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Roger Pedder, Heinrich Spängler, Jesús Casado, Lutz Goebel and Charles Robinet-Duffo.

## Liaising with the Austrian family business community

*On the 28th and 29th of May, EFB organised a joint event with FBN Austria, to coincide with EFB's first General Assembly of 2013 in Vienna. Held in the famous Hotel Sacher, EFB organised a conference entitled, 'Family Business in a Changing Europe.' The conference was a chance for EFB to engage with the local Austrian family business community on current affairs, and also on the political and economic future of family businesses in Europe.*

### On performance during the crisis

A first panel discussion, moderated by Jesus Casado, Secretary General of EFB, was dedicated to exploring the performance of family companies during the crisis, the regulatory environment that family companies were now operating in, and recommendations for the future. The panellists were well placed to give ground level feedback on the performance of family companies, due to them all being family business owners themselves, and also chairs or active members within their respective national family business associations.

**Charles Robinet-Duffo**, CEO, Henner Group and board member of ASMEP-ETI and FBN France, noted that in France seventy per cent of the members of the French family business associations had expanded their workforces, but also that the debt burden of on these companies had been lowered. In general, Mr Robinet-Duffo stated that family companies had outperformed their listed counterparts. Mr Robinet-Duffo remarked, however, that the situation in France remained difficult, and that the Government had shown a lack of understanding with regards to promoting French businesses. Mr Robinet-Duffo noted that the relief on the transfer of business had been maintained, but that the procedure was highly burdensome. He declared that his associations were pushing for fiscal incentives for long-term investments, a subject which is being currently debated in Brussels. On the issue of →

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wealth tax in France, he remarked that the system was counterproductive due to minority shareholders having to pay the tax, meaning the company would pay out dividends just to pay the tax.

**Roger Pedder**, President of European Family Businesses, noted that generally the performance of British business had been flat. With regards to family business performance, Mr Pedder stated that anecdotal evidence has suggested that family companies had done well due to lower debt burdens. On the UK government's response to the crisis, Mr Pedder remarked that bank lending was trying to be stimulated via guarantee provisions, but there was no immediate prospect of strong growth. Due to the government recognition of the family business sector in the UK, Mr Pedder noted that the tax situation for family businesses was rather benign, through business property relief (BPR) for business transfers, and fiscal incentives for new investments through various enterprise initiative scheme. Mr Pedder remarked however, that these enterprise initiative schemes should also be applicable for established companies, as the schemes are aimed at start-up creation.

**Heinrich Spängler**, President of FBN Austria, remarked that Austrian family companies had performed relatively well during the crisis. 'The long-term inherent outlook of family companies has



Former chancellor Schäuble addressed the participants in the gala dinner celebrated the night before.



Mr. Spängler raised the issue of corporate governance during the panel discussion.

served them well'. On the response of the Austrian government during the crisis, Mr Spängler remarked that the banking rescue in Austria had been done quickly and efficiently. But he stated that harsh restrictions on the banking sector was threatening to push the country into recession. When quizzed about what family businesses should be focusing on in Brussels, Mr Spängler noted that the issue of corporate governance was significant. He explained that in countries with the dual board system, some were advocating for obliging companies to have a fully independent supervisory board. Mr Spängler remarked that this had the potential to mean that family capital would not be adequately represented, a point that EFB is currently monitoring and will reinforce in its plan of action with EU institutions.

**Lutz Goebel**, President of Die Familienunternehmer, noted that between 2008 and 2010 the economic situation for family businesses had been difficult, with production suffering in almost all sectors. However, he remarked that very few family companies had reduced their workforce, and now turnover was above pre-crisis levels. Mr Goebel underlined the flexible labour arrangements, known as the 'Kurzarbeit', and German companies' equity ratios having been strengthened over time, had aided family companies to recover whilst maintaining their workforces. Mr Goebel noted that certain actors in Germany are pushing for increases in taxes on income, inheritance, dividends, and the re-introduction of a wealth tax. On the special regimes for family business in Germany, Mr Goebel remarked that inheritance tax relief for family companies is in the constitutional court, due to it being seen as an unfair advantage. Mr Goebel stated that the current regime works well and full relief can be achieved if the company maintains staff numbers for a period of seven years.

All the participants agreed that EFB's focus in Brussels should be to change the mind-set in Europe, and force a change towards responsible capitalism. There was general agreement that EFB should press for policies that better the fiscal



treatment of equity, put the focus on long-term capital as opposed to short term capital gains from speculative activity, and improve the lending provisions for all types of SMEs. 'Patient capital through time is a stabiliser in an economy and is the basis for future growth', remarked Roger Pedder.

### Next generation

The second panel discussion, moderated by Albert Jan Thomassen, Director of FBNed, was dedicated to getting the next generation of business owners point of view on their experience of the crisis and their outlook for the future. The panellist who participated in the discussion are all fourth generation.

**Karl Mayer-Rieckh**, Deputy Chairman of Leder & Schuh remarked that the changing competitive landscape had triggered a lot of changes within his family business. For example, having to manage the balance between a long-term outlook and keeping the business agile. Referring to the current economic situation, Mr Mayer-Rieckh remarked that access to bank debt is becoming more problematic due to banks wanting to see higher equity ratios.



From left to right: Marie Christine Ostermann, Karl Mayer-Rieckh, Gloria Fluxá and Albert Jan Thomassen

**Gloria Fluxá**, Executive Vice-President of Iberostar, noted that the company had faced some tough years, but the business was recovering well. She noted that the company's diversification had helped through direct sales channels via internet platforms. In addition, she remarked that the crisis had forced an internal review of the company.

Mrs. Fluxá remarked that the family had created a family protocol to manage the integration of outside expertise, which has worked well for the business. With regards to recommendations for government, Mrs. Fluxá noted that better language skills were absolutely crucial for the younger generation.

**Marie Christine Ostermann**, Managing Director of Rullko Großeinkauf GmbH & Co, noted that her company had performed relatively well through the crisis, but competition is now fiercer than ever. On the future of her company, she noted that the inheritance tax situation in Germany was worrying as it could be liable to change following the German elections. Mrs. Ostermann stated that the challenge for young entrepreneurs would be to hold more equity in their businesses, as the system was loaded in favour of debt. She noted that the lesson from the crisis should be the perils of over indebtedness. On the question of education and the next generation, the panellist said that there was

still a real lack of and entrepreneurship dimension within the educational system, and also a lack of understanding or desire for the entrepreneurial life in Germany.

### Alliance with KPMG

During the conference, **Christophe Bernard**, Head of Middle Markets at KPMG, and **Friderike Bagel**, announced the formal long-term partnership between KPMG and EFB. Mr Bernard stated that KPMG proudly shares the same values of family business. Both presented the joint research projects that KPMG and EFB would be undertaking together.

### Mariano Puig

Finally, at the closure, **Alfonso Chiner** Professor at IESE Business School introduced **Mariano Puig**, President of Fundació n Puig, who delivered a captivating presentation entitled 'Managing succession across multiple generations'. Mr Puig noted that his business was now in its third generation. He remarked that the size of the family, following the 2nd generation, had made the governance particularly complex. Mr Puig stated that there are ways to navigate this complexity, like establishing exemplary governance. Mr Puig highlighted in a family business there must be a balance with legitimacy and meritocracy. Finally, he remarked that the Family makes contributions to the business, via commitment, stability, culture and values, and long-term vision.



Mariano Puig

He summarized the life of a family business leader through the following phases: 'First: learn how to do, second: do, third: teach others how to do, fourth: make others do, fifth, let others do'.



## ***EFB contributes to the European Commission's consultation on long-term financing***



EFB recently participated in the European Commission's Green paper on the long-term financing of the European economy. European Family Business answered the questions it deems core to the interests of family companies across the EU, and where its expertise can contribute to the debate about how to foster long-term financing.

Here are some of the key points stressed of EFB's response:

### **Supply and Characteristics of long term financing**

In its response, EFB noted that while the paper refers to household savings as the main source of funds to finance investments, the paper does not recognise households as Investors. EFB believes that there is lack of recognition that households are an important driver of the economy, actors/subjects who can make a huge difference as entrepreneurs or as co-financers of entrepreneurial activity. The amount of passive household savings in the EU area is substantial. Therefore, it is of the essence that households are encouraged, i.e. by means of promoting a lucrative taxation of equity, to invest their savings in businesses.

### **Corporate Income Tax Reforms**

Regarding the question of potential corporate income tax reform, EFB noted that for the real economy, a better fiscal treatment of equity is needed, as it is the logical source of long-term financing.

EFB highlighted that there is a growing body of institutional literature, from the IMF and European Commission, which is questioning the benefits of a continued debt bias in taxation.

EFB noted that the discrimination of equity in most of Europe's tax codes has affected the economic decisions of millions of family business owners who would ideally prefer to invest and re-invest equity in their companies for the long term. Indeed, tax codes that favour leverage and treat equity less favourably than debt have caused European businesses to be much more vulnerable to economic downturns than they would be if there was a level playing field for equity finance.

In the response, EFB recommended correcting the debt bias in taxation, via the implementation of a tax system that does not favour debt and other forms of investment over equity but creates a level playing field for all forms of savings and all types of owners. EFB believes that this would firstly, encourage the flow of private and household savings to businesses and, secondly, encourage businesses to re-invest their retained earnings in the business. This would contribute to economic growth and employment in Europe.

### **Tools and frameworks for financing**

In its response, EFB fully supported the redevelopment of national multilateral banks, or investments schemes to fill the gap when the private banking system does not satisfy demand, with a particular focus on financing the real economy. In addition, EFB supports the creation of government and privately backed funds that invest and provide equity financing to SMEs, which are denied access to stock or bond markets.

Finally, EFB remarked that too often, ground level business owners do not know that other forms of finance exist, and rarely look outside of the conventional commercial banks. Funding opportunities provided by the European Budget to the real economy must be expanded and better communicated to the target recipient.





## Sustaining family businesses beyond generations with good governance



Christophe Bernard  
KPMG Partner in  
charge of Family  
Business in Europe.



Alain Berthoud,  
KPMG Partner in  
charge of Family  
Business in France

Family businesses are a source of wealth for the economy. They generally have a long-term focus and demonstrate excellent resiliency in the face of economic crises, compared with other types of traditional companies. In addition, they are often integrated into the local economic fabric and contribute to economic growth.

At the same time, their familial nature can be a weakness in that it requires two fundamentally different spheres to coexist: business and family. Business is guided by performance and rational decision-making, while family is more strongly impacted by emotion. This can be a virtue for a company when all family members are in agreement, but also a disadvantage when their values and goals differ. The risk is even greater when several generations hold a stake in the company. Transition phases, in particular, are sensitive times. Therefore, it is in the interest of the company to organize the family unit by setting forth rules that are accepted by all. Two major tools can be used for this purpose: the Shareholder Agreement and the Family Constitution.

### The Shareholder Agreement: a legal framework

The Shareholder Agreement is a binding legal contract. Its scope is easy to identify: by definition, it concerns the family members who are shareholders in the company. As a legal document its form is clearly delineated, even if its specific content may vary according to the family and the company.

The Shareholder Agreement typically comprises four main sections:

**Management of the company:** clauses concerning voting rights (quorum, enhanced majority, veto rights, etc.), clauses concerning administration of the company (choice of governance bodies, their composition, appointment of independent directors, creation of committees, relationship between family and company governance, etc.), and finally information clauses (appointment of statutory auditors, control rights, communication about the company, etc.)

**Shareholders:** financial clauses and, in particular, those concerning distribution of the company's profits, clauses on control of ownership changes (preemption, stock market introduction, liquidity of shares, etc.), and finally termination clauses (exclusion, right to withdrawal, share appraisal, etc.)

**Management of the agreement:** its lifespan, sanctions in case of breach of the agreement, confidentiality and non-competition clauses.



**Specific elements:** this section may include information relating to the Family Constitution or to the involvement of family members in company governance.

### **The Family Constitution: a moral commitment**

Unlike the Shareholder Agreement, the Family Constitution does not have legal standing, but rather is a set of rules freely accepted by the family members on principle, that represents a kind of moral commitment. While it is a more flexible document laying out the principles and values that guide the family's action, this does not prevent it from also precisely defining the objectives assigned to the company. If we explore in more detail...

First of all, the Family Constitution has a wider audience than the Shareholder Agreement. It concerns all members of the family, whether or not they are shareholders. In fact, defining the family perimeter is one of the issues to be

resolved prior to drafting the constitution. Who is acknowledged as being part of the family? Who wants to commit to the rules the family is defining?

At the same time, the Family Constitution addresses broader topics than the Shareholder Agreement. It is up to the family to decide what subjects will be covered by its constitution. There are many potential topics:

- What are the family's values?
- What are the strategic objectives for the company?
- How are relations between the family and the board of directors managed?
- How are conflicts within the family managed?
- How is created wealth distributed?
- How are the family members integrated into the company? And how are they trained?
- How is transmission of ownership of the company managed?

Drafting a Family Constitution will not necessarily prevent conflicts, but it does provide a framework for better managing and resolving them. Often, the mere act of thinking together about these key questions helps a family anticipate future problems. By clarifying how the family operates and how its relation to the family business is expressed, the constitution helps defuse frustrations that could otherwise arise in the absence of rules.

The Family Constitution is a complex document.



Often an outside adviser can be useful in helping the family arrive at consensus on difficult issues. An adviser with good knowledge of corporate and tax law will also be able to ensure that the Family Constitution and Shareholder Agreement form a coherent package.

Finally, an outside adviser provides a framework for the process. Drafting a constitution involves certain necessary steps, such as understanding the family and business environment and a phase for everyone to give their input. Only after these discussions can the adviser propose a document that corresponds to the family's wishes, keeping in mind also that these rules will need to evolve over time.





Jesús Casado

## ***Letter from the Secretary General***

Dear friend,

The European Union and its Member States are still grappling with the problems of trying to get Europe going again. Recently, the Commission launched the long overdue debate on how to best deliver Europe's long investments needs via a public consultation entitled 'Long-Term Financing of the European Economy.'

In our response, EFB highlighted the need to strengthen the equity base of European companies, as Equity is the logical source of long-term financing. The discrimination of equity in most of Europe's tax codes has affected the economic decisions of millions of family business owners who would ideally prefer to invest and re-invest equity in their companies for

the long term. Indeed, tax codes that favour leverage and treat equity less favourably than debt have caused European businesses to be much more vulnerable to economic downturns than they would be if there was a level playing field for equity finance.

EFB called on the Commission to take up the ambitious task of a full reassessment of tax codes across the EU 27. EFB believes that various codes have grown up over time and may now be so complex that they result in perverse outcomes and disincentives. As a result of such a reassessment, the Commission would have a comprehensive list of best tax practices that it could publish and thereby support the development of tax systems in the EU to better promote growth and employment.

Finally, on the role of the banking sector in the provision of long-term financing, EFB expressed support to the Commission's efforts in creating a legislative framework where the banking sector is not allowed to return to the excesses of the past. Family businesses across Europe are in favour of a banking sector whose primary focus is on serving the needs of the real economy.

In addition, in my three first meetings of the High Level Group on Administrative Burdens, I had the chance to verify the huge potential of this advisory group in helping European companies reduce their administrative costs. I have chosen to be reporting member in Economic and Financial Affairs, in Enterprise and Industry, and in Internal Market and Company Law, plus co-reporting member in Taxation, Customs and Statistics.

In this third mandate, the main focus of the group will be twofold: first, we will concentrate our efforts in identifying measures that could help the reduction of burdens for SMEs and second, we will help the Commission to verify if the measures adopted at the European level have really been implemented on the ground by all the member states, which is not always the case. In other words, how much of these reductions finally reach the intended recipients.

We will start to concentrate our work, amongst others, in exemptions for micro enterprises from certain provisions of the accounting directives, Intrastat reporting obligations for the compilation of statistics and e-invoicing on VAT. Other measures identified by the group on the area of transport (tacograph, reduced reporting obligations) and public procurement will be also taken into account. The idea is to focus our work in no more than ten measures, in order to be more effective.

President Barroso plans to participate in the next HLG meeting, on the 19th of September.

Finally, in May, with the support of FBN Austria, EFB held its first General Assembly of the year in Vienna. During the GA, EFB presented its achievements and current priorities issues to its member associations. EFB's newly formed Tax and Legal, Ownership and Entrepreneurship, and Competitiveness Committees were formalised and launched. With the help of our new partner KPMG, we are planning to publish a Europe-wide comparative tax study focused around the transfer of business, and soon the EFB-KPMG Barometer will be published in the autumn.





## **Jesús Casado appointed member of the High Level Group on Administrative Burdens**

*The high level stakeholder group on administrative burdens advises the Commission on simplification & reduction of administrative burdens in the EU.*

The High Level Group of Independent Stakeholders on Administrative Burdens, now in its third mandate, has appointed European Family Businesses Secretary General Jesus Casado to be one of its members.

The group, which reports directly to President Barroso, is chaired by Edmund Stoiber, former Minister-President of Bavaria, and formed by other 14 experts in the areas of business and economic policy from all across the EU.

The group's task shall be to advise the Commission on the administrative burden placed on business, in particular on SMEs and micro companies, arising from EU legislation, and on simplifying existing EU legislative acts appropriate for review and on how to make public administrations in the Member States more efficient and responsive to the needs of stakeholders, in particular SMEs, when implementing EU legislation.

In particular, the group shall provide advice to the Commission on the measures aiming to reduce the administrative burden and simplify existing legislation, with a particular focus on the needs of small businesses. Also on its simplification rolling programme, focusing on acts with a high potential for reducing the administrative burden.

The group will share with the Commission its views on the basis of the roadmaps, concerning potential administrative burden placed on business, in particular on SMEs and micro companies when applying EU legislation.

It will also advise on measures that can be taken at national level to help Member States apply the EU legislation adopted under the Administrative Burden Reduction Programme in the least burdensome way.

Work will also be conducted on measures to make administrations more responsive to the concerns of SMEs and more responsive to the needs and the imperative on growth when applying EU legislation.