared culture loses out.

So where we have not delivered sufficient results, we must look elsewhere. Like reviewing the legal framework. And looking at legislative exceptions.

We need a copyright system fit for the digital age. For scientists, for artists, for film and TV lovers, for our culture. Copyright should not be a tool of obstruction and control, but something that enables. Delivering for every European. ■

1. http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm
2. http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm
3. http://europa.eu/rapid/press-release_MEMO-13-955_en.htm
4. http://ec.europa.eu/licences-for-europe-dialogue/
5. http://europa.eu/rapid/press-release_MEMO-12-950_en.htm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Unveiling the hidden side of the counterfeit trade

Grant Busby, Laure Tempier and Junko Yamamoto work for the World Customs Organization

April 2013, at the port of Lomé, a team composed of two Togolese customs officers and two WCO anti-counterfeiting experts enter a customs warehouse to inspect a 40 foot container. After unloading piles of diverse products, they find the contraband goods that they were searching for hidden at the back of the container: more than 37,000 undeclared insecticide aerosol sprays – counterfeits of a famous Nigerian brand.

No X-ray machines were used to identify the counterfeit insecticides, only the human brain checking customs declarations, bills of lading and other supporting documents for subtle clues and misinformation. The laboratory analysis later reveals that all the products, bar one, contain active ingredients different to those indicated on the spray itself and that frequent exposure to some of the non-indicated solvents and additives could cause respiratory disorders and cardiac problems.

This interception took place during one of the World Customs Organization's (WCO) anti-counterfeiting operations, code-named BIYELA, with the participation of 23 sub-Saharan African customs administrations. The 10-day operation, mainly targeting fake and illicit medicines, resulted in the seizure of over 1.1 billion products, including 550 million counterfeit and illicit therapeutic doses. In the same vein, another enforcement operation in Latin America and the Caribbean, code-named TIGRE 3, saw 17 customs administrations intercept 26 million counterfeit products in five days. Operations are a key WCO activity in the fight against counterfeiting and piracy,

Insecticide aerosol sprays, counterfeits of a famous Nigerian brand, seized in Togo during Operation BIYELA

and aim to establish operational capacities for IPR protection. They provide customs with a snapshot of the trends and patterns used by counterfeiters and of the scope of this trade in participating countries and in the region where the operation takes place. This last objective is particularly important in raising awareness at the policy-makers level; helping them to understand the seriousness of the situation in their country and in their region.

A phenomenon which goes unnoticed

Illicit trade is by its very nature difficult to stop, but customs enforcement experts around the world agree that counterfeit products have invaded society to an extent that is difficult to imagine. This is particularly the case in developing countries, although developed countries are not free from this scourge either, spending large amounts of money and resources to hold back the tide. People in all countries are confronted with counterfeit goods on a daily basis, so much so that they hardly notice it.

One often hears how huge the phenomenon has become all over the world, so it may seem a little paradoxical to say that the phenomenon goes unnoticed. The fact is that counterfeit items are no longer just luxury bags, watches, sporting gear and products that consumers have become familiar with and therefore, with a close look, able to easily spot if they are fake. The problem also differs from region to region. In Latin America for example, counterfeit goods are mainly high value goods of good quality, leading one to suspect that the counterfeit trade is being used by drug traffickers to launder money.

A consumer may be confident that the wallet he bought at an authentic retail store is genuine, but can he be sure that his car's oil filter, spark plugs or even the brake pads are not counterfeit, or that the vegetables eaten by his family daily are grown without any counterfeit fertilizers or pesticides? These counterfeit items are just a few examples of what customs officers encounter on routine cargo examinations, and even for them, with their keener eyes to identify fake products, the situation is becoming ever more complex.

Firstly, today it is common for cross-border transactions to involve a criss-crossing of consignments, which enables the true origin of goods to be obscured and new, including fake, Certificates of Origin to be issued. Counterfeiters misuse transhipment, especially through Free Trade Zones, to unload and load shipments, repackage them, and thus 'create a new ID for their goods' with 'legal' new bills of lading and invoices, taking advantage also of relaxed oversight, lesser customs controls and the lack of transparency in some of these zones. They also analyse customs interceptions, understand how their shipment was targeted and then change their patterns, including using other companies to transport their goods, declare their goods in a different way, mix genuine and fake products and move their goods differently.

Another obstacle is domestic assembly of counterfeit items which is becoming an extremely popular practice among infringers. Plain fabric or machine parts are imported – which is perfectly legal, while logos, emblems or machines for manufacturing logos are imported separately – which is illegal in some countries and a 'gray' area in others. Importing in this way is less obvious and less risky than smuggling copied end products in most countries. Legally these items could circumvent existing laws and regulations, depending on how infringement is defined in national legislation. Offenders then assemble their products and logos to produce perfect fake end products domestically.

Goods could be as simple as sunglasses or as complex and advanced as a flat-screen television. For sunglasses, ornamental plastic logos are attached to the body of the glasses without any advanced knowledge or techniques. They can also be easily applied to other products, such as purses or hair accessories, giving infringers freedom to place them on whatever products appeal to the targeted domestic market. For more advanced products, such as televisions, this disguise operation would require an assembly manual, which is often shipped with the cargo or dispatched separately, as an extra precaution.

Last but not least is the problem of machines which are imported to produce counterfeit products locally, such as automatic sewing machines. Their import is legal at face value, but they will be used for illegal means; the equivalent in a way to the importation of 'precursors' used to make narcotic drugs. The end result is that trademark and copyright infringers are able to circumvent customs controls without too much effort. All these practices are a real curse for customs.

Improving the enforcement framework

In the course of the WCO's anti-counterfeiting support to its members, several common issues that pose a problem in many countries have been observed: the lack of legislation to address the reality and needs of society; the lack of political will; the lack of real interest by some rights holders for customs intervention; the lack of adequate training and awareness on the issue; the lack of adequate exchange of information and data; and, last but not least, collusion and corruption.

These issues are intertwined with one another. For example, without appropriate legislative back-up, customs cannot act and neither can rights holders, and without political will to address the situation, nothing is going to happen. In order for customs to effectively address the intertwined challenges posed by counterfeiting and piracy, the WCO has taken a multi-pronged approach; providing WCO members with extensive capacity building and relevant tools to combat the trade in illegal counterfeits.

Following a customs request for assistance, the WCO carries out a diagnostic mission to assess a country's whole anti-

Seized counterfeit sunglasses being checked in Uruguay during Operation TIGRE 3

"... in order to successfully combat counterfeiting and piracy, customs has to adopt an holistic approach"

Counterfeit spark plugs seized in Côte d'Ivoire during Operation BIYELA

counterfeiting regime and provides options for improving the national framework. The WCO follows-up with tailor-made national training, which includes risk analysis techniques to select high-risk cargo, to equip a greater number of customs officers with a proper understanding of their national regime and of the situation pertaining to their specific country.

Of course rights holders have their part to play as well as other government agencies, especially those dealing with health and safety issues, and food security. Cooperation with rights holders is essential for customs to improve its risk analysis skills, as the private sector has the knowledge base which customs needs to be able to identify quickly whether a product is genuine or not.

Machines used to assemble counterfeit watches seized in Uruguay during Operation TIGRE 3

Over the years, rights holders have been actively engaged in WCO capacity building activities, participating in seminars and supporting multi-country operations. To enhance this cooperation, the WCO developed IPM, a tool which facilitates communication between customs and rights holders, and which is accessible by both. IPM contains useful information, such as the routing and packaging of genuine goods and photos distinguishing genuine and fake products, while allowing direct contact between customs and rights holders.

To further assist its members, the WCO has also developed various e-learning modules through which young customs officers can learn about the basic concept and philosophy of intellectual property (IP), including IP-related agreements.

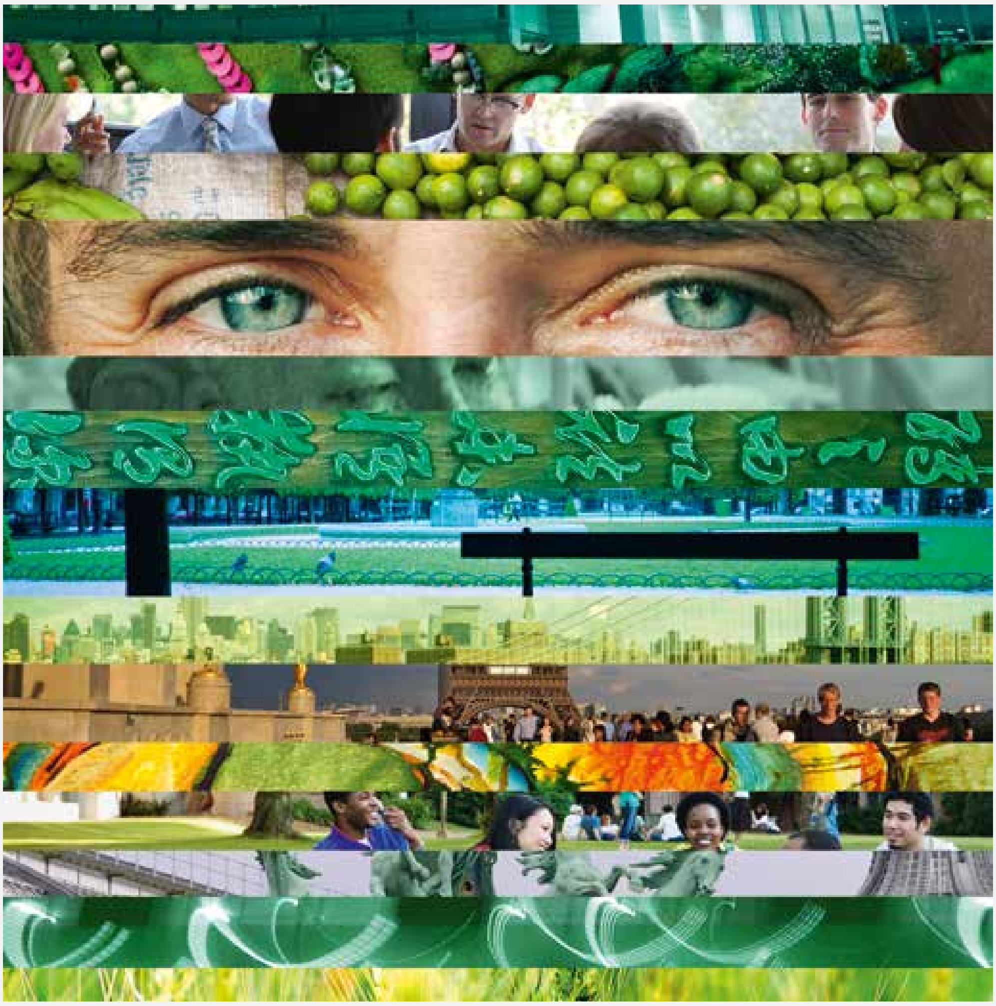
Respect for intellectual property

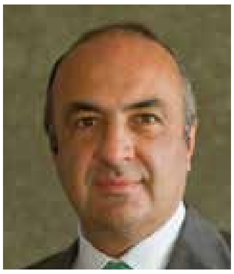
Improvements in customs' operational techniques only will not suffice. Increasingly sophisticated actions on the enforcement side will undoubtedly be matched by an equivalent increase in the use of sophisticated means by counterfeiters.

It has, therefore, become increasingly evident that in order to successfully combat counterfeiting and piracy, customs has to adopt an holistic approach, encompassing not only an understanding of and respect for law enforcement remedies which can stem the tide but also fostering and cultivating respect for the inherent value of IP. ■

WCO IN BRIEF

Comprising 179 customs administrations, plus the European Union that has rights akin to a WCO member in those areas for which it has competency, the WCO is the only international intergovernmental organization dealing with customs procedures and customs border enforcement. Its mission is to provide leadership, guidance and support to customs administrations to secure and facilitate legitimate trade, realize revenues, protect society and build capacity, thereby improving the effectiveness and efficiency of customs administrations across the globe.





Building trust in global supply chains

Philippe Amon is Chairman & CEO of SICPA Holding SA

It is a pleasure to be able to contribute to this *World Commerce Review* edition focussing on combating counterfeiting. SICPA has long been at the forefront of those in the private sector providing solutions to combat this scourge in its many forms and the allied crimes of illicit trade - be it through sale of counterfeits, contraband, tax evasion, avoidance of quality controls or theft of intellectual property. These crimes damage governments' revenues, undermine policies and put at risk public health and citizens well-being.

The threat is asymmetric and requires a flexible solution

Safe international trade is essential for the economic growth our governments are currently seeking but globalisation has meant that supply chains have become ever longer and more complex, presenting new opportunities which criminals can and do exploit. Securing these supply chains has thus become ever more important. The threat is asymmetric.

Success requires exploitation of the latest technology and as well as flexibility and collaboration among the many stakeholders – to match the agility of the criminal organisations. The work of international organisations such as the OECD, WCO and standards organisations in promoting cooperation and best practice is crucial to tackling the issue.

So is direct action by individual rights holders and national governments to reinforce their own capabilities and build robust systems which can be linked across borders to build an interoperable international network.

SICPA has spent many years investing in developing up-to-date tools for governments so they can meet these challenges now and in the future. Our SICPATRACE® platform is designed to accommodate numerous products, to protect licit industries and provide them with a level playing field, to help promote the conditions suitable for economic development and investment.

Our approach builds on our long experience providing security inks and security features to protect bank notes and value documents in working in partnership with governments. SICPA has developed a modern tool box which can be implemented in a modular way and adapted to take account of national needs.

At the core of the approach is secure track and trace which provides transparency and control across the length of complex supply chains which criminals are so adept at exploiting.

Digital technology is crucial but needs to be complemented by material based security

Secure track and trace is based on marking legitimate product securely so as to guarantee authenticity and gives each item a unique identity so that it can be monitored through its life cycle from manufacturer to consumer. Digital technology is essential for monitoring and for the full exploitation of data, but to protect against the vulnerabilities of cyberspace secure marking needs to use material based features such as high security inks.

To be effective a secure tracking and tracing system should be fully integrated but modular and adaptable to a wide range of products – be they excisable goods, medicines, sensitive equipment or other goods which are targeted by criminals. At each stage there are benefits. At the beginning of the supply chain benefits include production control which tackles the mis- or under-declaration which can result in tax losses. As the products moves on to wholesalers and bulk traders there are gains from preventing diversion frauds, adulteration, illegitimate re-packaging. At inspection stages there are tools to counter corruption.

Business intelligence, risk profiling and reporting modules exploiting 'big data' ensure best use of enforcement resource. Real-time information of evidential quality improves enforcers' 'hit rates' for seizures and prosecutions. And at the end of the chain features can be provided which give consumers certainty about the legality and quality of the products they are purchasing.

Implementation requires a holistic approach and expertise

SICPA knows from its experiences across the globe that implementing a successful track and trace system requires a holistic approach and proven expertise. It needs to address the needs of all stakeholders. Permissive legislation needs to be in place. A good system is un-intrusive and has minimal impact on production processes - it copes with difficult industrial environments and is seen as enabling by manufacturers. The integrity of data capture is crucial – it has to be error free and acceptable to all supply chain actors. It requires a fully reliable and secured system of aggregation so

"Business intelligence, risk profiling and reporting modules exploiting 'big data' ensure best use of enforcement resource"

that eg. a bulk package does not require unpacking. Checks by the authorities need to be quick and easy, compatible with trade facilitation schemes based on AEO and contain anti-corruption safeguards.

The cost of counterfeiting and illicit trade is high. The benefits of combating it are significant. The technology now exists to do so successfully. It is a tool par excellence to promote economic well-being. We stand ready to provide advice and input to those who want to make it happen! ■

Brand enforcement strategy; public and private enforcement considerations

Ronald Brohm is Managing Director at REACT, a not-for-profit organization with over 20 years experience in fighting counterfeit trade

As far as governments are concerned the enforcement of IP rights has to compete with other higher priorities and therefore there is a constant struggle to allocate adequate publicly held resources to the problem. It should also be stressed that the rights being protected are privately held rights. It is therefore time to focus on this private aspect of enforcement for the well known brands. The debate should be to what extend should governments support complement the enforcement of such rights. REACT has always viewed this as an important public-private partnership, but increasingly that partnership is becoming polarised and the strategies divided.

General development in anti counterfeiting remedies

The spectrum of enforcement measures to fight counterfeiting of trademarks has increased significantly since the introduction of the GATT treaty in 1986. Businesses, supported by governments are nowadays able to stop and seize counterfeited goods at the borders, on the internet and inland: in marketplaces, in shops, in warehouses and factories.

The creation of this anti counterfeiting service industry started off mostly in the US and Western Europe in the 1990s followed by Eastern Europe and more recently by impressive developments in Asia. Particularly in China, considered by all brands as the prime market to be protected, the investments in anti counterfeiting remedies have been massive. More recently, the Latin American countries have introduced legal remedies and many anti counterfeiting experts found new employment in this region as well. Many countries in Africa and Central Asia are showing positive signs of reforming their laws and introducing remedies; so equivalent activity is expected in those regions in the future.

It is however not all positive for the anti counterfeiting industry. In past years we see a change in government's support, mainly in Europe. Most obvious example is the rejection of the Anti Counterfeiting Trade Agreement by the European Parliament in 2012.

Not only at a central government level, rights owners may have experienced reduced interest in their issues, also at a local level, they are often confronted with customs officials who are reluctant or hesitant to intercede in protecting their rights and police officers prioritizing other crimes. The economic crisis in Europe is obviously a contributory factor resulting in governmental budget cuts as well as the strong movement for a free Internet. Whereas the momentum towards effective enforcement by European authorities has been dissipated, authorities in other continents like Asia and Latin America have proved to be unreliable and inconsistent in their support for enforcement of intellectual property rights.

Rightly or wrongly, brands need to face these developments and evaluate even more carefully how the various enforcement mechanisms work in practice when building their IP strategies. In the current climate in our view it is certainly not advisable for businesses to place too much reliance on public enforcement capabilities, rather they should consider how to build more private legal remedies into their strategies.

Counterfeiting confronts nearly all brand owners and despite the huge growth of anti counterfeiting services, the trade in fake products has not declined significantly. On the contrary, counterfeiting is no longer confined to prestigious consumer brands that focus on protecting their product integrity, high levels of quality and relatively high net margin. The low cost production model in Asia has enabled copies to be made of virtually any type of product.

This coupled with the rapid expansion of Internet auction sites provides ready access to a huge global market to purchase cheap plausible and increasingly high quality counterfeit goods. This new trade makes it attractive for counterfeiters; hence the flow of fake goods all over the world has been achieved at extremely low cost with the result that almost all popular goods are under threat from copying. The counterfeiting industry has become a dangerous phenomenon and the more we let it grow, the more difficult it is becoming to address.

How to build an effective strategy to prevent or repress counterfeiting

When products are being counterfeited, each IP rights owner wishes to take action at the earliest stage possible to prevent damage to its sales and its reputation. Requesting governmental authorities to protect your IP rights is often ineffective. A robust anti counterfeiting strategy can however, be developed based on private preventive and repressive measures.

Before the problem even occurs, steps need to be taken by the rights holders to enable swift and effective anti counterfeiting measures. First of all by identifying the products at risk and provide these products with unique features to distinguish them from fakes. This could be a security device but just as well a unique coding. Secondly, consider the trademark portfolio in key markets; meaning those where you generate a substantial part of your revenues and those you want to develop over time. Thirdly, make sure you have your own supply chain secured and your suppliers can be verified at all stages in the distribution channel. The latter requires sound contractual arrangements and built-in control mechanisms.

The internet

The internet has facilitated the trade in counterfeited goods, but is equally helpful to trace and combat it. Almost all the trade is nowadays visible somewhere on the internet. By consistently monitoring the internet for suspected offers for sale and the abuse of your brands, actions can be taken to prevent further damage. Despite the free bits movements and their political support, most courts support rights owners in their enforcement actions on the internet. Furthermore, internet service providers like auction platforms, host ISP's and social media platforms, tend to provide support to rights owners.

"Private intellectual property enforcement is becoming increasingly relevant since governments are tending to allocate fewer resources to this problem"

Unlike European Parliament members and the Pirate party supporters, the ISP's mostly care about their users/consumers and do not want them to be deceived by counterfeited goods. Possible Internet related anti counterfeiting remedies include, the removal of auctions and webshops offering fakes. With a sophisticated internet search mechanism, clusters of trade in fake goods can be discovered and removed, therefore making the web a more difficult platform for offering fake goods. Civil remedies to recover damages should be considered to target major sellers.

The results of this exercise largely depend on the reliability of the data collected by the ISP's regarding the traders. Taobao, for example, the world's biggest auction platform, provides fairly reliable data and hence, civil litigations against important sellers of fake goods on Taobao can be recommended. Other platforms however are much less strict. Unfortunately, commercial traders on The internet do not have to comply with the usual trade rules imposed on each business operating in conventional trade. An improved control of registration of businesses using The internet to trade goods is where government intervention might be more effective in the future. Such a development would assist rights owners in enforcing their rights and protect consumers against fraud.

The borders

Nowadays counterfeit trade in Europe, Asia and North America is mostly done through e-commerce, particularly for light weight consumer products. Whilst in Europe 40 foot maritime containers full of goods is a declining trend, this is still the usual means of operation in Africa and Latin America. In other continents, the goods are mostly distributed through drop shipment, ordered on the internet and delivered by post/courier. In our view border protection procedures are not (yet) adapted to this new situation with high numbers of small consignments being the dominant theme. Customs authorities do not have the capacity to intensify their inspections to that extent, and rights owners find the increase in cases too much of a burden for their legal budgets.

In the revised EU Regulation 608/2013 which entered into force 1 January 2014, a specific procedure for small consignments was introduced with the objective to facilitate the interceptions of the small consignments. This procedure is unlikely to work because the rights owners are excluded from this procedure and vital information stemming from it, but they do have to pay the storage and destruction costs. Moreover, this procedure is questionable from a trademark law perspective because the authorities granted themselves the powers which are derived from the exclusive rights of trademark owners.

An effective practical solution was found in the Coventry, UK postal hub, whereby all the parcels destined for the UK between 2 and 30 kg are inspected with the support of the rights owners. At very low costs the rights owners managed to support the customs authorities in the interception of over 30,000 parcels containing fake goods yearly. This innovative procedure has achieved excellent results and has the potential for application by other European countries. Many consumers who have been deceived by counterfeiters are now being protected in this way. Unfortunately, the authorities in other EU countries have not so far shown sufficient flexibility in their approach to adopt this excellent way of working.

The Coventry example is embodied by partnership and is a good example of where combined public and private enforcement efforts can be effective. Unfortunately, as with the new EU regulation, enforcement in some other countries is becoming more polarised and compartmentalised. The spirit of the TRIPS Agreement always embodied this twin-track public private balanced approach – let's see if this current adverse trend towards separation can be reversed!

Following the Coventry example would be an enormous step forward in border protection. By ensuring rights owners can add value to border inspections procedures, the authorities will be less dependent on their finite human resources and competition from other important priorities, such as illegal drugs, firearms, prohibited items and smuggled tobacco.

In TRIPS the role of customs authorities has always been to suspend the release of suspected goods and supervise the inspections of the consignments. It has always been the case that their actions can never be fully effective at the border without the active support of rights owners. Nowhere is this put to the test quite as graphically as in a busy international mail sorting office.

Inland enforcement

Strong civil enforcement remedies which go beyond the usual civil claims, such as the detention of fakes, disclosure of supply chains, the freezing of asset and demands for damage compensation are readily available in the most important markets. Although intervention through public enforcement may not be absolutely necessary, in reality private enforcement becomes extremely expensive and unrealistic, especially when rights owners need to pursue multiple infringements. Not many rights owners may be able to sustain such a strategy over a sustained period. From a consumer protection point of view, it makes sense that market inspectors and economic police officers are empowered to take action and intervene.

Just as in the Coventry international mail example, in order for this inland scheme of control to work effectively, support from rights is absolutely essential. Rights owners can add logistical support and be ready to institute legal proceedings in appropriate cases. Such a public-private partnership is appropriate and facilitates a fast practical response to counterfeiting. The twin objectives of this approach being:

a) to prevent counterfeits from entering the consumer market, and;

b) to prevent governmental resources from being stretched to unrealistic levels.

Conclusion

Private intellectual property enforcement is becoming increasingly relevant since governments are tending to allocate fewer resources to this problem. This situation can however be ameliorated if rights owners take steps to protect their own supply chains and provide logistical support to supplement public enforcement resources. This partnership approach requires excellent communication between the parties and the valuable public and private resources must be managed carefully and deployed strategically.

In this way public private partnerships may create opportunities for a stronger enforcement at lower cost for governments. For this approach to work effectively governmental authorities need to be open-minded and flexible in their approach. They must also be able to trust brand owners and be ready to establish formal public private partnerships. This will require governments to impose the common registration requirements for commercial operations on the internet, enable rights owners to cooperate with the inspection of suspected parcels at the borders, take the consumer protection role seriously and intervene at outlets when there is evidence that consumers are being deceived. In this way, counterfeiting can be combated at each stage in the distribution process in an effective and low cost manner. ■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Intellectual property in the TTIP

Lorna Brazell is a Partner and heads up the patent litigation practice at Osborne Clarke, London office

The Transatlantic Trade and Investment Partnership (TTIP) aims to galvanise the limping economic recoveries on both sides of the Atlantic by stimulating trade and investment between two of the world's largest markets. And in highly developed economies, it goes without saying that a significant proportion of growth comes through innovation, to deliver a differentiated, if not unique, selling point for the products, services and business models firms rely upon to succeed.

It follows that the protection of intellectual property (IP) must be core to any such strategy, giving companies the confidence that the advantages conferred by their innovations will remain exclusive to them rather than being rapidly adopted and exploited by competitors.

That, at least, is the conventional wisdom from one perspective, and it has worked well for many years. But it is equally important to recognise that without exception, every new technology or product launched today builds upon decades if not centuries of previous innovation, going back ultimately to the unknown inventor of the wheel.

Innovation of the kind we expect today is possible only because the riches of previous generations' work are freely available for all to improve upon. The law of intellectual property is not simply about maximising the protection for today's latest thing, although a variety of industry sectors are no doubt urging that upon the negotiators. It is about the rather more subtle task of finding and holding the right balance between different commercial interests: businesses up- and downstream, artists, designers and consumers.

The parties negotiating the TTIP already have some of the most sophisticated IP systems in the world. Political statements about ensuring the best protection for investment abound, but the reality is that while there are plenty of differences of detail, it would be very hard for any industry sector to argue that its interests are simply not given suitable protection in either the USA or the EU.

Rather, the question is whether this grand scale negotiation, in which the negotiators will trade off numerous bargaining chips in one arena to attain a priority objective somewhere else, can be used by any given interest group to adjust the balance struck on one side of the ocean to reflect a balance, more advantageous to its interests, already accepted on the other. In pharmaceuticals, biotechnology, film, music, software, food and drink, there are differences of approach between the parties' laws which are bound to be the target of extensive lobbying.

The US government has long been an effective advocate for its industries' preferred IP standards, which as a result are incorporated in numerous bilateral investment treaties with countries around the world. If the draft IP chapter of the Trans-Pacific Partnership disclosed by Wikileaks is accurate, it is continuing to do so in its discussions with the diverse group of countries participating in that negotiation. Although IP is known to be one strand under discussion in the TTIP, the draft chapter on IP remains secret so informed commentary is not yet possible. But it would be a fairly safe bet to assume that US norms have been proposed for the TTIP as well.

But what would the draft look like if European industry had carriage of it?

One of the most important factors which has given rise to the notorious tribe of so-called 'patent trolls' is the unique nature of the US system for litigation of patent disputes. Three particular aspects could usefully be harmonised in favour of a more European approach: trial by jury, discovery of documents, and the trebling of damages where an infringement is found to be 'wilful'.

The cumulative effect of these is to give a patent troll a potential windfall in damages far exceeding any rational measure of loss, through a litigation process that is massively expensive – discovery can involve millions of documents – and highly unpredictable, since the jury which ultimately decides is very unlikely to include any single person who really understands the technology in question.

As a result, there is a strong incentive for small and medium sized companies to settle even very weak claims, giving the patentee a 'war chest' with which to take on progressively larger targets. The jury system is not used in patent disputes in any other developed country, and results in a high rate of decisions being overturned on appeal, making the process of reaching a final conclusion yet more protracted. EU and all non-US companies would be glad to see the back of all of these – although notably it does appear that in the Trans-

Pacific Partnership the US is instead aiming to roll out at least the treble damages principle more widely.

Another almost unique feature of the US IP system is the requirement for copyright to be registered at the Copyright Office before it can be enforced. This position is a retreat from America's former arrangement, under which copyright had to be registered in order to subsist at all, but still leaves EU companies under a burden when it comes to exploiting their copyright works in the USA which they do not face in their own countries, or most of the rest of the world.

Strange as it may seem in view of its current status as the *World's Policeman* on matters of audiovisual copyright, the USA was in fact a very late convert to the Berne Convention, the principal international copyright treaty, signing up only in 1988 and adjusting its laws to the minimum extent necessary to comply. Although sophisticated companies rapidly learn from necessity to negotiate the pitfalls of IP protection in the markets in which they operate, small and medium sized companies doing business only intermittently in the USA do not need additional obstacles of this nature placed in their paths.

The protection of the European heritage of fine foods and wines should also be on the agenda. Distinctive products such as wines, hams and cheeses are protected in the EU because of their association with a particular geographical origin – Champagne, Parma and Wensleydale spring to mind – and producers not located in the appropriate place and using the appropriate production technique are prohibited from describing their products by those names.

The US system, by contrast, permits place names to be registered as trademarks independently of the origin of the product, method of production or location of the producer, so that a quite different set of rules applies as to what products can be marketed under the name. Although a deal was done in 2006 to reinstate some protection for European wines, it was substantially vitiated by a 'grandfather' clause which permitted US winemakers to continue to use descriptions which they were already using – so California Champagne and many others continue to be sold. Repeating the pattern which eventually led the US to sign up to the Berne rules of copyright, however, parts of the US wine industry have started to realise that strong protection for a high quality, geographically located product – Napa wines, for instance – is valuable to prevent the quality reputation of all producers being undermined by lower quality products being sold under the same name. Maybe the time is ripe for re-asserting the European tradition.

Each of the issues identified here is capable of provoking heated debate among the businesses affected and their advisers. But the most important point remains that made at the beginning: these are all varnishes on an already fit-for-purpose system of IP protection. Of course businesses push hard for small changes which will make their lives marginally easier and their profits marginally greater. But the need for change should be carefully balanced against the disruption caused to a working system by tinkering, and perhaps inadvertently tilting the playing field to the disadvantage of another group of market participants, whose voices may not have reached the negotiators' ears.

"... every new technology or product launched today builds upon decades if not centuries of previous innovation, going back ultimately to the unknown inventor of the wheel"

There will, however, be a number of areas where IP-rich industries from both continents can agree. The software, publishing and audiovisual sectors all suffer from online piracy which is complex and difficult to stamp out, and ramping up the legal penalties or changing the division of responsibility between internet service providers and their subscribers may be seen as a way to address it.

The difficulty is that although there are copyright pirates in every jurisdiction, the global nature of the internet means that no amount of deterrence in the EU or USA is going to solve the problem: the servers are simply relocated to Russia or other jurisdictions where enforcement, whatever the laws may say, remains a challenge. The negotiators are unlikely to achieve a substantial improvement in protection by agreeing higher standards, while the legitimate businesses which underpin the operation of the internet are already bearing a significant responsibility for policing rights from which they themselves profit little.

As Graham Smith, author of *Internet Law and Regulation*, has pointed out, *"With each new round of regulation aimed at preventing wrongdoing, the greater the temptation to rectify the failure of the previous round by throwing a wider regulatory net over non-culpable actors engaged in general purpose activities. Site blocking injunctions against online intermediaries is an obvious example. Co-option of payment processors, advertising networks, domain name registrars and search engines is another."* Negotiation should be cautious however loudly the film and music industries may shout: – in such a complex area, the governing law is that of unintended consequences.

More usefully, attention could be paid to the law of trade secrecy which is frankly unsatisfactory on both sides of the Atlantic. In the USA, protection of confidential information is a matter of the law of the individual states, and varies significantly between them – and the same is true in the EU. In 2013 the European Commission began the process of consultation on a draft Directive aimed at improving and harmonising the protection for valuable, secret information between member states. The negotiators should seize this rare opportunity to harmonise this commercially important area of law with an important trading partner at the same time.

The topic of confidentiality of one category of information is certainly on the table already: that of clinical data produced for the approval of drugs and agrochemicals by the regulators. In the EU, companies get at least 10 years' exclusivity over their data; in the US, where biological products are concerned, it is 12. A suggestion to increase the EU limit is bound to be made – but as with so many areas of IP, this again concerns a balancing of interests. Once the data loses its exclusivity, then other manufacturers can cross-refer to it in their applications for approval, reducing the need to duplicate clinical trials and, of course, speeding up the market entry of competing products, to the benefit of patients and healthcare payers. A decade is a long period in healthcare, and where biological medicines are concerned the 'second entrant' is never a mere copycat since no two biological molecules are identical.

Increasing the term of data protection adds a further cost and delay to the development of effective – sometimes improved – variants on an original molecule without necessarily increasing the rate of innovation and improvement elsewhere. The EU led the world in introducing a path to market for these so-called biosimilars, and European universities and companies contribute valuable research and development skills to this industry sector. A levelling of the period of exclusivity in the USA to 10 years would benefit both patients and payers, on both sides.

Finally, the negotiators should definitely agree to avoid the troubled question of what software can be patented. The law in the USA is in disarray – the Court of Appeals for the Federal Circuit found itself completely at sea when asked to rule on the question in 2013 – and the EU has long ago given up trying to legislate a solution. For the moment, a case-by-case approach seems to be the best that can be achieved – and with so many more tractable questions to occupy them, it is best for the TTIP team to leave it that way. ■

Are the TTIP roadblocks for real?

Suparna Karmakar is a trade economist and Marie Curie Fellow at Bruegel[1]

Last year's absolute euphoria about the transatlantic trade and investment (TTIP) agreement seems to have taken a beating of late, what with the rising political barriers and popular-consumer group activism on both sides of the Atlantic. Opposition from the anti-trade campaigners that a deal will damage consumer, labour and environmental regulation and undermine sovereignty of signatory countries has been coupled with the now-anticipated slippage in the completion timeline beyond the original 2-year negotiation timeframe; officials caution that the informal mid-2014[2] deadline to conclude TTIP negotiations is now likely to be pushed back to 2015. Furthermore, the range and complexity of the potential regulatory issues are so vast that EU officials admit they would be unlikely to be finalised in an original deal. Instead, TTIP is expected to function more as a 'living agreement', which would establish a framework for regulators.

Projected gains from market integration

TTIP is the newest mega-regional agreement in formation, with negotiations launched in March 2013; thus, talks are still at a very early stage and the 4th round of negotiations took place in Brussels on March 10-14, 2014. Together, the US and the EU already account for almost half of global GDP and a third of world trade; each day, goods and services worth US$2.7 billion are traded bilaterally. The stock of shared direct investment adds up to more than US$3.6 trillion. The trade and investment agreement under negotiation is aimed at consolidating and deepening this existing bilateral partnership between the two major global trade blocs.

Before the launch of negotiations, the EU commissioned independent studies to estimate potential benefits of an integrated transatlantic market. A CEPR study had estimated that an ambitious and comprehensive agreement could bring significant economic gains for the EU as a whole (approx. US$88.7 to 155.1 billion a year through 2027, depending on level of ambition in the negotiated agreement) and the US (US$64.4 to 123.5 billion a year), while also increasing global income by almost US$130 billion annually as a result of increased bilateral trade. Therefore, an ambitious and comprehensive agreement which eases behind the border impediments to trade and investment is likely to increase annual GDP of both parties by 0.5 to 3.5 percent, depending on the degree of integration.

As much as 80 percent of the total potential gains from the TTIP are however estimated (by Ecorys consultants) to come from cutting costs imposed by administrative procedures and divergent regulations (the so-called non-tariff barriers or NTBs), as well as from liberalising trade in services and public procurement. Although tariffs between the US and the EU are already low (on average less than 4 percent), the cost of dealing with unnecessary bureaucracy can add a tariff-equivalent of 10-20 percent to the price of goods, which (although usually borne by the consumers) affect competitiveness of both domestic producers and exporters in the highly cost-sensitive modern global value chains. It is estimated that eliminating even half of the NTBs to trade arising from regulatory divergences could increase transatlantic GDP by half a percent, or US$150 billion.

But tackling these NTBs is not easy, endorsed by the fact that the two trade partners have been discussing regulatory harmonisation in key traded products/sectors for nearly two decades now, since the adoption of the Transatlantic Declaration in 1990. Furthermore, as most of the gains are expected to emerge from eliminating bilateral regulatory and beyond-the-border barriers, an inability to sufficiently reduce the NTBs will imply that a large part of the projected trade gains may remain unrealised. Also, reducing the remaining tariffs will be harder than imagined: the reason why high tariffs in sugar, textiles and garments, steel, and trucks have existed for so long is because of powerful vested interests that are loath to forgo their advantages, and negating which calls for political appetite for challenging key constituencies at a time of weak economic prospects. Hence, and despite different studies having already outlined the economic and strategic benefits of TTIP, the debate on the feasibility of a deep trade agreement and even its desirability is still an open issue.

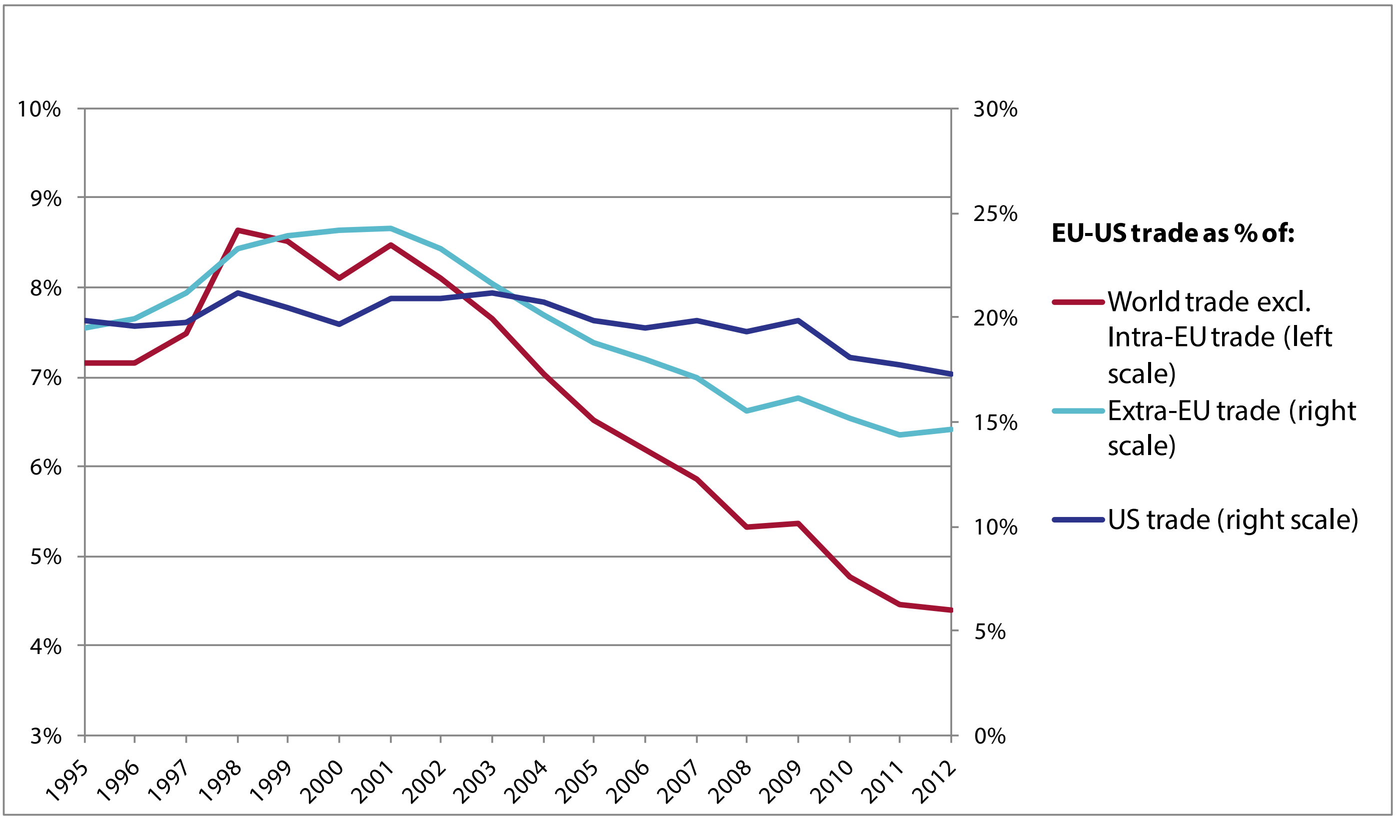
Political economy of TTIP negotiations

The political economy of launching the TTIP stems from a desire to reverse the partners' increasing loss of influence in world trade matters. The trends in the shares are quite remarkable. After hovering for 25 years around 40%, the EU-US share in world trade (excluding intra-EU trade) declined sharply in the 2000s. As can be seen from the chart below, trans-Atlantic bilateral trade as a share of global (extra-EU) trade has suffered a strong secular decline, falling by half (around 4 percentage points) since the Asian financial crisis, but more sharply since 2001, the year China joined the WTO. Also notable is that the 2008 global financial crisis and the ensuing recession has not reversed the trend decline in bilateral trade; this implies that the recession and fall in world trade was region-neutral share-wise, although bilateral trade as a share of extra-EU trade declined by nearly 10% since 2001, and more than the corresponding decline of the same vis-à-vis US trade.

To that end, the TTIP's intent to craft a 'gold standard' deep and comprehensive trade agreement, setting new rules and regulatory standards that are expected to put pressure on the large emerging market countries (EMs) left outside the deals to adapt or suffer the consequences, is therefore interpreted by some as the west's last attempt to regain control of global trade system.

Strictly speaking, and as seen in the below chart, the TTIP would affect only trade between the EU and the US, which in 2012 represented 4.4% of world trade (excluding intra-EU trade). The corresponding figure for the ASEAN+6 countries is 14.9% and the for TPP group 13.6% (Bruegel's calculations from UNCTAD data). Furthermore, long-term prospective scenarios by CEPII[3] suggest that these trends are likely to

EU-US trade patterns



Source: Calculated from UNCTAD data

"... what does this rising anti-trade rhetoric imply for the TTIP's prospects?"

persist in the present and immediately succeeding decades, resulting in trade between the members ASEAN+6 (17%) dwarfing that between transatlantic partners (2.4%) in 2035.

This reorientation of the world economy toward Asia has been entrenched and a transatlantic partnership will most likely not be able to reverse it, especially in view of the aging population in the TTIP partner countries and consequent labour competitiveness concerns. It is undeniable that there is an ongoing tectonic shift in the global governance system towards the multi-polar Pacific. However, the TTIP may allow the signatories to continue to play leading roles in world trade through the setting of influential norms, standards, and other rules, at least for the duration of the transition period.

Are the TTIP roadblocks significant?

The above then sets the context of our query; what does this rising anti-trade rhetoric imply for the TTIP's prospects? Is the slippage for real, or is it simply a matter of waiting for the electoral storms to blow over? Parsing the many causes for rising disquiet about the proposed trade agreement, it is clear that part of the TTIP opposition has come from the Snowden revelations of US intelligence monitoring European politicians and policymakers, which has been a definite dampener for the EU pro-TTIP groups' call for stronger broad-based cooperation with the US. Building momentum for a radical response to the National Security Agency spy scandal since Germany's chancellor backed calls for European internet services that are walled off from the US, is likely to escalate in the current election season. And that development is unlikely to bode well for boosting general transatlantic bonhomie, which is necessary if the TTIP talks are to regain last year's momentum.

Other opponents fret that the inclusion of an 'investor-state dispute settlement' (ISDS) mechanism in TTIP would allow US companies to sue European governments to force a change in national laws. US oil companies might, it is argued, use TTIP to challenge France to lift its ban on fracking, say environmentalists. But the issue of investor-state litigation is more nuanced. ISDS has been and continues to be a much contested provision; recently concerns of private sector profit motives trumping legitimate public policy regulations have been on the rise, including, in Europe, on environmental regulations and food labelling issues. On the other hand, UNCTAD statistics reveal that use of ISDS measures have been on the rise in recent times, and EU investors accounted for over 52% of the cases during 2008-2012.

This dichotomy has raised differential reactions on the proposal from different stakeholder groups. This matter is however being handled well by the DG Trade which has announced a 2-month long public consultation on the subject to collect views on the desirable contours of the ISDS draft text for the TTIP and future trade and investment agreements (viz. with China). It is to be noted that the US had also undertaken a similar exercise to gauge popular sentiments on the issue a couple of year's back, before drafting their own model ISDS text to be used for future negotiations.

Similarly, with respect to the TTIP not being able to comprehensively address the regulatory coherence agreements and finalise all the different 20 plus issues in an original deal by 2015, this doesn't seem to be a concern that portends a failure of the proposed transatlantic deal. It is accepted that FTAs by EU and US tend to entrench the regulatory philosophy and practice in their respective trade hubs as these practices are exported to their partners; in practice each tend to present their draft of the agreement and expects that negotiation partners will simply sign on. Such a negotiation modality will not work for TTIP, given the nearly equal economic and strategic weight of the negotiating parties, which calls for more nuanced and mature negotiation tactics from both partners. Both the negotiators and the citizens on both sides of the Atlantic know and agree that any way forward will necessarily comprise of sensibly recognising each other's standards (including accepting divergent regulatory philosophies) and attempt procedural streamlining where possible, but never at any costs of safety. An explicit agreement to avoid further regulatory fragmentation will call for cooperation when setting new rules, by motivating regulators to cooperate at an early stage and through the life-cycle of a regulation.

Yet, a real risk for the TTIP's timely conclusion does emanate from the strength of the global growth and trade recovery going forward. Irrespective of the emerging green shoots of hope and positivism across the world, underlined by the revised higher growth forecasts for 2014 and 2015 by the IMF, the global economy still seems to be in the grips of the 2008-financial crisis induced recessionary trends. Clearly recovery is not going in a straight line, and for sure it has remained fragile and uneven across major economies, including in the most promising US.

The eurozone recovery did pick up some speed in the final quarter of 2013, but notwithstanding the faster-than-expected economic growth it is yet to come out of the woods, even after factoring in that unemployment levels and willingness to work in the EU are now similar to the US levels. With the transatlantic economies still week, industry stakeholders and policymakers might not be in a position to make the deep concessions that will be necessary to conclude a 'gold standard' deep and comprehensive trade agreement that could pose a credible threat to the rest of the world to adapt to the new rules out of fear of the consequences. The TTIP's ability to emerge as the new global regulations and standard setter is thus still under a cloud. ■

1. Research assistance by Marco Antonielli is gratefully acknowledged.

2. Since the European Parliament is involved in trade negotiations, the May 2014 election was considered as an effective albeit informal deadline.

3. Fontagné L & Fouré J (2013), "Opening a Pandora's Box: Modeling World Trade Patterns at the 2035 Horizon", CEPII Working Paper 2013-22.

TTIP'ing in the right direction

What the new free trade agreement will mean for growth in Europe

Håvard Sandvik is Programme Officer at the European Liberal Forum

The report below outlines the discussion at a European Liberal Forum Ralf Dahrendorf Roundtable in London on 30 November 2013 and is re-issued with the kind support of the European Liberal Forum (ELF) asbl. ELF is the political foundation of the European Liberal Democrats, the ALDE Party[1]

According to CEPR, the Transatlantic Trade and Investment Partnership (TTIP) would, if concluded, boost European GDP by €120 million, or 0.5% of European GDP. This is the promise held by TTIP, and also why the European Liberal Forum decided to convene a roundtable assessing the progress made and the obstacles along the way to a new transatlantic free trade agreement. In TTIP'ing this way – what does Europe stand to gain?

The ALDE Party Congress, the largest annual gathering of European Liberal Democrats, gave us the opportunity to involve key, high-level politicians and EU officials with expert knowledge of the intricate TTIP negotiations. As the foundation of the ALDE Party, ELF wished to highlight this important topic to the Congress delegates, especially in light of the recent developments in transatlantic relations following the NSA-scandal and threats to halt TTIP negotiations. Key was also our audience, around 80 Congress guests and delegates, all from various Liberal institutions, at national, regional or European level.

The roundtable was opened by ELF President Felicita Medved, who emphasised the treaty's potential in alleviating many of the woes faced throughout Europe as a result of the crisis. In particular she identified strong Liberal leadership on this issue, especially from Commissioner De Gucht and TTIP spokesperson Marietje Schaake MEP. As Medved reiterated, promoting free trade is a key issue, high on the European Liberal agenda.

Keynote speaker and adviser to Commissioner De Gucht, Claes Bengtsson set the stage by explaining the staggering benefits a bilateral transatlantic free trade agreement would translate into for the European economy. Nevertheless, the preferred EU track is for multilateral negotiations, which involve more partners and could hold more promise if realised. As Bengtsson pointed out however, with the slow death of the Doha Round of trade talks, Europe has to pursue a dual-track strategy. Commissioner De Gucht is hard at work pursuing other agreements with MERCOSUR, India and Brazil among others, but as Bengtsson point out, the greatest

The Roundtable members included (from l to r) Marietje Schaake, Alek Tarkowski, Claes Bengtsson and Sharon Bowles

"... with the slow death of the Doha Round of trade talks, Europe has to pursue a dual-track strategy"

potential can be found in a transatlantic trade agreement. On question from the audience on how TTIP would affect Europe's neighbours, Bengtsson explained that while the negotiations are strictly bilateral, the EU encourages all its neighbours, including the EFTA countries and Turkey to intensify their own trade negotiations with the US.

In his comments he also emphasised the importance of timing in ensuring that this agreement is passed. Given the changing nature of the global economy, Europe and the US might not be in the same, position to set product and services standards at a later stage. Sharon Bowles MEP chimed in at this point too, emphasising that an agreement would have a wide impact on everyone from diary producers to bond traders. In fact, as Bowles pointed out, one of the most important sectors to include in the TTIP is the financial services sector, where an agreement has tremendous potential for Europe and the United States alike. TTIP is especially attractive to small and medium-sized enterprises (SMEs) which stand to gain the most from levelling the playing field.

A potential stumbling block to negotiating treaties of this magnitude is ensuring that public consultation is far-reaching and open. Bengtsson also recognised this as one of the big challenges ahead, but ensured the audience that the Commission has made public consultation a priority. Marietje Schaake MEP, ALDE spokesperson on TTIP, reiterated the concern regarding public consultation, and noted that consultations of this magnitude is likely to be a complex and challenging task for any institution. On questions from the audience on how the TTIP consultations would avoid the pitfalls of ACTA, Schaake pointed out that ACTA was in many ways a transitionary case – a treaty where negotiations started before the passing of the Lisbon treaty, and concluded after its ratification. This meant that the European institutions had to re-define their role vis-à-vis each other and the European citizen. This was a learning process also for the European institutions and Schaake doubts that TTIP will falter on the same shortcomings of public consultation.

Marietje Schaake put the treaty into perspective by showing that the treaty would go far beyond trade benefits, impressive as they may be. As a Liberal, she especially underlined the importance of trade in promoting mutual tolerance and respect. While the transatlantic project for previous generations were defined very much as a politico-military cooperation – TTIP'ing in the right direction might allow the younger generation to positively re-define the relationship. ■

1. The report, as well as all ELF publications are available free on www.liberalforum.eu

Taming financial markets is a must for achieving stability - why the Bretton Woods spirit and logic need to be rediscovered

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

Fears are mounting about emerging markets being hit by the US Fed ending its monetary stimulus. Ironically, these fears are a replica of worries produced when the Fed resorted to its monetary stimulus, which put upward pressure on emerging market currencies. And some voices talked about a currency war against the backdrop of the financial crisis and rising protectionism. Whichever way the US central bank moves, the impact is severe on emerging markets. And the impact would be severe on Europe too, in view of the negative feedback loops between sovereign and bank strains in the eurozone. All this is further evidence that we are lacking a proper international economic regime and makes us envy the Bretton Woods arrangements.

Those arrangements could be seen as an epitome of Pax Americana, of a hegemonic shaping of the international economic regime after the end of the Second World War. But such a view would be questionable for two reasons, at least. One, because there is always a need for an effective international regime, which should foster peaceful interactions among sovereign states. Secondly, the Bretton Woods arrangements were rooted in the lessons of a huge financial and economic crisis, the Great Depression, and tried to combine regulations applied to domestic affairs with rules covering international relations.

The logic of Glass Steagall (which separated investment banking from commercial operations) and Keynesian macroeconomics applied to domestic finance, whereas pegged, but adjustable exchange rates and capital controls were used for the sake of enhancing economic recovery and trade in the world. What is called the 'impossible trinity' (concomitant stable exchange rates, free flow of capital and independent monetary policy) was taken care of through those arrangements. However, once the USD was delinked from gold in the 70s, a dynamic was put in motion that gathered tremendous speed via waves of financial deregulation.

The Big Bang in the City of London in 1986, the rescinding of Glass Steagall in 1999 and the Commodity Futures Modernization Act of 2000 in the US, etc. have brought in a new era, a rapid growth of finance in the industrialized world, and fuelled deep financial integration in the EU. But darker sides of the new financial system were poorly understood and largely dismissed due to a blind belief in the virtues of market self-regulation and of derivatives. And we have, gradually, got into another huge financial and economic mess, which harms the social fabric of society, even democratic politics. Add to it the profound eurozone crisis.

Like almost 60 years ago, in order to create adequate policies one has to come to grips with the profound roots of the financial and the eurozone crises and, arguably, rediscover the Bretton Woods spirit and logic – which were imbued with concern for the fate of the free world, of helping economic recovery in an open international system.

Finance must be reined in. Let's get back Glass Steagall!
For economies to start to grow again on a sustainable basis and create jobs, a sound financial intermediation system is needed. There is need to bring the financial system 'back to reason', to make it shed, as much as possible, of its speculative and destabilizing nature, to downsize it. What intrigues is that, even now, not a few chiefs in the financial industry do not acknowledge the role it has played in bringing about a crisis that is matched by the Great Depression only, in living memory.

This is also one of the main conclusions of the British parliamentary commission on banking standards[1]. The gross abuse of securitization, the promotion of a wide range of exotic financial products that were hardly tradable and frequently of lousy value, the reckless short-termism in maximizing profits and a blatant neglect of risks, have turned major components of high finance into an in-built destabilizer. The role played by a paradigm which extols the virtues of self-equilibrating financial markets and which was embraced by major central banks is to be highlighted here. The Libor scandal, the growing information on the rigging of commodity and currency markets, give more salience to the wrongdoing in an industry which has, or is supposed to have, many features of public utilities.

The Larosiere and Liikanen reports, which were worked out at the behest of the European Commission, the Turner, Vickers and the Tyrie reports in the UK, the Dodd-Franck legislation and the Volcker proposals in the US, indicate a path of overall reform. And measures have been enacted in order to bolster capital and liquidity requirements, reduce leverage, cap bonuses, enhance transparency and discourage excessive risk-taking, etc. But, arguably, more has to be done.

For example, dealing with the 'too big to fail' syndrome may require the application of anti-trust legislation, as it does happen in various industrial sectors; this would imply splitting big financial entities. A sort of Glass Steagall legislation should be restored, as after the Great Depression. Ring-fencing retail from trading activities is not sufficient for protecting tax-payers. The proposal made by the US senators John McCain and Elizabeth Warren should be supported in Europe too and the European Commission should consider it very seriously. As a *Financial Times* editorial stresses *"it would eradicate the testosterone-charged culture of investment banking from retail activities."*[2]

More should be done when it comes to diminishing the casino like activities and regulating the shadow baking sector, enforcing ethical standards, tackling the threats posed by rising electronic (algorithmic) trading. Regarding the nature of electronic trading and linkages between finance and economic numbers provide a lot of food for thought: for instance, the average holding period for a stock moved from 4 years at the end of the Second World War to 8 months in 2000, 2 months in 2008 and 22 seconds in 2011[3]. And a legitimate question arises: what justifies the rising share of financial institutions' profits in overall corporate profits in recent decades? In the US for example, this share was about 8% in 1947, it rose to above 20% over the years and a peak of c. 46% was reached in 2001.

Bailing-in creditors and share-holders is being pursued in the EU in view of the great burden-rescuing financial entities have put on public budgets. As the Liikanen report indicates, the public cost of avoiding a financial meltdown amounted to over 13% of the EU27 GDP during 2008-2011. And the figure goes much higher if other committed aid is added. But I wonder why banks, themselves, are not embedded in this process, in view of the enormous pay gap between banking and other sectors in the economy? Limiting remuneration of top managers is not sufficient. Bailing in large depositors is fraught with pitfalls; it would accentuate the fragmentation of eurozone banking and discourage capital flowing into the EU if the banking union gets into being very slowly.

Some highlight a 'financial cycle', which has much lower frequency than business cycles[4]. The observation that the financial cycle depends critically on policy regimes is of exceptional relevance. For, although cycles can hardly be precluded the amplitude of boom and bust dynamics is influenced by policies, as it is the size of the financial industry – which is currently oversized in not a few advanced economies (eg. UK, Ireland, Netherlands, Iceland, Cyprus, etc). The robustness and resilience of financial systems has been much diminished by inter-connectedness and the spreading use of derivatives. Via widespread securitization, banks have, arguably, relinquished their mission of due diligence in lending, have gone much beyond what is prudent business conduct. Large financial entities have turned into 'risk-spreaders' and this is why they should be closely monitored by the ECB.

"The US and the EU have the key role in reinventing the logic and spirit of Bretton Woods, in taming finance, for the sake of regaining economic stability and preserving democratic order"

In order to reduce its fragility, make it more robust, the financial (banking) system needs to be 'modularized', as Andrew Haldane, from the Bank of England, remarked. And there are ways to achieve it, in spite of stern opposition from the financial industry: by promoting more simple banking (finance), downsizing large groups, separating activities, prohibiting the use of certain financial products, regulation of the shadow banking sector (hedge funds and private equity funds included), forcing transactions on open venues and mandating reporting and transparency standards, punishing frauds and market rigging severely.

The eurozone needs its own Bretton Woods

The financial crisis unveiled congenital flaws of the eurozone design and has created a formidable challenge for policy makers. The EU, the eurozone in particular, have become an area of major concern to countries the world over. And this concern is not only because the EU is the largest trading bloc in the global economy, but, also, because it is the site of many globally operating banks, financial institutions, and, not least, since, together with the US, it has been behind the globalization drive of the past decades. A financial disaster in Europe would imperil the European project, would have wide ranging implications for the global economy.

Budget profligacy in some EU member states does not explain the depth of the crisis in the eurozone. A consistent implementation of the Stability and Growth Pact would have not prevented tensions rising in the eurozone. Ireland and Spain, with their prudent budget policies in the pre-crisis years but sky-rocketing private indebtedness, are quite illuminating in this regard. A flawed design and incomplete policy arrangements, which invited rising inter EU member states imbalances, are no less important in explaining the plight of and the disaffection in the eurozone.

The Bretton Woods logic and spirit provide lenses for interpreting the eurozone crisis and figuring out remedies. First is the issue of policy space, of adjusting imbalances in an area where member states no longer use exchange rate tools. Second is the issue whether the current policy coordination and policy arrangements are appropriate for a single currency area. Economists are fond of extolling the virtues of fiscal space and this is why the EC and the IMF keep prodding governments to build it up through buffers and counter-cyclical policies. But there is another, broader and not least important concept, eg. policy space. For economies to adjust smoothly to shocks they need to rely on highly flexible markets and be able to resort to an array of adjustment tools – Jan Tinbergen got his Nobel Prize for highlighting just that tenet decades ago.

In a single currency area, where the monetary policy and exchange rate policy are gone, the tasks for policy makers can easily turn into a mission impossible. As matter of fact, the fathers of the eurozone were conscious that the design was inadequate, but they bet on a highly questionable assumption: that convergence will take place eventually and that EU funds would make a decisive contribution to this end.

The eurozone crisis is also one of economics having taken revenge on politics; and as deregulated finance has brought a disaster upon us, a flawed design of the eurozone has created a big mess of its own too. To claim that the introduction of the euro was a big success is an overstretched assertion, in my view. The way it does function now, the single currency area is more constraining than the gold standard regime from the inter war period of the last century. And it pays to remember what that policy regime has led into, apart from other events.

It is true that there are automatic stabilizers nowadays, which did not exist at that time, but they cannot compensate for precarious policy arrangements and the constraints imposed by the Fiscal Treaty. The single currency area is devoid of policy arrangements which should consider external imbalances and the need for a fair sharing of adjustment burden. To think that the way out of large external disequilibria is by internal devaluation in certain countries only is quite unrealistic. To disregard the huge unemployment in several countries and the rising social tension is to repeat historical mistakes and bring demons of the past back to life.

The banking union project might provide a solution to enhancing the cohesiveness of the eurozone. But there are important technicalities, of a fiscal nature in particular, and sequencing problems that need clarification. There is also need for a strong and timely financial backstop. And there are other needed policy arrangements, which go beyond the operations of a banking union, in order to make the eurozone, the EU function properly.

The bottom line is that fiscal rectitude is not sufficient for rescuing the eurozone. There is need of elements of fiscal integration (the issue of common bonds, eventually), of tools for dealing with asymmetric shocks (such as insurance for unemployed people) and of stronger means for fostering economic convergence. Fiscal capacity, as put forward by president Herman van Rompuy, encapsulates such requirements. It is justified to decry, as some do, the insufficient size of resources the EU budget assigns to R&D based activities, to innovation, as a means to help EU members states cope with the challenges posed by the emerging economic powers. But it is also wrong to underestimate the impact on the eurozone, on the EU in general, of growing economic cleavages among member states.

A 'mezzogiornification' of the southern fringe of the eurozone was anticipated years before its inception. But Paul Krugman put it in benign terms, with specialization taking place according to comparative advantages and Germany, in the main, at the centre of an industrial core of the EU[5]. Whereas, now, we see that unless institutional and policy arrangements are adequate rising imbalances among EU member states, especially in the eurozone, can bring about havoc. The eurozone needs its own Bretton Woods.

Democratic order demands taming financial markets

The financial and economic crisis is reinforcing a worrying tendency in Europe and the US: the erosion of middle class. This erosion can be linked with technological change (that has favoured highly skilled labour in advanced economies), Asia's phenomenal economic growth (that has eroded western countries' market shares), public policies that have underestimated the role manufacturing and, not least, an over-expansion of financial industry in several economies, at the expense of other sectors. The excessive growth of finance has entailed a marked change in profit distribution in the corporate world and in income distribution in society at large.

Peoples' capitalism cannot obscure the significant rise in income inequality in recent decades. OECD data make up a grim picture in this regard; between the mid 1980s and the late 2000s income inequality rose in 17 out of 22 industrialized countries. When the 'social pie' is rising income inequality may not cause alarm. But when the social pie stagnates, or even shrinks, its increasingly unequal distribution produces tension and can become dangerous. Anyhow, an uncontrolled rising income inequality harms the 'equal opportunities' policy, which was a huge achievement of a civilized, fair society. There is also a huge ethical problem involved here. Big companies are fond of speaking of corporate social responsibility. But where was it when investment banks sold to investors financial products which they sold at the same time on the future market? And examples of this nature are numerous.

Weakened economies and the erosion of middle class are bad for the functioning of checks and balances, for securing the social glue and the social capital which are underpinning a democratic order. The rise in intolerance (xenophobia and chauvinism), high political polarization are harbingers of worse things to come unless policies are formulated to counteract them.

Taming financial markets is, therefore, a must so that future deep crises be avoided, or better dealt with. The way financial markets have functioned in recent decades is not God given. Public policy can and should change it, as it did after the Great Depression and after the Second World War. The reform of the financial industry is badly needed in order to bring back a sense of fairness in society, which is critical for the functioning of democracy.

However brilliant practices used by European public and private entities might be the economic/business environment, as a structure, matters tremendously. Finance has to assist economies recover and prosper again, and not, instead, extract undue rents from and destabilize them. In the same vein one can reason when it comes to the eurozone design and policy arrangements; these condition

the functioning and performance of national policies, as the latter impact on the state of the eurozone in their turn.

Rediscovering the logic and spirit of Bretton Woods

We need to rediscover the Bretton Woods' logic and spirit for the sake of tackling three formidable crisis which blend each other: a deep financial crisis, the eurozone crisis, and the crisis of the international regime against the backdrop of shifting power in the world economy.

The future international economic system will, quite likely, be carved out amongst three major currency blocs, with the US, the EU and China providing the lynchpins. A reshaped international regime would involve rules for the realignment of major currencies and measures in order to mitigate destabilizing capital flows, including financial transactions taxes; rules for preserving an open trade regime, but that should consider the needs of the poorest countries at a time when ecological degradation and food safety are a rising global concern. The functioning of the IFIs would have to keep in mind the shifting power redistribution in the world and lessons of economic modernization. G20 has not been effective enough in this respect. A new international regime would have to combat tax evasion and avoidance, not least because of the heavy burden bank rescues operations have put on public budgets, on tax payers. In this respect, a legislation that should limit tax havens to the utmost would make sense economically, socially, and ethically.

In domestic finance the restoration of a sort of Glass Steagall legislation would be more than welcome, together with measures that deal with the too big to fail syndrome, limit over-risky activities (trading), downsize finance and bring it back to reason, make it more simple. The EU and the US have the key role in promoting uniform norms in the regulation and supervision of finance. The Financial Stability Board could help enforce this new framework. The main aim herein is not the avoidance of arbitrage attempts by firms, but the very function of finance in the service of economies.

The US and the EU have the key role in reinventing the logic and spirit of Bretton Woods, in taming finance, for the sake of regaining economic stability and preserving democratic order. ■

1. The UK Parliament Commission "laments the striking limitation on the sense of personal responsibility and accountability of the leaders within the industry for the widespread failings and abuses over which they preside" (cited by Financial Times, June 19, 2013, p.8)
2. Split the Banks, 13 July, 2013
3. Scott Patterson, Dark Pools, 2012, Random House, p.46
4. Claudio Borio, "The financial cycle and macroeconomics; what have we learned?", BIS Working Papers, No.395, December, 2012
5. Paul Krugman, Geography and Trade, MIT Press, p.80, 1991

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A European Glass-Steagall to preserve the single market

Karel Lannoo is Chief Executive Officer of the Centre for European Policy Studies (CEPS)

The European Commission faces a delicate balancing act with the proposal it unveiled on January 29th, aimed at implementing the recommendations of the Liikanen High-level Expert Group formed in February 2012 to examine possible reforms to the structure of the EU's banking sector. The proposed regulation must meet the dual challenge of preserving the single market and at the same time accommodating existing EU measures covering resolution and trading activities. Given the changes in the composition of the incoming European Parliament and the European Commission and the public's fatigue with post-crisis measures, the fate of the proposal is uncertain – but still, it is on the table.

The proposal will apply to banks with total assets exceeding €30 billion and with trading activities exceeding €70 billion or 10% of total assets. National competent authorities will apply metrics setting thresholds in terms of relative size, leverage, complexity, profitability, associated market risk, as well as interconnectedness from which to mandate, where warranted, separation between the core credit institution and the trading entity. Both would have to be legally, economically and operationally separated, and would issue their own debt on an individual or sub-consolidated basis. The entities could only be consolidated at group level. The European Banking Authority (EBA) is tasked with developing draft regulatory technical standards to specify how the

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"Given the changes in the composition of the incoming European Parliament and the European Commission and the public's fatigue with post-crisis measures, the fate of the proposal is uncertain"

metrics will be defined and applied. The metrics were not part of the Liikanen report, published in October 2012, which only set absolute size thresholds.

The Commission proposal comes late in the crisis. It follows about four years after the comparable Volcker proposals were unveiled in the US, and more than three years after Commissioner Michel Barnier announced the creation of the expert group chaired by Erkki Liikanen, Governor of the Bank of Finland and former European Commissioner. In the meantime, the member states have not waited for the EU to take action and have adopted national measures on their own. The most well known are the Vickers proposals in the UK covering retail ring-fencing; France and Germany adopted timid national rules on separation, followed most recently by Belgium.

The surprising element of these national measures is that none of them provoked any protest from the European Commission that the task can be better dealt with at EU level, and could hinder the free provision of services. The proposal by the Belgian government to separate banking, for example, does not make any sense on 'subsidiarity' grounds. It will only apply to two mid-sized banks that have Belgium as their home country.

From this perspective, the Commission's separation proposal faces tough challenges, as suggested by the statement issued by Ministers Schauble and Moscovici following the meeting of the Franco-German Finance Council just two days before the proposal was released, insisting that national acts on the subject had to be respected. For banks that were subject to national primary legislation adopted before 29 January 2014, the Commission proposal foresees a derogation for the separation, but under very tight conditions (Art. 21). They require a clear separation of the risk-taking activities of the bank from the deposit-taking activities, not only legally, but also in the decision-making structure and risk management.

For a bank to receive a derogation, its member state must send a request to the Commission, accompanied by a positive opinion issued by the competent authority supervising the credit institution.

This may be a difficult test for French and German institutions to pass, but it will be easier for the UK, as the intention is principally to safeguard the deposit-taking, although it must be a separate entity. And for states that have a tighter system in place, such as Belgium, the proposal may be difficult since it comes in the form of a regulation, and hence the national legislation will need to be adapted. For third countries, an equivalence test will apply, but it is doubtful whether the US would ever pass the test as the Volcker rule does not mandate legal separation.

Two broader questions remain: Why this proposal now, with the move towards the Single Supervisory Mechanism (SSM) and the finalisation of the resolution framework underway? And is the evidence in support of separation sufficiently strong? Given the national legislation in place throughout the EU, the danger is not imaginary that the final text will be watered down substantially, above all the conditions attached to the derogation spelled out in Art. 21, and more powers will be left to the member states. The same applies for the authority that will decide on separation, which in the draft is 'the competent authority', meaning the European Central Bank for the SSM, but this may well become the member state in the negotiations, as happened in many places in the capital requirements Directive (CRDIV). Hence, the end result could diminish the single market, despite the best of intentions, and present the ECB with a hell of a job to perform.

In response to the second question, the jury is still out on the merits of separating commercial from investment banking. Our own research indicates that universal retail banks are less fragile than narrow banks. Tail risks hit focused and investment banks the hardest; hence splitting up the banking system renders it more fragile.[1] Moreover, several pieces of legislation have been adopted since the beginning of the crisis to strengthen supervision and increase capital requirements, also for securitisation and trading activities (initially in CRDII and III, later consolidated in CRDIV). Most importantly, structural separation in banking is an old-fashioned, rules-based approach for what should be, under the capital add-ons of Basel III and its Pillar II, a matter of supervisory discretion. ■

1. See Rym Ayadi, Emrah Arbak and Willem Pieter De Groen (2012), Regulation of European Banks and Business Models: Towards a new paradigm?, CEPS Paperback, CEPS; Brussels.

Meet in Berlin

© Gerhard Buchholz

If you are planning a congress or meeting, Berlin is the answer – the whole city is at your disposal for an unforgettable event

Sometimes the selection of the right location for an event is very simple, because who needs to compromise if everything is possible in Berlin? The choice of special locations ranges from the 368 metre high television tower to the hangar of former Tempelhof Airport accommodating 5,000 guests. Europe's most modern hotel landscape offers a unique diversity at favourable rates. To put it in a nutshell: the German capital convinces as a perfect meeting and convention host that also offers many cultural highlights.

25th anniversary of the fall of the Berlin Wall

9 November 1989 was the day the Berlin Wall came down. To honour this historic milestone 25 years ago, a series of special events and museum exhibitions will take place throughout the city. Around 9th November 2014 thousands of illuminated white balloons will form a 12-kilometre-long lighted wall as a 'symbol of hope for a world without walls'. If the weather is good enough this wall can even be seen from outer space.

Starting in March 2014, the German Historical Museum is going to feature the works of photojournalists in an exhibition entitled '*Colour for the Republic – Photo Reportages from Everyday Life in the GDR*'. In November 2014 the permanent exhibition at the Berlin Wall Documentation Centre will reopen its doors to the public after a year's renovation.

CityCube Berlin & Estrel - new Berlin convention facilities

In spring 2014 the CityCube Berlin will be opening. This new, multi-functional congress hall will be able to host events with up to 11,000 participants. It is going to feature two main floors, flexible wall partitioning, numerous conference rooms and the southern section of the exhibition grounds nearby. The CityCube Berlin temporarily replaces the International Congress Centre ICC which will be closed for refurbishment.

The Estrel Berlin is the only major venue in Berlin used equally for entertainment, conventions and hotel accommodations. The building complex with the striking glass façade holds a convention hall that can accommodate up to 6,000 people. The adjacent hotel has 1,125 rooms ready for the night. In addition, the Estrel Berlin organises its own successful shows such as *'Stars in Concert'*.

Estrel Berlin is also making plans for building a new 700-room hotel tower and a new convention centre. The exhibition space will be approximately 8,500 m^2 and will be able to host events with up to 4,200 participants.

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European companies need stronger signals to deliver a real industrial renaissance

Markus J Beyrer is Director General of BUSINESSEUROPE

By setting the goal of increasing industry's share of Europe's GDP to 20% by 2020, the European Commission has rightly placed the importance of revitalising European industry in the political and institutional limelight. The industrial sector, together with related services, contributes greatly to the European economy, creating prosperity and employment.

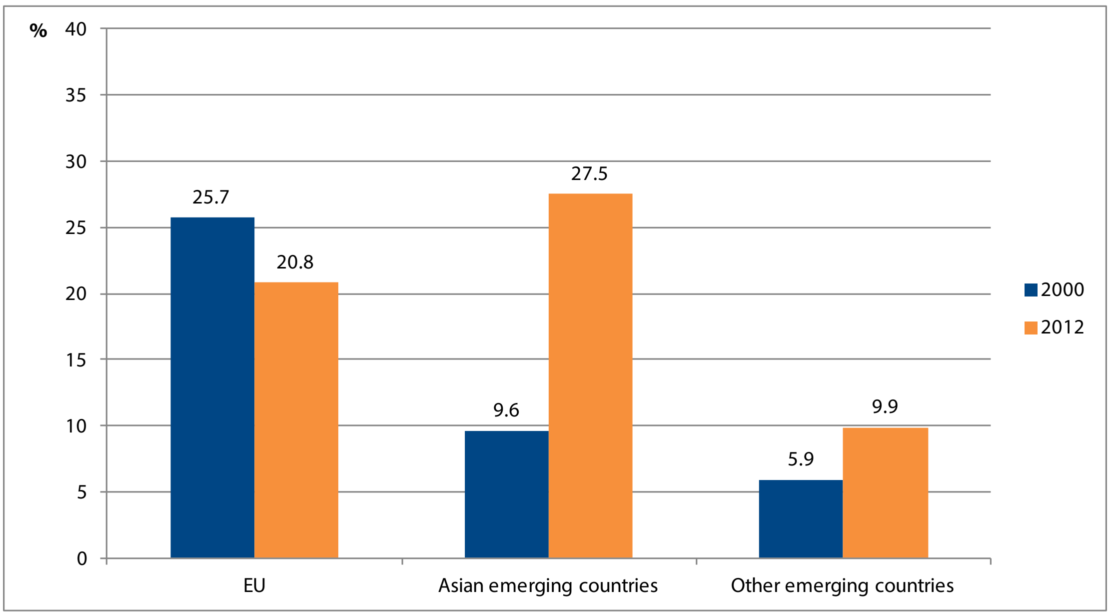
Europe's manufacturing sector is exceptionally productive: an hour of work generates nearly €32 of added value, a productivity level that is about 15% higher than in the services sector. Accounting for 75.6% of merchandise exports and 57% of total exports, industrial companies also drive our international economic performance. With a share of 15% of added value in the total economy, industry is responsible for 65.3% of R&D and 49.3% of innovation investments. Manufacturing directly employs around 32 million people and indirectly accounts for an additional 20 million jobs in related sectors across Europe. Overall, the EU manufacturing sector offers above-average wages in all skill classes, thus providing attractive and high-quality jobs.

Despite its important role in Europe's economy, industry has come under severe pressure in recent years, putting at risk the future high standard of living in Europe. Several factors have resulted in the decline of industry in a number of member states.

Since the start of the new millennium, emerging markets have experienced vibrant growth, turning them into more dynamic drivers of the world economy. Spearheaded by China, Asian emerging markets in particular have significantly raised their share of worldwide manufacturing added value, while Europe's share dropped by 4.9 percentage points between 2000 and 2012. Industry's decline in the share of the EU economy's added value has also, to a large extent, been due to the increased importance of services.

A number of poorly designed, disproportionate or insufficiently assessed EU policies have severely impeded the cost-competitiveness of EU companies. Inconsistent and uncoordinated legislative initiatives also lead to higher costs for businesses and add to the amount of red tape. For example, in the area of energy and climate, the bulk of EU initiatives have subjected businesses to instability, disproportionate energy costs and administrative burdens, thus exacerbating the challenge of effectively competing on the global market.

Share of world manufacturing's value-added in %



Source: UN (2013), OECD (2013), Eurostat (2013), calculations by IW

Even if European industry has been subject to increasing pressure in recent years, opportunities exist for reversing the trend of deindustrialisation. Europe is the cradle of industrial societies. The Single Market is the world's largest market with more than €12.6 trillion in GDP. To regain lost ground, European industry must be able to quickly adapt to global trends and to seize the opportunities provided by developments on the global market. Two main paths offer significant growth potential: increasing internationalisation and integration in global value chains, and driving more cooperation in innovation.

Industrial production and activities are increasingly organised in trans-national and global value chains and production networks. Production in Europe increasingly entails value chains involving a range of countries, with each country specialising in one or several stages. Besides, as industrial products and processes evolve, manufacturing no longer acts as a secluded sector, but is extensively linked with other sectors through the deliveries and purchases of intermediates. To regain lost ground and to succeed on the global market, European industry must better harness the potential of cooperation and integration in value chains across firms, sectors and national borders. Increasing this interconnectedness will be key for Europe's future competitiveness.

Compared with other branches of the economy, the manufacturing sector is far more innovative with respect to all indicators (innovation intensity, innovator rate, R&D activity rate, turnover shares from innovative products, share of cooperation). Innovation intensity in large manufacturing companies is twice as high as in large companies in other sectors. Thus, industry plays a key role in driving progress in the EU and around the world. However, there are large differences in innovation levels depending on company size, the economic sector and networking abilities in Europe. To close this gap and for European industry to capitalise on its innovative potential, increased transnational cooperation for research and innovation is vital.

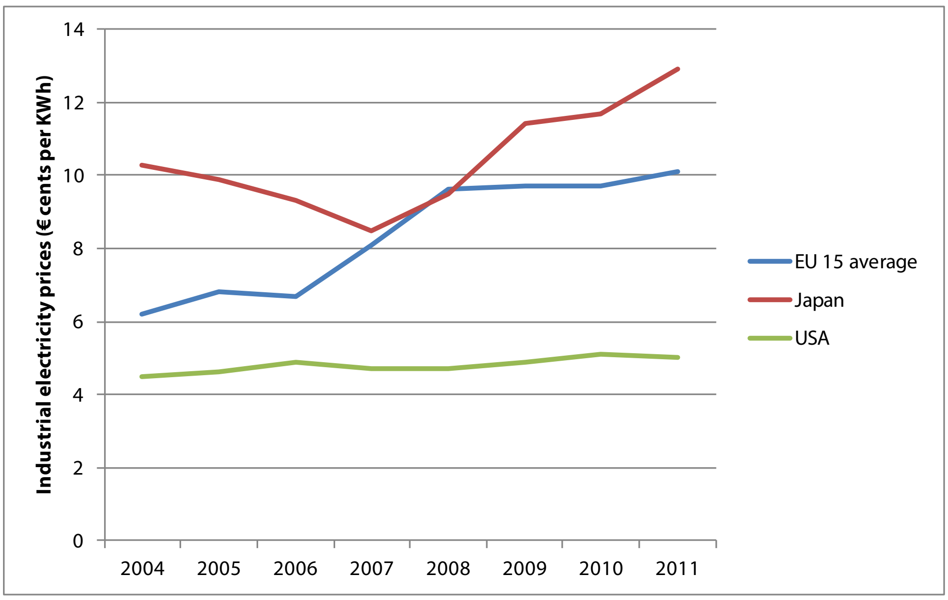
"A number of poorly designed, disproportionate or insufficiently assessed EU policies have severely impeded the cost-competitiveness of EU companies"

European industry has the potential to regain lost ground and to compete successfully on the global market. Improving industrial competitiveness in Europe is predominantly the task of business. Companies must adapt to new trends such as the increasingly stronger competition from emerging markets and knowledge intensification by further integrating into global value chains and engaging in more cooperation for innovation.

However, to effectively exploit the opportunities of the global market, business needs the right framework conditions that allow companies to develop their full potential and improve their competitiveness. EU policies must not undermine the cost-competitiveness of industry by over-regulation, thus burdening companies with disproportionate cost and administrative requirements. European companies need stronger signals to deliver a real industrial renaissance. A new approach to EU industrial governance will be key to prioritising competitiveness across all relevant policy areas.

At its annual conference, BUSINESSEUROPE Day, held in Brussels on January 28, BUSINESSEUROPE proposed that European institutions and member states agree on an *Industrial Compact for Europe*. 'Industrial Compact' means a 360° strategy based on a shared vision that industrial competitiveness is a prerequisite for maintaining a high standard of living in Europe. BUSINESSEUROPE's recommends that this Compact provide competitive framework conditions that facilitate the growth of the more than ever interlinked European industry and services, drive investment and trade, support dynamic enterprises and enable the development

Trends in industrial electricity prices



Source: International Energy Agency, energy prices and taxes (derived from DECC, 2013) and commercialisation of innovative technologies.

The Industrial Compact requires a fundamental change in European governance. It is necessary to prioritise and mainstream industrial competitiveness throughout all policy areas (energy, climate, environment, innovation, employment, financial services, corporate governance, etc.), and decision-making levels (European Commission, European Parliament, different Council formations, implementation by member states). To this end, the following steps need to be taken:

1. The role of the Competitiveness Council must be strengthened to become the gatekeeper of competitiveness in the EU;

2. The progress made in pro-competitiveness reforms should be monitored and evaluated every year at the Spring EU Council (as is the case for growth and employment enhancing reforms);

3. A permanent Industrial Competitiveness Coordination Group, made up of the Commissioners most relevant to industrial competitiveness, should be established to ensure that all Commission proposals are well coordinated and positively impact competitiveness.

In its recommendations, BUSINESSEUROPE furthermore identified seven policy drivers to foster Europe's industrial competitiveness.

1. Strengthening competitiveness in energy and climate policy. The EU needs to reassess its approach to energy and climate policy. The high cost lessons from the current EU policy need to be fully addressed while taking game changers such as the shale gas revolution in the US and the very limited progress in global climate talks into account. This requires an energy and climate policy that secures a supply of affordable energy and strengthens the competitiveness of Europe's internationally competing industry.

2. Opening foreign markets and unleashing the potential of the Single Market. The Single Market is one of the EU's most powerful achievements. If properly implemented, it can offer enormous opportunities for citizens and businesses alike. The Single Market is an asset which should be used as a springboard to meet the challenges and seize the opportunities of the global market. To sustain and improve its global competitiveness, Europe must also increasingly direct its focus to foreign markets and match itself with other economic regions of the world. Due to the ongoing integration of manufacturing industry and services, increased manufacturing exports can also serve as a driver of trade in services.

3. Promoting cooperation for innovation. The manufacturing sector is the main source of research and development in most European countries, amounting to two thirds of R&D expenditure. Innovation increasingly relies on cooperation among businesses. Highly dynamic and innovative enterprises comprising a high innovation potential, broad-based international business activities and an active participation in networks, act as front-runners and trigger important economic multiplier effects.

4. Expanding trans-European (and national) infrastructure. Infrastructure networks are the arteries of the economy. Strong and efficient infrastructure not only enables trade within and across borders, but serves as a key prerogative for businesses to engage in international value chain integration and cooperation. To ensure cost-effective and internationally accessible infrastructure, remaining regulatory, administrative and technical barriers in all modes of transport need to be removed.

5. Improving access to finance. Access to finance on reasonable terms is vital for the survival and growth of companies of all sizes. Yet, access to credit is currently restricted, particularly for SMEs. Within the euro area, interest rates charged to businesses continue to diverge significantly between member states. As well as restoring normal bank lending conditions across the EU, access to finance for European businesses needs to be improved by strengthening non-bank financing routes. A properly functioning banking union is also urgently needed. It will lead to deeper and more liquid markets, more resilient to financial shocks, and better able to support cross-border trade and investment.

6. Making labour markets more dynamic, strengthening flexicurity and productivity. More needs to be done to effectively implement national structural labour market reforms and to ensure the financial sustainability of national social protection systems. The overall objective is to ensure open, dynamic and mobile labour markets through reforms focusing on stimulating job creation and employment participation, smoother labour market transitions, and better allocation of labour based on employers' needs.

7. Making education and skills fit for industry. Achieving growth, productivity, and a better match between skills and jobs in Europe relies on a more effective management of human potential. The overall objective is to provide the skills needed to foster Europe's industrial growth. Governments should ensure that available resources are used by priority to bring to Europeans of all ages the knowledge and skills they need to succeed on labour markets. An important part of this is to address in the short-term shortages in terms of science, technology, engineering, mathematics – STEM – skills.

The beginning in 2014 of the next five-year European legislative term is a unique opportunity to define the elements of a comprehensive industrial strategy for Europe. BUSINESSEUROPE already called on the European Council to agree on an ambitious action-oriented Industrial Compact and calls on all European institutions and member states to contribute to the implementation of this Compact over the next political cycle.

We must act now, tomorrow will be too late. ■

The obsession with regulation

Robert Oulds is the Director of the Bruges Group and the author of *Everything you wanted to know about the EU: But were afraid to ask*

The European Commission has predicted that the much heralded Transatlantic Trade and Investment Partnership (TTIP) will boost EU GDP by 0.5% which will annually add €120 billion to the economy.[1] The gains seem significant but in reality they represent little more than a rounding error in the calculation of economic output.

Yet, there will be benefits. However, unless agreement is reached on regulation and in particular the precautionary principle the TTIP will be cast aside; another casualty of the EU's obsession with regulation.

The European Commission does not just pass regulation affecting its own internal market but also aggressively seeks to export its rules beyond its own borders. Instead of liberalising the Single Market the EU is looking to raise rivals costs. This includes the most important potential trade deal in EU history. Instead of allowing European businesses to innovate more freely the Commission is attempting to make the USA apply what is known as the 'precautionary principle.'

According to Professor Ragnar Löfstedt, the Director of King's College London Centre for Risk Management, whenever a new endeavour or products is proposed the European Commission can decide to ban a product until its producer demonstrates that it poses no (or an acceptable) risk. This attitude is at the heart of EU regulation and largely responsible for the growing complexity and rigidity of European Union law. Its use has been upheld by the European Court of Justice in legal cases including Pfizer Animal Health SA v. Council 1999 ECR II-1961.[2]

The precautionary principle stymies innovation and harms economic growth. It is this well-intended in theory, but pernicious in practice, belief that is responsible for the march of health and safety legislation.[3]

The stubborn requirement for this and not allowing free access to goods which do not comply with the precautionary principle may have the effect of scuppering the Transatlantic Trade and Investment Partnership between the EU and the USA. The United States of America has a different approach to risk-management which is more open to innovation.[4]

From the European Commission perspective, free trade agreements are not just to encourage the export of goods but also exist to export its regulations. A condition of tariff free trade access and the faster transit through customs is for the non-EU state to apply common technical and health and safety standards. Compliance with EU environmental rules and a commitment to ensuring that competition is not being distorted by state intervention is also mandated. As is the protection of intellectual property rights and that public procurement will be open to all.[5]

Some even demand that in exchange for tariff free trade with the EU countries sign up to the EU's human rights agenda.

For the EU trade is politics by other means. There is a price to be paid for accessing the EU's internal market from outside the EU.

So what is the basis of this regulation and is it a burden on businesses?

A case can be made that common standards actually boost trade and make it easier for both service providers and manufacturers. Value is added to goods through an increasingly complex chain of production over many jurisdictions, with different parts and programmes originating in a number of countries. Global production, it is argued, requires global regulation. The Brussels bureaucracy is not the only organisation that promotes this position. It is even shared by some in the United States of America and is espoused by the influential US group the Council on Foreign Relations.[6]

What is more, the setting of different standards in one country can be used as a protectionist measure that makes it more difficult for one country to produce products for the recipients market. This is especially the case if the exporter has to pass costly and time consuming safety checks.

The standardisation of regulation will therefore remove these technical barriers to trade. Certainly it is the case that supply lines are always improved if there is interoperability. The difference between domestic and export markets will also be reduced making it easier for businesses to operate in one environment.

The arguable increase in trade does not take into account the probability that some businesses can reach agreement themselves making the regulation unwarranted. The desire for regulation also fails to consider that the costs of compliance. The level of interference has reached a point where it becomes excessive. Standardisation is also monotonous and impinges on creativity harming innovation.

There is substantial evidence which suggests that over-regulation is holding back economic growth. A report on the burdensome cost to business was commissioned by the pro-EU Prime Minster, Tony Blair, during his time in office. The 2005 report by the Better Regulation Task Force for the then premier estimated that regulation cost the British economy 10-12% of GDP. That amounts to approximately £150 billion per annum.

This cost is divided between, administration which entails 'familiarisation, record keeping and reporting, including inspection and enforcement.' This accounts for around a third of the burden with the remainder coming from the 'costs directly attributable to the policy goal.' At least half of this regulation, and therefore at least half the costs, originate from the EU; with this amount steadily growing. Half the cost equates to £75 billion pounds per year.

Other arms of the state have, however, come to different conclusions with civil service impact assessments reaching a different figure. These have been analysed by the British Chamber of Commerce in their *Burdens Barometer 2010* report. According to this he annual cost of EU regulation is £7.5 billion per year, still not an inconsiderable sum.[7]

Who is correct?

The figure derived from the British civil service may well underestimate the costs of regulation. Their impact assessments have been criticised by the Better Regulation Task Force. This report argued that the evaluations by Whitehall are inadequate. They lack a full cost benefit analysis of how the regulation is to be implemented and enforced. What is more, the impact assessments do not include nor fully explore other, less costly, alternatives to regulation.

The EU also produces its own impact assessments on the advantages and disadvantages of its own regulations. Just as the EU regards that the appropriate level for law making is at the European level it also regards its rules as beneficial with affordable costs. The fundamental floor at the heart of EU impact assessments is the fact that the Commission, the body which produces the legislation, also conducts the cost/benefit analysis of the proposals.[8] The bureaucracy, which incidentally leaves implementation to the EU's arm's length agencies and the member states, are unlikely to consider their own ideas as defective.

What is more, the monitoring of the legislation once in force also rests with the European Commission, the same body that has the monopoly on introducing the directives and regulations.

The Roman poet, Juvenal, in his satires famously asked *"Quis custodiet ipsos custodes?"* This translates as *"Who will guard the guards themselves?"* Or *"Who watches the watchmen?"* When it comes to law making in the EU the answer is that the EU is its own guardian. The future of enterprise in Europe rests with the benevolence, or perhaps, malevolence of the European bureaucracy.

"Excessive EU regulation is a cost too far. The European Union is most definitely in relative, if not actual, economic decline largely because of excessive regulation"

Even supporters of the EU and some senior figures in the European Commission have admitted that the over-regulation of business is harming the economy.

Peter Mandelson, as Secretary of State for Trade, told the Confederation of British Industry conference on 8th November 2004 that the cost of EU regulation amounts to holding back GDP in the EU by as much as 4%.[9] He was soon to become the EU Commissioner for Trade, taking up that post just two weeks later. This regulatory burden did not decrease during his time at the centre of the EU.

Those in the UK that believe that EU regulation is seriously to the detriment of enterprise are not alone. The Netherlands has also come to the conclusion that the EU is bad for business. As long ago as 2002 the Dutch government estimated that the administrative burden of regulation alone, which they define as 'the costs imposed on businesses when complying with information obligations stemming from government regulation' cost them 3.6% of GDP.[10]

Other Dutch reports have come to similar conclusions. In 2004 a report commissioned at the request of Gerrit Zalm, the then Dutch Deputy Prime Minister who also served at that time as the Netherlands's Finance Minister, estimated that the administrative burden on business in his country cost 3.7% of economic output. These conclusions were supported by the Organisation for Economic Co-operation and Development (OECD). In 1997 they predicted that regulatory reform in the Netherlands could boost Dutch GDP by 3.5%.[11]

Like the UK, not all Dutch regulation, comes through the imposition of European Union directives and regulations. In the Netherlands, it is estimated that the EU element amounts to 40%. The proportion for the UK is higher, now as much as 60%.

On 10th October 2006 Günter Verhuegen, the European Commissioner for Enterprise and Industry and a Vice-President of Commission stated that, *"Many people still have this concept of Europe that the more rules you produce the more Europe you have. The idea is that the role of the commission is to keep the machinery running and the machinery is producing laws. And that's exactly what I want to change."*

Verhuegen's bid for reform was, however, blocked according to the Commissioner by the EU's administrative culture.[12] Even the Vice-President could not stop the legislative avalanche.

Günter Verhuegen also estimated that the annual cost of EU regulation across the EU amounted to €600 billion per annum (around 5.5% of GDP), while the benefits of the Single Market amount to only €160 billion: therefore the costs exceeded the benefits by a staggering €440 billion.[13] Later, in a letter from Commissioner Verhuegen to Bill Newton-Dunn MEP, on 18th June 2007, the Commissioner gives the overall figure of just the administrative burden of EU level legislation as costing 3.5% of GDP for all member states and this sum would be similar for the UK.[14] What is more, the figure of three and a half per cent actually excludes the costs that directly relate to the policy goal making the final figure much higher.

It appears that even these, now former, Commissioners have a better recognition of the harm that EU rules have on competitiveness than British civil servants whose analysis of the costs of regulation in their impact assessments clearly underestimate the burdens that are being placed on businesses. Yet they could stop the ever-growing amount of EU rules. If the EU has not changed this damaging practice after more than a decade of governments recognising there is a problem what hope is their of change now...?

All measures of the cost of EU regulation show that there is indeed a significant price that business and therefore consumers have to pay as a result of EU rules. Across the EU enterprise, production and entrepreneurship have been replaced with regulation, inspection and compliance. Even the Confederation of British Industry mentioned in a report on the European Union that, 'The EU has moved too far from 'adding value' to 'adding functions', resulting in 'mission creep' in several areas.'[15]

Yet why at this difficult economic time is it still in place and continually being added to? Or, more specifically, cui bono; who benefits from the EU?

The reasons for regulation

Apart from the precautionary principle there are also other factors that have led to the growth of regulation.

Sir John Robert Seeley, the historian and writer on religious affairs, in his 1883 book the *Expansion of England* wrote of the British Empire that 'we seem, as it were, to have conquered half the world in a fit of absence of mind.' The Empire of the European Union, a realm of regulation, has conversely been deliberately established. It is not a free trade area that has been on an accidental legislative binge. The higher authority of the EU uses law to achieve its goal; that is the building of a monolithic system of political control that is aimed, rightly or wrongly, at reigning in the excesses of the nation states.

By implication the nationalist passions of the citizens of its member states are also kept in check. Or so the thinking goes. Building Europe requires the establishment of a body of law known as the *acquis communautaire*. A new political power cannot be said to exist unless it is an active law maker. The European Commission recognises that its political governance cannot be established in an absence of law.

Whilst the EU is largely immune to influence from national democratic institutions it is very much open to lobbying for new legislation from both environmental groups and multi-national businesses alike. Small and medium sized enterprises, who suffer most from red-tape, do not have the finances the time nor to defend their interests. This is not surprising; since 2010 there have been 3,580 new EU rules on business that would take 92 days to read.[16]

Naturally the bigger the business the greater the resources it can spend on both being consulted by Brussels on future legislation and on lobbying for laws that are in their interests. This can include regulations that add costs on to competitors. Despite the apparent quest for harmony between the people of Europe, EU law making can also be manipulated to raise the costs of a rival country.[17]

The City of London and the UK's financial services industry has borne the brunt of this legislative assault. Recent regulations concerning; credit rating agencies, and the establishment of the European Systemic Risk Board, the European Banking Authority, the European Securities and Markets Authority the European Insurance and Occupational Pensions Authority are prime examples. As is the Alternative Investment Fund Managers directive.

The expansion of the EU is also another factor. The accession of the once Soviet-dominated states did not lead to a new European paradigm where excessive regulation would be resisted. Far from leading to a liberalisation of the EU the eastward expansion became another excuse for yet more law making. In the opinion of the Commission the former communist states of Eastern Europe had insufficiently developed law for a capitalist free market. Apparently their economies were in need of stewardship by the EU. The standardisation that followed led to even greater EU interference.

The former President of the Czech Republic, Václav Klaus, said, during his time in office that, *"every time I try to repeal some Soviet-era directive, I'm told that whatever I am trying to scrap is a requirement of the European Commission."*

The European Commission is not the only EU institution that is adding to the legislative morass. A member of the Commission Legal Service blames another branch of the EU, the European Parliament. *"The European Parliament, under the co-decision [ordinary] procedure, is allowed to propose uninformed, irrational, impractical amendments, safe in the knowledge that they have no responsibility for implementation."*[18]

Other EU institutions are also part of the problem as any ambiguity is clarified by the European Court of Justice who inevitability add evermore complexity to EU law; which once in place is extremely difficult to repeal.[19] EU rules resemble the complicated financial devices bankers use like their debt swaps and derivatives. Few in the banking sector understood how they operated in practice let alone the risks involved. Complex EU law is equally economically damaging.

Excessive EU regulation is a cost too far. The European Union is most definitely in relative, if not actual, economic decline largely because of excessive regulation.

It is only fair to leave the last word to the EU. According to a report by the European Commission titled *Global Europe 2050* in the year 2000 the EU accounted for 25% of world economic output. However, by 2050 its share of global GDP will be 'as low as 15%.' The EU's own report goes onto say that, 'By 2050, Europe's share of global economic product may be lower than it was before the onset of industrialization, hardly a trend leading toward global economic dominance.'[20] ■

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Strategic options for Europe's future

The euro crisis has prompted the most intense debate about the future of the European Union in its 55-year history – but most of the contributions to that debate have amounted to little more than a repetition of well-known positions.

What is urgently needed now is some genuinely fresh thinking and new ideas about how to respond to the financial, economic, political and social challenges facing our troubled Union. We need a new 'pact' for Europe – between its member states, and between the policy-makers and the public – to heal the wounds of the economic crisis, to deliver effective responses to those challenges, and to re-establish the European Union as global player.

The *New Pact for Europe* project, initiated and supported by a large consortium of European foundations led by the King Baudouin Foundation and Bertelsmann Stiftung, aims to support a pan-European public debate on the future of Europe. Through a rigorous analysis of the current state of the Union and the strategic options for the future, followed by a series of national debates involving ordinary members of the public as well as politicians, business leaders, trade unionists and other civil society representatives to discuss those options, it seeks to generate realistic and practical ideas to make European integration more effective and strengthen the EU's position on the international stage.

This initial analysis has been included in a first report of the project, *Strategic Options for Europe's Future*, which reflects the work and discussions of a Reflection Group including EU experts from different member states and marks the end of the first stage of the process: it analyses the 'state of the Union' and the multifaceted challenges ahead, and assesses **five possible strategic options for the future:**

Option 1 - Going back to the basics: Supporters of the option argue that the events of recent years have shown that European integration has gone too far and that the EU should abandon moves towards an 'ever closer union'. For them performing a U-turn and undoing mistakes of the past is the most promising way forward to rescue the most worthwhile result of European integration: the Single Market. Dismantling the euro in its current form would according to advocates of this option – not lead to a collapse of the Union, but rather herald the start of a more pragmatic, effective approach to European integration.

Option 2 – Consolidating past achievements: Proponents of this option argue that the EU has already introduced most of the reforms needed to overcome the euro crisis and these should be given time to work. There is a need to be realistic and accept that member states are not willing to go further and pool sovereignty in key areas. The EU should, at this difficult moment, steer clear of overambitious attempts to deepen integration, which could backfire given the negative political and public attitudes in many countries towards the EU and euro.

Option 3 – Moving ahead ambitiously: Those supporting this option argue that simply consolidating past achievements will not be enough: further integration, including measures

"... the time has come to restore public faith by reshaping Europe to better match people's aspirations"

to further deepen integration in the Economic and Monetary Union and boost the Union's democratic legitimacy in the public's eyes, and an honest public debate about the EU's future are vital not only to overcome the crisis but also to prepare for future challenges. All this will require significant changes to the EU Treaties. But reforms will have to be done jointly and cautiously, step by step, to avoid creating new dividing lines between EU countries.

Option 4 – Leaping forward: Advocates of this option say that recent experience has provided ample proof that the EU is insufficiently equipped to face current and future challenges, and that there is a need to take a major qualitative leap towards a fully-fledged economic, fiscal, financial, social and political union, with a strong European executive ('European government') and legislature (parliament) able to take autonomous decisions reflecting genuine European interests. Potential opposition from some countries should not prevent the 'willing and able' from making a major leap forward, even if this leads to a 'core Europe' including only those countries ready to deepen integration significantly.

Option 5 – Changing the 'more/less Europe' logic: Supporters of this option believe that the traditional debate about European integration along the lines of more or less Europe has been exhausted. The experience of the last six decades has shown that a further transfer of national political and democratic concepts to the European level would not work. They say that the EU and its members should concentrate on efforts aiming to make the Union more accountable to the public for its actions, find new ways to involve the public in policy-making, and boost the EU's capacity to safeguard the fundamental rights of its citizens and guarantee their basic social rights by strengthening the Union's caring dimension.

This first report is designed to serve as a basis to promote an open and frank debate all over Europe about possible alternative paths for the future development of the European Union. The report is currently being discussed with citizens, politicians, policy-makers and key stakeholders in about 50 events in many EU countries to generate ideas for future action. After that, the Reflection Group will draw on the outcome of these debates to draft a proposal for a *New Pact for Europe*, including concrete recommendations, with additional input from an Advisory Group to further enrich their work. The aim is to feed these proposals – which must ensure the EU's continued relevance and clout in a vastly changed world – into the work of the new EU leadership which will take office after the May 2014 European elections.

There is no time to lose: the challenges Europe is facing are profound and only partly caused by the economic situation. Differences over Europe's priorities, policy direction and the depth of its integrationist zeal can no longer be dismissed as the concerns of a small minority of eurosceptics. Member states are more divided than ever by disagreements over the EU's role and purpose. The current economic crisis has simply highlighted a need to take a fresh look at what a united Europe stands for and should focus on, half a century after the original member states embarked on the road towards an 'ever-closer union'.

The European elections in May 2014 look set to produce results clearly confirming that, largely because of the financial and political fall-out in Europe from the global economic crisis, public opinion is increasingly negative towards the EU's leaders and the way the Union is run. This situation threatens the very future of the Union and the time has come to restore public faith by reshaping Europe to better match people's aspirations.

Perceptions of economic mismanagement and disputes between Europe's leaders about the answers make it even more imperative to set out a course which has significant public support from the outset, rather than trying to swing public opinion behind plans after they have been formalised by EU institutions.

That is the aim of the *New Pact for Europe* project. It encourages genuinely fresh thinking that generates innovative ideas for future action in the many public and private meetings held these months involving all sectors of society, from top political figures to ordinary members of the public.

Obviously, not all the ideas that make their way into the draft pact will be taken up by policy-makers, but it aspires to provide a valuable contribution to the ongoing debate over how to introduce workable, realistic reforms that will shore up an EU hit by financial, economic, political and, increasingly, social turbulence as well as global challenges.

Simply repeating the same old policy responses will not do: they cannot close the widening gap between EU countries themselves, and between the member states collectively and the public. We need a plan that combines a return to the EU's core values, updated to cope with a globalised world vastly different from the one which saw the creation of the Common Market more than 50 years ago, with new ideas for the future.

The timing of this initiative is crucial: by the end of the consultation process and the drafting of proposals for change, the new European Parliament and new leadership in the European Commission and European Council will have been installed, with a mandate to deliver the Europe the citizens want. Their biggest priority must be to ensure that the EU does not (as many claim it already has) lose touch with the people it is meant to serve. ■

NEW PACT FOR EUROPE

If you wish to receive more information about the project or join the debate, please visit the website the New Pact for Europe at www.newpactforeurope.eu

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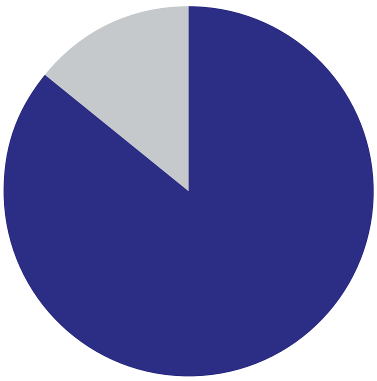

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Europe – a time for change

Alisdair McIntosh is director of Business for New Europe, an independent coalition of business leaders advocating a positive case for reform in Europe

Taking stock

The Brussels air is thick with the scent of regime change. The current European Commission, under José Manuel Barroso, is coming to the end of its term. Legislative work on issues, from financial reform to competition policy, has slowed to a shuffle. Politicians across the continent look anxiously ahead to the European Parliament elections in May.

These will be followed by a flurry of summitry and horse-trading. By the autumn, there will be new Presidents for the Parliament and Commission, a new foreign-policy chief, and a new team of Commissioners. The EU will move into action once more.

So now is a good time to draw breath, glance back at the record of the past five years, and look forward to the challenges and opportunities ahead.

Weathering the storm

The period since 2009, when the current Commission and Parliament were given their mandate, has arguably been the most difficult in the history of the European Union. But it has also shown that the EU has resilience, and that reform is possible. In the face of the worst economic and financial crisis in a generation, the EU has after several false starts stabilised the ship. Tough domestic policy action by the worst-hit countries, stronger economic governance at European level, and a massive injection of resources have allowed the eurozone to weather the storm and make some headway back towards a path of growth.

Meanwhile, the Commission has sought to breathe new life into the Single Market, through a package of targeted measures to promote growth, employment and competitiveness; and it has begun the mammoth and long-overdue task of lifting the burden of regulation on the smallest businesses. And the EU has not been entirely inward-looking. It has opened new trade talks with many of its global trading partners, and concluded a number of major agreements, including with South Korea, Singapore and Canada.

But much more to do

But even its most ardent supporters recognise that the EU has to do much better if it is to tackle the strategic challenges of the coming years – fragile growth, weak peripheral economies, high youth unemployment, increasing competition from emerging economies, a potential energy squeeze. And these are testing political times across Europe. Anti-EU movements are gaining ground in some countries, and there is widespread dissatisfaction with the EU institutions and malaise with the political process. In the UK, there is the possibility of a referendum on leaving the EU; in Scotland, there will soon be a referendum on leaving the UK.

The EU needs to show that it 'gets it': that it recognises the need for change. It has not always seemed to hear the message – sometimes too slow to act, sometimes too quick to legislate. And it has not always struck the right balance between action that is best taken at European level and action best left to individual member countries.

A Europe that works

There are a number of practical things that the EU could do that would show it 'gets it', and that would be of immediate benefit to all member states. Some of these are set out in the *Manifesto for Reform* published last summer by Business for New Europe and signed by over 250 UK business leaders including a third of the FTSE 100 companies.

It can complete the current negotiation of a comprehensive free trade agreement with the United States. Between them, the EU and US account for half of world GDP and a third of bilateral trade flows. An ambitious deal could yield €120 billion a year in gains to the EU economy - £10 billion a year for the UK alone.

It can deepen and strengthen the Single Market, especially in services. Services account for over 70 per cent of EU output but only 22 per cent of internal trade. Greater liberalisation of services covered by the existing Services Directive (such as construction and professional services) alone could increase EU GDP by up to 2.3 per cent. The creation of a genuine digital single market by 2020 could increase it by a further 4.1 per cent.

It can speed up its work to reduce the regulatory burden on businesses. The UK Government has taken a lead on this, through a business-led taskforce set up by David Cameron; other European governments have expressed support for this work; and the Commission has followed suit, with its

"The EU needs to show that it 'gets it': that it recognises the need for change"

own programme to reduce EU red tape by 25 per cent. This work needs to go further, faster.

It can enhance the position of the City of London, not just as Europe's financial centre, but the world's financial centre in Europe. The City is a huge asset to Europe, as well as a huge beneficiary. Part of the long-term solution to the eurozone financial crisis is less reliance on banking, and more on capital markets – this is a massive opportunity for UK financial services.

And it can streamline itself – focusing on what it does best, cutting its costs, making the institutions more accountable to the public.

Not (just) a British question

Business for New Europe puts these proposals forward from a UK perspective. The UK gains massively from its membership of the EU. UK income dependent on EU exports is over £200 billion a year, or 15 per cent of GDP. Well over 3 million UK jobs depend on our membership. And the more successful the Single Market is, and the more the EU is able to open up world markets through trade deals, the more we will benefit.

But the UK's relationship with the EU over recent years has not been a comfortable one, and public opinion is sharply divided, never more so than at the moment. And with the possibility of a referendum in the coming years, business is waking up to the need to point out the importance of UK membership, and UK engagement. A trickle of commentary has now become a more insistent flow, with interventions from Airbus, Diageo, DHL, Nestle, Goldman Sachs, Unilever, Hyundai, Ford, Nissan, BMW, Hitachi, EasyJet, the Scotch Whisky Association and others, not to mention the publication of the CBI's substantial report *'Our Global Future'*. A recent survey found that 80 per cent of British businesses would vote to stay in the EU if there were a vote tomorrow; and that three quarters of them were concerned that UK exit would lead to a reduction in foreign investment.

It is important, though, that we don't fall into the trap of thinking that we are alone. Many member states, in Northern Europe and elsewhere, agree that there is a pressing need for reform. Chancellor Merkel said as much when she visited London on 27 February; so too did the Dutch Prime Minister Rutte, in an earlier visit. Other governments are very clear that they value the UK as a key player in the EU, even if they do not always appreciate the language some of our politicians use from time to time. They want us to stay, and play our part fully. So if the UK Government can get its tone and tactics right, by building coalitions with like-minded allies and negotiating from the centre, rather than shouting from the sidelines or threatening vetoes, change is possible.

It is all to play for. Game on. ■

European elections ahead but no changes expected! Plus ça change...

Regardless of the outcome, the elections won't change the current course of European politics, write Raoul Kirschbichler and Mario Fantini

The outlook for the eurozone looks bleak: High levels of unemployment. Low economic growth. Recession. In addition, credit is scarce and many European banks remain fragile. Unless there are serious policy changes, the worst days of the European crisis may still lie ahead. But even if Europeans vote for new MEPs in May, will anything really change?

Contrary to what some political observers have said, the European Union today does not suffer from a democratic deficit. Rather, it suffers from a governance deficit, particularly on economic matters. Over the past few years, there seems to have been a broad inability among its elected officials and policy-makers to properly identify, frame and respond to the challenges posed by the European debt crisis.

Unfortunately, this is not set to change anytime soon. Whatever the results of the European elections slated for 22-25 May, the fundamental policy approach to solving the crisis will probably remain the same. Even if the two major parties in the European Parliament — the European People's Party (EPP) and the Socialists & Democrats (S&D) — see a big loss of seats, and even if voters choose to go in a more populist direction, Europe is likely to see no new economic concepts or ideas that could lead Europe out of the crisis.

One has to recongize that the initial impetus leading to the three-stage Economic and Monetary Union (EMU),

"Businesses will bear the burden of fiscal consolidation, governments will bear none of it and the European crisis will continue to smoulder"

and the subsequent introduction of the euro in 1999, was fundamentally political not economic. The eurozone never fully constituted an 'optimum currency area' nor can it be suggested that all member states were ever fully committed to the grand vision of the European project. In fact, the idea that political, economic and monetary integration would create a 'United States of Europe' that would bring prosperity to all Europeans everywhere was always merely a theoretical proposition — some might even call it a dangerous 'pipe dream'.

Europeans simply have never liked sovereign power to shift to a central authority elsewhere. And national identity and sovereignty have always become more important whenever common, supranational goals have failed. We only have to remember Hermann the German.

So today, solutions to the ongoing problems of the euro do not lie in increased political integration or more centralized fiscal policies, as has been suggested. What Europe needs is growth. And this means that the private sector needs to be allowed to 'breathe'. This can only be done by ending the interventionist madness of Europe's financial regulatory authorities. If central banks keep meddling in the debt markets, say, then there will be no chance for the private actors to figure out exactly when to invest or liquidate, and in which sectors to direct new financial resources.

We should be perfectly clear about one thing: Governments do not create jobs; markets and private sector entrepreneurs do.

We should also recognise that since the European Central Bank is in charge of monetary decisions, a 'one-size-fits-all' approach to interest rate policy predominates. The result is that countries with rising unemployment have interest rates that are still too high, while countries with high wages have interest rates that are too low.

At the same time, the decisions of the European Central Bank seem to be designed to minimize the dominance of Europe's economic engine, the German economy. This has already fuelled tension among some EU member states and has helped to undermine the basic idea underlying the whole European project — which is to persuade citizens to identify with 'the European idea'.

All eyes have thus been on Germany. But the Germans can't carry the euro alone on their shoulders. And increasingly it seems like France will really play the central role in deciding the euro's fate. France must thus become another anchor of growth and stability in Europe.

Broad public support for the Europe project will always depend on the EU's economic achievements. But ever since politicians launched the third stage of the EMU 15 years ago, the constituent economies have been too diverse and simply too varied. In fact, just a couple of months after the launch of the euro, many EU member states had already violated the 'Stability and Growth Pact' adopted by the European Council in 1997 and had abandoned the Maastricht Treaty's 'no bail-out' rule. Europe's governments quickly and easily betrayed themselves. They failed to live up to their economic agreements. And since then, Europe's voice in the world has been effectively weakened.

Today, Brussels is still just reacting to the debt crisis. It has never quite been in charge of the agenda nor has it taken a proper leadership role. What European leaders have done is adopt quick solutions to fast-growing problems, but no long-term solutions have been sought nor have any major reforms been implemented. We have seen year after year of 'cosmetic' or superficial changes, with banks — and, in some cases, states — bailed out. But the roots of any of these problems were never really tackled.

And as the underlying root problems are allowed to grow and fester, so too has demand for greater economic integration — including a misguided call for a common 'European finance minister' with control over the taxes and budgets of all EU member states. This is nothing more than yet another attempt to shift problems to the supranational level where there is even less of a chance of solving them.

There are plenty of areas where common or collective action is needed at the EU level. Energy and the environment may be two such issues. But trying to address the European economic crisis through greater centralisation and harmonisation of fiscal and monetary policies is a wholly misguided notion.

So if we speak of a 'governance deficit', we should have in mind the political class in Brussels and elsewhere that has led to this critical moment in Europe's history. And if the elections in May produce yet another European Parliament filled with the same uninspired policy-makers that we have been seeing, then Europe is in for a tough time indeed. In fact, such a situation could well end up diverting the political agenda away from microeconomic or regional integration, two fresh ideas that would actually be quite useful.

Regardless of the outcome, the elections won't change the current course of European politics. Whoever comes to power — in Brussels or in any member state — will be confronted with the same challenges and decisions as before. But we have little doubt that the lethargy and confusion that reigns among Europe's political class will continue to limit the decisions that any newly elected politicians can make. And at the end of the day, it will be the same old story: Businesses will bear the burden of fiscal consolidation, governments will bear none of it and the European crisis will continue to smoulder. Somehow, that doesn't seem quite right. ■

ABOUT THE AUTHORS

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Sport as a tool for economic and social engineering

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In his influential book *Homo Ludens* Dutch historian Johan Huizinga (1872-1945) writes that since *"the last quarter of the 19th century games, in the guise of sport, have been taken more and more seriously"*.[1] Rules have become stricter and it has become nearly impossible for amateurs to break the records set by professionals. In his opinion, the organisation and professionalization of modern sport have reduced the 'pure play-quality', ie. the carelessness and spontaneity associated with play. In a way sport and play have become distinct activities. Sport is practised with a certain external aim (wealth, health or fame), whereas play has no aim but itself.

Interestingly, as if he was afraid that readers would miss Huizinga's point, the English translator of *Homo Ludens* added a footnote, saying: *"It is probably significant that we no longer speak of 'games' but of 'sport'. Our author [Huizinga] may not have been sufficiently familiar with the development of 'sport' in the last ten or twenty years, here and in America, to stress the all-important point that sport has become a business, or, to put it bluntly, a commercial racket."*[2]

Collectivist and paternalist tendencies

A present-day translator might add that sport has evolved into an unusual kind of business: the business of government. Commercial or not, sport used to be a largely social affair, at least in liberal democracies. We all abhorred how communist countries, in particular the so-called German Democratic Republic, used and abused their athletes for the greater glory of socialist ideology. Fortunately, nothing like that exists anymore in Europe or, one could say, anywhere else; except for a handful of Stalinist or rigidly Islamic countries whose athletes are largely irrelevant in today's world of sport.

Nevertheless, sports policies in many liberal democracies do contain some elements that reek of collectivism and paternalism. Sport has become an important instrument of economic and social engineering, as I will argue below.

National pride

A couple of weeks before the start of the London 2012 Olympic Games British prime minister David Cameron gave a jubilant speech about the 'Olympic legacy', the expected structural beneficial effects of hosting the world's largest and most expensive sports event. He concluded by saying that, although volunteer work, jobs, school sport and prosperity were all very important, the first prize was *"a national boost to our energy and inspiration, a chance to realise how great we can be and how much we can go on to achieve as a country"*.[3]

In two ways politicians like Cameron try to boost the national moral trough the Olympic Games. One is by hosting the event and showing the world the organisational skills of their country. The second way, which is open to all countries participating in the Olympics, is by winning as many (gold) medals as possible, the idea being that successful athletes are a source of pride for their fellow countrymen and the envy of the world. As one minister for sport put it: *"Professional sport does not just generate medals, but a 'we' feeling and national pride too."*[4] Hence the Dutch government proclaimed in 2005 that the Netherlands should occupy a place among the top ten Olympic countries.

For several reasons this strategy is objectionable from a liberal, or libertarian, perspective. First, there is hardly any evidence of a positive relation between the level of national pride and the Olympic medal index, or between national pride and any kind of sporting success. A survey conducted during four global sporting events found only small and very temporary increases in the feelings of national pride.[5]

Moreover, according to research from New Zealand, people who have a deep emotional connection with a national sporting team do not necessarily show the same intense feelings towards the nation.[6] Second, it is disquieting that governments regard athletes and citizens primarily as members of a collective body, the nation. The Olympic Games are, of course, imbued with patriotism – the flag-raising, national anthems et cetera – but athletes should not be reduced to mere nation-building tools. It is very well that people feel uplifted when a representative of their country beats his rivals, but it is rather odd for the government to build a policy around this. Why should people be proud of someone else's performance, someone who is basically a stranger to them? It is no personal merit to be born on the same territory as a successful athlete.

Third, official attempts to crank up the level of national pride through sports rest on the ill-founded belief in the micro-managing skills of the government. To realise their grotesque 'top-10 ambition', the Dutch want to win 57 Olympic medals in 2016 (Rio de Janeiro) and 82 in 2020 (Tokyo). Even a seasoned central planner would baulk at this task, as the Dutch won 20 medals in London and 16 in Beijing.

Economic engineering

Overconfidence can be detected also with regard to the expected economic benefits of hosting major sport events. For some reason policy makers seem to believe that the world of sport is immune to the uncertainties that plague government planning in other fields. Taxpayers who have to stump up billions are given very detailed projections of the number of new jobs and international tourists, and promised superior infrastructure and multifunctional sport facilities. It is hardly necessary to point out that ex-post studies show that many ex-ante studies are riddled with creative accounting and wildly optimistic assumptions. It is sobering that the European Tour Operators Association, a lobby group, wrote that *"for tourism in the Chinese capital, the Olympic Games were a toxic event".*[7]

What is surprising is not that the Olympic Games cost more money than they generate, but that politicians, including the austerity-prone, conveniently ignore this again and again. If the Olympics create an economic bonanza, why not grant them to Greece, Ireland or Portugal? That would certainly be cheaper than bailing out their banks or plugging their budget deficits.

Health paternalism

An additional reason for renewed political interest in sport is that successful athletes and sporting events might induce people to lead healthier lives. Obesity is just one example of several lifestyle diseases the may result from a lack of exercise. Rather than lecturing people about their excessive intake of fat and sugar, wouldn't it be more effective and less paternalistic to get them moving?

Only partly so. Again, there is very little evidence that successful athletes manage to enthuse people for their sports. Dutch athletes excel in skating, field hockey and soccer, but over the long term mass participation in these sports has gone down.[8] Only relatively new sports, such as darts and golf, witnessed a surge in membership, but it is questionable whether public health is improved when people substitute playing soccer for throwing darts. Even the hugely successful London Olympics failed to increase the number of youth playing sports, despite the much hyped health 'legacy' the Games would bring.[9] Also, the widely held belief by politicians that mass participation in sports will foster successful sporting elites is largely false. The so-called 'double pyramid theory' does not hold.

"Sport has become an important instrument of economic and social engineering"

Finally, although encouraging people to do sports may seem less of an interference with their lifestyles, the language used by policy makers is often still paternalistic or even downright denigrating. The Dutch Olympic Committee wrote: *"prevention, as we all know, is better than cure. Sportive people have known this for years and they act accordingly. Because when you are an athlete, you love your body."*[10] This message suggests that health is a choice, and that fat or sedentary people must dislike their bodies. Humans, however, do not only have bodies – they are their bodies too, as a philosopher aptly put it.[11] Our body is more than a set of parameters, it is an integral part of our identity. That is why officials should tread very carefully when promoting sports as a public health instrument. ■

1. J. Huizinga, Homo Ludens. A Study of the Play-Element of Culture, London/Boston (Mass.), 1949, p. 179.
2. Ibidem, n1. It is not surprising that Huizinga did not write about the commercialisation of sport in Great Britain and the United States in the 1940s as the Dutch original of Homo Ludens was published in 1938.
3. Prime Minister's speech on the London 2012 Olympics, 5 July 2012 (https://www.gov.uk/government/news/prime-ministers-speech-on-the-london-2012-olympics).
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5. Ivo van Hilvoorde, Agnes Elling and Ruud Stokvis, 'How to influence national pride? The Olympic medal index as a unifying narrative', International Review for the Sociology of Sport 45 (1), 2010, pp. 87-102.
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8. Maarten van Bottenburg, 'Top- en breedtesport: een siamese tweeling?' in: SCP, Rapportage sport 2003, Den Haag, 2003, pp. 285-312
9. The Guardian, 'London 2012 Olympic Games legacy questioned as young people shun sport', 12 December 2013 (http://www.theguardian.com/sport/2013/dec/12/london-2012-olympic-legacy-young-people-shun-sport).
*10. NOC*NSF, Olympisch Plan 2028, p. 26 [my translation].*
11. Jenny Slatman, 'Het lichaam in beweging: een te disciplineren machine?' Tijdschrift voor gezondheidswetenschappen 89 (3), 2011, pp. 134-136, p. 135.

Base Erosion and Profit Shifting – business support for collaborative solutions

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The BEPS Action Plan

Last year, the Organisation for Economic Cooperation and Development (OECD) embarked on one of the most ambitious programmes of tax policy work ever attempted. With the full endorsement of the Group of 20 (G20), the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan was released in July 2013.

There is broad agreement that in some areas, international tax rules have not kept pace with globalisation. The OECD states that existing rules have revealed weaknesses which have created opportunities for BEPS: *"where the interaction of different tax rules leads to double non-taxation or less than single taxation."* These are the situations that the BEPS project seeks to remedy.

These concerns will be addressed through 15 BEPS Actions covering a wide range of international tax issues from the digital economy to the transfer pricing of intangibles. The significant political imperative behind the BEPS project has accelerated the time-frame, with all of the BEPS Actions being largely tackled over a two year period. This is extraordinarily fast relative to previous OECD tax policy projects. In fact, by September 2014, the OECD will have fully or partially completed its work on the digital economy, hybrid mismatches, harmful tax practices, treaty abuse, transfer pricing of intangibles and transfer pricing documentation, which will include a template for reporting country by country information to tax authorities around the world.

Business engagement

The BEPS Action Plan states clearly that the OECD's core relationship with business is through the Business and Industry Advisory Committee (BIAC). In 2013, BIAC organised two International Dialogues on BEPS at the OECD in Paris. Those meetings provided opportunities for the business community to engage and assist in the development of the OECD's thinking, through discussions and the submission of written comments (publically available on the BIAC website). BIAC acts as a key coordinator in gathering business comment on BEPS proposals or related questions from the OECD.

The OECD issued has issued a calendar for planned stakeholder input during 2014. In the first three months of 2014, the OECD intends to release four draft documents for public consultation with a time-frame for comments of between 21 and 30 days: a stark contrast to the average period of over 80 days for analogous consultations during 2012 and 2013. This will put pressure on commenting stakeholders to process and feedback on a large volume of technical proposals in a short time-period.

Although this will no doubt be a challenging timeframe for business, BIAC encourage its members to actively participate in the BEPS project. Only solutions reached with the full endorsement of governments, business and broader society can stand the test of time.

Collaborative action

The BEPS project juxtaposes the need for deep technical multi-year analysis with the important political expectation of immediate action. BEPS certainly represents a challenge for governments and business, but it also represents an opportunity to re-examine principles, and to reach consensus based agreements that can unite the OECD with non-OECD member countries in the G20 as well as Less Developed Countries.

The technical expertise and practical experience that governments and business can bring to this forum is critical to the BEPS project's success. This project represents a challenge and an opportunity, and BIAC's members stand ready to assist the OECD and its member governments in any way that they can.

The OECD BEPS Action Plan states clearly that accomplishing the BEPS Actions will require a *"comprehensive process that involves all relevant stakeholders,"* including working closely with non-OECD economies and consulting with business and civil society.

In the end, all stakeholders in the BEPS project share a common interest: sustainable cross-border trade and investment that will create more wealth, more growth and more jobs. This is the core goal of the OECD and should be borne in mind by all stakeholders as the BEPS project continues to ensure that it is not jeopardised.

Multilateral solutions

The OECD is seeking to complete work on the BEPS Actions whilst preserving its consensus-based framework, a very ambitious task within the time allotted. The Action Plan itself notes that failure to achieve consensus may result in unilateral measures, *"which could lead to global tax chaos marked by the massive re-emergence of double taxation."*

Indeed, a number of OECD governments have already begun considering (and in some cases taking) unilateral action targeted at certain BEPS Actions including: elements of thin capitalisation rules; restrictions on certain payments between related parties; a 'culture tax' to generate revenues from video-sharing websites; a tax on smartphones and a law requiring internet advertising space to be sold only through companies registered locally for VAT. These worrying examples illustrate the willingness of countries to take action outside of the OECD BEPS project, and demonstrate again the need for all stakeholders to work towards common solutions expediently.

BIAC strongly urges countries to act in a coordinated way and to avoid unilateral measures across all BEPS Actions. Independent proposals will result in disputes and double taxation, which will hinder growth and investment.

Coordination across actions

Given the accelerated timeframe of the BEPS project, there is a risk that the BEPS Actions are dealt with in silos to ensure deliverables are produced in time. BIAC strongly supports a coordinated approach to the BEPS Actions – one that that takes into account the interconnected nature of the tax issues identified.

Proposals implemented under one Action will no doubt have significant consequences for others. For example, interest deductibility proposals will impact the transfer pricing work on financial transactions. It is also clear that the OECD's work to 'address the tax challenges of the digital economy' will be significantly impacted by measures taken under almost all of the other BEPS actions. Full consideration should therefore be given to the wider impact of all proposals, intended and unintended, before implementation.

Tax and transparency

The BEPS project is broad in its technical reach, but it also relates to perception issues. Public confidence in the international tax system has been shaken. In order to help restore that confidence, in September 2013 BIAC offered its *Statement of Tax Principles* to promote responsible business tax management.

The Statement acknowledges public disquiet but also affirms that most international businesses will work hard to pay the right amount of tax on their activities as required by local and international laws. Whilst this is a good starting point, there remain opportunities for business to improve public understanding of the tax system further.

BIAC doesn't believe that indiscriminately releasing more information into the public domain will address misunderstandings, but it does support consideration of how businesses can best explain their economic contribution, and the taxes paid in the jurisdictions in which they operate, to the public.

Whilst raising public tax awareness, business has an

"BIAC strongly urges countries to act in a coordinated way and to avoid unilateral measures across all BEPS Actions"

opportunity to restore trust, and to potentially address certain BEPS concerns without the need for complicated changes to international tax rules.

Rebuilding trust

There is a clear temptation to see BEPS as a series of technical issues, for which a new set of complex international tax rules is needed. BIAC believes that at least some of the issues can be addressed through soft-law options, and even by focusing on dialogue and relationships in some cases.

BIAC's Statement proposes that relationships between international businesses and tax authorities should be transparent, constructive, and based on mutual trust. We also believe that tax authorities and business should treat each other with respect, and focus their efforts on areas of risk.

BIAC has also released its *Statement of Tax Best Practices for Engaging with Tax Authorities in Developing Countries* which are intended to support responsible business tax management and to enhance co-operation, trust and confidence between tax authorities in developing countries and international business.

Transparency, open dialogue and co-operation between tax authorities and business contribute to greater compliance and better functioning tax systems. In this regard, the OECD's promising work on Co-operative Compliance should form part of the solution to the problems.

Achieving sustainable solutions

BIAC supports the development of coordinated multilateral solutions to the issues identified. However, achieving consistency in the implementation of proposed rules may prove to be a significant challenge.

BEPS Action 15 suggests the development of a multilateral instrument to implement BEPS measures, and amend bilateral tax treaties. BIAC strongly supports this work – the importance of this Action in achieving consistency and avoiding double taxation should not be understated.

BIAC also believes that business will find it easier to constructively contribute to the development of sustainable solutions if the risk of double taxation is mitigated. This could be achieved through the multilateral adoption of Mandatory Binding Arbitration to ensure effective dispute resolution.

Conclusion

BIAC seeks to promote the efficient working of the tax system to fund public services. BIAC also supports stability, certainty and consistency in global tax principles.

The OECD is the right forum to develop international solutions to the issues identified in the BEPS Action Plan.

It is BIAC's hope that by working together, and by engaging quickly, business, governments, and civil society can take this opportunity to support the OECD in introducing solutions that address these concerns and lead to more sustainable cross-border trade and investment, creating more wealth, more growth and more jobs for generations to come. ■

If you would like to discuss closer involvement in BIAC's contribution to the BEPS project, please contact our secretariat Nicole Primmer (primmer@biac.org). Please also visit the BEPS area of the BIAC website (www.biac.org) for further details.

Radical change on the way for Dutch royalty conduits

Newly introduced Dutch 'substance' requirements and an agreed change to the EU Royalty and Interest Directive may bring radical change to the way Dutch royalty conduits will operate in future, writes Jos Peters, the Senior Tax Partner at Merlyn International Tax Solutions Group

Introduction

The usual practice to benefit from the Dutch tax treaty network in the area of reducing or even avoiding foreign withholding taxes on royalty payments, has always been to set up Dutch BV as a royalty conduit, whereby the Dutch entity was managed by a Dutch fiduciary services provider (often called a 'trust company'). The trust company charges a fixed fee for hosting the entity and also a fixed fee for the statutory director(s) it will make available. On top the trust company charges on a time spent basis what it does for the entity such as bookkeeping, preparing annual accounts, filing the annual corporate tax return but also providing legal and tax assistance. In very many cases the latter two categories have come from outside advisers (experts). It is a 'public secret' that the Rolling Stones, U2 and Tina Turner use such Dutch royalty conduits to receive almost tax free income from their performances worldwide. Also football players, tennis players, race car drivers, motor cycle racers and ice hockey players are known to use this traditional 'Dutch route' for their image rights. But the term 'royalty' in tax treaties covers a lot more: all legal types (for the licensing of a patent, a trade mark, a trade name), authors' rights, but also payments for the rental of equipment, (airplane leases, bare boat charters…), the rendering of technical services and consultancy.

Changes have already been announced, there are more to come

This old royalty conduit model is almost outdated, however. Strangely enough, it is still often used because providers hate to tell clients that their solutions are losing tax and legal efficiency, or they may not even know that this is the case because legal and tax matters are usually boarded out by trust companies to external parties such as the Big Four for tax advice or the international law firms, either for tax advice or for assistance with contractual matters or for both. In my view there is (risk of) a major gap here: the trust company may not know that the changes in tax rules will affect the structures it operates for clients and the outside lawyers and tax advisers usually wait with advising and assisting till the phone rings and questions are asked. But the phone does not ring because the trust company is not aware of the (upcoming) problem. This leaves ample room for matters to fall between the ship and the shore, which – increasingly – implies the risk that a royalty conduit structure that was OK three years ago, is now no longer OK, but nobody signals this.

Several years ago I have already started to offer my clients a different and much better solution. On our website www.merlyn.eu in the 'publications' section an article can be found that I wrote in late 2010 about this alternative structuring of a royalty conduit entity. I suggest the reader, for a full understanding of how the changes to the royalty conduit sector are playing out now, three years later, to read this article (written for the *Euromoney Corporate Tax Handbook 2011*) before continuing.

My alternative back then, to use a Dutch royalty conduit owned by a third party, was already advantageous because it eliminated the effects of the so-called transfer pricing rules, always an expensive part of setting up a Dutch royalty conduit entity owned by the client himself. Should the entity be owned by the Dutch service provider, instead of only being hosted and managed by him, there is no need for a benchmark study and an advance tax ruling, so this set-up will eliminate an upfront expense of some €15K. It also eliminates the sometimes very costly outside legal

"... the picture for traditional Dutch royalty conduits is rapidly getting uncomfortable"

and tax advice: the client no longer needs this (the legal and tax issues of the company in use are no longer his but the provider's worry since the provider now also owns the entity) and the provider must have this knowledge in-house if he has sufficient working experience with this alternative business model.

Background on why changes are seeing the light of day at speeds never seen before

Recently, under pressure from the many press publications about the Dutch royalty structures employed by Yahoo, Starbucks, Apple, Google and the like, in their 'Double Irish – Bermuda' set-ups (which all heavily rely on a Dutch intermediate entity between the two Irish ones) many changes have been made or announced, by the Netherlands itself, by the European Commission and by the OECD, with the aim to counter the 'immoral tax avoidance' that takes place via the Netherlands, by these big multinationals.

The Netherlands

To start with, the Netherlands introduced new 'substance' rules in its Corporation Tax Act in September last, effective 1/1/2014. The country already had the strictest substance rules for its own legal entities, introduced in 2001. The main new challenges for 2014 and onwards are:

1) Advance rulings are no longer available for standalone royalty conduits; this risks of course a dispute with either the Dutch tax administration on what gross margin a Dutch royalty conduit entity should make in any given case, or a similar dispute with the foreign tax inspector where the royalties originate if the Dutch conduit entity is 'related' to the entity that pays the royalties;

2) If the Dutch tax authorities should find out, from several new questions added to the Dutch corporate tax return, or upon a tax audit that a structure falls short of the Dutch substance rules (and in case one does not have an advance ruling this could happen any time) it will send letters out to the foreign tax inspectors who deal with the royalty paying entities, informing them thereof. This will likely bring the roof down in the royalty paying countries and the tax authorities there will see the letter from the Dutch tax authorities as a sign that they can still in retrospect charge the royalty taxes they forewent in the past, during at least a five year period, with fines and interest...

3) Royalty conduits need to maintain a substantial amount of capital; this point was unclear until now (there was only a strict rule for interest conduit entities) but the ruling team has published a 'safe haven' approach for the royalty sector: the Dutch entity, if related to the recipient and/or the payer of the royalties, must have an equity of at least 50% of the expected annual amount of incoming royalties and prepay at least 50% of this equity amount to the so-called UBO without recourse, so the Dutch entity runs economical risk: if the royalties fall short of expectations, the entity starts to make losses that cannot be offset in any other way than against future Dutch profits (which will be rather low so a large part of the loss might well eventually evaporate).

Traditional royalty conduit entities, owned by the client, have also become much trickier over the last three years because everybody is now focusing on 'beneficial ownership'. A tax treaty requires a Dutch entity to meet two criteria before it can enjoy the reduced withholding tax rates of the countr(y)(ies) of the royalty payer(s).

1) A Dutch residency certificate, signed and stamped by the Dutch tax authorities. This was all that was looked at, usually, abroad upon a tax audit in the past.

2) But the tax treaties also demand that the Dutch entity receives the royalties for itself and not for a party outside the Netherlands (such as a BVI or Cayman Islands company). This aspect has been overlooked for a long time because it is difficult to apply. Most countries do not even have a definition of 'beneficial ownership' in their national laws so they have trouble defining the tax treaty term. For a tax inspector, in any country, basing an income adjustment or a tax rate adjustment on unclear grounds does not work and he knows it.

OECD guidance to tax authorities on the meaning of 'beneficial ownership'

In addition, the OECD is working hard on giving the tax inspectors of the world guidance on what is actually meant by 'beneficial ownership'. When these final regulations will come out, this summer, foreign tax inspectors will for the first time have a real weapon to attack royalty conduit structures, based on new OECD commentary to the OECD Model Tax Treaty which has usually been the basis for the actual tax treaty between the Netherlands and the country of the royalty payers.

The European Commission announced a GAAR provision in the Royalty and Interest Directive

Another recent measure was the announcement by the European Commission to add a general anti abuse rule (GAAR) to the Interest and Royalty Directive. This new rule will have to be implemented in each EU country before 31/12/2015. It means that if a Dutch entity receives royalties from a related entity somewhere else in the EU, the tax inspector of that country may feel free to take the position that the Dutch entity has insufficient 'substance' under the laws and regulations of his country, so the reduction of the royalty withholding tax was given in error and the money will have to be paid back, including a fine and interest for late payment.

And there is more to come...

A further major threat are the so-called Limitation on Benefits (LOB) articles that are increasingly part of tax treaties: these articles basically deny any and all tax treaty benefits to a resident of the other country (the Netherlands) if the Dutch entity does not meet one or two 'hard' criteria either in the legal or in the substance area. Until 2012, the Netherlands had only one tax treaty with an LOB provision, with the USA. In 2012 Japan insisted on such an article for the new Dutch/Japanese tax treaty that went live per 1/1/2013 and got it, and in 2013 the Dutch government, unilaterally, promised to offer 23 other countries a treaty renegotiating, part of which would be the introduction of an LOB article...!

How much risk are you prepared to take?

So the picture for traditional Dutch royalty conduits is rapidly getting uncomfortable. The old 'stability' that these entities were known for, plus their low pricing, has been eliminated almost entirely and can only partially be regained by adjusting the set-up through adding considerable substance and obtaining expensive additional tax and legal input from the consultancy firms mentioned, that charge some €500/hour on average. And even then one cannot feel safe because foreign tax authorities may well ignore the Dutch new rules, saying they do not go far enough, and replace them by their own, much stricter, rules, like Germany and China have done.

What are the basic steps to address the new risks and the cost associated therewith?

It should be emphasized that both the old and new Dutch national 'substance' rules and the new European Commission's instruction to countries to implement a GAAR in the European Interest and Royalty Directive, focus only on related companies. This has historically been so (in the EU case even by definition). These governmental solutions are therefore not applicable to our independent Dutch royalty conduit entities!

So by trading your own Dutch royalty conduit BV for a similar entity, but now owned by Dutch residents, one breaks the chain and all of a sudden transfer pricing, benchmark studies, advance tax rulings etc. become obsolete. The simple way is to sell the Dutch conduit entity you currently employ to a Dutch provider, so all business features remain unaltered (especially the existing contracts with the royalty paying entities). The new price you will agree with the Dutch fiduciary service provider is a third party price by definition, not open to scrutiny by any tax authority.

And the price setting is simple: the Dutch owner of the conduit entity will incur, for his own account, almost all expenses of setting up the Dutch structure and running it. The client just pays him a percentage of the royalties that flow through the providers entity. The only other expenses the client pays would be for:

a) The contracts with the ultimate licensees (a cost the client would also incur if he owned the Dutch entity himself, because this contract is a business contract that can only be negotiated by him). The Dutch provider will of course also have a say about this contract because it will be one of his companies that will sign it.

b) A second cost element that the client will have to pay for himself is the cost of setting up and running a website for the Dutch BV, as the expenses therefore are not under the control of the Dutch provider and could erode his gross margin to unacceptably low levels. There is no need for a Dutch royalty conduit to have its own website and the vast majority of them do not have one, but it is a possibility.

c) The third and last exception to the rule that the Dutch owner/provider will pay for any and all costs of setting up and running the structure and all business risks of the entity used are his worry and not the client's are the legal expenses associated with any business litigation by or against the Dutch company [eg. for patent or trade name infringements]. The Dutch entity is collecting royalties for his product or invention and the safekeeping of this invention or product is in the interest of the client, not in the interest of the Dutch intermediate, third party owned, legal entity per se. This rule again applies because litigation expenses can be very high and are outside the control of the Dutch provider.

The margin the Dutch entity will make on the royalty flow through business is usually a declining percentage of the foreign royalty income after royalty withholding tax if any (in most cases, under the Dutch tax treaties, the foreign royalty tax will go down to zero). For example:

- 6% on the first €500,000 of net after tax royalty income per annum;
- 5% on the next €500,000 of net after tax royalty income per annum (ie. on income between 500K and 1,000K);
- 4% on the next €1,000,000 of net after tax royalty income per annum (ie. on income between €1 million and €2 million);
- - 3% on any further net after tax royalty income per annum (ie. on income exceeding €2 million)

This then works out as follows: say that in a given year the Dutch subsidiary entity receives 1.8 million of net royalty income. Its reward, to be withheld from the onward payment of the royalties to the client, will then consist of:

- 6% on 500K = 30K
- Plus 5% on another 500K = 25K
- Plus 4% on the residual 800K = 32K
- Total margin for the Dutch entity: 30K +25K + 32K = 87K = 4.8% of total income.

How to deal with LOB provisions?

One element of an LOB provision is that the company that claims tax treaty benefits, can only do so if it has limited 'types' of owners (in fact: in the current Dutch tax treaties with the USA and Japan say they have to be Dutch owners or owners resident in another EU country). This element is of course also a threat to the traditional royalty conduit business because many royalty earners do not or no longer live in a high tax country or in the EU, so these LOB provisions already by themselves call for a change of ownership of 'their' Dutch royalty conduit entity to someone else (in line with the new Dutch rules and the new EU interest and royalty directive). But we solved this problem already in the above by having the Dutch royalty conduit company be owned by the Dutch service provider who also delivers the traditional services of hosting the Dutch entity and its management.

But an LOB provision, also in cases where the Dutch conduit company is not owned by the client but by Dutch or EU residents, stipulates that a qualifying entity (the shares of which are held by the 'proper' owners) if it pays more than 50% of its incoming royalties out to non-qualifying persons in a tax deductible manner, the entity still disqualifies for treaty protection.

This rule seems to kill most traditional royalty conduit companies in the longer run, because the Netherlands will increasingly allow LOB provisions in its tax treaties and, as mentioned, is nowadays even offering such LOB provisions to 23 countries with which it already has a tax treaty, but without an LOB provision. It is only a matter of time before the Netherlands will have 6, then 14, then 20 and perhaps in the future even 25 tax treaty partners with which it has agreed upon an LOB provision in the respective tax treaty. In my view it would be a bit foolish to wait till this happens and to then, all of a sudden, start to look for a Dutch royalty conduit structure that can withstand LOB provisions, rather than doing this now, at ease, when the threat is still 'around the bend'.

New structures will be needed to stay in line with the current and future tax developments

In order to overcome this last but hard to circumvent new tax treaty development, we have, already for a few years, been using structures that consist of two Dutch entities: a Dutch parent BV and its wholly owned Subsidiary BV. Dividends from the subsidiary BV to its parent are non-deductible for tax purposes, so they meet the above-mentioned '50% test': the entity which receives the royalties from abroad is not allowed to pay more than 50% of this income onwards unless this 50% is non-deductible. Dividends are non-tax deductible in the Netherlands, like almost anywhere else in the world.

The double-BV structure or BV1/BV2 structure that we employ for clients easily meets both LOB criteria:

1) The owners of the Dutch royalty conduit are also the owners of its parent company;

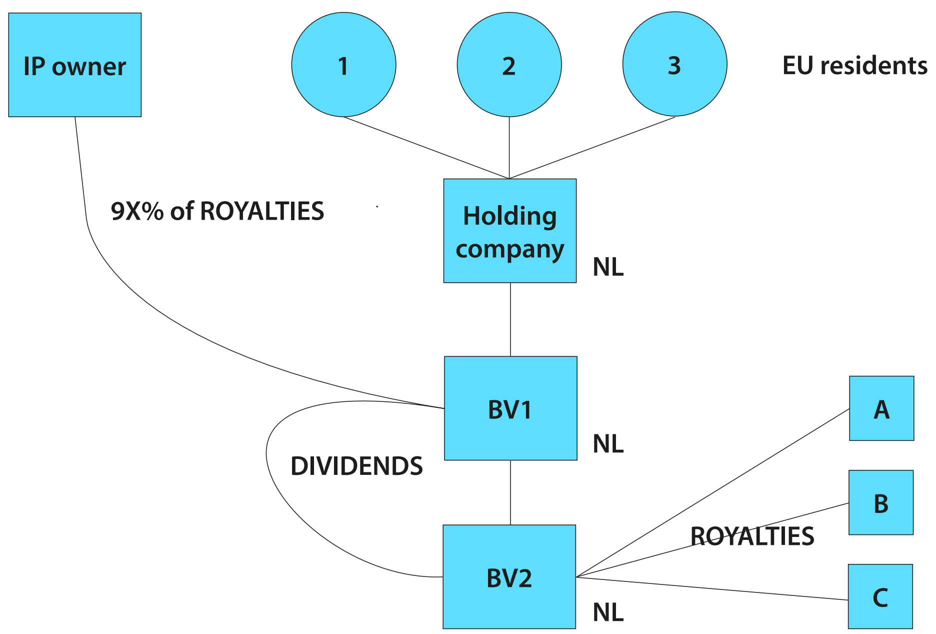
2) And the onward payment at the level of the royalty receiving entity ('BV2') consists of a non-tax deductible dividend to its parent (BV1). See Exhibit 1 at the end of this article for a visual.

This solution, without further planning, would seem to lead to a major Dutch tax problem: the subsidiary, if it cannot deduct the dividends it pays, will show a very high taxable profit which would undo all of the advantages of using the Netherlands as conduit jurisdiction. This can be resolved in two ways under Dutch national tax law, however.

I will only elaborate on the least attractive of the two solution here, on which an advance tax ruling could even have been obtained in the past (not anymore, like I explained, under the revised Dutch substance rules from 1/1/2014 onwards). But one can do this also without an advance ruling, based on a thorough benchmark study and a transfer pricing report (needed because the two Dutch entities are related in a transfer pricing sense, even though they are unrelated to the ultimate recipient of the royalty income and also unrelated to the payers of the royalties).This briefly works as follows:

> the Dutch subsidiary might have obtained the right to collect the royalties from its 100% parent in lieu for a constant flow of interim dividends, for free. Under standard transfer pricing rules, this will then cause 'mispricing' and the conduit company can apply clear and constant case law from the Dutch supreme tax court that it can, for purposes of filing its corporate tax return, take a deduction for the royalties it should have paid if the parent had been a genuine third party. This tax deductible item would be close to the royalty amounts

Exhibit 1



that the Dutch parent is paying to its client to obtain the exploitation license which gives rise to the royalty income in the first place...

But there is even a better solution available in the Netherlands which resembles the US 'check the box' rules. Also the Dutch corporate tax system, on a very limited scale, contains elements whereby a Dutch subsidiary, upon election, becomes a 'branch' of its parent, which eliminates all transactions between the subsidiary and the parent, because one cannot sell a license to oneself, conclude a loan with oneself etc.

Conclusions and recommendations

In the above I have tried to explain that the Netherlands may still continue to be the best jurisdiction in the world to collect royalty type income, under its very favourable tax treaties with other countries, but that it would be naïve, when a new structure has to be set up, to do this based on old and outdated tax rules even if the traditional Dutch 'trust sector' does not seem to be aware of the three major attacks that have been launched over the last two years to stop what many, even in the Netherlands, see as 'abuse' of the Dutch tax treaties. And owners of existing traditional Dutch royalty conduit structures may want to consider how much risk they are taking by not changing their structures to make them 'state of the art'.

In exhibit 1 a basic diagram of our BV1/BV2 solution can be found. We suggest anyone who likes this idea to not start doing this at home, but to request our assistance in setting the new structure up and answering the list of questions that may well have resulted from reading the above carefully. ■

More countries must push for deal to liberalize trade in green goods and services

A new initiative to pursue the conclusion of a deal to liberalize trade in green goods and services was launched in January at the World Economic Forum annual meeting in Davos, Switzerland and has received strong support from the International Chamber of Commerce which calls for more countries to join the drive for a deal.

Launched by Australia, Canada, China, Chinese Taipei, Costa Rica, the European Union, Hong Kong, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, and the United States, the initiative is the latest step to move global trade talks out of the Doha Development Agenda deadlock and build on momentum following the successful outcome of the World Trade Organization (WTO) Ministerial Conference in Bali in December 2013.

According to an ICC-commissioned report such an accord could inject up to US$10.3 billion in additional exports and augment employment gains by 256,000 jobs.

"We hope that such a plurilateral effort could become the basis for a broader WTO agreement" said ICC Secretary General Jean-Guy Carrier. *"We encourage WTO members to keep an open mind about such achievable deals to maintain the newfound momentum of the WTO in advancing world trade, and pursue this initiative along with others such as the negotiation of an International Services Agreement, within the WTO."*

As well as providing an opportunity for ICC leaders to voice business priorities for the G20, the Davos meeting was the first occasion for business and government representatives to discuss a WTO 'post-Bali' agenda. Heading an International Chamber of Commerce (ICC) contingent of business leaders in Davos, ICC Chairman Harold (Terrry) McGraw said: *"Building on the success of Bali, concluding a new plurilateral treaty to liberalize trade in green goods and services will be another demonstration of the benefits of working within the World Trade Organization to conclude new agreements for the 21st century. Nothing could be more important to both developed and developing economies than to increase the trade in goods* *and services that contribute to their economies, create jobs and sustain their resources for the benefit of all citizens."*

ICC participated in the annual World Economic Forum in Davos in January to press for continued progress on global trade and investment on behalf of business worldwide, and has been a long-time supporter of reducing trade barriers for environmental goods and services on behalf of its extensive global business network of 6.5 million companies. Recognizing the importance of sustainable growth and access to open, well-functioning and efficient markets, ICC urges more countries to join the plurilateral initiative to develop a truly global agreement. According to the Peterson Institute for International Economics the EU, together with APEC countries, represent more than 95% of world trade in clean and energy efficient technologies.

"Freeing trade in environmental goods and services will increase trade, promote investment, and hasten the spread of green technologies worldwide," said James Bacchus, Chair of the ICC Commission on Trade and Investment Policy and Chair of the Global Practice Group, Greenberg Traurig. *"It will further green growth at a time when the world much needs to grow in a sustainable way. Not least, it will sustain and strengthen the momentum of the WTO in building on its recent success in Bali."*

ICC's World Trade Agenda (WTA) initiative has highlighted fostering 'greener' economic activity through trade as a do-able element of stalled Doha Round trade negotiations.

The ICC WTA business recommendations called for concrete progress to be made in lowering trade barriers for all goods to foster global value chains, including lowering trade barriers to environmental goods and services, and building upon the APEC initiative to discuss at the WTO an agreement to eliminate barriers to trade in environmental goods and services. It also encouraged cooperative approaches and alternatives to unilaterally-imposed environmental rules that create barriers to trade.

ICC's commitment to multilateral approaches to international trade agreements is reflected in the work of ICC's G20 CEO Advisory Group and in ICC's WTA initiative launched in 2012 by ICC and the Qatar Chamber of Commerce and Industry in response to calls from WTO members and G20 leaders for fresh approaches from business following a 12-year impasse in multilateral trade negotiations. ICC's continuing extensive consultations with business on trade negotiation priorities, an essential component of the WTA, aim to help establish a new agenda for international trade negotiations.

Having played an influential role in pressing governments to reach agreement in Bali and bring multilateral trade negotiations back to centre stage, ICC and members of its global network welcomed the Bali Accords as good news for business and good news for the world economy. But in 2014, the world business organization hopes that renewed energy and confidence in the WTO will also drive the process to reach further agreements to liberalize trade.

"The Bali deal breaks through the log jam that has bound up trade agreements for the last decade and paves the way for future agreements that will further increase global growth and job creation," said ICC Chairman McGraw. *"The positive outcome from Bali will also go a long way to restoring faith that governments have the capacity to achieve tangible results multilaterally for the benefit of all WTO members".*

"... the Davos meeting was the first occasion for business and government representatives to discuss a WTO 'post-Bali' agenda"

During the Davos gathering Mr McGraw hosted a meeting between business leaders and WTO Director-General Roberto Azevedo on the post-Bali trade policy agenda and underlined the importance of leadership in moving the trade agenda forward.

McGraw said that with Azevedo at the helm pre- and post-Bali there was solid confidence that more can be achieved at the WTO in favour of jobs and growth for the world economy.

"The door is now open to proceed with a forward-looking post-Bali trade and investment policy agenda that meets the needs of today's global economy, especially for small- and medium-sized enterprises and developing countries, and we must now look to adopting a policy approach that is do-able and yet remains centred on multilateralism," said ICC Secretary General Carrier. *"Success most often translates into the need to carefully envisage the next steps and giving this careful consideration will be a priority for our organization in 2014."*

ICC strives to ensure that, with new poles of power and leadership in emerging markets, the global economy stays faithful to the precept that open international trade and investment and a market economy system are key factors in creating and spreading wealth. But historic changes taking place in the world today are contributing to a rise in trade blocks and protectionism. While ICC recognizes that the classic method of large negotiating 'rounds' to conclude multilateral trade agreements may no longer be suited to such a multipolar world, it also cautions that while bilateral and regional trade liberalization can be good for business they must rest on a solid foundation of an effective rules-based multilateral trading system embodied by the WTO.

Victor K Fung, Chairman of the ICC World Trade Agenda and Founding Chairman of the Fung Global Institute, said: *"Now is the time to ensure the effective implementation of the trade facilitation agreement within the Bali Accords. This will help to show the benefits of the multilateral approach for the entire world."* ■

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Sharing the burden

Sohail Jaffer is Deputy CEO at FWU Global Takaful Solutions

Globally, there has been a discernible shift in recent years towards risk-sharing between the public and private sectors in the provision of pension cover, with defined benefit (DB) schemes increasingly being complemented or replaced by defined contribution (DC) programmes. This process is being driven by a mix of demographic and financial trends, with life expectancy levels rising dramatically at a time when governments worldwide are coming under increasingly pronounced fiscal pressures.

Although these pressures may appear to be less immediate in some parts of the Middle East and North Africa (MENA) than in the EU or Japan, even in the wealthiest economies of the Arab world, governments are increasingly recognising the need to address the issue of their pension time-bombs.

A Booz & Co analysis[1], published in 2009 but still relevant today, describes pension plans in the GCC as *"extraordinarily generous to those they cover."* As a result of the attractive incentives offered by these schemes, roughly nine out of 10 male workers in the GCC retire by the age of 60, according to the Booz report, compared with one in 10 in the OECD.

The drawback, however, is that these generous pension schemes do not extend to expatriate workers. As the Booz report puts it, *"perhaps most damaging of all to the GCC's future economic development has been the GCC's policy of excluding productive non-national labour from its pension programmes."* This, says Booz, might be less of an issue in a region that did not pin so much of its economic fortunes on foreign-born workers. But three-quarters of GCC-based employees are expatriates, while in the UAE and Kuwait the proportion is 83% and 82% respectively.

Pension systems in the GCC compared with Asia

Pension systems in the GCC differ markedly with those in key Asian financial centres, such as Singapore and Malaysia, which offer government-sponsored provident funds to all local employees. By contrast, in the United Arab Emirates (UAE), for example, the current practice is for companies to provide expatriate employees with an end of service (ES) lump sum based on the number of years of service. This system, which has been enshrined in UAE labour laws for a number of years, is increasingly regarded as inefficient for the government as well as for employees.

Given that the majority of expatriate workers in the UAE are estimated to send up to half their salaries home, this system is unsatisfactory from the government's perspective because it drains much-needed resources away from the domestic economy.

According to the Booz analysis, if the GCC expanded pension coverage to non-nationals, the contribution fund would in some cases grow three-fold, reflecting the number of additional contributors. This would help to add considerable depth to local financial markets.

Expatriate workers' dependence on employers' end of service benefit (EoSB) payments, meanwhile, leaves them vulnerable in the event of the bankruptcy of their employers, especially given that in the majority of cases end of service liabilities are either under-funded or unfunded. This vulnerability became all too apparent in the economic downturn of 2009 and 2010. According to SEI[2], *"across the region, corporate cash flows were tight and, in some cases, non-existent, resulting in corporate restructurings and bankruptcies. This left many employees as creditors to the firm or, put simply, receiving none of their EoSB."*

Grasping the nettle of unfunded EoSB

Research published by Towers Watson suggests that a rising number of companies in the Middle East are addressing the issue of unfunded EoSB. The number of companies indicating that they are now funding their EoSB, at least in part, rose from just eight in Towers Watson's 2009-2010 survey[3] to 24 in 2010-2011, a growth of 200%. *"This is a significant increase*

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"... perhaps most damaging of all to the GCC's future economic development has been the GCC's policy of excluding productive non-national labour from its pension programmes"

in one year and falls into line with Towers Watson's view, particularly given the projected sharp rise in ESB liabilities over the next 10 years or so that companies should be looking to fund benefits (at least in part) as far as possible," Towers Watson notes. *"Such funding, preferably under an external trust, may help to achieve greater security for the employees' ESBs."*

At a broader level, the public and private sectors in a number of leading MENA economies are exploring new solutions for ensuring that adequate retirement cover is offered to all local employees. In the UAE, for example, Dubai's Department of Economic Development has been in discussion with the World Bank on the introduction of a mandatory pension system for employees not covered by the present scheme.

Government-backed pension initiatives are likely to be especially beneficial for small and medium-sized enterprises that are the backbone of the economy in the UAE. SMEs will continue to spearhead economic dynamism and diversification in the UAE, according to SEI's most recent survey, in which 80% of respondents indicated that they expect their headcount to grow in the next three years. About 34% of this increase is expected to come from smaller companies with fewer than 200 employees, while 37% will be generated by medium-sizes operators with a headcount of between 200 and 999[4].

In the meantime, the private sector has been looking at initiatives that would provide added pension security for expatriate workers. For example, in February 2013 the NBAD Trust Co, a wholly-owned subsidiary of the National Bank of Abu Dhabi (NBAD) announced the launch of its Today Wealth Builder, specifically designed for companies employing expatriates. As the local press explained at the time of the launch[5], this is essentially a *"packaged corporate structure underpinned by a range of investment fund options that employees can choose based on their risk appetite."* These schemes are individually tailored, with regular payments made either solely by the company or by both the employer and employee.

Efficient pension provision: a competitive edge

Employers contributing schemes of this kind are not motivated purely by altruism. In an environment in which the region's financial centres, in particular, are competing intensely to attract top quality staff, the provision of generous and secure retirement programmes is increasingly being identified as giving employers a competitive edge. As NBAD Trust Services has said[6], *"by offering employees a cost-effective and professionally managed savings solution, employers will be able to demonstrate that they have the long-term interests of their staff in mind. This will have a powerful and positive impact on their ability to recruit and retain high quality employees."*

Competition for talent is likely to intensify rather than ease over the foreseeable future. According to SEI's latest report, a recent survey by Robert Half, the *2013 UAE Salary Guide Report*, indicates that 85% of executives are concerned about losing their top performers over the next year. The result, says SEI, is that *"human resources departments are under pressure to consider retention strategies and rewards for employees that link compensation to length of service."*

The importance of health insurance

If the provision of more efficient pension schemes are increasingly regarded as a competitive advantage for employers, so too is the offer of group medical coverage, which is now seen by most companies as a prerequisite for attracting and retaining talent. The most recent *Mercer Benefit Survey for Expatriates and Internationally Mobile Employees* found that 98% of companies now provide medical benefits coverage to their globally mobile employees, up from 57% in 2005[7].

Governments in the GCC are progressively introducing mandatory health cover systems. For example, the Advisory Council of Qatar enacted its new health insurance law in June 2013, requiring mandatory coverage for all Qatari nationals and visitors. According to Towers Watson, the Qatar government picks up some 73% of the country's annual expenditure on health care of almost $2.8 billion. *"The requirement for additional contributions to the mandatory health care system will help to reduce this expenditure and shift the burden more toward employers,"* Tower Watson advises[8].

In Dubai, meanwhile, according to new regulations recently rolled out by the Dubai Health Authority (DHA), companies employing 1000 or more employees are required to provide medical cover to all their staff by October 2014. Those with between 100 and 999 employees have until July 2015 to comply, and by June 2016 even those with fewer than 100 will need to have followed suit[9].

Responding to demographic and fiscal pressures

A number of MENA countries have other powerful incentives for overhauling their pension systems. According to a report published in 2012 by the Kuwait-based Markaz[10], the generous welfare system in the GCC is exasperated by the Elderly Support Ratio, which calculates the degree to which the youth population is able to support the aging and retiring. By global standards, this ratio is currently high in the GCC.

But as Markaz warns, *"a stark reversal is expected in just 40 years, when this ratio is expected to drop to the low single digits across the GCC. This essentially means that by 2050, Kuwait, for example, will have just three working age persons supporting one senior citizen; this will constitute a major strain on resources for the country."*

Demographic trends across the broader Arab world are, however, even more unnerving, and point to the need for an urgent rethink of pension policies in scores of

Muslim-majority countries. *"The projection for an ageing population in the Arab world is alarming,"* notes a recent report published by Milliman[11]. *"Its tsunami effect will be catastrophic because family or tribal support is disappearing. We are also moving towards a financial economy rather than a real economy, which means we are becoming more dependent on financial instruments for our survival. According to the UN's recommendations, funded pension plans can be a panacea for this problem."*

The Turkish blueprint

A striking example of a MENA economy which will face growing demographic and fiscal pressures is Turkey, which is developing what may be a blueprint for private pension systems across the MENA region. According to UN projections, the share of the Turkish population aged below 24 will fall from 50.4% in 2000 to 35.7% in 2030. Among major economies in the Muslim world, only Egypt (where the share is forecast to plunge from 55.7% to 28.1% in the same period) is undergoing a more rapid ageing process.

Turkey's unfavourable demographic dynamic, combined with a low savings rate aggravating the perennial problem of the country's current account deficit, has been an important driver of legislative change designed to promote the growth of private pensions. Under the revised pension law, which came into force at the start of 2013, the government contributes an amount equal to 25% of the sum paid by individuals into private pension schemes. At the same time, a range of tax incentives have also been introduced aimed at boosting domestic savings.

With a private pension fund to GDP ratio of just 2%, according to PricewaterhouseCoopers[12], the long-term growth potential for the industry is self-evident. Already, the passage of the new law has led some private pension companies to double their target for the industry's assets in 2023 from TRY143 billion (US$67 billion) to TRY300 billion (US$138 billion), compared with TRY19 billion (less than US$10 billion) in 2012. Aside from increasing the savings rate and helping to reduce Turkey's current account deficit, this will underpin the expansion of the country's insurance and asset management industries, supporting the growth of Istanbul as a financial centre.

The potential of shariah-compliant pensions

Dovetailing with MENA governments' commitment to promoting more sustainable pension systems in recent years has been the increased depth, sophistication and adaptability of the region's financial systems. More particularly, the recent expansion of the Islamic financial services industry worldwide has underpinned robust growth in the takaful (shariah-compliant insurance) sector.

The investment policies and annuity principles of conventional pension system mean that these schemes are unacceptable with devout Muslims, given the payment of riba (interest) twinned with the element of gharar (uncertainty) arising from the unpredictability of life expectancy and therefore of annuity payment streams. There is, however, a growing recognition that the takaful industry is well-positioned to provide shariah-compliant solutions to those eager to reconcile their religious beliefs with the need to cater for a comfortable retirement.

One product that is being explored as a means of avoiding all these elements is the Islamic equivalent of government longevity bonds, known as longevity sukuk, which pay declining coupons each year after a given age (typically 75) rather than any principal. According to Milliman, *"the underlying spirit of takaful fits squarely in the government longevity sukuk concept through the mechanism of wa'ad (promise or undertaking)."*

Products such as these will provide an important building-block for shariah-compliant pension programmes. As Linklaters observes in a recent update on Islamic annuities[13], *"the costs associated with increasing lifespans across the world is well known. The nascent Islamic pensions industry will only develop if shariah-compliant means of dealing with longevity risk are developed."*

Conclusion: bright prospects for pension providers

Shariah-compliant pension products will form a small but growing component of the market for defined contribution schemes. More generally, it is clear that the long term prospects for conventional as well as Islamic pension providers are bright, and that opportunities will continue to be underpinned by growing demographic and fiscal pressures throughout the MENA universe. In the GCC, meanwhile, expansion of opportunities for private pension funds will also support the growth of the asset management and life insurance industries. This will in turn make a key contribution to the expansion and diversification of the financial services industry in regional centres such as Dubai. ■

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2. SEI: Employment Trends and Managing End of Service Benefits in the Middle East, September 2013
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8. www.towerswatson.com September 26 2013
9. See www.globaleye.com media centre (December 21 2013) for more details
10. Kuwait Financial Centre "Markaz" – GCC Demographic Shift, June 2012
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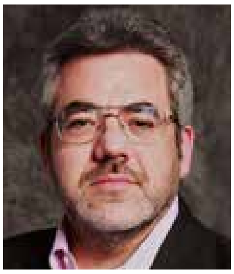


The continuing evolution of collaborative technologies

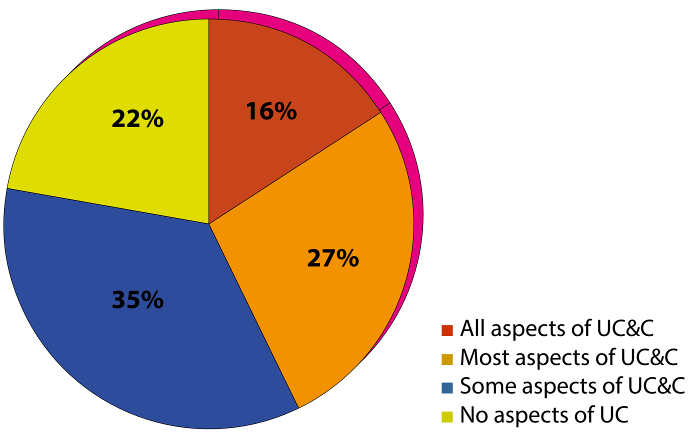
David Danto is Principal Consultant Collaboration, Video and Multimedia at Dimension Data (Americas) and IMCCA's Director of Emerging Technology, and Carol Zelkin is the IMCCA Executive Director

Here at the IMCCA we've spent a lot of time discussing collaborative technologies in the context of hardware and the various manufacturer offerings. When we were asked by the *World Commerce Review* to provide an update to the space this year we felt it was important to point out that it's not all about the hardware or software that an organization buys. Successful implementation of the technology is just as equally about an organization's approach to the space.

In the past, Enterprise Collaboration was a term used to describe technology located in silos – including such areas as videoconference rooms equipped with AV, web conferencing applications, interactive whiteboards and advanced audio conferencing. Enterprises of today are beginning to realize that these are actually different sides of the same thing. Unified Communications (UC) or Unified Communications and Collaboration (UC&C) are the terms that describe this combined space. While it is clear that this is the correct direction for organizations to follow, many of them are still struggling to realize the vision.

Figure 1: Only 16% of technology leaders have adopted a unified strategy

Do you have a supporting budget to evaluate and implement UCC?



In a survey of over 3,000 technology leaders that the global ICT service provider Dimension Data performed with Ovum research, only 16% of those surveyed were looking at the UC space as a whole when it came to budgets. Additionally, 22% weren't even considering the implications of the combined technologies.

The reason that organizations are having so much trouble achieving the promise of Unified Communications is that it is not a product one can buy from the leading industry manufacturers (despite their sales pitch). Successful UC is actually an outcome - and one that can only be achieved when appropriate technologies are deployed in combination with a future-ready strategic vision and a detailed adoption program. The best way to envision this is as the three legs of a stool.

- One leg is a realistic, rich understanding of the actual uses that are needed
- One leg is selecting the right technology to meet those needs
- The third leg is a specific adoption plan

If there's a mismatch between the uses needed and the technology provided, the stool will fall. Without an effective adoption plan, the stool will also fall.

Understanding that there are users, not just one typical 'user', and driving adoption

When technology managers want to improve their organization's collaboration technologies, they often make the mistake of starting by shopping around. They get a lot of information about products, comparing features and prices and trying to find the best match for what they perceive as their typical organizational user. But the process usually ends without achieving user satisfaction and without gaining significant utilization and ROI.

That's because shopping for technology for a perceived 'typical organizational user' is not the correct place to start. Organizations don't have a single 'user.' They have people – each one with different use cases. The correct first step

“Successful UC is actually an outcome - and one that can only be achieved when appropriate technologies are deployed in combination with a future-ready strategic vision and a detailed adoption program”

involves meeting with these people and understanding their pain points and business drivers. It requires creating a user segmentation plan that differentiates needs among key executives; people in manufacturing; frequent travellers; remote workers; team leaders; HR professionals, and so on. One has to pick the right tools for each, then build an architecture supporting the use of all those tools.

As a simple analogy – a hammer is a really great tool. Craftsmen would never be without one in their toolkit. However, if it was their only tool, and the needed job was cutting glass, the hammer would be a really lousy choice. It is just as ridiculous to assume that any one collaboration application or appliance can be widely distributed within any organization and meet all the needs. Only after identifying and classifying all the actual needs can tools to meet them be purchased. For an example, a typical organization might have the following list of user groups:

- Executives
- Team leaders
- External salespeople
- Internal sales support
- HR recruiters
- Manufacturing
- Point of sale/point of manufacture resources
- IT personnel
- Support personnel

The characteristics of ‘the right tool’ for each need - and the support requirements for each - vary significantly between each user type. Manufacturers who try to claim that their one hardware or software product is all that’s needed to cover all the needs are not presenting an accurate picture. One-size-fits-all solutions are never the correct direction for most organizations. Technology managers need to spend the time needed engaging representatives from an organizations actual user groups to understand their priorities and pain points before selecting a blend of technologies to meet their needs.

In addition, even when you select the right blend and build the ecosystem, the users are not necessarily going to come to your new technology ‘field of dreams’ – not without an adoption plan.

Some IT organizations will spend as much as two years on a technology deployment project, and then just announce it on a Friday afternoon before the Monday that it’s available. Then they wonder why people aren’t using it. The answer to that problem is generally due to inertia. People will not change their behaviours unless they are engaged to do just that. Motivating people to change behaviour requires nearly as much time and effort as any technology implementation plan.

The very same people that were engaged to discover actual user need have to be re-engaged to champion the use of new collaboration technologies throughout an organization. It closes the loop, instilling the understanding that actual needs are being heard and motivating users to change their behaviour. When correctly planned and coordinated adoption efforts can double the utilization numbers of any new technology and the resulting ROI.

Figure 2: Without motivating users, new technology will not achieve maximum ROI

Driving usage and adoption is a matter of people

Technologies to choose from – the cost of entry coming down

Over the last seven years (as we detailed many times in this publication) the cost of high-end systems used for collaboration (telepresence) was sometimes prohibitive. What we’ve seen in the last year is that like the proverbial pendulum, what has swung too far to one side often swings back too far to the other. In the last year we’ve seen the entrance of a number of collaborative hardware product offerings in the sub $1K US range.

- TelyLabs – The firm that started it, TelyLabs last year introduced a new category of room-based collaboration system. Unlike traditional solutions which focused on providing an optimal experience for high profile situations regardless of price, this new category of solutions focuses on providing the most important features at an affordable price - suited for mass deployment. TelyLabs product was an all-in-one appliance that has an HD a camera, codec and audio system in a compact bar that fit above or below a display.

- Logitech ConferenceCam CC3000e – In their approach to the sub 1K space Logitech omitted the codec but beefed-up the quality. Their solution has a full pan-tilt-zoom camera, table speaker/microphone and control surface – all terminating in a USB connector that you can plug-into any PC or Mac system and use with whatever soft client you like.

Figure 3: New systems - left top to bottom Tely, Logitech, Google, right Cisco MX

- Google Chromebox for Meetings – Most recently, Google has jumped feet-first into the meeting room collaboration space with this new system. Made of a webcam, a speaker/microphone, a Chrome-based CPU and a remote control, this system is meant to enable a conference room to participate in their 'Hang-outs' soft conferencing product.

More expensive than software and a webcam alone, but less expensive than a traditional appliance, one has to be very clear about the capabilities and limitations of these new systems, and where they would fit into an organization's blend of technologies. Keep in mind the following rules of thumb:

- Webcams are good at capturing images of people sitting directly in front of their displays, however they are generally completely inappropriate for capturing the images of three or more people sitting in a room. Don't let the marketing pictures or stories from even the most reputable firm deceive you into believing you'll see anything but a wide shot of tiny people.

- Low end appliances will generally produce better images than software alone, but are almost universally not monitorable. If you want to know the status of the video systems on your network in case someone has kicked-out a plug or experienced some other failure than these are just not for you. If you're deploying a collaboration device in a critical area or for a VIP spend a little more money at the front end instead of spending a lot more time on the back end explaining how you couldn't tell that it had failed before the user tried unsuccessfully to use it.

- Ensure that you understand the interoperability strategy of any low-end system. In some cases they only work with other units from the same manufacturer. In other cases the manufacturer provides an 'off-ramp' for interoperability, but using it may result in poor experiences, additional use charges or both. Don't assume that a system that meets an organization's needs today will be able to grow with that organization in the most cost effective manner.

On the other hand, there are new choices in modular systems that do include all the features of past high-end systems. The Cisco MX200 and MX300 for example are fully self-contained room systems that have large displays, PTZ cameras, control systems, and still have the remote management capabilities of traditional systems. They're not sub $1K US, but they're also not the tens of thousands traditional room systems can cost (or the hundreds of thousands that immersive telepresence can cost.) Organizations are now embracing these lower cost choices because they realize that industry best practices have changed. In the recent past, free-standing systems were looked-down-upon as somehow reflecting a cheaper image for a user firm. Now, organizations have realized that the most expensive, integrated conference rooms were really not utilized very well for a number of reasons. Buying a quantity of inexpensive systems instead of just one expensive system (as long as it does one or two things very well) is no longer perceived as a bad choice.

Interoperability is still the key

Organizations are not just looking for less expensive systems, they are still in search of easy to use solutions. Collaboration end users want to ensure that whatever other systems they happen to be using will be able to work with whatever other system are in use – both inside and outside their organizations. Part of making this a reality is selecting interoperable systems as part of the blend we discussed, but part of it has also begun to rest on the shoulders of third party firms. A few new players in the industry are creating a niche for themselves by enabling this interoperability.

In a few brief years BlueJeans has established itself as the de-facto cloud based interoperability provider, allowing any-to-any connections between systems of most types. (Exceptions would include Vidyo who wants you to use their own Videoway any-to-any service; and Skype – from which Microsoft inexplicability pulled all third party connectivity). Now new players Acano and Pexip enable this interoperability to be located on an organizations premises – with Acano's gateway abilities already deployed at a number of organizations and Pexip's just coming to market.

These third parties are today allowing for richer interoperability than many collaboration technology manufacturers support on their own (with the most typical case using these new gateways being Microsoft Lync clients communicating with Cisco infrastructure. Microsoft and Cisco do support direct interoperability, but it is more limited).

We here at the IMCCA will continue to stay on top of related trends and emerging technologies and encourage our members to strengthen and grow the overall collaborative conferencing and unified communications industry. ■

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. 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

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Collective expertise, bespoke solutions

When acquiring a SuperYacht or a private jet, the complexities of ownership require careful consideration. The specialist attention of a highly experienced service provider capable of providing the bespoke support that such assets demand, is essential.

Knox House Marine & Aviation offers owners of SuperYachts and privately operated aircraft, a comprehensive range of management services that are bespoke to their requirements and delivered through a single point of contact. Services are offered through Knox House Marine Management Limited and IOM AERO.

Today's yachts are sophisticated and complex vessels and with rapid technological developments and frequent regulation changes, their safe and compliant operation is challenging. Knox House Marine Management's Yacht Management services offer support and advice to owners and captains, which will ensure their yacht is properly maintained, compliant and efficiently administered. No two yachts are identical and our yacht management services can be tailored accordingly.

The team at Knox House Marine Management has the necessary expertise and experience to deliver a tailored solution that not only matches the owner's requirements, but is of vital assistance to the captain and their crew. We aim to exceed the expectations of all parties, giving greater safety, enjoyment and peace of mind.

Our services are formed from a wealth of experience in the maritime sector and this ensures your yacht is safe, compliant and looking and performing at its best. We aim

to remove the administrative burden from yacht owners and our SuperYacht management service is delivered through a dedicated point of contact that is available 7 days a week.

If you are a potential, new or existing owner, our services could be of considerable interest to you.

Do I need a management structure?
We have focused on what owners and captains want and don't want from their management company. It is as a result of this that we pride ourselves on offering a totally bespoke, yacht specific management package with an aim to cut costs and reduce paperwork and downtime. Our approach paves the way for captains to significantly reduce the time they spend in the office and more time with the crew and the running of the vessel.

How do I finance my vessel?
Knox House Marine Management has a strong working relationship with several leading banks that specialise in marine finance. This allows us to assist you in finding the right lender for you and to oversee the finance procedure, both during your purchase of the vessel and throughout your ownership of her.

Who will deal with crew recruitment and their payroll?
Through our extensive crew database of hand-picked professionals, Knox House Marine Management can offer professional crew at all levels who will be a true asset to the smooth day to day running of your vessel. As part of our crew solution services, we will attend to all crew placement, insurance and payroll matters and if requested can provide background checks and references.

How do I choose a suitable flag state?
Our experienced team has a wide-ranging jurisdictional knowledge and can help guide you in finding the most suitable flag state for your vessel.

My vessel is under 24 metre, where do I find a tonnage surveyor?
We offer a survey service for yachts that are under 24 metre tonnage, which can be undertaken for numerous flag states including the UK, Cayman Islands, St Vincent and Grenadines.

I am a new owner awaiting the delivery of my new yacht. How do I have a PDI (Pre-Delivery Inspection) survey performed?
We can provide a comprehensive inspection, including a structural in water and out of water inspection of the hull and stern gear. A full systems test of the hotel services and an interior fit-out inspection is also included. Moisture testing, hardness testing, ultrasound thickness measurements or thermal imaging can all be provided upon request. Sea trials are an integral stage of our pre-purchase surveys and include a full systems test and performance trials. When finance or insurance is required we can include a realistic valuation of the yacht.

IOM AERO is well positioned to help private aircraft owners realise the tax and operational benefits of the Isle of Man's sought-after M-Register. Its administrative, management and full consultancy services aim to reduce the burden of responsibility that comes with ownership.

What do M-EDIA, M-YJET, M-AGIC and M-CCCP have in common?
The answer is that they all represent private or business aircraft registered on the Isle of Man – a jewel in the heart of the Irish Sea. With a modern-day population of some 85,000, the island retains a unique character as an international centre of business excellence. We are well known, amongst other things, as the motorcycle mecca of racing with the TT festival, and have some of the best golfing to be had in northern Europe.

Despite the global recession which has hit the private aviation world hard, the Isle of Man Aircraft Registry has grown at a consistent rate of 100 – 110 aircraft per year for the past 5 years.

Currently the 6th largest register of business jets in the world (and ahead of the UK and France), as at the 31st January 2014 a total of 666 aircraft had been registered on the Isle of Man. Some may say that's unlucky though let us assure you we have already passed 675 by the time this article has been published.

Attractive alternative – so what is driving the booming business to the Isle of Man's M-Register?
We believe the success of our register is that it offers an attractive alternative to the traditional ones. We have a completely different approach; we provide excellent personal service whilst maintaining the highest regulatory standards. Let's not forget the island already boasts a 100 of the worlds most exclusive and expensive super luxury yachts on its commercial yacht register, of which many carry helicopters and the owners have their own business jets.

Interest in aircraft registration is coming from all over the world as the reputation of the M-Register reaches far and wide.

The Isle of Man advantage

- High regulatory standards and quality international reputation for safety and service
- Flexibility; unlike similar registers, your unique M-registration can be transferred to future new aircraft
- Privacy and confidentiality; the identity of the owner can remain undisclosed
- Clear and concise tax regime; the Isle of Man has a zero rate on corporation tax and Insurance Premium Tax (6% in the UK)
- Zero rated VAT; we are the only offshore centre that enables registration for EU VAT/IVA, yet still enables businesses to benefit from a zero direct tax regime
- Neutral nationality registration prefix
- Secure Mortgage Register

Registration 'Mike'

As an example of how the 'M-' Register is considered 'register of choice' for private aircraft owners, consider the statistics on registrations of Gulfstream's top of the range G650. With a lengthy waiting queue and list price in the region of $65 million, it was 'designed to be the fastest, largest, longest-range, most advanced business jet'; therefore it really is the new must-have toy! To date, 53 G650 aircraft have been delivered, with 5 of these having been registered on the 'M-' Register. Removing American registered aircraft shows an even more impressive story. The aptly named M-YGVI was the first to be registered outside of the USA, with 'M-' Registered G650s now accounting for 33% of non-'N' Registered aircraft of the type. We're assured that the Registry has a number of pending registrations awaiting delivery!

Flagship IOMAR

The Isle of Man Aircraft Registry is a flagship example of both the type of business the Isle of Man aims to attract - quality; and what the Isle of Man can offer to clients; a highly professional, but also user-friendly and flexible, service.

The Registry has also allowed the Isle of Man to offer a more complete package of offshore solutions. For example, the Isle of Man is one of the world's leading centres for super-yacht registration, management and ownership, and super-yacht owners are often existing and potential future aircraft owners. Existing professional relationships developed in relation to a client's yacht can easily be extended to cover the client's aircraft with resultant benefits for both the client and the service providers.

The Registry's high profile has also raised the Isle of Man's profile as a centre for aviation. In addition to the manufacturing presence on the Isle of Man of multinational aerospace companies such as GE Aviation, Isle of Man corporate and trust structures are frequently used by major international airlines and aircraft operators in aircraft ownership and financing transactions.

M-MIND blowing…

Yes it is! Headquartered in the Isle of Man, IOM AERO provides complete management solutions to owners of private and corporate aircraft. We pride ourselves on our bespoke, client focused service and can assist you with every aspect of a privately operated aircraft's lifecycle. And why not personalize your 'M-' Registered aircraft; the possibilities are M-ANY! ■

For further information about the services provided by Knox House Marine & Aviation please call +44 (0)1624 653821 or email enquiries@khmarineaviation.com

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Live and let die under the EU Succession Regulation's regime

Dr Marcus A Hosser, TEP, is the founder of DR HOSSSER Rechtsanwalt in Frankfurt/Main

These days, many expatriates ('expats') live a happy life in the EU member states far from their home countries. The stay abroad opens, in all regularity, new opportunities to the brave ones who have accepted the offer of working in a foreign country for a few years. The other side of the coin is that their stay abroad makes the legal environment much more complex. Even employees of multinational concern which often offer a 'feel safe-package' connected with the promise 'we will retrieve you and your family in case anything happens', are well advised to take some precautions.

As long as the expats are happy and healthy in the foreign country, in most cases no serious legal problems come up. However, what happens if the expatriate passes away and who will receive his or her assets which are situated in the home country and/or the assets at his place of residence in the foreign country?

The experienced lawyer's answer to the above question will simply be: 'It depends'. Apart from other factors, the relevant legal cornerstone are the deceased's citizenship and/or his last domicile, his date and place of death and especially if he has died in a member state of the European Union and if so, whether he has passed away in Great Britain, Ireland or in Denmark.

Firstly, this article focuses on the passing away in an EU member state as the place of death of testators who have lived in that state for many years. Secondly, referring to the time of death, one has to differentiate between a passing away (i) before or respectively (ii) on or after August 17, 2015.

The reason for the distinction regarding the day of death is the EU Succession Regulation of 2012. It has already come into force but only is applicable to all cases of death on or after August 17, 2015. The headline indicates that the EU

"Expatriates who are planning on working and staying for a longer period in a EU member state should be aware of the EU Succession Regulation's new concept"

Succession Regulation will bring major changes from the current international inheritance law rules of some of the EU member states.

Different from the current, eg. German, French, Spanish and Italian, conflict of law rules that the EU Succession Regulation does not ask for the deceased's citizenship. Under the EU Succession Regulation the law of the deceased's habitual residence at the time of death (law of the domicile) is decisive. Therefore, it makes a major difference for a German testator, if he dies either before August 17, 2015 or on that date or later, as far as the international inheritance law rules are concerned. The same applies, for example, to citizens from Italy, France and Spain.

From a German perspective, until August 17, 2015 the law of his or her German citizenship (at the day of death) is the decisive law to start with in determining the applicable inheritance law. On or after August 17, 2015 the law of the deceased's last domicile becomes relevant, which can be different, especially in case of expatriates. They should not rely on the exception for cases in which the deceased had a manifestly closer connection with a state other than the one of his last habitual residence. What can be done to assure that the German inheritance law or the one of the expat's home country will be applied even after August 17, 2015, although the expat's domicile might have changed since then?

In most cases the own date of death is unknown. Therefore, good advice for testators in the given situation is to earnestly consider a choice of the applicable inheritance law up to the possible legal extent. A choice of law which was made before August 17, 2015 will remain valid even after the EU Succession Regulation is applicable directly.

Expatriates who consider such a choice of inheritance law for the future should keep in mind that the EU Succession Regulation is not (and will not become) valid in the two common law states Great Britain and Ireland, on the one hand, and in Denmark, on the other. Those member states have not ratified the EU Succession Regulation. If a longer stay abroad in one of those countries or in other non-EU-countries is intended, one has to deal with different legal basic points. A further very important factor is that the EU Succession Regulation is not merely relevant for EU-citizens who die in EU member states. It is also applicable for non-EU citizens who – might – have their future last domicile in an EU member state.

An expat's succession might be subject to the inheritance laws of the foreign country in which he resided at his date of death – in case he has had his 'last habitual residence' in that EU member state. Under the German national inheritance law rules, the 'habitual residence at the time of death' was – isolated seen - not relevant until the EU Succession Regulation came into force in 2012. The EU Succession Regulation does not define the meaning of the term 'habitual residence at the time of death'.

Therefore, the concrete interpretation in the single EU member states and the application by a foreign probate judge or authority might be diverse in the EU member states. In that respect the EU Succession Regulation might face some obstacles and its intention to harmonise the various rules about international inheritance law could be partially foiled. Regardless of that, the above advice to check in time, if a choice of law is possible and makes sense, can be upheld or even strengthened: those potential uncertainties make a choice of inheritance law even more important for the prospective testators.

If the testator wants to make sure that his home country's inheritance law can and will be applied to his succession, he should contact an inheritance law expert from his home country in time, in the first place. Testators who would be fine with the foreign inheritance law's application, eg. because it is one of a very elaborated kind (like German inheritance law), he or she should contact an expert from that country.

Prior to August 17, 2015 there will be no harmonisation through the EU Succession Regulation. Without a proper estate or succession planning, an expatriate's succession will be subject to a patchwork of national conflict of law rules in the field of inheritance law: in some countries the law of the citizenship at the day of death is relevant, or the law of the last domicile for others. In that context, looking at the aforementioned laws only is the starting point of the applicable inheritance law's – often very complex – determination. In each case special legal rules for the deceased's real estate in a foreign country exist.

Last but not least, before or after August 17, 2015, more than one inheritance tax or estate tax law regime will remain or become relevant for most of the cases of succession. This does not simplify things.

Summing it up, the EU Succession Regulation's range of application is by far wider than a possible relevance only for EU citizens. The Regulation is important for all persons who (might) have their – future – last domicile in an EU member state, other than Great Britain, Ireland and Denmark. Even before the EU Succession Regulation becomes applicable on August 17, 2015 a professional international estate planning has to take its new rules into consideration. Expatriates who are planning on working and staying for a longer period in a EU member state should be aware of the EU Succession Regulation's new concept because it might become essential for their own case of succession. ■

Better profits without increased sales or lower costs

Christine Gerryn is Director of Group Communications and Commercial Development at Atradius Credit Insurance NV

Achieving higher profits is often associated with an increase in sales or a decrease in expenses. While in many cases this is the route to a better bottom line, focusing on these two items can produce the opposite outcome if pursued without regard for the quality of sales and the ability of your buyers to pay for their purchases.

You can address these issues – quality and security – by selling on cash terms, clearly the most risk free way to trade, but this could also be a deterrent to winning orders, especially if competitors are prepared to offer more attractive terms. This means selling on credit which provides more sales opportunities, but creates payment risk. This risk can be significantly reduced by using credit insurance.

Many companies write off the idea of using credit insurance as too expensive. For some companies this may indeed be the case, but the perception of cost really needs to be addressed in the right perspective. Comparing the cost effectiveness of credit insurance with other methods of managing your credit exposure is an exercise that all businesses should undertake.

For example, a company with annual revenues of €100 million which had absolutely no bad debts over the course of a year and did nothing to protect its receivables would have no bad debt expense. The same company paying, for our example, €150K on credit insurance would have had a €150K expense. But very few companies experience no bad debts. An Atradius survey of more than 6,000 companies in 30 countries found that almost 5% of the value of their invoices was uncollectable[1].

But, for our example, let's assume that the company is very good at collecting its receivables and only 0.2% of the value of receivables is uncollectable. This produces a loss of €200K if uninsured. A credit insured loss would be around €130K (credit insurance premium of €150K – claims payments of €180K (€200K claims - own risk which is usually about 10% of the unpaid debt). The investment in credit insurance has netted you a €70K savings which directly improves your bottom line.

But what if this same company only has €100K in bad debt losses? It now looks like credit insurance would cost you €50K more. But that's not necessarily the case. €100K is not your real cost. If the company has a profit margin of 10%, your €100K loss results in an actual out of pocket loss of €90K. But recovering that €90K is going to cost €900K in additional sales (10% profit margin on €900K revenue = €90K).

Annual cost of bad debts (in thousands except percentages)

Sales	100,000	100,000	100,000	100,000	100,000	100,000
Profit margin	20%	20%	10%	10%	5%	5%
Cost of insurance	0	150	0	150	0	150
Bad debts	100	100	100	100	100	100
Out of pocket loss	80	60	90	60	95	60
Sales required to recoup loss	400	300	900	600	1,900	1,200

If credit insured you would have paid €150K in premiums and received around €90K in payments on your claims resulting in an out of pocket expense of about €60K but only the need to sell €600K to recoup your annual insurance cost. The uninsured company will have to sell an additional €300K more than the insured company just to get back to breakeven.

As your profit margins shrink, the cost of a bad debt climbs. From a simple, but pure numbers argument, for many companies, credit insurance makes sense when premiums are less than 1.8 times the value of your bad debts.

But credit management is never that cut and dry. Businesses reserve against bad debts to ensure they have enough cash to keep the business running. They buy credit reports and other information to check the creditworthiness of their buyers. When things do go wrong, they hire a collection agency to pursue the debts - or even sell their debts. With all these options at hand, it seems a company should be able to reduce its bad debt expenses on its own by simply paying a little more attention to its internal credit management procedures.

A strict and proactive approach to credit management can reduce your bad debts. It will help you get paid earlier and, if a customer does go bankrupt, you can put your company in a better position to collect at least some of the debt. However, all of these credit management activities cost time and money and they don't guarantee a default free receivables portfolio.

For instance, smaller debts are sometimes not pursued while larger ones are. Individually it seems the larger debts have the potential to do the most damage and can be the most difficult to recover, but it's the smaller ones that often present the more significant risk of loss because the cost of pursuing them is often greater than the value of the receivable. At Atradius Credit Insurance, many customers keep very close tabs on the large buyers and rely on Atradius to keep a close eye on their smaller buyers.

Back to the time and money issue; Bad debt reserves represent money that is unavailable for use in growing the business. While credit insurance is not going to fully compensate for reserving, it can reduce the amount you need to reserve, freeing up cash that can be used to grow the business.

Checking a customer's creditworthiness is itself a bit of a risk. While a credit report may tell you about the customer's finances, you still have to make a judgement call on whether or not to extend credit. Most companies want to complete the sale and are therefore more inclined to take the risk than not take it. More often than not they come out OK but, as pointed out earlier, if just one out of 20 of those invoices ends up uncollectable you could lose half the profit on the other 19.

"Credit insurance removes much of the risk and provides underwriting expertise from people who spend every day analysing the finances of businesses, and the risks associated with the buyer, its industry and the countries it operates in"

Credit insurance removes much of the risk and provides underwriting expertise from people who spend every day analysing the finances of businesses, and the risks associated with the buyer, its industry and the countries it operates in. It's like having a team of risk analysts to advise on how to best work with a customer – cash, credit or a combination. There will always be some unavoidable payment defaults, and when these occur, credit insurance pays you.

Finally, collecting debts; whether done in-house or through a collections agency, the aim is the same. And your chances of recovering the debt are improved by good credit management practices[2]: reminders of approaching due dates, understanding and adhering to legal procedures, trade laws and trade practices in the debtor's country, and taking timely action when a debt is late, to name just a few.

In the end, a good collections agency can increase success. It can help address the legal aspects of the collection, with timing of actions and applying the appropriate pressure to secure payment while preserving relationships with the debtor, if desired. Some debtors simply wait to pay until the debt is turned over to an agency - as if the seller is not serious about the invoice until they call in the professionals. Particularly when it comes to foreign debtors, as an agency that specialises in international collections will have more resources on hand to obtain payment. Good international collection agencies can be hard to find but, if you're credit insured by an international credit insurer, the collections support is usually part of the credit insurance package – protection plus collection.

While credit insurance may not be right for every company, every company should at least have a serious discussion with a credit insurer to compare the real cost of insured and uninsured trade debts on their business. ■

1. http://global.atradius.com/images/stories/Publications/payment_pratices/Round12/ppb12_nov-2013_APAC.pdf#page=19
2. http://global.atradius.com/images/stories/Publications/credit-to-cash/07credit_management_essentials.pdf

AMBA accreditation – a mark of quality for top MBA programmes

Working for the Association of MBA's accreditation side, Mark Stoddard, AMBA's Accreditation Manager, has been one of the key people on the frontline witnessing the development of MBA programmes all over the world. As a co-creator in the process, he is not only making sure that the programme meets AMBA's strict accreditation standards; he also guides business schools in the development of their MBA and other business postgraduate programmes.

"For me, accreditation is a process of quality assurance and continuous improvement, judged on a set of defined standards and based on the foundation of peer review. This means that judgements and decisions of accreditation are made primarily by contemporaries who both understand the challenges of the market and can provide advice based on their own knowledge and experiences," says Stoddard adding that AMBA also engages with governments and other interest groups to ensure that the value of the MBA is upheld and recognised.

For the Association of MBAs, the unit of analysis is postgraduate management education, with a major focus on the MBA (although AMBA also accredits other postgraduate general management programmes such as the MBM - pre-experience Masters in Management - and the DBA - Doctor in Business Administration). As an independent organisation providing a mark of quality for stakeholders in what is a very diverse and international market – there is an enormous range in quality for the MBA and it is largely an unregulated market. Factoring in the cost of such programmes, both in terms of admissions fees and the time involved, it is important to offer a global benchmark and a system of rigorous assessment against these standards to enable those interested in the MBA and similar programmes to make the right choice in terms of their investment.

Per-Olof Larsson (left), CEO of GU School of Executive Education, receiving the certificate for AMBA accreditation from Sir Paul Judge, AMBA President

As far as a professional degree such as the MBA is concerned, the stakeholders are far wider than just students and schools, although these are hugely important. *"We pride ourselves on our multi-stakeholder approach to accreditation. Employers are also a key group because at the end of the day, they are going to be recruiting the graduates of these programmes. It is therefore important that they also have a mark of quality for the type of talent that they recruit, again from a very large and very diverse pool,"* Mark says, adding that it is essential that the AMBA criteria match the needs of employers as well as those of the academic community.

AMBA, as the only global accreditation body that focuses exclusively on postgraduate general management education, has developed substantial expertise in this field. Mark explains: *"Our accreditation process allows – and indeed demands – that peer review teams drill into the detail of the programmes themselves, rather than focusing more broadly on the institution and its processes as most accreditation bodies in management education*

"... the MBA qualification is unique in the way that it utilises the management experience of participants alongside that of the faculty in creating a dynamic real-time learning experience"

do. We also have a strong consumer protection mandate, which comes from our multi-stakeholder approach – our primary role is to protect and promote the value of the MBA to enable students and employers to make the right choice when choosing MBA programmes or MBA hires, and for those business schools working to maintain the highest standards of delivery."

The MBA is a global phenomenon and AMBA has been very successful in expanding its sphere of influence internationally. Now having accredited MBA programmes on all continents, and beyond its traditional base in the UK and Western Europe, AMBA has now developed excellent networks in Latin America, Eastern Europe and parts of Africa. Stoddard says that it is no surprise that the current demand for accreditation is coming from Asia, particularly China and India, as their business schools seek to become widely respected and visible on the international scene. AMBA currently accredits 20 schools in China and interest is still growing there, while Mark Stoddard has recently undertaken a successful accreditation visit to IIM Calcutta, which is widely regarded as one of the top three business schools in India, a country with more than 3,000 business schools. This brings the total number of AMBA-accredited Indian schools to 6.

"There are three major reasons that schools apply for an international quality accreditation," Stoddard continues, *"to attract more (and better quality) students, to improve international visibility and networks, and to gain advice on continuous improvement. I believe that all schools value the third element of accreditation, but certainly for a school like IIM Calcutta, who have no issues in attracting the best students in their national context, accreditation is far more about making a statement that the School is of international standing - thereby making it easier to engage with other high profile business schools across the globe for partnerships, faculty exchanges, and joint programmes"*. Mark, who has been part of around 100 accreditation review teams, is convinced that this will lead to significantly higher numbers of international students being attracted to study in these key Asian countries.

The rise of online learning technologies, and the subsequent emergence of MOOCs (Massive Open Online Courses) are changing the way education is viewed and designed, and the MBA is no different. The advantages of technology-enabled learning are enormous, but the MBA qualification is unique in the way that it utilises the management experience of participants alongside that of the faculty in creating a dynamic real-time learning experience, and enabling this at a distance is possible but not at all easy.

In terms of curriculum, issues such as sustainability, ethics and risk management are rightly coming to prominence, and integration of the subject matter is being achieved in innovative new ways throughout the MBA journey, instead of the traditional approach of a single capstone thesis or project.

Although the MBA curriculum is not the same everywhere, it is based on the same core subject areas. *"But no two programmes are the same," Stoddard explains, "and we support and encourage this diversity, albeit within the framework of our quality standards."*

Is the MBA still relevant? *"Very much so,"* Stoddard continues. *"The unique attributes of an MBA are still highly sought-after by employers, producing graduates who possess a combination of broad general management knowledge, an integrated understanding of functional areas, enhanced strategic and leadership skills, and all honed by substantial management experience and the latest on management theory.*

Of course not all MBA programmes are designed to do this or are successful in producing these outcomes – and that is where accreditation comes in." ■

Professor Zhang Yuli (left), Dean of Business School, Nankai University, receiving the certificate for AMBA accreditation from Sir Paul Judge, AMBA President

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[1] QS Global 200 Business Schools Report 2012
[2] 2013 AFR Boss MBA ranking
[3] 2012 Excellence in Research for Australia results

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RETHINKING CORPORATE UNIVERSITIES

Thomas Sattelberger, EFMD's Vice-President for Corporate Services argues that corporate universities must evolve from being socialisation and knowledge transfer machines to helping their parent companies undertake effective transformation

Until 20 years ago the big companies of the old 'Deutschland AG' dominated the image of Germany. Whether Daimler, Siemens, Dresdner Bank, Hoechst, BASF, Thyssen, BMW or Bosch, successful German companies had a long tradition of large research budgets, stable business models, long-term customer relationships and a reliable legal framework in which to operate.

They also had social mechanisms in place in order to assure the stability of their own culture. These were not just social agreements with 'co-managing' unions but also ties of loyalty, even obedience, within their management teams.

The past two decades have called all this into question. Globalisation – not only in Germany but also in all so-called old economies – has led to a 're-measurement of the world'.

Industrial behemoths are dying faster than ever, swallowed up or languishing in bureaucracy. Digitisation has made value-creation processes intangible; innovations are increasingly dealt with through the backdoor; garage start-ups are growing into giants.

The large corporations of Deutschland AG, which carry with them the baggage of their history, have been travelling in dangerous waters. Compared to the many small speedboats and international giant liners they often look like Roman galleys.

Of the eight companies mentioned above, one has died, one survives only through state aid, two have had life-threatening crises and two have deteriorated significantly under global competition.

'Ambidexterity': nurturing core business and innovation

Long-established large companies are usually characterised by different polarities: old and new businesses; established sales areas and emerging markets; efficiency programmes and innovation initiatives; centralised bureaucracy and peripheral dynamics of change; administrators and entrepreneurs; a dominant number culture and an experimental ethos.

This was popularised by Robert Duncan and James March as the concept of 'organisational ambidexterity'. A company must be able to cope with two opposing issues equally well if it is to handle disruptive change.

To seize the opportunities of the present and systematically exploit the potential of the future demands two parallel organisational structures or mental maps, one for the full exploitation of the current business, the other for researching new business ideas.

Yet this is only effective in the long-term for a few. Dinosaurs either end up in a crisis situation and probably death, or are able to transform themselves radically.

The radical transformation needed is related to four things:

- the paradigm shift needed in the minds of those in power

"Digitisation has made value-creation processes intangible; innovations are increasingly dealt with through the backdoor; garage start-ups are growing into giants"

"Only when the people within an organisation are included will they adapt well to changes. This is especially true when employees are exposed without protection to disruptive change in the business"

- reform of the overall culture of the company, its responsiveness and resilience to disruptive changes, and its diverse capabilities consistently to find and fit into changing environments
- the rebuilding of the whole organisation (and its employees) – as IBM did twice – to cope with the skills shift connected with a change of business systems in the face of radical technological breakthroughs or generational upheavals
- incorporating diversity into the enterprise, not just in traditional categories such as gender and age but also in critical thinking. William Ross Asby's 'law of requisite variety' states that 'variety absorbs variety'. This is fundamental for transformation.

Human resources management (HRM) can play a significant role in these transformation challenges since the response to the deeply engraved patterns within company structure and culture must acknowledge:

- the significant increase in diversity in all its forms and dimensions while maintaining good cultural glue at the core of the enterprise
- the radical improvement of individual and collective ability to adapt, especially in view of increasingly disruptive change

Signals, triggers and starting phases of transformation

How do we recognise that transformation necessities exist?

Here are a few early signals of the endangered sustainability of an organisation:

- Over the years, proven business models receive boosts from new technology but lose energy or become obsolete unless substitutes are found and commercialised
- Competitors – often small –find better and/or completely different solutions
- Internal corporate borders are closed and encourage isolation; changes in the external world are inadequately perceived in the inner world, let alone processed
- Increasing isolation creates an overstressed internal climate within the company
- Companies behave like a hamster on a wheel, meeting the challenges of tomorrow with responses from yesterday with the people of today
- A period of cultural decadence begins, as in ancient Rome feasting taking place as the enemy stands at the city gates
- Discontent in an organisation becomes overwhelming; revolutionaries and counterrevolutionaries appear on the scene as well as 'know-it-all' tradition-keepers; old versus new is debated openly in the decision makers' offices and/or tacitly on the shop floor

Finally, dramatic transformation has a number of ultimately shattering triggers, for example: a rapid "overturning" of the market models and technologies of an entire industry (such as print media); or a crisis degenerates a company into a cost-cutting machine.

Transformation can also be triggered by external events such as war, natural disasters, terrorist attacks or political interventions. Think of Angela Merkel's planned energy revolution in Germany.

8

20 years ago the big companies of the old 'Deutschland AG' (Daimler, Siemens, Dresdner Bank, Hoechst, BASF, Thyssen, BMW or Bosch) dominated the image of Germany...

2

...but today of these eight companies one has died, one survives only through state aid, two have had life-threatening crises and two have deteriorated significantly under global competition

"If companies need to become not better but different in order to survive they require the intellectual and emotional freedom to experiment"

For successful ambidexterity, freedom of thought and a trial-and-error approach are essential. It is not just about new or different thinking. An oracle of Delphi that proclaims (vaguely) what the future might look like is of little use.

Only when the people within an organisation are included will they adapt well to changes. This is especially true when employees are exposed without protection to disruptive change in the business.

But sugar-coating the change would be wrong. It is only when an organisation is aware that it has reached a dead end in its previous form that the pressure for change is converted into action.

Therefore successful transformation teams often encourage a 'sense of urgency', creating an 'artificial crisis' to raise alertness levels to that of an effective fire-fighting team The concept of 'irritation' is vital for preparing transformation.

Here, the concept of the corporate university comes into play – but with a completely new meaning.

Traditional corporate universities serve the status quo

General Electric (GE) and Motorola are considered the pioneers of the corporate university approach. They not only provided training for an exclusive cadre but also for the general run of employees. Above all, Jack Welch, the long-time CEO of GE, revolutionised the procedure in the 1980s. In Crotonville, GE's campus 30 kilometres from Manhattan, it was 'his' staff and 'his' leaders that implanted 'Speed, Simplicity, Self-Confidence' – a variant of the Six Sigma methodology that was the defining mantra for change.

The challenge for Crotonville – and all subsequent corporate universities – was:

- how will people perform better in existing structures and cultures?
- how can a worldwide organisation be streamlined from the top down with the help of its own cultural and educational centres?
- how can a company run faster, jump higher or wider and perform better than the others in the field but within the given business logic?
- how can homo-social reproduction, the ruling managerial and organisational DNA, be guaranteed?

The first German corporate university, the Lufthansa School of Business, which I founded, and centres at Haniel, Bertelsmann and Daimler followed the GE model from the mid-1990s and developed into efficient socialisation machines. Their mission was to serve both the selection and cloning of a ruling elite as well as the 'massification' of proprietary content, processes and philosophies throughout the organisation.

But how should companies, facing radically different challenges, organise their learning?

The energy, media and print, entertainment, commercial and automotive industry followed the telecommunications industry: not evolutionary change but managing disruptive changes.

Companies whose key task in dealing with future challenges lies in the transformation of their own DNA require neither cadre-training units nor mass-produced knowledge. Rather they require what we might call 'laboratories' - think tanks and experiential testing grounds for behavioural change and experiments with alternate business systems and also areas where experimental business architectures, more democratic leadership cultures, new mental line-ups and unconventional service initiatives can be assessed.

Corporate universities 2.0 – laboratories for transformation

If companies need to become not better but different in order to survive they require the intellectual and emotional freedom to experiment. If traditional leadership must become different it requires space for personal experimentation.

Instead of standardised teaching, behaviour constraints and predetermined curricula, it is necessary to encourage the learning and interaction of people in terms of a complex habitat. From a variety of perspectives and judgements, laboratories allow decision makers to radically question traditional business models and creatively destroy and reinvent them.

In order to take account of the disruptive dimension, such a transformation centre must not just drive the development of new pictures of the future for business and people. It must also simulate and test new working environments where the effects of technology and innovation on the social microcosm and the creative behaviour of teams and individuals can be experienced.

However, this new type of corporate university can only be successful if it gets the best out of people's raw talents and provides them with opportunities that enable self-examination and self-reflection. Strategy, technology or professional competence are superficial whitewash when individuals persevere with outdated motivations, concerns and patterns of action.

In order to cure themselves of old patterns and let go of outdated paradigms, managers need to acquire alternative

CORPORATE UNIVERSITIES - DINOSAURS ON THE PATH TO 2.0?

+ Prototype and lab for organisational renewal and innovation	?
+ Cultural nucleus in organisational change processes	Lufthansa School of Business
+ Platform and accelerator for implementing strategic top-down initiatives	GE Crotonville
+ Engine for collective standardisation	McDonald's & Disney Universities
Company specific professional and management school for the development of individual competencies	Motorola University & UniCredit Group Center

management skills – not only how to alter things radically in a new social-psychological space but also to experience how they themselves undergo change. Classic group dynamics, gestalt therapy (a form of psychotherapy that emphasises personal responsibility and individual experience) and sensitivity training must be utilised as well as value clarification and dialectic self-discovery.

Since egocentrism, control addiction, lack of self-reflection and narcissism often lead to the derailment of careers, personal leadership style and behaviour must also be addressed: Who am I? What is driving me? What is my shadow? How do I seek and deal with power? How do I deal with differences and diversity? Can I serve those around me?

Sloan Professor Emeritus of Organisational Psychology Edgar Schein of the Massachusetts Institute of Technology (MIT) in Cambridge coined the concept of 'upending experiences' in the 70s, where harrowing experiences 'throw' human beings, managers and leaders from their retracted paths and pose powerful questions of their thought and actions.

For companies in transformation, the framework and life of a new values architecture, beyond pure economics, is essential. Enforcing individual responsibility, learning from mistakes, and the strengthening of character and integrity are vital parts of learning design.

Corporate empathy and societal responsiveness This leads to the final requirement for successful transformation. Society in general, all around the company, is also part of a modern 'laboratory'. A company is not a fortress, operating only within the inner circle of stakeholders and shareholders. The outside world can, indeed must, take part in the new definition and positioning of a company on platforms that create encounters, controversial discussions and build bridges of understanding from inside to outside and vice versa.

Some companies demonstrate an 'organisational blindness' with all the consequences that occur when the corporate sensory system fails and the enterprise and the outside world are too alienated. Societal platforms help to see and feel the needs of humans and society. They offer the chance to reflect and develop a company's standing with its fellow citizens. Only if we are able to position companies in a more balanced way can we embed them in society on a more accepted and appreciated basis.

There is no question that developing corporate universities as engines for transformation is a challenge. Resistances must be overcome; old and comfortable thought processes must be left behind. But an 'out with the old, in with the new' approach is the only way to revitalise and reinvent corporate universities.

Educational institutions aimed at transformation must respond to four challenges:

1. look for answers to disruptive changes in the business
2. question the traditional role of leadership and organisation
3. offer the individual the possibility of self-development
4. ultimately, put the societal usefulness of the business or company to the test

Businesses must decide what they expect from their training centres. Should they be more advanced technical centres for pure knowledge transfer; should they be socialisation machines for the cloning of people; or laboratories to shape the future?

If one keeps in mind the challenges we face, the answer is clear. ■

ABOUT THE AUTHOR

Thomas Sattelberger has worked on the Boards of Directors of Lufthansa German Airlines and Continental AG since 1999 and from 2007 to 2012 Deutsche Telekom AG. He founded the Lufthansa School of Business as the first corporate university in the German-speaking world in 1997, and between 2005 and 2007 more than a dozen Continental AG universities in countries ranging from the Philippines to Romania. In 2010 he started Deutsche Telekom's Telekom School of Transformation Project.

Munich students win ICC Mediation Competition 2014

ICC's annual Mediation Competition aims to raise awareness of mediation which provides businesses with a procedural framework to settle matters cordially, rapidly and cost-effectively. A team of law students from Ludwig-Maximilian University of Munich won the 9th ICC International Commercial Mediation Competition last month, beating first-time entrants Monash University, Australia, in a riveting final mediation session in Paris. Competition newcomers Maastricht University finished third, and Bucerius Law School in Germany won fourth prize.

In a final closely observed by some 350 spectators, students demonstrated their mediation advocacy skills in solving a life-like dispute over the patenting of a newly invented pharmaceutical drug. Applying ICC's new Mediation Rules, Monash played the part of the requesting party, and Munich the respondent, with team members acting as either counsel or client.

"The competition is a great opportunity to see how students from other countries and jurisdictions address commercial disputes that businesses face," said Conor McLaughlin, member of the winning team along with Harley Steward and Martina Rehman. *"Mediation is probably new to a lot of law students. Most focus primarily on litigation. So this competition gives us an opportunity to explore other ways of resolving disputes, and try and find solutions that don't involve the lengthy, costly, and sometimes destructive, route to litigation."*

The Munich team was coached by Raffael Probst, of the Munich Center for Dispute Resolution, with help from PhD-Student David Kaufmann. Kaufmann said: *"My research is mainly on psychology and neuroscience of moral judgment and cooperative behaviour, which kind of helps when it comes to understanding how you get the other side to stay at the table and join you in exploring joint interests and options. It was very interesting to see, for the first time, how things I know in theory actually translate to the practice of mediation and negotiation."*

Biggest ever ICC Mediation Competition

An award ceremony marked the close of this biggest ever ICC Mediation Competition, which over six days brought together 65 university teams and 120 professional mediators from around the world. Munich's prize included internships with the ICC International Centre for ADR, and the Litigation and Arbitration Department of Linklaters.

"ICC is proud to contribute to the education of the next generation of dispute resolution specialists and to provide a platform for mediators from all around the world. We hope all participants return home with increased knowledge and skills, helping promote high mediation standards around the world," said Jean-Guy Carrier, ICC Secretary General.

For Pablo Bernad, Partner, Head of KPMG Risk Consulting in Europe, Middle East, Africa and South Asia (EMA), headline sponsor KPMG sees ICC's Mediation Competition as a source of new talent. He said: *"When we recruit, we look for people like the students here who are willing to get out of their comfort zone. Their mediation skills will be very important both in mediation, and in real life, in real business. The ICC Mediation Competition provides a neutral ground to bring those skills out. And it raises standards by bringing a great diversity of students and coaches from across the globe together with some of the most renowned professionals in the industry."*

Monash: process and facts

The Monash University team comprised Master of Law students Tessa Sullivan, Joanne Paul and Julia Larner, and undergraduate arts/law student Jemima Roe. Coach Naomi Burstyner, senior researcher and lecturer at Monash University's Australian Centre for Justice Innovation (ACJI),

A team of law students from Ludwig-Maximilian University of Munich won the 9th ICC International Commercial Mediation Competition

The ICC Mediation Competition was the biggest ever

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Sashika Jayewardene,
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and consultant in negotiation and conflict resolution, said: *"If you prepare students for mediation in terms of learning a theory and a process, and you give them an opportunity to understand the facts, they feel safe, and they'll do well. That's probably one of the most important things they learnt at this competition."*

Co-coach Wendy Gaddie, senior researcher, and coach at ACJI, added: *"The most valuable thing we've got out of this competition is being involved on an international scale with some of the most prestigious professionals in our field, and being able to take away valuable words of wisdom from around the world."*

With teams from Germany reaching the quarterfinals for the first time in the competition's nine-year history, this year was also marked by a high number of newcomers in the final rounds, including Denmark's Aarhus University, Hugh Wooding Law School in Trinidad and Tobago, and New York University School of Law.

Trinidad and Tobago student Ronald J Daniels, described the competition as a *"wonderful experience"*, adding: *"It opens up your perspective of mediation on the international front, not just domestic mediation. It's going to give me a more balanced view as a problem solver in the legal arena. We in the Caribbean are gradually moving towards the concept of the modern attorney who is in effect a problem solver and not a legal adversary."*

Representing ICC Mediation Competition newcomers Fatih University of Turkey, law student Muhammet Fethullah Kaplan agreed: *"It's been a really good experience. Mediation in Turkey is a new topic, so it's been very educational, and beneficial for our careers. We've had fun and made good new friends in other countries. I'll never forget this event in my life."* ■

Management, the Brazilian way - inspiration and perspiration build the future

James Wright is a Professor at USP and Director of the FIA International Executive MBA

Creativity, innovation, quick turnaround, flexibility, hard work, and an eye on the future are hallmarks of the Brazilian management style. Brazil is a young country, with great resources and a dynamic, multiracial society which firmly believes in building a better future. Local companies have achieved global leadership in diverse industries such as aircraft manufacture, renewable ethanol fuels, agricultural production, forestry management, mining, food and beverage, among others.

FIA Business School has graduated CEOs and business leaders in each of these industries, and has studied their management practices. These represent a particularly Brazilian brand of management, integrating creative strategies, innovative use of technology and resources, flexibility and social consciousness.

Somewhat surprisingly, the fun-loving Brazilians work long hours; rigorous project management, attention to detail, focus on objectives, hard work and perspiration are important elements in the success of outstanding companies like EMBRAER, the world leader in regional aircraft, VALE, possibly the most efficient mining company in the world, and AMBEV, global leader in the beer industry. All this achieved in a volatile economic environment, with poor transport infrastructure and an inefficient, regulation-bound and slow moving government bureaucracy.

This difficult context makes Brazil into a demanding testing ground for managers and for management techniques. Arguably, a couple of years in the country equates into five years of management experience in a stable economy, as new challenges, changes in economic outlook, opportunities and legal frameworks evolve at breakneck speed. Profuturo-FIA, a Future Studies Centre, was created in 1980 to study economic, social and technological trends, starting with a study of the future of fuel ethanol in Brazil.

As Brazil opened up its economy in the 1990's, Brazilian managers needed to change gears, moving from making easy money with clever cashflow management in hyper-inflationary times, when consumer prices changed every week, to managing costs and delivering real value to customers who could now compare prices in a stable economy in a globalised world.

Realising this need, FIA launched the first Executive MBA in Brazil, with international standards but a distinctly Brazilian flavour. The objective was to provide executives with modern management tools, coupled with a global outlook and social responsibility. A first innovation turned the traditional MBA head over heels; instead of starting with core subjects like accounting, statistics or marketing, it begins with in-depth analysis of the socio-economic and strategic challenges in a volatile business environment. With a clear

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vision of companies' mission and role in society, as well as the requirement to create superior returns to shareholders, the subsequent courses focus on leading company-wide transformations to achieve sustainable strategic leadership.

Sustainable leadership requires a strong emphasis on business ethics and Corporate Social Responsibility, taught in the Executive MBA since 1993. This has created lasting commitment to social causes by the Alumni Association, whose primary goal is to give back to society by applying management expertise to charitable NGOs. More than one thousand volunteer MBAs have trained hundreds of NGOs in business practices, and teaching materials have been provided to 17 countries.

From the outset, reversing the traditional flow of original management thought from more developed centres. Dr. James Wright, Associate Dean for Research at FIA, published in 1984 the first scenarios and models that called for companies to create 'Basic Products' specifically designed for low income consumers in emerging markets. This approach later became internationally accepted through CK Prahalad's 2005 bestseller The Wealth at the Bottom of the Pyramid. Professor Renata Spers of FIA followed up, analysing worth five years of financial data that showed, for the first time ever, that companies that served low income groups grew more and were more lucrative than firms that focused primarily on high income markets in Brazil.

In another innovative line of research, Professor Alfredo Behrens, studies how Brazilian samba clubs put on one of the world's grandest and most creative spectacles, the carnival parades. Each club, with up to four thousand members, competes with a rigorously orchestrated, perfectly timed one hour extravaganza of creative costumes, choreographed dances, imaginative floats, and a different story line. Poorly educated but highly motivated people, work hard for a full year to roll out, precisely on schedule, a completely new show, in an amazing project management feat.

Gaining a global outlook is a key part of management development, so since 1995 FIA Executive MBA graduates take at least two international study trips. Every year regular study trips go to the USA, UK, France, China, India, Dubai, Mexico and Canada. This is a truly international learning experience, which is materialised in comparative studies, seminars and business plans presented on their return to Brazil.

Integrating best practices across different business schools, the Americas MBA for Executives is a joint program between partner schools ITAM in Mexico, Simon Fraser University in Vancouver, Canada, Vanderbilt University in the USA and FIA in Brazil. Students from all four schools study the core subjects at their home university in the first part of the program, and then meet in four intensive nine day immersions in each country, to study and learn about each other's business culture. They conduct a real consulting project over a final six month period, putting into practice what they have learned in multicultural teams, often working at a distance, as so executives do today in international firms. This programme has shown itself to be a wonderful cross-cultural learning experience, as well as a very cost and time effective format.

These initiatives has allowed FIA to be the first South American school to effectively attract a class of full time MBA students from Europe and the USA, who come to Brazil to study in English and learn about management with a Brazilian flavour. In this way, FIA feels that it is helping to develop not only capable managers, who are making companies in Brazil more competitive, but preparing international executives who will work together to bring effective and concrete contributions to a better world. ■

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