ECEFIL
European Center of Economic and Financial Law
ΕΥΡΩΠΑΪΚΟ ΚΕΝΤΡΟ ΟΙΚΟΝΟΜΙΚΟΥ ΚΑΙ ΧΡΗΜΑΤΟΟΙΚΟΝΟΜΙΚΟΥ ΔΙΚΑΙΟΥ
REPORTER

Editorial

On March 11, the Heads of State or Government of the Euro Area, meeting for the third time in this constellation since the introduction of the euro, concluded on the adoption of a "Pact for the Euro" to be presented to the next European Council later in March. This Pact, another building block of a gradually emerging enhanced European economic governance after the recent debt crisis within the eurozone, meets in principle with the expectations of the markets (as indicated by their initial reactions), even though the timing of its adoption came as a positive surprise.

The Pact, [which has been designed to be compliant with the provisions of the Treaty on the Functioning of the European Union on the operation of the internal market], builds upon the main principles underlying the European economic governance as laid down in the Treaty (still unmodified since the adoption of the Maastricht Treaty): economic autonomy, coordination of economic policies (apart from monetary policy which is the competence of the European Central Bank, a European institution) and fiscal discipline. It contains four objectives concerning: competitiveness, employment, fiscal sustainability and financial stability. Leaving the form of the means for the implementation of these objectives mainly to the discretion of member states of the eurozone (a condition obviously set by their majority as a *qua non*), the Pact requires their Heads of State or Government to monitor politically any progress towards achieving them on the basis of a series of indicators.

The Heads gave also political support towards the completion of the work on the establishment of the European Stability Mechanism (ESM), which has been endorsed by the European Council in December 2010 and is expected to enter into force in January 2013, following a limited-scale amendment of the Treaty, as a successor to the current European Financial Stabilisation Facility (EFSF). In this context, the *novum* consists that both the EFSF and the ESM will be given the power to intervene in debt primary markets, even though exceptionally, as part of the financial assistance given (or to be given) to a requesting eurozone member state under the conditions agreed upon in December.

A decision to speed up the finalization of the amendment/enhancement of the Growth and Stability Pact (also initiated in late 2010) was also taken, addressed to the Ministers of Finance.

As expected, radical decisions were not taken. Nevertheless, a considerable deepening of the existing main framework on the European economic governance is taking shape, gradually as usual, but steadily. Its effectiveness in sheltering the eurozone from the disintegrating factors that have threatened its existence during the last 12 months is to be proven.

The Greek Corporate Tax Regime: A Realistic Turn

The conditionality imposed on Greece under the Memorandum annexed to the Loan Facility Agreement and the IMF Stand-by Agreement included significant increases in the tax burden on business and citizens, aimed at reducing the fiscal deficit. The impact of these increases has not been assessed by independent evaluators and is currently the subject of political controversy. Tax proceeds have increased but do not correspond to expectations (thereby confirming the predictions of the Luffer curve). Moreover, the extension of tax coverage to small business, thanks to the hitherto unused potential of Treasury databases, has increased tax proceeds, while also leading to thousands of closures. Clearly, economic success cannot depend on tax dodging. While firms observing reporting requirements should be satisfied from these developments, in the course of 2010 they were called upon twice to pay a special emergency charge, based on their corporate tax bill prior to the economic crisis.

On the other hand, under a provision adopted in 2010 (art. 13 of Act No. 3842) a new corporate tax regime was introduced involving a tax rate of 24% on undistributed profits, to be gradually reduced to 20%, while the withholding tax on dividends was set at an unrealistic rate of 40%, thereby encouraging Greek businessmen to set up parent companies in Cyprus and other low tax jurisdictions, in order to benefit from EC Directive 90/435, as amended by Directive 2003/123 (transposed into Greek law by Act No. 3453/2006). Under article 5 of the amended directive “profits which a subsidiary distributes to its parent company shall be exempt from withholding tax”. Interestingly, as of 1.1.2009, the status of parent company is attributed to any company of a Member State which has a minimum holding of 10% in the capital of a company of another Member State.

Under a new law just enacted by Parliament (art. 15), the corporate tax regime adopted last year has been repealed and, as of 1.1.2011, a corporate tax rate of 20% will apply to total profits, while the withholding tax rate on dividends is reduced to 25%. Arguably, however, the incentive to establish parent companies in low tax jurisdictions will continue to dominate corporate tax planning, as long as efforts at EU tax convergence fail to produce results.

Constantine Stephanou
Jean Monnet Chair, Panteion University
Director of ECEFIL

“Basel III”: the new regulatory framework of the Basel Committee on international prudential banking regulation

On December 16, 2010, the Basel Committee on Banking Supervision adopted two important reports entitled:

- *“Basel III: A global regulatory framework for more resilient banks and banking systems”,* and
- *“Basel III: International framework for liquidity risk measurement, standards and monitoring”.*

Both these reports are quasi final, since during the next months modifications and supplements to their provisions will be adopted according to the ongoing program of the Committee. As a matter of fact, on January 13, 2011, the Committee issued a press release entitled: “Basel Committee issues final elements of the reforms to raise the quality of regulatory capital”.

The content of these reports had also been endorsed politically in November 2010 by the G-20 Summit in Seoul.

These reports, widely known as “Basel III”, constitute part of the response of the Basel Committee to the recent (2007-2009) international financial crisis, addressing some of its main causes. Their provisions lay down a new international regulatory framework for banking regulation, by reforming the existing “Basel II” framework. The main objective of this reform is the enhancement of the stability of the banking system, internationally, by:

- enhancing the micro-prudential regulation of banks, in order to increase their resilience in periods of stress, and
- addressing, though the implementation of macro-prudential policies, the systemic risk that may affect the entire banking (and in general financial) system, and in particular the pro-cyclical amplification of this risk over time.

Accordingly, “Basel III” introduces significant modifications to the existing regulatory framework (in particular with regard to the quality and level of own funds), as well as new micro-prudential tools (such as a leverage ratio and two liquidity ratios). The *novum,* however, consists in the adoption of macro-prudential regulations, such as, mainly, the capital conservation buffer and the countercyclical buffer. In that respect, it has correctly been pointed out by Hervé Hannoun, Deputy General Manager of the BIS, that “Basel III” is *“an enhanced Basel II plus a macro-prudential overlay”.*

Professor Christos Gortsos

Responsible lending and borrowing in the EU – Initiatives of the European Commission

In June 2009, the European Commission (EC) issued a consultation paper on *"Responsible lending and borrowing in the EU"*, which will probably be followed up by a proposal for a Directive in the coming months. Even if there is already EU regulation on the issue (Consumer Credit Directive (CCD) and –indirectly– the so called Capital Requirements Directive), the EC believes that there is still significant room for improvements, especially in the area of mortgage credit.

According to the EC, *responsible lending* means that credit products are appropriate for consumers' needs and are tailored to their ability to repay, while *responsible borrowing* implies that in order to obtain a credit consumers should provide relevant, complete and accurate information on their financial conditions, and are encouraged to make informed and sustainable borrowing decisions.

In the consultation paper, the EC examines possible regulation in relation to certain issues which are linked or could contribute to responsible lending. In the areas considered:

(a) No specific rules exist at EU level in relation to the mortgage credit. This concerns advertising and marketing, advice standards, suitability and creditworthiness. However, according to the EC, in mortgage credit there are a number of disincentives from lending in a responsible way (e.g. the lender, in case of default of the borrower, has the possibility to resort to the sale of the property held as collateral).

(b) The existing rules in mortgage credit are not sufficient: for pre-contractual information, the existing provisions of the Code of Conduct on home loans are not binding. However, borrowers must be in possession of all necessary information to make an informed decision.

(c) No rules exist at EU level with respect to the provision of credit in general. This remark concerns risk guidelines, which could be provided to consumers at a pre-contractual level in order to alert them on the risk involved as well as responsible borrowing, i.e. the "obligation" of the borrower to be honest when providing documentation to the lender.

Moreover, the EC envisages the adoption of specific rules for credit intermediaries and the handling of complaints.

Dr. Christina Livada

Financial Intelligence beyond Money Laundering: Using FIUs in the International Anti-Corruption and Asset Recovery Campaign

Intelligence may prove a decisive factor in the global effort against corruption and it can certainly play a central role in tracing the proceeds of economic crime related with abuse of power by Political Exposed Persons (PEPs), such as heads of state or government, politicians, government and legal officials and high-ranking military officers, their relatives and associates. Intelligence networks may prove decisive for the financial integrity of the developed economies and for the economic development and political stability of the developing countries.

The ability to recover assets that have been embezzled and hidden in foreign jurisdictions is a key part of the international anti-corruption campaign. By asset recovery it is encompassed asset tracing, satisfying legal requirements, resolving competing claims, invoking mutual legal assistance and the mechanics of repatriation. Recent events in the Middle East and North Africa have created an opportunity for substantive and lasting change. As governments around the world seek to freeze the assets of former dictators, the debate concentrates on tackling the money flows, a major concern of the Financial Action Task Force (FATF), which sets the international anti-money laundering (AML) standards. Countries are seeking to freeze the assets of former dictators, but no one can give a plausible answer to the question how could the money placed there, in the first place. FATF should strengthen:

(a) key standards for pursuing dirty money and bringing criminal and corrupt individuals to justice,

(b) international cooperation to get the money back after it has gone as well as acting on the basis of a more proactive, know-your-customer, due-diligence requirements to ensure that banks know where their customers are getting their funds from and that they are not the proceeds of corruption.

In that framework the functions performed by Financial Intelligence Units (FIUs) can prove vital in assisting AML operations as well as recovering illegally obtained funds and assets. FIUs are specialized agencies within governments that are given the authority to collect reports of suspicious financial transactions from various reporting entities like financial institutions and designated non-financial businesses and professions; they analyze these reports and disseminate the resulting intelligence to local competent authorities such as law enforcement agencies, prosecutors and foreign FIUs to combat money laundering and terrorist financing. Assuming their new role FIUs should establish contacts in financial institutions, domestic agencies, and foreign FIUs through the Egmont Group that can serve as a two-way sharing channel of resources in any given investigation. The familiarity of each FIU within its jurisdiction with financial services, products and trends can contribute in analyzing financial records and flows, both critical in money laundering and asset recovery investigations.

Professor Stavros Katsios

EU Merger control: The Olympic - Aegean case

On 26 January 2011 the European Commission announced the prohibition of the proposed merger between Aegean Airlines and Olympic Air, on the basis of the EU Merger Regulation. The merger had been notified for clearance on 24 June 2010. The rational behind the (unpublished yet) Commission decision is that the proposed merger would have resulted in a quasi-monopoly on the Greek air transport market. Together the two carriers control more than 90% of the Greek domestic air transport market and the Commission's investigation showed no realistic prospects that a new airline of a sufficient size would enter the routes and restrain the merged entity's pricing. The companies offered to cede take-off and landing slots at Greek airports, but the Commission rejected the offer as Greek airports do not suffer from the congestion observed at other European airports in previous mergers or alliances. As with previous airline mergers, the Commission analysed the combined effects of the proposed merger on the individual routes on which both companies operate. According to the Commission, the proposed merger would have led to

a quasi-monopoly between Athens and Thessaloniki, the country's second-biggest city, and between Athens and eight island airports. In Commission's view ferry services do not generally constitute a sufficiently close substitute to air services so as to discipline the merged entity's pricing behaviour post-merger. Their travel times are much longer and frequencies lower. The only domestic route where ferry services were considered a close substitute to air services is Athens-Mykonos for which the Commission concluded there were no competition problems. The Commission has examined 11 mergers and many alliances in this sector since 2004 and this is only the second negative prohibition. The first, in 2007, was a prohibition of the proposed acquisition of Aer Lingus by Ryanair, both Irish, which presented similarities with the Greek case. Both transactions amounted to a merger of two airlines based at the same "home" airport in the national capital (COMP/M.4439 *Ryanair/Aer Lingus,* OJ C 47, 20.2.2008, pp. 9-20). The General Court upheld the Commission's prohibition of the Irish case in its judgment of 6 July 2010 (Case T-342/07 *Ryanair Holdings vs Commission*).

Professor Nikolaos E. Farantouris

Postal services & the postal market: Towards full market opening

Following the adoption of the third Postal Directive in 2008, Commissioner McCreevy noted that *"The Directive was a job well done. But work is hardly finished. The Directive has paved the way for the accomplishment of the internal market for postal services. But markets will not automatically open. I am committed to using all means at my disposal to make a competitive and sustainable postal market a reality, with its benefits for businesses and consumers".*

Therefore, the remaining years towards the opening of EU postal markets to full competition will be crucial in determining whether the path that has been followed so far, namely since 1992, with the adoption of the Commission Green Paper and the three successive Directives (1997/2002), has managed to address in an efficient and satisfactory manner the main concerns in the postal sector, and if the desired results have been reached, both from a user and provider perspective.

There still are a number of significant questions about future developments in the postal sector, also related to technological development and to the future of communication, as well as important challenges ahead. What really matters is to identify the problems facing the postal sector, in order to come up with specific proposals and solutions, so the more in view of the importance of that sector for the economy and our society.

Up until now, the gradual opening of the markets through the successive restriction and –ultimately– elimination of the legal monopolies known as *'reserved areas'* came somewhat as a panacea, a self-objective, arguing that liberalization of postal services will bring a series of substantial benefits for the users with respect to the quality of service, technical standards, tariffs. During the last 20 years or so, this gradual opening has therefore been closely monitored and assessed by the relevant competition, national regulatory authorities. However, once the opening of the postal market is fully achieved, the ultimate objective will not anymore be to liberalize that specific market. The focus will be on the obligation to uphold the universal service, mainly through new financing methods, since financing has been so far secured through the reserved area. Indeed, before its last amendment by the third Directive, the first Postal Directive provided that *"to the extent necessary to ensure the maintenance of universal service, the services which may be reserved by each Member State shall be …".* Therefore, the financing issue appears to be the next object of main concern, as if adequate financing will in itself ensure the service, and most importantly the universal postal service for all users.

Dr. Georgios N. Katapodis

EU dialogue on the post–2013 Multiannual Financial Framework (MFF)

Current dialogue between the European Commission, the European Parliament and the Council has been launched concerning the post 2013 Multiannual Financial Framework. Before the discussion on the budget itself, the fundamental question that should be answered is "what should be financed by the EU?". The European Commission launched the idea of the social market economy of the 21st century in the EU 2020 strategy as a "smart, sustainable and inclusive economy". The EU 2020 strategy must be taken as the basis for the political priorities of the next MFF, however more attention should be paid on policies and actions that have a European strengthening impact, a European Added Value. In fact, the European Added Value can be considered the "corollary of the established principle of subsidiarity" as defined in Article 5 TEU. As a consequence, the EU budget should be used to finance actions that Member States and regions cannot finance themselves with better results. Expenditure at EU level should be able to make proof of its European added value, following the "subsidiarity check".

Actions and priorities that will be taken into account in the next MFF apart from those described in detail in the EU 2020 strategy, will be linked with cohesion policy, research and innovation, education and youth, migration flows and justice and home affair issues. The concept of the European added value is an argument addressed towards Member States that European spending is not about re-distributing money, but about investing it in a strong and competitive Europe. In areas where the European added value leads to a shift of responsibilities from the national to the EU level, Member States are in turn in a position to save costs. Following the financial crisis heavy impact within the EU and in times of severe and long-term budgetary constraints, coordination between the EU and national budgets should be seen as crucial for the sake of improving economic governance, transparency and efficiency of public spending.

Dr. Marina Stefou

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Forthcoming events of ECEFIL

Market Regulation and Supervision: Challenges and Prospects

ECEFIL Annual Conference

Athens, 18 - 19 May 2011

ECEFIL is pleased to announce the first Annual Conference on *"Market Regulation and Supervision: Challenges and prospects"* in Athens from the 18th to the 19th May 2011.

The first part of the conference, 18th May 2011, will be devoted on *Network Services and infrastructures.* Specifically on:

- *Electronic communication:*
  - *New generation Networks: VDSL versus FttH,*
  - *Transition to digital television, and*
- *Participation in the production and supply of electricity by independent suppliers*

The second part of the conference, 19th May 2011, will be devoted on the *Financial Sector* and more specifically on the ongoing European developments in the:

- *Banking sector*
- *Capital markets, and*
- *Private Insurance*

Well known experts and academics will open the floor for discussion, dissimmination of information, and exchange of views and good practices.

A year after the crisis: Adjustment in Greece and the Eurozone

European Parliament

Brussels 24 May 2011, 15.00 - 17.30

EKEME, ECEFIL and TEPSA jointly organize a conference on *"A year after the crisis: Adjustment in Greece and the Eurozone"* in Brussels on 24th May 2011 at the European Parliament.

Key-note speaker will be Prof. Jean-Victor Louis, Professor Emeritus ULB, Brussels, and former Secretary General of TEPSA.

Broad discussion will be made on the new European economic governance and the Greek case.

For more information visit our website at:

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