European Commission

Enterprise Directorate-General

FINAL REPORT OF THE EXPERT GROUP ON THE TRANSFER OF SMALL AND MEDIUM-SIZED ENTERPRISES

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Legal Notice

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TABLE OF CONTENTS

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The group met six times under the chairmanship of the Commission. The report is based on the contributions of the experts and has been compiled by the Commission.

EXECUTIVE SUMMARY

A business transfer in the context of this report is understood as a transfer of ownership of an enterprise to another person or enterprise that assures the continuous existence and commercial activity of the enterprise. This can take place within the family, through management buy-outs (sales to non-family management/employees) and sales to outside persons or existing companies, including take-overs and mergers.

The expert group on the transfer of small and medium-sized enterprises (SMEs) was set-up in November 2000 to help the Commission monitor the implementation of the 1994 Recommendation on the transfer of small and medium-sized enterprises. Central to the Best project on Transfer of Businesses, it consisted of experts from 12 Member States. Its tasks included identifying new legal, tax and support measures taken since 1998 when the first review was made, assessing the measures taken, analysing the provision of support measures and making proposals for further action.

In mapping the measures taken by the Member States, the experts found that:

- All Member States had taken some measures in response to the Commission Recommendation, however:
- no measures at all had been taken in more than half of the potential areas of action;
- as many as thirteen Member States provide for special rules for inheritance and gift taxes in the case of business transfers;
- ten Member States have taken measures to facilitate the transfer to third parties, and
- there are some areas where more than two thirds of the Member States have not taken any measures.

Among the legal and tax recommendations, the expert group identified the following five key areas for business transfers:

- Measures facilitating the transfer of businesses to third parties
- Specific measures facilitating transfers to employees
- Special rules for inheritance and gift taxes for business transfers
- Relief for early retirement
- Tax relief on money received from a transfer which is subsequently reinvested in another SME.

The experts stress that when proposing new legislation affecting business transfers, including taxation measures, the Member States should ensure that the conditions for business transfers do not deteriorate.

A lot of support is available for business transfers from numerous different bodies. However, this is not often offered in a structured manner and thus it does not necessarily reach the target audience. Raising awareness, providing information on the support available, offering specific training courses on business transfers, including business transfers in the curriculum on entrepreneurship education, coaching and counselling, providing market places for buyers and sellers of companies and making finance available are important means to facilitate and to provide support for business transfers. This report highlights good practice examples from different Member States in all these areas.

According to the experts, business transfers are still very often triggered by the entrepreneur's retirement but those due to personal reasons are increasing and a growing number of business transfers will take place outside the family to third parties. There is a lack of comparable data on business transfers at European level but it can be estimated from national research data that approximately one third of enterprises will transfer ownership in the next 10 years (ranging from 25-40% depending on the Member State). This corresponds to an average of at least 610 000 SMEs to be transferred each year, of which 300 000 SMEs with employees, involving 2.1 million jobs, and 310 000 SMEs without employees.

As a consequence, in the coming years we may foresee an increased demand for future potential SME buyers/owners, which will require more focus on motivating and training them.

The values and views of business owners have changed. Whereas the entrepreneurs of the immediate post-war period have built their companies themselves, younger entrepreneurs do not necessarily have the same emotional bond with their companies. They are more prone to sell their enterprise for personal reasons and they frequently are changing between self-employment and employment or may establish consecutively several enterprises *(serial entrepreneurship)*. This trend of more frequent ownership through the working life of an individual may create increased business dynamics and enhance innovation. Since there is a tendency for SME owners to reduce their efforts to develop and expand their enterprises many years before retirement, the increasing trend of transfers that take place before retirement can help ensure that a lot of good potential is not lost and the value of the companies will not start decreasing.

Despite the individual differences in the Member States we are looking at the same trends in all Member States:

- An increased importance of business transfers as a policy issue due to the high and rising number of transfers within the ten years to come;
- An increasing number of business transfers will take place outside the family to third parties;
- An increasing number of entrepreneurs will only stay in the same enterprise for a shorter period of time, not a life time; and
- Personal decisions (early retirement; change of profession, interests or in the family situation, etc.) and changing competitive environment (changing markets, new products, new channels of distribution, etc.) and not only age will increasingly be the trigger for transfers.

With these trends and challenges in mind, the expert group recommends:

- Creation of a “European Business Transfer Centre”, co-ordinating and facilitating the work of the national activities
- Creation of a European sellers and buyers database/market place, connecting the activities of existing national databases and stimulating the creation of host databases in countries where those do not yet exist
- Organisation of regular European seminars/meetings/fora
- Development of alternative or additional tailor-made training and management tools
- Public initiated support programmes and research
- Equal attention should be given to start-ups and transfers.

Longer-term attention from policymakers is required to prevent unnecessary business closures and encourage entrepreneurship, growth and development. Therefore, the Commission in close co-operation with the Member States is urged to establish a detailed Action Plan for how and when the recommendations proposed by the expert group will be implemented.

1. INTRODUCTION

In December 1994, the Commission adopted a Recommendation concerning the transfer of small and medium-sized enterprises[1]. In this Recommendation, the Commission identifies regulatory and support measures which could facilitate business transfers. The Recommendation was followed up by a Communication in March 1998[2] which reports on the progress made by the Member States by the end of December 1996.

The current paper is the basis for a follow-up to the Commission Communication of 1998 and it is the outcome of the work of an expert group on the transfer of small and medium-sized enterprises which was set-up in November 2000.

The tasks of the group were:

(1) To verify and complete the measures taken by the Member States which the Commission had compiled. To analyse the current situation in the implementation of the 1994 recommendation and to evaluate the effectiveness of the most important measures.

(2) To verify the business transfer measures in the support database and to identify new measures in the participant countries (e.g. awareness raising measures, training, cross-border issues, and market places).

(3) To identify good practices among the measures which could be fed into the good practice database.

(4) To analyse the provision of the support measures (who provides them currently, what would be the best channels to provide them, quality of these services, coverage, etc.).

(5) To discuss and create possible indicators for monitoring the provision of support measures in the Member States and make proposals for statistical work.

(6) To provide views and recommendations on the current work and on possible future steps leading to a concrete action plan.

1 Commission Recommendation on the transfer of small and medium-sized enterprises, OJ L 385, 31.12.1994, p. 14 and the accompanying Communication containing the justification for the Recommendation, OJ C 400, 31.12.1994, p. 1.

2 Commission Communication on the transfer of small and medium-sized enterprises, OJ C 93, 28.03.1998, p. 2.

2. BACKGROUND: NATURE AND VOLUME OF BUSINESS TRANSFERS

A business transfer in the context of this report is understood as a transfer of ownership of an enterprise to another person or enterprise that assures the continuous existence and commercial activity of the enterprise. This can take place within the **family**, through **management buy-outs** (sales to non-family management/employees) and **sales** to outside persons or existing companies, including take-overs and mergers.

In most small and many medium-sized companies the transfer of ownership goes hand in hand with the transfer of the management function. In the case of private limited companies a transfer of 51 % of shares may be considered a business transfer. In the case of private limited companies a transfer of 51 % of shares may be considered a business transfer. In the case of public limited companies, which concerns mostly large scale enterprises and where ownership and management functions are separated, transfers in the sense of this report do not take place and have a different nature. In some cases enterprises are sold or taken over for the use of the building or the location only and specific business activities are not continued. This may not be considered as a transfer in the sense of this report. In addition, a number of enterprises may not be transferable for a variety of reasons such as inferior earning potential or bankruptcy. In other cases entrepreneurs will prefer to close down rather than transfer the business or they may be unable to find a successor (buyer).

Business transfers are still very often triggered by the entrepreneur's retirement. However, retirement is only one reason for business transfers. Causes for earlier transfers are personal decisions (early retirement, change of profession, etc.), changing competitive environment (changing markets, new products, new channels of distribution, etc.) or incidents (divorce, illness, death, etc.) which also play an important role.

At present, few (reliable) data on business transfers are available and in most cases not on a regular (yearly) basis. However, the magnitude of the phenomenon and its importance for the development of business demography and employment requires monitoring and regular evaluation of transfers.

Table 1 below shows that approximately 20% of the self-employed are over 55 years old, ranging from 10 to 26% depending on the Member State. It should be noted that this table only provides a rough estimate of the size of the problem in the EU Member States as it assumes that male and female entrepreneurs at an age of 55 or above will retire within the next ten years. It also assumes that the proportion of self-employed who work even beyond the age of 65 will remain at the same level as in 2000. Furthermore, retirement is only one cause for business transfers. For Germany and Austria it is estimated that it accounts for about 42-43% of business transfers. As this data is only valid under the assumption that the different causes are of similar weight in the Member States, it should be interpreted with great caution.

Table 1: Age structure of the self-employed[3]

Country	Selfemployed by age group (%)	
	15-54	55+
L	90,00	**10,00**
F	84,96	**15,04**
B	84,74	**15,26**
FIN	82,95	**17,05**
A	82,61	**17,39**
NL	82,53	**17,47**
IRL	82,42	**17,58**
I	82,15	**17,85**
EL	80,92	**19,08**
E	80,20	**19,80**
UK	78,16	**21,84**
P	77,67	**22,33**
D	76,35	**23,65**
DK	75,86	**24,14**
S	73,79	**26,21**
EU-15	**80,24**	**19,76**

The four tables in Annex 1 present some data that is considered the most relevant for business transfers but also indicate the lack of strategic comparable information.

On the basis of information extracted from various national studies, approximately one third of businesses need to be transferred to new owners in the next ten years (ranging from 25% to 40% depending on the Member State)[4]. This corresponds to an average of at least 610 000 SMEs to be transferred each year, of which 300 000 SMEs with employees involving 2.1 million jobs (assuming that an SME with employees has 7 employees on average), and 310 000 SMEs without employees[5].

The business transfer process is a long one and does not always go smoothly. Generally, three kinds of problems linked to the preparation of business transfers can be identified.

The first type of **problem is psychological or emotional**. Many entrepreneurs, especially those who have created and built up their own businesses over a number of years, are very reluctant to let go and to prepare the transfer of their business. The transfer of know-how and skills takes place very late, if at all. The result is that the transfer is often insufficiently prepared. This is not only a matter for the entrepreneur who is transferring the firm but it also affects and limits the preparation time for the buyer or the successor or their nearest collaborators.

There has been a lot of discussion on the different measures available for business transfers and on the tax and legal problems affecting them. However, there are still many invisible, “soft” or emotional problems that play a major role in transfers, especially where family businesses are concerned.

The lack of planning and openness can have quite dramatic, serious effects for the continuity of the business in unexpected situations (illness, accident, death). This is

3 Eurostat, Community Labour Force Survey 2000. Self-employed by age group for NACE 1D: sections C-K.

4 See Annex 1 for the available data.

5 Enterprises in Europe, 6th report, 2001.

the case especially in those small companies where the entrepreneur has taken on the whole responsibility of the firm and there are limited plans over the company's future. There can also be difficulties if the transferor and the successor are both in charge.

The second type of problem is related to the **complexity of the business transfer process** and to the fact that the entrepreneur has no experience or knowledge of handling this situation. The entrepreneur does not necessarily know who to contact for help or where to find information.

Transfer-of-knowledge-related issues are among the possible problems feared by entrepreneurs (especially current owners). How are they to transfer the tacit knowledge that the owner has to the next generation? Moreover, the transfer of networks or relationships and the reluctance to share management power and pressures for successfully continuing to manage the business are often regarded as potential problems in a transfer situation.

The third type of obstacle stems from **national legislation**, in particular company law, taxation and administrative formalities. Examples of problems of this kind include high inheritance and gift taxes, finance, problems preventing the change of the legal form of a business when preparations are being made for transfer and problems preventing the continuity of partnerships when one partner dies or retires.

The issues at stake in a business transfer also depend on the size of the company. A business transfer involving a larger company often means a risk of losing many jobs. When a transfer of a smaller business fails, fewer jobs will be lost. One should however remember that **86% of the 9.1 million enterprises with employees in the EU have less than 10 employees**[6].

The size of the company also reflects the way it manages the problems related to business transfers. Owners of **large companies** are today more easily and frequently assisted by specialists, who can provide them with personalised suggestions to the different aspects involved in the transfer process (legal, fiscal, financial and management issues). The interpersonal and psychological aspects seem to be less considered in large companies, because they are often bypassed – or overwhelmed - by the weight of the economic and financial implications of the transfer. Nevertheless, these are issues that should be addressed, and sensitising owners to the importance of planning the continuity process is very important.

In larger companies, the management of continuity is often the responsibility of some selected managers as a part of an integrated and normal process of management forecast and planning for the future. In such companies, the handover is somehow perceived as one of the processes of change in the company's life. It is thus seen as part of running the business and it is managed by a project (or by some more or less integrated projects).

Small business owners are more often unaware of the problem of continuity of their company. They generally consider their company as a "part" of themselves. Since they are very busy in living day-by-day, they usually can't – or won't - take enough care of planning the change of ownership of their company. More precisely,

[6] Enterprises in Europe, 6th report, 2001

they don't think ahead to do that in a structured plan or project, because they are not always aware of its vital importance.

This psychological problem is very important because it prevents them from taking the first step. This first step consists of becoming aware of the problem. After that they can systematically analyse the situation in order to plan the transfer and the continuity of their business, with the right tools.

This report will try to address some of the problems discussed above and provide possible solutions.

Problem: A lack of comparable data on business transfers at European level.

Possible solution: In the future, the enterprise registries in the Member States should provide annual data on business transfers allowing a detailed analysis by region and industry and should also provide information on the characteristics of transfers conducted. In the meantime, policy makers must rely on topical studies for in depth information on the number of transfers, projected and conducted, characteristics of transfers, and related problems.

Proposed indicators: The following indicators are suggested for monitoring business transfers. They would also provide the basis for the evaluation of transfer processes and the design for appropriate policies. Ideally these indicators should be available on an annual basis.

- Age structure of SME owners by size class of enterprises
- Number of business transfers by sector (NACE 1D, sections C-K)
- Number of business transfers by size class
- Number of start-ups
- Number of closures
- Age of the enterprise at transfer
- Type of transfer (family, employees, third parties)
- Form of transfer (inheritance, gift, sale, merger, etc.)
- Reason for transfer (retirement, accident, other reason)
- Period of ownership (serial entrepreneurship)

The following indicators can not be provided without specific research and/or surveys and may therefore be generated less frequently, for instance every five years.

- Number of SME owners planning business transfers (in the next five or ten years)
- Number of SME owners over 50 years old who are not planning business transfers (in the next five or ten years)
- Number of jobs concerned by planned transfers
- Average time when SME owners started planning the transfer
- Successful and failed transfers
- Reasons for failed transfers

3. LEGAL MEASURES

Sections 3 and 4 of this report provide an overview of the main legal, tax and administrative measures taken by the Member States since 1998 in response to the Commission Recommendation of 1994. They are based on the replies received from the Member States in summer 2000. The information concerning the 12 Member States that have participated in the expert group has been updated during the course of work. Summary tables containing all reported changes are attached in Annex 2 of this report. The changes taken place since 1998 when the previous review[7] was made are marked in bold.

3.1. Single-member public limited company

§4 (c) of the Recommendation: Member States are requested to allow the creation of a public limited company with only one partner.

Spain, France, Italy and the United Kingdom have reduced the minimum number of members required to form a public limited company to one.

3.2. Simplified public limited company and administrative and accountancy simplification

§4 (b) of the Recommendation: Member States are requested to allow small and medium-sized companies to establish themselves in the form of public limited companies with a very small number of shareholders, the establishment and management of which would be simplified.

In Germany, the *"kleine Aktiengesellschaft"* is a public company with a small number of shareholders. It is not however a small company in the meaning of small volume of trade or employees as it is often thought. As long as all shareholders are known, many simplifications are granted, e.g. calling of a shareholders' meeting by registered letter instead of a public announcement. As for any other public limited company, the „kleine Aktiengesellschaft" can be set up with only one shareholder. The minimum capital required for formation is EUR 50 000. At the moment of incorporation, the cash contribution only needs to be half of the amount.

In Denmark, a private limited company is not required to have a board of directors, and there are no requirements regarding the nationality of the members of the board of management and the board of directors. A private limited company with only one shareholder does not need to hold annual general meetings if the company does not have a board of directors.

The Netherlands does not require SMEs to have a supervisory board any more and it has also introduced abbreviated forms of accounts and simpler audit regulations.

The United Kingdom provides relief from the regulatory burden of small private companies by freeing up some of the Company Act provisions that could otherwise apply. For example, small companies are allowed to file

[7] Commission Communication on the transfer of small and medium-sized enterprises, OJ C 93, 28.03.1998, p. 2

abbreviated forms of accounts and may be exempt from the requirement to an audit. There are also provisions allowing for dispensation of annual general meetings.

3.3. Conversion of partnerships into limited companies and vice versa

Article 4 (a), (d) and (e) of the Recommendation: Member States are requested to (a) provide for a right of transformation for enterprises which allows them to change from one legal form to another without the need to wind up the firm or create a new legal entity, (d) when taxing any transactions designed to separate management powers and ownership, recognise the economic need for such operations and (e) apply the principle of fiscal neutrality for the preparation of transfers of assets, mergers, divisions, exchanges of shares, stamp duties, registration fees and other similar taxes.

Belgium, Denmark and the Netherlands have introduced the possibility to change the legal form of a company into their legislation.

From 2001, in the Netherlands, it is possible to transfer from a public company to a one-man business without paying company tax.

In Italy, it is now possible to change from a partnership to a limited company but not vice versa.

In Sweden, the change of legal form is also possible provided that the conditions in the tax legislation are fulfilled. However, Sweden does not have any specific legislation concerning the change of legal form as such.

3.4. Continuity of partnerships

Article 5 of the Recommendation: Member States are requested to (a) provide for the principle that, in the event of death of one of the partners, a partnership should be kept as a going concern, (b) introduce a provision that the partnership agreement shall take precedence over the unilateral actions of one of the partners, (c) ensure that family law and inheritance law, in particular the unanimity rule for decisions taken within the framework of joint ownership, do not prevent the enterprise from being kept as a going concern and (d) ensure that the reimbursement of the share of the deceased does not jeopardise the survival of the enterprise.

Denmark and Germany have introduced the legal principle of continuity for partnerships into their legislation.

To improve the continuity of partnerships, Belgium has introduced the system of the *"bureau d'administration/administratiekantoor"*. This allows the company to have its shares "certified" and enables the rights of the shareholders to be split. Those shareholders that are not interested in the governance of the company can obtain a certificate in exchange for their share. With this certificate, they are still entitled to dividends.

3.4.1. *Disagreement between co-operating entrepreneurs*

Disagreement between co-operating entrepreneurs is quite frequent at the time of transfer and poses a potential threat to the survival of the enterprise. Consideration should, therefore, be given to the settlement of disputes between the co-operating entrepreneurs arising in the context of business transfers.

In Italy, disagreement between co-operating entrepreneurs can be solved through training where senior and junior shareholders of different family businesses meet in mixed groups for a focused confrontation. They first gather in small parallel sub-groups, which are arranged so that members of the same family business are not in the same group. Moreover, the participants are invited to exchange roles, from senior to junior, and vice versa. They then meet together again to discuss their conclusions. People usually say that by such experience they suddenly understand the point of view of their relatives, as never before, probably because they feel less conditioned by emotional bonds. Since they get into a more rational mood, they learn from the positive experiences that their colleagues have had through dialogue, or by separating the company goods while preserving the enterprise's vitality. This has proven to be a very effective way of helping shareholders change their minds and consider different solutions.

In the Netherlands, if the shareholders involved are not able to find a solution to their problems in a spirit of mutual understanding, the conflict can be solved in court. A shareholder whose behaviour is detrimental to the enterprise can be compelled to sell his shares to the other shareholders or, if shareholders treat one of their number unfairly, the court will order them to purchase his shares, after first establishing their value. The threat of court involvement is in many cases sufficient to provide the incentive for the parties involved to solve the conflict between themselves.

3.5. Further proposals

3.5.1. *New legal measures*

When proposing new legislation affecting business transfers, the Member States should ensure that these measures do not deteriorate the conditions for business transfers.

4. TAX MEASURES[8]

4.1. Inheritance and gift taxes

Article 6 of the Recommendation: Member States are invited to (a) reduce the taxes on assets exclusively used for the business in the case of transfer by gift or succession, including inheritance tax, gift tax and registration fees, provided that the business is genuinely kept as a going concern for a minimum period, (b) offer the heirs the possibility of spreading or deferring payment of the gift or inheritance taxes and grant interest exemptions and (c) ensure that the assessment of the business can take account of how the value of the business changes some months after the death of the owner.

4.1.1. Transfer of business within the family

In Greece, transfers of sole proprietorships, shares of a sole proprietorship or a general partnership to the entrepreneur's spouse or children due to retirement are tax free as of 1 January 2001. (See good practice case 1)

In Spain, in the *mortis causa* or *inter vivos* transfer of an individual business, a professional business or shareholdings in entities, a 95% reduction of the value of the taxable amount may be applied in certain cases, provided that the value is maintained for 10 years and the donee is entitled to an exemption from estate tax during the same period (the latter applies in the event of *inter vivos* transfers). (See good practice case 2)

Ireland has reduced its maximum inheritance tax rate to 20%.

France has increased the tax relief from EUR 50 300 to EUR 76 220 for transfers between spouses.

Italy has abolished inheritance and gift taxes completely. Inheritance tax is no longer due on inherited goods, whatever their value and the degree of relationship of the actors. (See good practice case 3)

Luxembourg grants a tax relief of EUR 37 200 for partnerships and private enterprises on a loan which has been taken to pay off the heirs that are not interested in being involved in the business (cash adjustment).

In the Netherlands, transfer within the family is possible without any fiscal consequences on income taxation. It is known as the silent transfer. The main conditions to be satisfied are that the party concerned has filled the position of co-entrepreneur within the business for at least three years and accepts the transferor's balance-sheet valuation. The entrepreneur should also be at least 55 years old or be unable to work for 45% of the time or more. The company can be transferred totally or partially (own the company with the successors) and it has to be transferred to one or more (grand)children or their spouses. In case of decease of the entrepreneur, the transfer to the widow(er) or one or more of the other heirs can also take place through silent transfer. In this case, a written request to the tax inspector is required. As to inheritance and gift taxes, an exemption of at

[8] More detailed descriptions of the good practice cases are to be found in Annex 3.

least EUR 460 000 without any condition is being introduced for inheritance between partners in 2002.

4.1.2. Special rules for businesses

In Belgium, the region of Flanders has further reduced its inheritance tax from 3% to 0%. In the Walloon and Brussels regions, inheritance tax has been reduced to 3%. The federal law of 1998 reduced the gift tax rate to 3%. (See good practice case 4.)

Spain has taken a step forward against fraud in business transfer, which takes place when business activity ends owing to the accumulation of a volume of debts and it then continues via a change of ownership, leaving the obligation of paying debts pending with those who continue operating the business. A ruling of the Supreme Court, dated 15 August 2000, states that the tax obligations arising from succession in the exercise of business activities and in the exercise of operations are subsidiary rather than solidary. This modifies the Tax Administration practice which, for the recovery of debts and liabilities arising from the exercise of business operations and activities by natural persons, companies and legal entities, provided for the extension of claims to the successive owners.

France has reduced gift taxation for business transfers by 50% if the donor is less than 65 years old and by 30% if the donor is older than 65 years. For inheritance taxation, a reduction of 50% of the estimated value is available for unprepared transfers under certain conditions.

The United Kingdom has increased the threshold for taxable assets to GBP 234 000 (~ EUR 390 000).

The Netherlands grants a 30% reduction on the value of all business assets before taxation. The payment can be deferred for over ten years without interest. The value of government licenses such as quota is totally exempted. Under certain conditions, there is also a possibility for total exemption of income tax claims on capital gains. A further major improvement is that the valuation of the company will take place on a going concern basis instead of on the basis of the day of death of the entrepreneur.

In Austria, an EUR 363 365 exemption from inheritance and gift tax is granted if an entire business or a partnership share of more than 25% is transferred because of death or as a gift.

In Finland, when a financial consideration of more than 50% of the market value is used, no gift tax is charged. In the case that the taxpayer disposes of a share in a partnership or shares in a company to a close relative giving right to at least 10% ownership in the company, the capital gain is tax-exempt. There is also a possibility for total exemption of inheritance and gift taxes if the continuity of the business and the jobs are at risk.

In Sweden, the rules allow the valuation of the business property to 30% of the net asset value in inheritance and gift taxation.

4.2. Transfer of business to third parties

Article 7 (a) of the Recommendation: Member States are invited to waive taxation on at least part of the revenue from the added value or capital gains arising on the assets of a business in the event of a sale, in particular when the businessman has reached the age of 55 and provide tax incentives for the reinvestment of the profits made on the sale of a business in another enterprise.

4.2.1. Measures facilitating the transfer of businesses to third parties

In Belgium, the reduced inheritance tax rates mentioned in section 4.1.2 also apply to third parties.

Germany has reduced the progressive effect of taxation through a so called "1/5th method". This means that the fiscal charge on capital gains is calculated as five times the difference between the tax on the income without capital gain and the tax on the income plus one fifth of the capital gain. Germany also reintroduced the "co-entrepreneur-decree" (Mitunternehmer-Erlaß") in 2000 (first introduction in 1979, abolished in 1999). The decree gives personal companies (about 80% of all German companies) the possibility to transfer assets between the companies' own capital and the capital owned by individual partners but used by the company in a tax neutral way, which is important, for instance, in the case of preparing for a transfer of the business.

In the Netherlands, since 2001 has been possible to transfer the company to a successor also outside the family circle through the *silent transfer* (see 4.1.1), i.e. without any fiscal consequences on income taxation. (See good practice case 5.)

4.2.2. Tax relief on money received from a transfer which is subsequently reinvested in another SME

Belgium grants tax relief under certain conditions. In Spain the payment of taxes is deferred if a share of more than 5% is transferred. Italy has reduced taxation of capital gain to 19%.

4.2.3. Relief for early retirement

In Denmark it is possible to deposit taxable profits on sale of a business to a *pension savings account*. The deposit is limited to DKK 2 million (~ EUR 268 000) and the pension saver gets full deduction of the deposit in the year of the deposit. (See good practice case 6.)

In Germany, entrepreneurs who are 55 or older can demand that the tax rate on the proceeds from the sale of their business is halved when they retire (i.e. only once in a lifetime). Germany has also increased the relief for early retirement to EUR 51 200.

The United Kingdom is replacing retirement relief with a taper relief that reduces the percentage of the gain that is chargeable to capital gains taxation the longer an asset is held. For business assets, after they have been held for four years, only 25% of the gain will be taxable.

4.3. Transfer of business to employees

Article 7 (b) of the Recommendation: Member States are invited to promote the transfer of the enterprise to the employees, by reducing the taxation on the capital gain realised on the transfer of the shares to the employees, by waiving registration fees or through tax advantages.

4.3.1. Specific measures facilitating transfers to employees

Belgium has a system to promote stock options. After this favourable tax system had been set up, the rules related to social contributions changed. Formerly, stock options were considered as part of the salary, to the effect that social contributions had to be paid. The new general rule is that stock options are not treated as part of the salary.

Denmark grants an extraordinary tax deduction for 10 years on interest expenses in connection with an employee's purchase of shares in a company. The interest expenses can be deducted at the same tax rate as the salary by using a special method of calculation.

In the Netherlands, transfer of business to employees is also possible without any fiscal consequences in the income taxation. The conditions are the same as in the case of transfers between family members explained in section 4.1.1.

Portugal grants tax reductions for transfers to employees only in the case of a legal process of recovery of an enterprise that is in difficulties or in bankruptcy and when the employees are creditors of the enterprise.

4.4. Further proposals

4.4.1. Enhanced co-ordination

Problem: Public authorities need to become more aware of the importance of business transfers and the problems related to them. Inheritance, gift and income taxation are still important factors affecting business transfers. Not only the rates but also the taxation procedures and structures have an impact upon business transfers. It is important that the Member States frequently exchange experience on their national practices. They should also better co-ordinate their efforts with the different parties involved in business transfers.

Possible solution: Tax and legal experts from different Member States should get together on a regular basis to learn from good practices.

4.4.2. New tax measures

When proposing new tax legislation, especially in the field of inheritance and gift taxes and income taxes, the Member States should ensure that these measures do not deteriorate the conditions for business transfers.

5. SUPPORT MEASURES

The transfer of a business within the family or its sale to a third party is generally a once-in-a-lifetime event, of which the proprietor has little or no previous experience. It is a complicated matter involving many interests and parties, which calls for expertise in a wide variety of fields. Various forms of support are available in different areas from numerous bodies: banks, accountants, Chambers of Commerce, tax experts, lawyers, notaries, mergers & acquisitions specialists and consultants. Transferors and successors are, nevertheless, not always sufficiently informed, trained and accompanied in the process of a transfer of business. A successful transfer can, however, conserve on average five jobs whereas a start-up generates on average only two jobs[9].

In the sections below, some examples of good practice are highlighted. For a full description of the measures, please see Annex 3.

5.1. Soft aid

5.1.1. Awareness of entrepreneurs

One reason for failed transfers or a reason causing major problems in the transfer process is that the planning for the transfer of ownership has started too late. Experts in the field (counsellors, consultants) frequently mention the necessary preparation period, which may take from five to ten years. If the preparation and planning also includes the qualification of a potential successor, even longer periods may be required.

Especially in those cases were a transfer takes place because of retirement or personal reasons, entrepreneurs must be aware of the implications and time requirements of the transfer process in order to start preparations in time. As it can be assumed that incident-caused transfers do occur more frequently with entrepreneurs beyond a certain age (e.g. fifty years and older) it may be argued that, even in those cases, planning for transfers could be improved if entrepreneurs were sufficiently aware of the possibility of transfers.

In the Netherlands, advisors strongly recommend entrepreneurs to make “an enterprise testimony” where the entrepreneur writes down in short the most important practical (keys, bank accounts, etc.) and strategic (co-operation, growth strategy, deals, etc.) information about the firm in case of sudden disappearance (illness, accident, death). In this way the successor is better prepared to continue the business.

In Austria, entrepreneurs at the age of fifty are contacted in writing by the president of their state's economic chamber. They are advised to prepare for business transfer and to make use of the various services (information, consulting, transfer exchange) offered by the economic chamber and other institutions. Although this service is a good idea, it is not, however, implemented regularly in some of the regional chambers of commerce.

[9] Source: MEDEF (Mouvement des Entreprises de France), ACFCI (Assemblée des Chambres Françaises de Commerce et Industrie) and CRA (Club des Cédants et Repreneurs d’Affaires): Action Plan 1999.

Problem: Entrepreneurs are very often unwilling to think about business transfers. They have a short vision of the future, lack planning and equity finance and they are not interested in discussing the issues openly. Until the problems of business transfers are covered by the mass media, entrepreneurs will not feel it is an emergency that needs to be tackled.

Possible solutions:

- Promotion of large-scale awareness raising events or campaigns.
- Creation of standard tools and instruments that would help entrepreneurs analyse the company situation and take appropriate action.

5.1.2. Information

Once the entrepreneur has been made aware, he should be given initial information designed to increase the importance attached to a thorough preparation of the transfer/take-over procedure. This information should give the entrepreneur an overview of what type of more specific advice is available and where to get it. Larger banks and various accountancy firms normally organise this type of information meetings that are aimed at achieving better business transfers/take-overs.

In Germany, the Chamber of Commerce and Industry (Industrie- und Handelskammer, IHK) of Erfurt, has established a *one-stop-shop for entrepreneurs in the transfer phase*. (See good practice case 7.)

The *"nexxt"* initiative on transfer of business is a project of the German Federal Ministry of Economics and Technology in co-operation with many organisations and banks. It is a platform for action, created in order to bring together all the forces involved in the transfer of businesses. (See good practice case 8.)

In Italy, *Formaper*, the training organisation of the Milan Chamber of Commerce, systematically informs junior entrepreneurs and new entrepreneurs about the opportunity of continuing an enterprise, not only starting up a new one. *Transfbiz* - On-line ExchangeLetter on Business Transfer - is a newsletter which is sent every two months to institutions, managers, consultants, intermediaries, entrepreneurs about events concerning business transfers in Europe and the world. (See good practice cases 9 and 10.)

To counteract the fragmentation of the provision of support, in the Netherlands, the Council for Entrepreneurship (RZO) developed in co-operation with two partners a support structure for succession in family businesses. It includes related activities aimed at improving awareness, workshops and individual advice. (See good practice case 11.)

Problem: Despite the many initiatives provided by various organisations that aim to raise awareness about business transfers, there is a lack of structure in the approach to providing support. More co-ordination between the organisations providing support could reach more entrepreneurs in time.

Possible solutions:

- Promotion of experiments (including the use of new media) in the field of entrepreneurial information and advice, with a view to the timely and efficient preparation of the transfer process;
- Strengthening the link between information and advice, focusing more on transparent support than on individual measures;
- Encouragement of co-operation between different (participating and uninvolved) organisations to prevent fragmentation of effort and provide greater assistance for the target group at an earlier stage.

5.1.3. Education and training

Training is important for increasing entrepreneurs' knowledge of business transfers and their readiness to carry one out. Specific training courses on business transfers for both transferors and successors will provide the entrepreneurs with the knowledge and tools to plan and carry out the transfer process. The great majority of SMEs are owner-managed. The traditional managerial standards taught at universities and other educational establishments cover medium-sized and larger enterprises, as does most management literature. There is a need for alternatives and/or additional requirements for the owner-managers of SMEs compared with employed managers.

Inclusion of business transfers as part of the ordinary curriculum of entrepreneurship education would raise awareness and give basic information on this particular phase in the life cycle of an enterprise. This would also allow potential young entrepreneurs to learn about starting their own enterprise by buying an existing one whose owner wants to pass it on. The business skills of the successor are not always sufficient to secure the continuity of the business. This means that the training of the successor in business issues should also be one of the main aspects of business transfer training programmes.

Potential successors should also be encouraged to work in other firms for several years (and not only in their "own" family business). This should be seen as part of a trainee-programme to broaden their knowledge (to avoid "operational blindness").

In Spain, the Industrial Organisation School (*Escuela de Organización Industria EOI*) has organised a *"Higher Programme for the Consolidation of Family Businesses"* aimed at the transferors and the potential successors of family businesses. (See good practice case 12.)

Kit.brunello is a self-analysis check-up for SMEs in Italy and focuses on (family) business transfer processes. *Laboratorium* for business transfer is a structured procedure, composed of standard and repeatable sub-actions. Its objectives are to analyse the transfer situation for single companies and also for specific regions. (See good practice cases 13 and 14.)

In Finland, the *"Passing the baton"* -consultant service offered by the TE-Centres helps to manage the transfer of a business to the next generation. The Small Business Institute has also developed a *Business Succession and Development programme for SMEs*. (See good practice cases 15 and 16.)

5.1.4. *Coaching/Counselling*

Coaching and counselling covers advice which involves special assistance with generally complex problems such as succession legislation, taxation, preparing your company for sale, price evaluation, etc. It can also cover services involving assistance to the family in the succession process. Business consultants, tax auditors, lawyers, accountants, banks and notaries generally give this type of advice.

In France, *C.R.A., "club des cédants et repreneurs d'affaires"* (club of transferors and successors), is a national association that consists of former company managers who participate in it on a voluntarily basis. Its aim is to facilitate the transfer of businesses by establishing contacts between entrepreneurs and by providing information and assistance. (See good practice case 17.)

In the Netherlands, the *Foundation Ondernemersklankbord* is an organisation of more than 200 retired entrepreneurs, general managers with entrepreneurial experience and experts providing assistance on a voluntary basis. Preparation of business transfer is a major item in the assistance. (See good practice case 18.)

Team Beratung is a programme of the Austrian Economic Chamber in the federal states of Vienna and Lower Austria. It offers entrepreneurs the possibility to meet with experts in the fields of labour and social law to discuss the best ways of transferring their enterprise. (See good practice case 19.)

The Association of Finnish Local and Regional Authorities runs a project called *Enterprise Godfather*. They offer expert help for SMEs and organise seminars which include issues concerning the transfer of businesses. (See good practice case 20.)

5.2. Transfer market

An increasing number of business transfers takes place to third parties. It is therefore all the more important to facilitate the matching of buyers and sellers. The market for the purchase and sale of smaller enterprises is however (sometimes intentionally) non-transparent. Many potential purchasers and vendors are listed in the files of individual accountants, banks and consultants. The frequently restricted scope of these files limits the likelihood of establishing suitable contacts (matching supply and demand).

The countries listed in Table 2 have broader databases of buyers and sellers (See good practice cases 21 – 29). The host databases in the different countries are mainly initiated and funded by public institutions. They work on a national scale and in many cases co-operation is established with private companies like banks, advisors and accountancy firms. By combining the separate smaller databases from private organisations in a host database the possibility of contacts between buyers and sellers of companies increases.

Problem: Many small and medium-sized enterprises operate in business surroundings that are far from transparent, especially when they are looking for potential buyers, sellers and successors. In these circumstances demand and supply are not easy to match. The fewer the contacts, the more limited the number of candidates. Another complication involved is the importance of confidentiality in the buying and selling of enterprises.

Possible solutions:

- Further development of "enterprise exchange", buyer/seller files serving as "hosts";
- Analysis of the organisation and operation of the different national buyer/seller contact systems in order to promote, on the basis of the relevant success criteria, similar initiatives in other Member States and establish Community-wide links between existing initiatives to also facilitate cross-border transfers.

Table 2: Host databases for buyers and sellers of enterprises in the Member States

Countries	Name and website	Public/private initiative (initiated by)	Co-operation with others
Denmark	ticmarked.dk www.ticmarked.dk	Public (TIC)[10]	Yes, open system
Germany	Change / Chance www.change-online.de	Public (DIHK, ZDH, DtA)	Only co-operating partners
France	B.N.O.A. - Bourse Nationale d'Opportunités Artisanales www.bnoa.net	Public (A.P.C.M.)	Open system
Italy	GenerAzionImpresa www.generazionimpresa.com	Public (Bologna Chamber of Commerce)	To be connected with the national and international network of Italian and foreign chambers of commerce[11]
Luxembourg	Enterprise Exchange www.chambre-des-metiers.lu Enterprise exchange www.cc.lu	Public (Chambre de Métiers and Chambre de Commerce)	Separate databases for Crafts and other SMEs
The Netherlands	Ondernemingsbeurs www.kvk.nl	Public (Vereniging van Kamers van Koophandel)	Yes, open system[12]
Austria	Nachfolgeboerse www.nachfolgeboerse.at	Public (Wirtschaftskammer)	Open system
Finland	Company Market Service www.yrittajat.fi	Private (Federation of Finnish Enterprises)	Seller must be member, buyer could be anyone

5.3. Finance

Businesses which are taken over are generally larger at the time of take-over than new enterprises at the time of formation. Therefore the purchase of an existing business often requires more capital than a new business start-up.

10 Now an independent private organisation.
11 A number of regional chambers of commerce in Italy have piloted the national and international implementation of the market place for two years.
12 Close co-operation with private organisations.

Assisted loans (preferential rates of interest), the provision of guarantees, and forms of equity capital for a limited period could help to break down this barrier and make it easier for a larger number of potential transferees to take over businesses. Financial assistance of this kind could be linked with a review of the suitability of enterprises for transfer; this would mean extra security not only for the institution providing assistance but also for the transferee.

In Belgium, a system of special loans to help the transfer of businesses was set up in 1998. These loans are financed by a public institution, the *"Fonds de Participation/Participatiefonds"*. (See good practice case 30.)

In Denmark, a Loan Guaranty Scheme *"VækstKaution"* was launched in 2000. The objective and main focus of the scheme is to help SMEs by financing their growth potential. The scheme supports business transfers by issuing guarantees covering the payment of goodwill financed by the bank. (See good practice case 31.)

The *EDEN* programme, "An incentive to new business development", is an initiative of the French Government to assist both the creation of new businesses and the transfer of the company to the employees. (See good practice case 32.)

In Luxembourg, the *"Prêt de démarrage"*, a guarantee-free loan, was launched in 2002. This instrument aims at helping entrepreneurs who lack their own capital to finance a first business creation or a take-over. The loan is an initiative of the Société Nationale de Crédit et d'Investissement, it has a minimum amount of EUR 10 000 and a duration of 10 years. (See good practice case 33.)

In Finland, Finnvera plc has developed an *"Entrepreneur loan"* which is intended for situations where the share capital of a public limited company, or the investment in a partnership or in a limited partnership, is paid for or raised, or for situations where shares or holdings are purchased. (See good practice case 34.)

5.4. Further proposals

5.4.1. One-stop-shops for business transfers

Problem: In several Member States, one-stop-shops already exist. For instance, in the field of start-ups, in many countries it is common knowledge where to go for information and advice. If the entry point to the support structure is clear for the target group, overlap of provision of support is minimised and fragmentation is avoided.

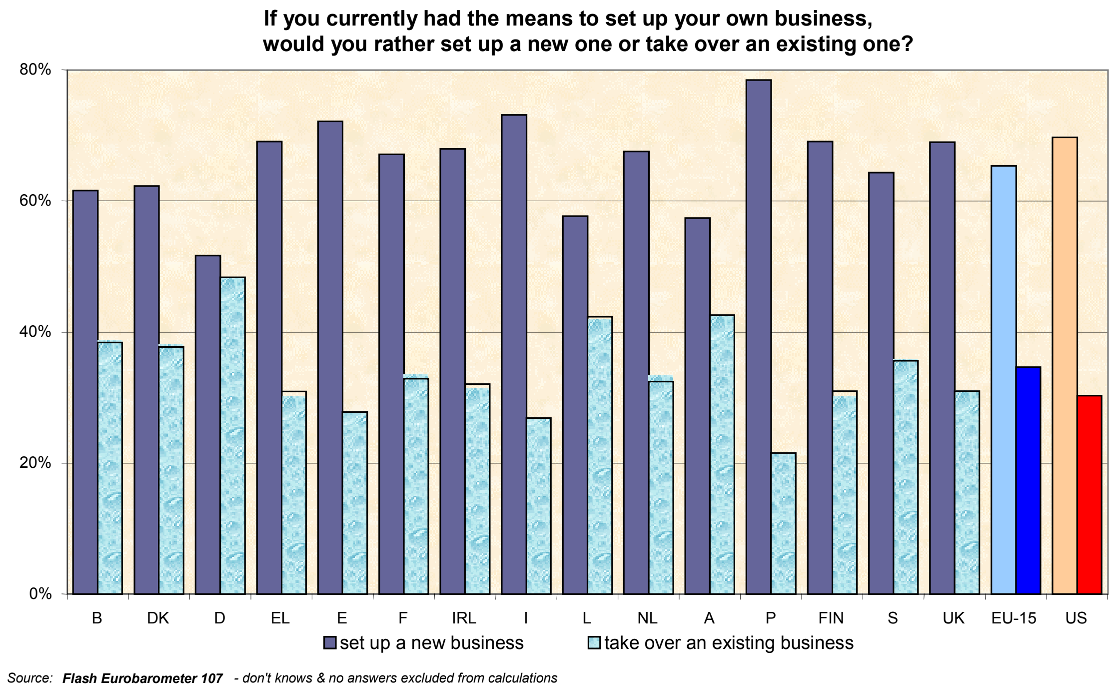
Basic information, statistics and research on business transfers is limited, fragmented and difficult to compare. It is useful not only for policymakers but also for advisers, financial organisations and the entrepreneurs involved to know more about the economic impact, processes and results of business transfers.

Possible solution: To counteract the lack and the fragmentation of data, research, information and advice on and for business transfers, Business Transfer Centres at national level should be promoted and established. They should operate as much as possible within the existing support structures.

5.4.2. Start-ups versus business transfers

Considering the large number of expected business transfers in the future, it is disturbing that according to the Eurobarometer survey[13], most people clearly prefer to start their own business (65% in Europe and 70% in the United States) rather than take over an existing one (35% in Europe and 30% in the United States). If this trend continues in the future, it may be difficult to find new owners for the companies that need to be transferred.

Graph 1: Starting a new business or taking one over: How to choose?



Problem: A lot of attention has been devoted to facilitating business start-ups in the hope of creating more employment. At the moment, research and policy on start-ups is well established in most European countries. This is in contrast to business transfers. While encouraging start-ups is a very important part in promoting entrepreneurship, we should not forget that existing companies conserve on average five jobs whereas a start-up generates on average only two jobs.

Possible solution: More attention from policymakers and research to optimise the process of business transfers are necessary. Those companies that have managed to survive the first strategic five years and continued to the stage where the ownership of the company needs to be passed on to the next generation should be considered worthy of support.

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13 Flash Eurobarometer No 107 "Entrepreneurship", 14.-20.09.2001.

5.5. Indicators

The expert group considered proposing some indicators to measure the provision of support measures. However, the group came to the conclusion that it was impossible to measure this in quantitative terms. For example, if we look at a possible indicator "the availability of market places", it would only show the number of market places, but having a great number of databases is not necessarily an indication of the success of the provision of support. In fact, in some countries there may even be too many of these market places, which just contributes to the lack of co-ordination in the provision of support.

6. ANALYSIS OF THE CURRENT SITUATION

6.1. Legal and tax measures

Table 3 below highlights the regulatory changes which have taken place since the Commission Communication of 1998 and gives an overview of the types and number of new measures taken by each Member State. More detailed descriptions of the measures are found in Chapters 3 and 4 and in the comparative tables in Annex 2.

Table 4 shows the overall situation in the implementation of the 1994 Recommendation, including measures that already existed before the current review exercise.

All Member States have taken some measures in response to the 1994 Commission Recommendation. As many as thirteen Member States provide for special rules for inheritance and gift taxes in the case of business transfers and ten have taken measures to facilitate the transfer to third parties. Eight Member States grant tax relief on money that is received from a transfer and which is subsequently reinvested in another SME.

No measures at all have been taken in about half of the potential areas of action. Concerning legal measures, no more than five Member States have introduced the continuity of partnerships as a legal principle in their legislation and only three Member States do not require decisions to be taken in unanimity by the heirs. With regard to tax measures, just two Member States take into account that the value of the business changes some months after the death of the owner and allow for the valuation of the business for tax purposes to take place later. Only four Member States agree to the payment in instalments of the capital gains tax arising from the transfer of business.

The areas where more than two thirds of the Member States have **not** taken any measures are the following:

- No requirement for unanimity decisions by heirs;
- Valuation of business for tax purposes to take place some time after death;
- Payment by instalments of the capital gain taxes arising from a transfer;
- Relief available to employees in relation to stamp duties and registration fees, and
- Special rules for the transfer to an enterprise or a co-operative set-up by employees.

In general, the Member States have implemented more legal measures than tax measures. One obvious explanation is that Member States are more reluctant to adopt tax measures as they imply a loss of income for them. With regard to legal measures, many of the measures exist in practice but have not been formally introduced into legislation.

It should be noted that not all the legal and tax recommendations have the same impact on business transfers. According to the expert group, the five key recommendations for business transfers are the following[14]:

- Measures facilitating the transfer of businesses to third parties
- Specific measures facilitating transfers to employees
- Special rules for inheritance and gift taxes for business transfers
- Relief for early retirement
- Tax relief on money received from a transfer which is subsequently reinvested in another SME.

[14] The list is not in any order of importance.

TABLE 3: IMPLEMENTATION OF THE COMMISSION RECOMMENDATION ON THE TRANSFER OF SMALL AND MEDIUM-SIZED ENTERPRISES (BLACK BOXES INDICATE PROGRESS SINCE 1998)[15]

MEASURE	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Minimum number of members for formation of a company limited by share capital reduced to one					■	■		■							■
No supervisory board required										■					
Reduced administrative burdens for establishing an SMEs as a public limited company										■					■
Change of legal form codified	■	■								■					
Continuity of partnerships as a legal principle		■	■												
Partnership agreements should be given precedence over the will		■								■					
Unanimity decisions by heirs not required										■					
Transfer of enterprise assets in toto															
Transfer between spouses allowed		■			■					■		■			
Tax relief for transfers between spouses								■	■	■		■			
The valuation of the business for tax purposes should take place some time after the death										■					
Payment by instalments of the capital gains tax arising from a transfer										■		■			
Reduced max. inheritance tax rates							■	■							
Special rules for inheritance and gift taxes for business transfers	■			■	■	■		■		■	■		■	■	■
Interest free instalments of inheritance and gift taxes										■					
Measures facilitating the transfer of businesses to third parties	■	■	■		■				■		■			■	
Tax relief on money received from a transfer which is subsequently reinvested in another SME	■				■	■		■		■					
Relief for early retirement		■	■												
Specific measures facilitating transfers to employees	■	■			■					■		■			
Relief available to employees in relation to stamp duties and registration fees															
Special rules for the transfer to an enterprise or a workers' co-operative set up by the employees												■			
TOTAL (21)	5	7	3	1	6	3	1	5	2	13	2	5	1	2	3

[15] It should be noted that not all the recommendations have the same importance for business transfers.

TABLE 4: IMPLEMENTATION OF THE COMMISSION RECOMMENDATION ON THE TRANSFER OF SMALL AND MEDIUM-SIZED ENTERPRISES OVERALL STATE OF PLAY[16]

	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Minimum number of members for formation of a company limited by share capital reduced to one	Red	Green	Green	Red	Yellow	Yellow	Red	Yellow	Red	Green	Red	Red	Green	Green	Yellow
No supervisory board required	Green	Red	Red	Red	Green	Green	Green	Green	Green	Yellow	Red	Green	Green	Red	Green
Reduced administrative burdens for establishing an SME as a public limited company	Green	Green	Green	Red	Green	Red	Red	Red	Red	Yellow	Red	Red	Green	Red	Yellow
Change of legal form codified	Yellow	Yellow	Green	Red	Magenta	Magenta	Red	Magenta	Magenta	Yellow	Magenta	Green	Magenta	Magenta	Red
Continuity of partnerships as a legal principle	Green	Yellow	Yellow	Red	Red	Red	Red	Green	Red	Red	Red	Green	Red	Red	Red
Partnership agreements should be given precedence over the will	Magenta	Yellow	Magenta	Magenta	Magenta	Green	Magenta	Magenta	Red	Yellow	Magenta	Magenta	Green	Magenta	Red
Unanimity decisions by heirs not required	Red	Red	Magenta	Red	Magenta	Red	Red	Red	Red	Yellow	Red	Red	Red	Red	Red
Transfer of enterprise assets in toto	Green	Red	Green	Red	Red	Green	Green	Green	Green	Red	Red	Green	Green	Green	Green
Transfer between spouses allowed	Magenta	Yellow	Green	Red	Yellow	Magenta	Green	Magenta	Red	Yellow	Green	Yellow	Green	Green	Green
Tax relief for transfers between spouses	Red	Red	Red	Red	Red	Green +	Red	Yellow	Yellow	Yellow	Red	Yellow	Red	Green	Red
The valuation of the business for tax purposes should take place some time after the death	Red	Green	Red	Red	Red	Red	Red	Red	Red	Yellow	Red	Red	Red	Red	Red
Payment by instalments of the capital gains tax arising from a transfer	Red	Red	Red	Red	Red	Red	Red	Red	Red	Yellow	Green	Yellow	Red	Red	Green -
Reduced max. inheritance tax rates	Red	Green	Green	Red	Red	Red	Yellow	Yellow	Green	Red	Red	Red	Red	Red	Red
Special rules for inheritance and gift taxes for business transfers	Green +	Green	Green	Yellow	Green +	Green +	Green	Green +	Red	Yellow	Yellow	Red	Green +	Green +	Green +
Interest free instalments of inheritance and gift taxes	Red	Red	Green	Green	Green	Red	Red	Red	Red	Yellow	Red	Red	Green	Red	Green
Measures facilitating the transfer of businesses to third parties	Yellow	Yellow	Green +	Red	Yellow	Red	Green	Red	Yellow	Green	Green +	Red	Red	Yellow	Green
Tax relief on money received from a transfer which is subsequently reinvested in another SME	Yellow	Red	Green	Red	Yellow	Yellow	Green	Yellow	Red	Yellow	Red	Red	Red	Red	Green
Relief for early retirement	Green	Yellow	Green +	Red	Red	Red	Green	Red	Red	Green --	Green	Red	Red	Red	Green --
Specific measures facilitating transfers to employees	Yellow	Yellow	Green	Red	Yellow	Red	Red	Red	Red	Yellow	Red	Yellow	Red	Red	Green
Relief available to employees in relation to stamp duties and registration fees	Green	Red	Green	Red	Red	Green	Red	Red	Red	Red	Red	Red	Red	Red	Red
Special rules for the transfer to an enterprise or a workers' co-operative set up by the employees	Red	Red	Red	Red	Green	Green	Red	Red	Red	Red	Red	Yellow	Red	Red	Red
TOTAL (21)	11	12	14	2	10	9	8	8	5	16	5	9	8	6	12

Legend

Green	Measure existed in 1998
Green +	Measure existed but has been improved or additional measures have been introduced since 1998
Green -	Measure existed but has been weakened since 1998 or will be phased out (- -)
Yellow	Measure introduced since 1998
Magenta	Measure exists in practice but not introduced into legislation, partial solution
Red	No measures available

[16] It should be noted that not all the recommendations have the same importance for business transfers.

6.2. Support measures

Table 5 provides an overview of the most important support measures identified by the expert group and which have been included in the database on support measures (www.europa.eu.int/comm/enterprise/smie).

TABLE 5: IDENTIFICATION OF SUPPORT MEASURES FOR BUSINESS TRANSFERS

TYPE OF MEASURE	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	TOTAL
Reception, Facilities and Basic Information, Referral										3			3
Professional Information Services		1	2			1	1	2	3	2		1	13
Advice & Direct Support			1			1			1	5		1	9
SME-specific Training and Education		1			1		4		3			3	12
Finance	1	1	7			1		1		2		3	16
TOTAL	1	3	10		1	3	5	3	7	12		8	53

6.3. National situation

In general, there are no evaluations available of the measures taken by the Member States and therefore it is difficult to assess the real impact of any of the measures. The following is an attempt to evaluate the situation in the different countries and is based on the views of the expert group.

Since 1 November 1998 in **Belgium**, it has been possible by the law of 14-7-1998 to certify shares. This enables a distinction to be made between the voting rights and financial entitlements (dividends) associated with share ownership.

Fiscal measures designed to promote business transfers include favourable rates of estate duty and registration fees (in the case of gifts). The Regions determine the rate of estate duty and the conditions which must be satisfied in order for a favourable rate of estate duty to apply. When a business is transferred by way of a gift, a favourable rate also applies if certain conditions are met. (Gifts are still governed by Federal law.) Under Belgian law, amounts which are received as part of the transfer of a business and which are reinvested in another SME are exempt from tax.

The Company Capital and Profits (Employee Participation) Act was published in the Belgian Official Gazette on 9 May 2001. Various Implementing Decrees are in force. The Act applies exclusively to companies, associations and institutions which are liable either for corporation tax under Title III, Chapter I, of the Code or for tax as non-residents under Article 227(2) of the Income Tax Code. Businesses wishing to take part in a participation scheme must be listed. The Act provides for a special form of financial participation in SMEs (the “investment savings plan”).

The Fonds de Participation/Participatiefonds provides transfer loans to ensure the continued existence of financially sound businesses when their ownership (or a majority of the shares) is transferred.

The Belgian Government's priorities for SMEs during the period 2002-2003 include reducing the administrative workload and reforming corporation tax.

In **Denmark**, the Government appointed a committee in January 1998 with the task of evaluating and recommending measures to be taken with regard to business transfers. In late 1999, the committee finalised its work, but only with a few recommendations concerning support measures. Today there are no public authorities who are responsible over-all for structuring and organising Danish efforts regarding present and future measures and work on business transfer. Accounting companies and some of the larger firms of solicitors and consultants provide most of the support. Banks are not very active at the moment but several employers' organisations/federations are working in this field. Public action is mostly through TIC - a public organisation supporting SMEs - which is financed by the state and regional communities. Only TIC and some of the employers' organisations offer support to SMEs free of charge. All the others consider business transfer an interesting business opportunity.

So far, initiatives for the support of business transfers in **Germany** have not been co-ordinated. Measures were taken by the individual Bundesländer, banks and chambers of commerce, but without co-ordination and independent from each other. This will now change with the national-wide *information campaign „Nexxt"*, which started at the end of 2000. The participation of all the players in this field in one common campaign means that all the participants have been able to sit together at one table. This is advantageous for business transfers.

The current *taxation reform* in Germany will mean that from 2002 onwards profits will be taxed less. It can therefore be assumed that at the moment many enterprises are postponing their business transfers. Consequently a wave of transfers is expected in 2002. At the moment, this postponement of tax relief has a dampening effect on the number of business transfers in Germany. In principle, the impact of the tax relief will be positive.

In Germany there should be more *one-stop-shops* for entrepreneurs in the transfer phase. Only occasionally, as in the IHK Erfurt, can interested sellers and buyers of enterprises meet lawyers, tax advisers, representatives of development banks and the community that can provide them with all the necessary information on business transfer at once on one single office floor. This model for the one-stop-shops should be copied elsewhere in Germany and in Europe.

The *tax situation of SMEs* and also for business transfers could be improved. In particular the possibilities for tax reduction, provided for in German tax law, do not sufficiently take into account the situation of SMEs. The service industries do not invest in machines and equipment to the same degree as the manufacturing industries. Therefore, in comparison they cannot really use the possibilities of tax relief. Until now there have not been enough tax rules to compensate for this disadvantage.

The readiness to initiate business transfers depends directly on the spirit of entrepreneurship within society. The greater the understanding and positive spirit of enterprise in the individual citizen, the better it is for SME transfers. The entrepreneurial attitude can be improved mainly through *education*. More measures need to be taken to increase this attitude in schools.

In response to the Commission recommendation, the Ministry of Development in **Greece** established an interministerial committee consisting of participants from the Athens Chamber of Commerce and Industry, the Athens Chamber of Small and Medium-sized Industries, EOMMEX and the General Confederation of Small and Medium-sized Enterprises in order to examine the current situation and to make proposals for new measures.

The only measure that has been adopted is tax relief in the case of the transfer of a small business (sole proprietorship or a general partnership, or a limited partnership company) to the spouse or children due to the retirement of the owner. This measure is valid from 1 January 2001.

In addition, EOMMEX has included the possibility of financing, by means of a grant, the transfer of a business from the owner to the children, especially the extension and modernisation of the business transferred, in a measure for the creation of SMEs financed by the Structural Funds (period 1995 – 2000). This measure had very little success because at that period, there was no tax relief for this.

The Athens Chamber of SMI has organised a conference in order to inform interested businessmen on the importance of preparing themselves for the transfer of the business and on the procedures to be followed for a successful transfer according to the Greek fiscal and legal environment.

The Committee has ceased functioning and no other progress has been made up to now.

At present in **Spain**, the tax treatment is neutral for the transfer of family-owned businesses for the purposes of Inheritance and Gift Tax. This is the result of the important tax exemptions that have been passed. Regarding Corporate Income Tax, in the last few years there has been a sizeable approximation between the tax base and the book profit it refers to. As in other countries, this tax has evolved so as to avoid a dual tax burden from Corporate Income Tax and Personal Income Tax. Difficulties in connection with the transfer of businesses are therefore mostly related to the management methods rather than to their tax treatment.

According to the data available in Spain, over 2 400 000 companies are family-owned businesses, in which generational change plays a significant role. It is calculated that only 40% manage to get past the transition from the first to the second generation, and a mere 10-15% make it to the third generation.

The regulations applying to succession are the general rules of Inheritance law, which are not a common set of laws, because national Law sometimes coexists alongside specific territorial Law. The latter permit succession covenants, which are prohibited by national Law.

Non-voting shares, a feature taken from German Law, are also regulated in Spain by the Public Limited Companies Act (*Ley de Sociedades Anónimas*). This means that dividend rights are preserved, ruling out the involvement in management of those who cannot or do not wish to perform managerial functions. This can be very useful for family-owned companies; however, non-voting shares are not regulated by the Limited Liability Companies Act (*Ley de Sociedades de Responsabilidad Limitada*), which is the most widespread form of legal entity in Spain.

Neither is there a legal framework allowing the development of instruments such as Family Protocol, taken from Anglo-Saxon Law. This would entail modifications of the Civil Code and the provision of mechanisms for the settlement of disputes.

In order to study all these matters affecting family-owned businesses, a group of experts from the Ministry of the Economy and the Ministry of Justice was formed, which also has representatives from the National Coding Commission. The group met for the first time in November 2001.

The recent initiatives in **France** have primarily aimed at improving the information on business transfers and at preparing the transfer process by providing training. A major initiative has been the symposia organised by the Secretariat of State for SMEs, Commerce, Crafts and Consumer Affairs, which were followed by a White Paper on transfer of businesses.

One of the measures announced by the French Prime Minister in 2000 was to increase the number of entrepreneurs starting a business or taking over one that benefit from a quality support which is delivered by competent professionals. As a result, under the responsibility of *Conseil National de la Création d'Entreprise (CNCE)*[17], a "quality charter" of networks that give support to potential new entrepreneurs or successors of enterprises has been created. The participating networks are committed to quality services and to a certain level of competence of their advisors (training programmes for the personnel of the networks are to be carried out). The CNCE is responsible for monitoring that the charter is being implemented in conformity with the commitments made to the potential entrepreneurs.

In **Italy**, the new law of autumn 2001, which abolishes inheritance and gift taxes, could be a first important signal and a first important step for a new institutional awareness of the problem of business transfer in Italy. Until now, unemployment has always been considered the main problem by government and institutions. Nevertheless it has never been viewed in terms of losing jobs, but generally in terms of new start-ups to generate new jobs. From this point of view, some good results have been obtained, but an

[17] The National Business Start-up Council (CNCE), consists of qualified members from the public, governmental, quasi-governmental and private sectors and it sets the general guidelines for business start-up initiatives.

external observer might say that a lot has been done to create new jobs but not enough to maintain the existing ones.

Owing to the absence of a policy framework to help business transfers, the network of Chambers of Commerce, a few university departments, business associations, some banks, a part of the economic press and some small consulting companies have taken on board the job of providing assistance for business transfers.

As yet there is no widespread, shared culture regarding the transfer of businesses in Italy. Consequently, it is probable that broader action should involve all those directly or indirectly interested in the continuity of enterprises (institutions, private companies, business associations, Chambers of Commerce, social partners, etc.). Raising awareness both through the mass media and through direct dialogue with institutional representatives of the government is recommended.

Concern about the importance of business transfers in both macro- and microeconomic terms is increasing in **Luxembourg**. Professional chambers have been offering advice and limited services in the field for years. Banks, private consultants and accounting firms are starting to develop their own products and services in this area (tax, finance, legal matters, etc.). Most media are starting to cover business transfers and by so doing contribute to raising public awareness in the field. The fiscal reform of 2001/2002 reduces tax burdens on both physical persons and companies, making business transfers less "expensive". Nevertheless, public financial aid is still focused on start-ups. A certain lack of data on business transfer is apparent, which is due to the fact that different types of transfer leave different traces in different spheres. In general, financing still remains the main problem when starting up a new business or when taking over an existing one. Furthermore, when analysing failed transfers, emotional, financial and legal aspects seem to predominate.

Although progress made in **the Netherlands** in response to the Recommendation is positive, there is nevertheless some deterioration. On the positive side, transfer within family or to employees is now possible without any fiscal consequences through a so-called "silent transfer". However, the requirement for the transferor and successor to work together for at least three years in order to be able to benefit from the "silent transfer" is very demanding. Moreover, as from 2001, the special income tax rates that were applied to business transfers until 2000 (45% for normal transfers and 20% in case of death), ceased to exist. The relief for early retirement will be phased out by 2005 and only a small annuity will remain. Providing property (money or real estate) to the enterprise of the partner or of children under 18, is not only taxed progressively but, contrary to the previous system, is also subject to capital gains tax.

In general, the interest for business transfers as demonstrated by policy makers, service organisations, advisers and financial institutions is growing in the Netherlands. Nevertheless, in terms of research, policy, awareness and advice, more momentum could be developed. An earlier and better preparation of business transfers not only leads to improving the continuation of the enterprise but also stimulates further growth and development.

In **Austria**, in the last three years - on different levels - a considerable number of activities were implemented in order to facilitate transfers (awareness-raising of entrepreneurs, tax reductions, bank activities, Internet exchange, information/consulting, etc.). An example of such an activity is a CD-ROM that is exclusively targeted at business transfers (transferors as well as successors) which was published in April 2001 by one of the larger Austrian banks and is distributed to the business community. It provides information, supporting tools and Internet-connections for further information and counselling.

The latest tax reform (2001), however, had some negative impact on transfers since it increased the tax base for calculation of inheritance/gift tax. On the other hand, the "Neugründungsförderungsgesetz" was adopted in spring 2002 so that specific tax relief is also available for business transfers (not only start-ups). Generally, the overall development shows a high degree of awareness and a willingness to actively promote transfers. On the political side, there are preparations by the Ministry of Justice to introduce a simpler form of a public limited company to accommodate SMEs. This will also promote transfers of such firms. Another legal form favourable for business transfers is the foundation, which is gradually increasing in importance. At present there are roughly 2000 foundations in Austria.

The importance of the subject of business transfers, in its various aspects, is growing in **Portugal**. This is reflected in the implementation of initiatives in this field either by public institutions or business associations, banks and private consultants.

Over the last four years, along with various tax measures, a number of programmes have also contributed to solving the problems related to business transfers.

The Centres for Company Formalities (CFE) network, created in 1998, acts at the level of simplifying and streamlining the administrative procedures related to the establishment of companies and the alteration of partnership agreements. The CFEs allow the performance, in one place, of all the formalities required for the creation of a company or partnership agreements, with significant benefits in terms of facility and rapidity.

Programmes aimed at the promotion of entrepreneurship and financial innovation have developed an increasing use of venture capital by the use of seed capital, start-ups, activity enlargement, and also by supporting management buy-out and management buy-in operations.

As regards inheritance, the aim of the partnership programme "Generation to Generation" is to support (inform and counsel) family SMEs in their process of succession. It is operated by APEF – Portuguese Family Enterprise Association, IAPMEI –Institute for the Support of Small and Medium-sized Enterprises and Investment (Ministry of the Economy) and more than 24 business associations.

To conclude, in spite of the interest of public and private entities involved in this subject, there is still a lot to do, particularly as regards in-depth knowledge of the reality of the question (e.g. specific data) and major co-ordination of several of the institutions involved, in order to ensure, in a sustained way, the necessary dynamics to answer the problems associated with business transfer.

In **Finland**, the measures concerning tax exemptions and allowances for descendants, business transfers or transfers to third parties have been difficult. The amount of the tax to be paid depends largely on the difference between the tax base and the market value. The relief provided for under current relief legislation (valuing a business on the basis of its taxable value rather than assessing it chiefly on the basis of its market value) has lost much of its force, as taxable values have climbed sharply over the past few years and are now generally very close to market values. Under Finnish taxation policy, the main principle is often the neutrality of taxation and different exemptions do not always support neutrality.

Even if the adoption of new tax or legal measures has been difficult in Finland, there has been an increasing development process in order to provide other support measures for business transfers. At the beginning of 2000, the Ministry of Trade and Industry launched an *Entrepreneurship Project*, which is included in the Government's Programme. The project runs until spring 2003 and its objective is to promote stable economic growth, employment and competitiveness by enhancing the establishment of new firms and the growth and development of existing firms. The focus of the project is on different phases in the life cycle of a company. Measures are directed at those stages which are most crucial in terms of the firms' success. More than 100 concrete measures are applied throughout the project. Business transfer measures are included.

In Finland there are at the moment many interest groups (e.g. federations, consultants, bookkeeping firms and educational organisations among the policy groups such as the Ministry of Trade and Industry) who have woken up to the present situation of Finnish business transfers. They offer many different ways of awareness raising and providing information, such as seminars concerning business transfers and especially business succession. The problem is that the provision of support is still quite fragmented and there may be a lot of difficulties for entrepreneurs to find the information they need.

Assistance, advice and finance are available for business transfers but more is still needed, especially to facilitate financing and reduce the tax burden of business transfers. More advice, training and special courses are needed in the near future when very many changes of generation can be expected.

7. THE FUTURE OF BUSINESS TRANSFERS

Available research results confirm that the successful completion of business transfers correlates positively with the size of the enterprise. The larger the enterprise, the more likely the transfer is to be successful. The success of transfers is also facilitated by "favourable" legal forms, as has been recognised before. Overall the importance of business transfers for business demography and for employment is paramount and has been recognised by both the European Commission and national governments. Approximately one third of all enterprises will be confronted with the transfer problem in the next ten years (ranging from 25% to 40%, depending on the Member State). As most projections confirm, this will not diminish in the near future. It is more likely that this percentage will rise for demographic reasons and the wish of the entrepreneur to stop before reaching retirement age.

Although, regularly updated data on business transfers are not available and even topical studies do not cover all Member States, research results indicate a few important trends which are changing the nature of business transfers. Fewer and fewer transfers are family successions. The trend indicates a decreasing willingness of descendants (sons, daughters) to take over the family enterprise. Accordingly, transfers to third persons (employees - management buy out, others - management buy in) or other enterprises (take over, merger) are increasing. For the same reason as sales of enterprises are increasing, inheritance or donations as forms of transfer are becoming less frequent.

The possible buyers of enterprises can roughly be divided into the different categories listed in the table below. For example, the *"job buyer"* is buying the company in order to employ himself/herself. The *"financial buyer"* with a purely financial scope is not normally familiar with the business involved. The *"capacity buyer"* has background knowledge of the business and also wants to grow by buying an extra market share. Finally, the *"strategic buyer"* who has a longer-term vision of the acquisition with a tactical/strategic point of view. The value of the enterprise also varies according to the prospects and the possible benefits for the buyer involved[18].

Table 6: Types of buyer

	Job buyer	**Financial buyer**	**Capacity buyer**	**Strategic buyer**
Aim	Self employment	Maximise return on investment	Merger and integration	Create unique position
Value for the buyer	Salary	Current return on investment	Current return on investment + merger advantages	Strategic interest on future profit

[18] Adapted from Bedrijfsoverdracht en –overname, van Engelenburg et al, 1998

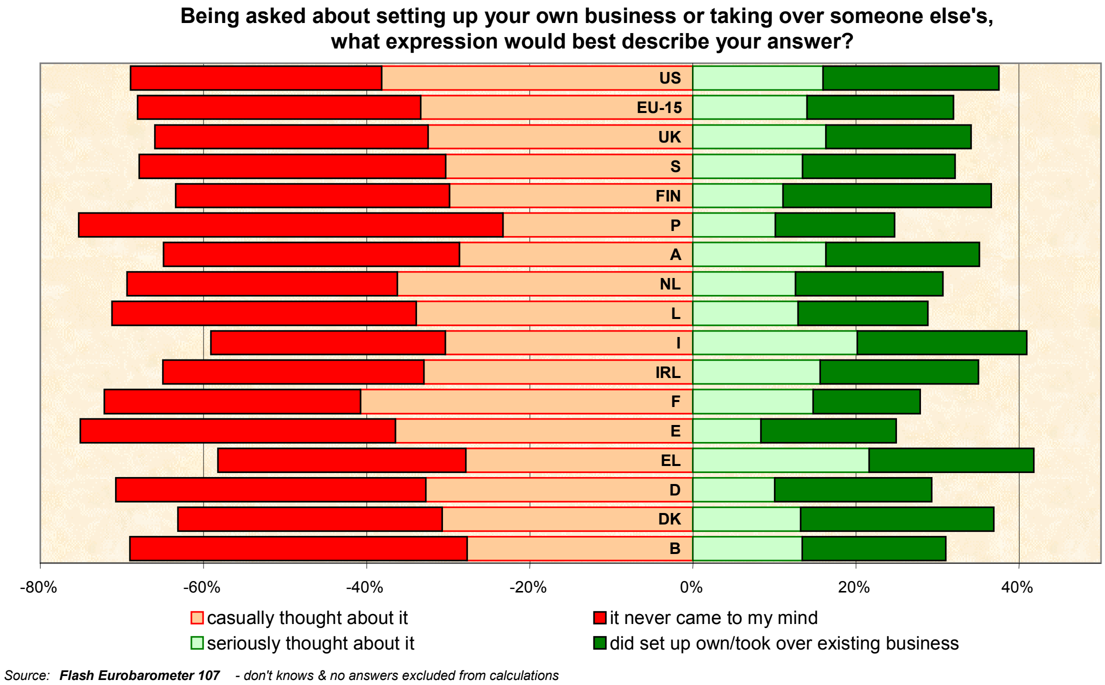
In addition, it should be noted that a number of enterprises will not be transferable for a variety of reasons such as inferior earning potential or inadequate equity. In some cases the entrepreneurs will prefer to close down rather than transfer the business. It should, however, be emphasised that a high percentage of transfers takes place with no big problems. On the other hand, *some* of those transfers which do not take place can also be understood as a necessary change in the structure of the economy.

Another important trend is the increasing number of business transfers for personal reasons and, thus, transfers before the entrepreneur reaches the legal retirement age. Transferability of an enterprise in terms of strategic position and earning potential becomes an important condition for successful transfers. This implies the need for a more professional, less emotional attitude by entrepreneurs towards their enterprise. Particularly in smaller enterprises – in medium sized or larger enterprises this condition is already and to a large extent fulfilled – better documentation and strategic positioning (business plan, marketing plan, evaluation and regular assessment) is required in order to increase the transferability and value of the enterprise. Thus, it is necessary to separate the life cycle of the enterprise from the life cycle of the entrepreneur, which requires timely delegation of management functions and involvement of employees in the decision making processes.

Taking into account the growing trend of transfers to third parties, the results of the Flash Eurobarometer survey[19] show that only 14% of the respondents in Europe and 16% in the United States have seriously thought over either starting a new business or taking over an existing one. To put it in different words, 68% of the respondents in Europe and 63% in the United States had *not* seriously considered starting a new business or taking over an existing one.

[19] Flash Eurobarometer No 107 “Entrepreneurship”, 14. - 20.09.2001.

Graph 2: Taking over or starting one's own business: having thought about it and actually doing it



The values and views of the owners have changed markedly: while the employers of the immediate post-war period built up their companies by their own efforts, many of the younger employers do not have the same emotional bond with their companies. Today young entrepreneurs are more entrepreneurial (they become entrepreneurs because they see the chance for a successful start-up (or take over) as compared to "craft-type" entrepreneurs (who become entrepreneurs because they have a particular skill or know-how). We also see a change in the curricula of entrepreneurs. They are more likely to sell their enterprise for personal reasons and they frequently change between self-employment and employment or may establish several enterprises consecutively *(serial entrepreneurship)*.

This trend of more frequent ownership through the working life of an individual may create increased business dynamics and enhance innovation in a great number of SMEs. This can be attributed to several reasons.

In the future - and even now already - the demand for faster innovation, the development of new products, global market considerations and the like will increase the need for the owners of SMEs to constantly update their skills just to keep up. There is also a tendency for SME owners to reduce their efforts to develop and expand their enterprises many years before their retirement. As a result, a lot of good potential can be lost and the value of the company will gradually decrease.

In the coming years we can expect an increase in demand for potential SME buyers/owners, which will require much more focus on motivating and training them. Improving the recruitment of new entrepreneurs might for instance be done through:

- improved awareness-raising by the employees' organisations to turn their members into business owners;
- buying a job by buying an enterprise, owning it for a shorter period, reselling it and cashing in on the increased value;
- buying yourself into an existing enterprise is also an attractive alternative to starting up a new enterprise;
- training and counselling that deals specifically with typical problems for owner-managed SMEs;
- reducing barriers to cross-border transfers.

These trends have important implications for

- the presence of appropriate legal forms;
- the need for financial instruments and taxation systems for business transfers;
- the need for fairly transparent and common market places for buying and selling of SMEs.

8. CONCLUSIONS

More than 86% of the 9.1 million enterprises with employees in the EU have less than 10 employees. This indispensable group of enterprises does not normally dominate the political and public debate or take part in organisational work. Therefore it is important to draw attention to this large group of SMEs facing some kind of business transfer within the next decade.

The Commission Recommendation of 7 December 1994 and the Commission Communication on the transfer of small and medium-sized enterprises of 28 March 1998 have to a great extent focused upon **inheritance, gift and income taxation**. The main target has been **transfers to another member of the family**. The main reason for transfers was **age**. This pattern seems to be changing.

Business transfers are standard in the business life cycle as well as in the entrepreneur's life cycle – every year businesses are transferred. Despite the individual differences in the Member States we are looking at the same trends in all Member States:

- An increased importance of business transfers as a policy issue due to the high and rising number of transfers within the ten years to come;
- An increasing number of business transfers will take place outside the family to third parties;
- An increasing number of entrepreneurs will only stay in the same enterprise for a shorter period of time, not a life time; and
- Personal decisions (early retirement; change of profession, interests or in the family situation, etc.) and changing competitive environment (changing markets, new products, new channels of distribution, etc.) and not only age will increasingly be the trigger for transfers.

With these trends and challenges in mind, the following is recommended:

(1) **Creation of a "European Business Transfer Centre"**, a virtual European platform for co-ordinating the gathering of information and exchange of experiences and best practices on the situation in the Member States and initiating and facilitating cross-border co-operation. To achieve a maximum impact and dispersal of the centres' services, similar business transfer centres should be created at national level. These centres must be closely connected to the work of European, national, regional and local authorities, business organisations and other bodies, such as chambers of commerce, and operate as much as possible within the existing support networks for SMEs. A European centre would also allow for a regular updating of the expert group's work.

(2) **Creation of a European sellers and buyers database/market place** which is linked to or integrated into the European Business Transfer Centre. The European database should serve as a general portal, enabling existing national databases to exchange information and to foster transnational business transfer. Offers of buyers and sellers from one Member State could be accessed in the other Member States' databases with the help of a

translation programme. The creation of this kind of databases as “hosts” in other Member States should be encouraged and could be facilitated by the European Business Transfer Centre. The same Internet-address with different country codes could help to promote the database on Member State-level.

(3) **Organisation of regular European seminars/meetings/fora** on specific business transfer questions, such as tax and legal matters and finance in addition to the services provided by the transfer centres, and the sellers and buyers database. These seminars should focus on the exchange of best practice and ideas which might be of use in other Member States for facilitating business transfer. The results should be used as input for seminars and meetings on national, regional and local level and could be accessible on the website of the Business Transfer Centre. Participants would represent public authorities, business organisations, experts (accountants, lawyers) and the like. The gathering of all interested parties can contribute to better co-ordination.

(4) **Development of alternative or additional tailor-made training and management tools** for both the existing and future owner-managed and small family-owned businesses, also by making use of the experiences gathered by the SME support networks as well as the business transfer centres in the Member States.

(5) **Public initiated support programmes and research** focusing on business transfers, including the collection and updating of statistical data, awareness building, motivating, training and education should be intensified in co-operation with organisations, advisers and other institutions involved in business transfers.

(6) **Equal attention should be given to start-ups and transfers** and in a much more co-ordinated way. Research on, support for and policy on business transfers should increase. Next to the strong orientation on start-ups, the phase of business transfers in the company lifecycle deserves more attention and co-ordinated action.

Due to the importance of business transfers, demographic reasons and new business dynamics, longer-term attention from policymakers in the form of practical support and an optimal fiscal and juridical environment is required to prevent unnecessary business closures and encourage entrepreneurship, growth and development.

The Commission in close co-operation with the Member States is urged to establish a detailed **Action Plan** for how and when the recommendations proposed by the expert group will be implemented.

ANNEX 1: FURTHER STATISTICS ON BUSINESS TRANSFERS

Table 1: Potential business transfers

	No of business transfers per year (*)	No of business transfers per year as % of all enterprises (*)	No of jobs involved per year	No of jobs involved per year as % of total employment
B[20]	3 637			
DK[21]	10 000	3-4%	34 000	2.5%
D[22]	71 000		900 000	
EL				
E[23]	150 000			
F[24]	43 160		162 000	1.16%[25]
I[26]	66 000	4 %	220 000	
L[27]	500		3000	1.5%
NL[28]	20 000	3%		
A[29]	5 600	2.8 %	45.000[30]	2 %
P				
FIN[31]	8 900	4 %		

(*) For B, D, E, I, NL, A and FIN yearly transfers (in % or absolute) are arithmetic averages of projections for a five or ten year period.

20 Opvolginsproblematiek in de familiale KMO, 1997.
21 Generationsskiftebetænkningen, August 1999.
22 Institut für Mittelstandsforschung (IfM), Bonn, 10.04.2002.
23 EOI Escuela de Organización Industrial.
24 APCE Agence pour la Création d'Entreprises, 1999: overall the statistics concerning the transfer of businesses in France are very under-estimated, because the initial goal of the database used is more an administrative than an economic objective. According to a relatively recent survey in two regions in France, the number of business transfers could be under-estimated by approximately 50%. In other words, the real magnitude of the business transfer in France would be nearer to 60 000/70 000 per year than 40 000.
25 Excluding the public sector.
26 Sda Bocconi, 1999.
27 Estimates based on the age of entrepreneurs in the craft sector.
28 van Engelenburg et al.: Bedrijfsoverdracht en overname, 1998 and Rabobank: Cijfers & Trends 1999/2000.
29 Austrian Institute for Small Business Research (IfGH), March 2000 (update of report from July 1999).
30 Yearly average of estimate for a ten year period (2000-2009).
31 Barometer of the Federation of Finnish Enterprises, 1999.

Table 2: Business dynamics

	No of transfers performed	No of start-ups	No of closures[32]	No of bankruptcies[33]	No of bankruptcies per 10 000[34]
B				5 300	100
DK	7 500[35]	17 000[36]	18 000[37]	1 700	113
D			407 000	27 500	78
EL				630	10
E			284 000	400	2
F[38]	41 652		254 000	39 000	168
IRL				800	94
I			270 000	15 000	38
L[39]		4 578		600	200
NL	20 000[40]	63 700[41]	49 400[42]	3 300	73
A	5 800[43]	23 742	15 000	5 200	168
P			85 000	460	7
FIN		22 562[44]	23 000	2 100	95
S			37 000	5 600	145
UK				14 800	40

Table 3: Reasons for transfers

	Age	Illness, accident or death	Personal reasons
B			
DK			
D[45]	42%	32%	26%
EL			
E			
F[46]	58%		
I			
L			
NL[47]	54%	26%	20%
A[48]	45%	31%	24%
P			
FIN			

Table 4: Types of transfers[49]

32 Enterprises in Europe, 5th report, European Commission 1998 (data 1994-1995)
33 Insolvencies in Europe 2000/2001, Verband der Vereine Creditreform e.V.
34 idem.
35 Generationsskiftebetænkningen, August 1999
36 Danmark's statistik, 1998-1999
37 Generationsskiftebetænkningen, August 1999
38 INSEE fichier SIRENE, 2000
39 STATEC, Annuaire statistique 2000
40 Rabobank, Cijfers&trends and RZO bedrijfsoverdrachten
41 Bedrijvendynamiek 2000, VVK
42 Idem.
43 Austrian Institute for Small Business Research (IfGH), April 2000; estimate on basis of information
44 Statistics Finland, 2000
45 Institut für Mittelstandsforschung (IfM), Bonn, 30.10.2000
46 Plan d'action MEDEF/ACFCI/CRA, 1999
47 Een nieuwe generatie in het familiebedrijf, Floren 1997 (research carried out among SMEs with more than 10 employees)
48 Austrian Institute for Small Business Research (IfGH), March 2000 (update of report from July 1999)

	Transfer within family	Transfer to employees	Transfer to third parties	No successor/ closure
B				
DK[50]	25%	10%	40%	25%
D[51]	42%	13%	15%	13%
EL				
E				
F[52]	14%	34%[53]		
I[54]	68%			
L				
NL[55]	27%	15%	>50%	
A	41%[56]			
P				
FIN[57]	29%	4%	16%	51%

49 Data is based on statistics and surveys.

50 Deloitte&Touche, Generationsskifte, October 1999

51 Institut für Mittelstandsforschung (IfM), Bonn, 30.10.2000.

52 INSEE Institut National de la Statistique et des Etudes Economiques – fichier SINE 1994

53 Wage-earners.

54 Sda Bocconi, 1999.

55 Rabobank, Cijfers en Trends, 1999 - 2000.

56 Austrian Institute for Small Business Research (IfGH), March 2000, estimate based on information of statistical offices of economic chambers of Salzburg and Vorarlberg.

57 Barometer of the Federation of Finnish Enterprises, 1999.
According to the survey made by the Central Chamber of Commerce in February 2000, 10.3% of enterprises are transferred by inheritance, 38.1% by gift, 19.8% are sold, 8.7% use business arrangements and 23% use several methods.

ANNEX 2: COMPARATIVE TABLES OF LEGAL AND FISCAL MEASURES TAKEN BY THE MEMBER STATES

COMPARATIVE TABLE No 1

Companies limited by share capital

Member State	Minimum number of members for formation[58]	Minimum capital	Supervisory board[59]	Reduced administrative burdens for SMEs[60]
B	2	**EUR 61 970**	no	yes (accountancy)
DK	1	**Private DKK 125 000 (EUR 16 800)** Public DKK 500 000 (EUR 67 200)	**Private: optional** Public: obligatory (mixed system with optional workers participation)	**Private: yes (no obligation to have a board of directors)** Public: yes (accountancy)
D	1	EUR 50 000	obligatory (workers participation limited to companies having **more than 500** employees)[61]	yes (*kleine Aktiengesellschaft*)
EL	2	**EUR 58 700**	./.	no
E	**1**	**Private EUR 3 000** Public EUR 60 100 (higher for special companies)	no	yes (accountancy)
F	**1 (SAS and SARL)**	Public: EUR 228 670 Private: EUR 38 110 **SARL: EUR 7 620**	optional	no
IRL	7	EUR 38 090	no	no
I	**1**	EUR 103 290	no	no
L	1 (s.a.r.l. private) 2 (s.a. public)	**Private EUR 12 400** **Public: EUR 50 400**	**Private: no if <25 members** **Public: obligatory**	**Private: No "commissaire aux comptes" or "réviseur" under certain conditions. No Annual meetings if <25 members** Public:no
NL	1	**EUR 18 150**	**no**	**Yes, abbreviated forms of accounts, simplified audit regulations**
A	**Private: 1** Public: 2	**Private EUR 35 000** **Public EUR 70 000**	**Private: Obligatory if capital > EUR 70 000 and number of partners > 50 or average number of employees > 300** Public: obligatory (3/7/12/20 members according to the size of the company)	**Private: yes** Public: no
P	5	**EUR 50 000** (higher for special activities)	optional	no

[58] The following footnotes refer to the articles of the Recommendation and have been added for clarification to the different points in the tables. This point refers to §4c of the Recommendation: the creation of a public limited company should be allowed with only one partner.

[59] §4b: Should not be obligatory for a small public limited company

[60] §4b: SMEs should be allowed to establish themselves as public limited companies whose establishment and management is simplified

[61] only for companies founded before 10th of August 1994 or family companies (= generally one shareholder); § 7 AktG

FIN	1	**Private** **EUR 8 000** Public EUR 84 090	optional if capital of at least EUR 84 090; if capital is lower, the number of board members can be less than 3 and the managing director is not obligatory	yes (accountancy)
S	1	**Private** **SEK 100 000** **(EUR 11 000)** **Public** **SEK 500 000** **(EUR 55 000)**	obligatory	no
UK	**1**	GBP 50,000 (EUR 81 000)	no	**Yes, e.g. abbreviated forms of accounts, the possibility to be exempt from an audit and dispensation of Annual General meetings**

COMPARATIVE TABLE No 2

Partnerships and Sole Proprietorships

Member State	Continuity of partnerships as a legal principle[62]	Conflict will/partnership contract[63]	Decision of the beneficiaries[64]	Transfer of enterprise assets[65]	Transformation to capital companies and vice versa[66]
B	Bureau d'administration/ Administratiekantoor system in place	no legal solution, but agreement prevails in practice	unanimity	concept of 'fonds de commerce' used in practice	**codified**
DK	**Yes**	**a legal solution**	./.	./.	**codified**
D	**Yes**	solution only partly in favour of the priority of the partnership contract	unanimity (majority in specific cases)	transfer in toto for sole traders and for partner associations	codified
EL	No	solution only partly in favour of the priority of the partnership contract	unanimity	./.	./.
E	No	solution only partly in favour of the priority of the partnership contract	unanimity for the disposal of partnership shares, majority for their administration	provision of immediate cash	partially codified
F	No	priority of the partnership contract	unanimity	Transfer *in toto ('fonds de commerce')*	partially codified
IRL	No	no legal solution, but priority of the partnership contract in practice	unanimity	transfer *in toto*	not codified, obligation to dissolve the company when transformed into partnership (disincorporation)
I	Yes	no legal solution, but surviving partners have a threefold choice	unanimity	transfer *in toto ('azienda')* **or in parts**	**Only from partnerships to limited companies**
L	No	no legal solution	unanimity	concept of *'fonds de commerce'* used in practice	partially codified
NL	No	**a legal solution**	**a legal solution in case of conflict.**	no transfer *in toto*	**codified**
A	No	no legal solution, but agreement prevails in practice	unanimity	./.	partially codified (only from capital companies to partnerships)
P	Yes	no legal solution**, but agreement prevails in practice (after the death of a partner, there is an amortisation of the quota)**	unanimity for the disposal of partnership shares, **if foreseen in the partnership contract, or direct transfer to the heirs**	transfer *in toto ('estabelecimento comercial')*	codified
FIN	No	priority of the partnership contract	unanimity	no legal obligation to transfer each asset individually	partially codified (only from a partnership to a capital company) **normally no tax consequences**
S	No	**agreements prevail in practice**	unanimity	transfer in toto	**Possible but not codified in legislation**

62 §5a: Partnership should be kept as a going concern when one partner dies

63 §5b: Partnership agreements should be given precedence

64 §5c: Unanimity rules for decisions by the heirs should not prevent the enterprise from being kept as a going concern

65 §4 d and e: Fiscal neutrality should be applied to transfers of assets that are done to separate the management powers and ownership

66 §4a: Should not be needed to close down the company or to create a new legal entity

UK	no, but personal representative can dispose of the enterprise within one year on the instructions of the beneficiaries	no legal solution	unanimity	transfer in toto	not codified; obligation to dissolve the company when transformed into a partnership (disincorporation)

COMPARATIVE TABLE No 3

Transfer of business within the family and its taxation

Member State	Transfer between spouses[67]	Rights of the spouse at the death of the entrepreneur	Taxation implications of transfers between spouses	Moment of valuation of the business for tax purposes[68]	Payment by instalments of the capital gain tax arising from a transfer[69]
B	only within marriage agreement; no sale; no agreements on future inheritance	no property right, but right to use and profit (*usufruct*), possibility of buying this right back	./.	./.	no
DK	**Yes**	Optional undistributed property right on estate	no	Inventory day (1-2 years after the death of the entrepreneur)	no
D	yes	legal right to inherit (*Ehegattenerbrecht*), compensation in cash (*Pflichtteil*)	**tax allowance of 307 000 EUR**	death of the entrepreneur **(declaration within 3 months)**	./.
EL	./.	./.	./.	./.	./.
E	**yes (specific cases)**	no property right, but compensation in cash; exception for agricultural properties	./.	./.	./.
F	only within marriage agreement (*commu-nauté universelle*), gift possible; no sale; no agreements on future inheritance	./.	Relief of **EUR 76 220**	death of the entrepreneur (the declaration has to be made within 6 months)	./.
IRL	yes	./.	no	on decision by the administrator of the estate after taking into account tax and legal requirements (usually shortly after the death)	./.
I	only within marriage agreement (*azienda coniugale, **familiare***); no agreements on future inheritance	**As for any other inheritance.**	**Total exemption as for any other inheritance.**	**death of the entrepreneur**	no
L	**Marriage agreement, testament**	**Usufruct, possibility to continue business (in right of establishment), exceptions for agricultural businesses.**	**Tax relief of EUR 37 200 for partnerships and private enterprises on a loan to pay out the heirs not interested in business (cash adjustment).**	**Death of the entrepreneur**	./.
NL	**yes**	**yes, unless otherwise stipulated.**	**As for any other inheritance. Possible without fiscal consequences**	**Going concern basis.**	**yes, over 10 years**
A	Yes	legal right to inherit (*Ehegattenerbrecht*), compensation in cash (*Pflichtteil*), exception for agricultural properties: no adequate compensation (*Anerbenrecht*)	./.	./.	yes, over 3 years (*Strukturanpas-sungsgesetz*)

67 §5c: Should be allowed

68 §6c: Should take into account the likely change in the value of the business after the death of the owner

69 §6b: Should be a possibility

P	**Yes, if foreseen in the marriage agreement**	**Yes, except for the administration of the company**	**Yes (inheritance tax of 10% of property value is applied)**	**death of the entrepreneur**	**yes**
FIN	yes	**legal right to inherit unless otherwise stipulated in the marriage agreement**	capital gains tax, inheritance tax and gift tax apply	death of the entrepreneur	no
S	yes	no special rights for the spouse	no income tax when changing share-holders, gift and inheritance tax apply	death of the entrepreneur	no
UK	yes	./.	./.	./.	**Available under certain conditions**

COMPARATIVE TABLE No 4

Inheritance and gift tax

Member States	**Maximum rate**	**Maximum rate for children**	**Special rules for business**[70]	**Interest free instalments**[71]	**Calculation of the tax base**
B	80%	30%	**Walloon region: reduced inheritance tax rate of 3% of the net value for family enterprises. Brussels region: reduced inheritance tax rate of 3% of the net value for SMEs. Flanders region: reduced inheritance tax rate of 0% of the net value for family enterprises under certain conditions. Federal law of 1998 reduces gift tax rate to 3%.**	./.	market value + relationship between donor and donee
DK	36,25%	15%	EUR 25 000 relief	no	**Especially adapted** market value **of shares and real estate** + relationship between donor and donee
D	50%	30%	EUR 256 000 business relief, 40% **reduction** on the rest of the amount	yes: 10 years (if necessary to assure the survival)	**Balance sheet value for tax purposes (special tax value for immovable property and holdings in other companies)** less **liabilities** and reliefs + relationship between donor and donee
EL	65%	25%	**Tax exemption for transfers of sole proprietorships and general partnerships to spouses and children due to retirement.**	yes: 5 years	scaled from 5% to 60%
E	34% (calculation of due amount with wealth coefficient up to 2.4)	The taxable amount is reduced in line with the children's age	A reduction of 95% **of inheritance and gift tax which applies to all family companies that are not limited by share capital.**	yes: 5 years	market value less liabilities
F	60%	40% **for amounts above EUR 1 707 000**	Payment deferred or in instalments, **reduction of inheritance tax by 50% of the estimated value for unprepared transfers under certain conditions. Reduction of the gift tax: - 50% if the donor is less than 65 years old - 30% if the donor is over 65 years old**	no	assessed value less reliefs
IRL	**20%**	**20%**	business relief	no	market value less reliefs + relationship between donor and donee
I	**0%**	**0%**	**Total exemption**	-	-
L	Inheritance tax 15% **Gift tax 14.4%**	Inheritance tax 15% **Gift tax 2.4%**[72]	./	**no**	market value less liabilities

70 §6a: Rates should be reduced for assets used exclusively for the business

71 §6b: Should be possible

NL	68%	27%	**30% reduction on business assets, no taxation of government facilities like quota. EUR 460 000 exemption of inheritance and gift taxes between partners.**	**yes, for 10 years if necessary**	income and inheritance tax
A	60%	15%	**Tax relief of EUR 363 365**	no	market value less liabilities, real property: monetary value (10% of market value)
P	50% **in the absence of agreement among the heirs**	25% **in the absence of agreement among the heirs**	**no**	**no**	market value less liabilities
FIN	48%	16%	taxation on tax value instead of market value (on request) **If a financial consideration of more than 50% of the market value has been used, no gift tax is charged.** **Possibility for total exemption if the continuity of the business and the jobs are at risk.** **If shares giving right to at least 10% ownership in the company are disposed of to a close relative, the capital gain is tax-exempt.**	yes: 5 years **for amounts greater than EUR 1 600** (on request)	market value less liabilities
S	30%	30%	**Reduction to 30% of net asset value**	no	**Net asset value (business property)** + relationship between donor and donee
UK	40%	40%	100% exemption for business (the threshold for taxable assets increased to **GBP 234.000 (EUR 390 000)**)	yes: 10 years for non exempted assets	market value less liabilities + relationship between donor and donee

72 For gift taxes, an additional transcription tax of 1% is added for real estate or a building and if these are located in the city of Luxembourg, a 50% overtax is also applied.

COMPARATIVE TABLE No 5

Transfer of business to third parties and its taxation

Member State	Capital Gains Tax Maximum rate	Measures facilitating the transfer of businesses to third parties[73]	Tax relief on money, received from a transfer, which is subsequently reinvested in another SME [74]	Relief for early retirement [75]
B	42.23%	**reduced inheritance tax rates for business transfers (see table 4) apply also to third parties**	**Yes, in certain conditions it is not taxed**	capital gains are subject to a reduced income tax of **16.5%** if seller is more than 60 years old
DK	59%	**Taxation of the transfer of goodwill and other intangible assets can be deferred if the payment is constituted by periodical payments**	no	**Possible to deposit up to 2 million DKK (EUR 268 000) on a pension saving account when selling the business. Full deduction of deposit at the time of the deposit.**
D	48.5%[76] 2003/2004: 47% 2005: 42%	**Reducing the progressive effect of taxation through the "1/5th method"** **Re-introduction of the principle of "Mitunternehmererlaß"**	yes	**A relief of EUR 51 200** for transfers by owners over 55. This is reduced by the amount by which the transfer exceeds EUR 154 000 **As an alternative to the „1/5th method" in the 1st column, entrepreneurs who are 55 or older can demand that the tax rate on the proceeds from the sale of their business is halved when they retire (i.e. only once in a lifetime).**
EL	20%	./.	./.	./.
E	48%	No **Exception for agricultural and forest properties: reduced transfer taxes of between 50% and 100%.**	**Yes (the payment of taxes is deferred if a share of more than 5% is transferred)**	./.
F	26%	./.	**Yes (the payment of taxes is deferred)**	no
IRL	20%	yes	yes (roll-over reliefs)	if an entrepreneur reaches 55 years of age and sells qualifying business assets for less than EUR 317 400, he will get a tax exemption for the capital gain
I	27%	**no**	**A lower tax rate of 19% is applied on the capital gain**	**no**
L	37.45% companies 39% private persons	**Tax relief on long-term investments made in the context of business transfers.** **Tax relief of EUR 49 500 – EUR 99 000 for value increase on sale of business.**	**no**	**no**
NL	52%	taxation can be deferred by legal means and also avoids high rates	**Yes, the payment of taxes can be deferred.**	**Retirement relief is being phased out in the coming 4 years (only a small facility remains).**
A	50%	payment of tax **on profits from selling capital assets** is possible over 3 years if seller had owned the business for at least 7 years; **tax relief of EUR 7 200 which is taken into account in inheritance taxation**	no	tax **on profits from selling capital assets** is only 50% if the seller is more than 60 years old and retires **or is unfit to run the business or if he/she dies**
P	35.2%	**no**	**no**	**no**
FIN	29%	no	no	no
S	30%	**Yes, restructuring possible without any immediate taxation**	no	no
UK	40%	yes	yes	**Retirement relief is being phased out and will not be available from the 2003-2004 tax year.**

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73 §7a: Tax arrangements should be introduced to encourage this type of transfer.
74 §7a: Such tax incentives should be provided.
75 §7a: Should be offered in particular to businessmen over 55 years old.
76 If the industrial and commercial income of the company is above EUR 43 375, the rate is reduced to 43%.

COMPARATIVE TABLE No 6

Transfer of businesses to employees and its taxation

Member State	Specific measures facilitating transfers to employees[77]	Relief available to employees in relation to stamp duties and registration fees[78]	Special rules for the transfer to an enterprise or a workers' co-operative set up by the employees[79]
B	**Favourable tax treatment of stock options**	EUR 1 000 general tax relief	**-**
DK	**Deduction of interest expenses for 10 years when buying shares as well as personally owned businesses.**	no	no
D	inheritance and gifts tax down to 30%	EUR 154 threshold per year	./.
EL	./.	./.	./.
E	**Special rules for stock options in specific conditions.**	./.	co-operatives
F	./.	tax reduction	tax exemption for shares transferred
IRL	./.	./.	./.
I	**no**	**No**	**no**
L	**no**	**no**	**no**
NL	**Possible without fiscal consequences**	**No**	**no**
A	./.	No	./.
P	**No, except for tax reductions**	**No**	**Specific rules only for co-operatives (exemption of certain taxes)**
FIN	./.	./.	./.
S	no	No	no
UK	**Tax advantaged share schemes for the transfer of shares to employees and statutory employee share ownership trusts (ESOTs)**	**No**	**no**

77 §7b: Should be promoted by reducing the taxation on the capital gain, by waiving registration fees or through tax advantages.

78 §7b: Should be provided.

79 §7b: Reliefs should equally be available for this type of transfer.

ANNEX 3: GOOD PRACTICE CASES

LIST OF GOOD PRACTICE CASES

TAX MEASURES

Inheritance and gift taxes

1. Greece: Tax exemption of business transfers
2. Spain: Reduction of inheritance and gift taxes
3. Italy: Abolition of inheritance and gift taxes
4. Belgium: Reduction of inheritance and gift taxes

Transfer of business to third parties

5. the Netherlands: The Silent Transfer
6. Denmark: Relief for early retirement

SUPPORT MEASURES

Information

7. Germany: One-stop-shop for business transfers
8. Germany: "nexxt" Information portal
9. Italy: Systematic information
10. Italy: Transfbiz - On-line transfer of business newsletter
11. the Netherlands: Co-ordinated support

Education and training

12. Spain: Training for business transfers
13. Italy: Kit.brunello - A self-analysis check-up
14. Italy: Laboratorium - Analysis of the transfer situation for companies and regions
15. Finland: Passing the baton
16. Finland: Training for business transfers

Coaching/Counselling

17. France: C.R.A.
18. the Netherlands: Stichting Ondernemersklankbord
19. Austria: Forum for discussion
20. Finland: Mentoring

Transfer market

21. Denmark: www.ticmarked.dk – A market place
22. Germany: www.change-online.de – A market place
23. France: www.bnoa.net – A market place
24. Italy: www.generazionimpresa.com – A market place
25. Luxembourg: www.chambre-des-metiers.lu – A market place
26. Luxembourg: www.cc.lu- A market place
27. the Netherlands: www.kvk.nl – A market place
28. Austria: www.nachfolgeboerse.at – A market place
29. Finland: www.yrittajat.fi – A market place

Finance

30. Belgium: Special loans for business transfers
31. Denmark: VækstKaution - A Loan Guarantee Scheme
32. France: EDEN - A programme to assist business transfers
33. Luxembourg: Prêt du démarrage – a guarantee free loan for start-ups and take-overs
34. Finland: Entrepreneur loan

1. TAX MEASURES

1.1. Inheritance and gift taxes

Good practice case 1 - Greece: Tax exemption of business transfers

In Greece, transfers of sole proprietorships, shares of a sole proprietorship or a general partnership to the entrepreneur's spouse or children due to retirement are tax free as of 1 January 2001.

This measure has proved to be very effective, not only because it provided financial incentives, but also because it brought to the attention of the small entrepreneurs and of the public authorities the issue of transfer of business. *Contact: Ministry of Finance, Income Tax Directorate, tel. +30-10-3375317-18.*

Good practice case 2 - Spain: Reduction of inheritance and gift taxes

In the *mortis causa* or *inter vivos* transfer of an individual business, a professional business or shareholdings in entities, a 95% reduction of the value of the taxable amount may be applied in certain cases, provided that the value is maintained for ten years and the donee is entitled to an exemption from Estate Tax during the same period (the latter applies in the event of *inter vivos* transfers). The reduction is conditional upon the following assumptions:

– *mortis causa*: the business is transferred to the spouse, descendants or adoptive children (or, if there are none, to ancestors, adoptive parents or collateral kin).

– *inter vivos*: the transfer is made to the spouse, descendants or adoptive children and the donor (65 or older or in a situation of permanent disability) ceases to perform director functions in the entity.

In either case, neither the successors nor the donors may carry out disposals or corporate operations giving rise to a substantial reduction of the acquisition value. *Contact: Mr. Miguel Ángel Sánchez, Director General de Tributos, Ministerio de Hacienda, c/ Alcalá 5, 1ª planta, 28014 Madrid, tel. + 91 5 95 80 00.*

Good practice case 3 – Italy: Abolition of inheritance and gift taxes

Italy has abolished inheritance and gift taxes completely. Inheritance tax is no longer due on inherited goods, whatever their value and the degree of relationship of the players. There is no longer a need to present the succession declaration. If the inheritance includes some real estate, the declaration must still be presented and a mortgage tax (2%) and the land surveyor (cadaster) tax (1%) must be paid. Tax is abolished for any goods and rights given as gifts. Gift tax is also abolished in the case of the simple waiving of these rights in favour of the spouse, descendants in the direct line (father, child, grandchild), and other relatives to the fourth degree (uncle/aunt, nephew, cousin). When gifts are made in favour of different persons, the register tax is due if the value is over EUR 180 000. If the beneficiary has a handicap, the exemption is not only EUR 180 000 but EUR 516 000. If a person, receiver of the donation of movable goods - for which s/he should pay a tax, substitutive of capital gain - sells such goods within five years after the gift, s/he must pay such substitutive tax as if the gift had not been given. *Contact: Ministry of Finance, Ufficio Registro e altri Tributi Diretti, Direzione Centrale Gestione tributi, Viale Europa 242, Roma, tel. +39 06 5997 3189, e-mail: entrate_dc_normativa@finanze.it, www.finanze.it/ dipartimentopolitichefiscali/index.htm*

Good practice case 4 – Belgium: Reduction of inheritance and gift taxes

In Belgium, the region of Flanders has further reduced its inheritance tax from 3% to 0%. In the Walloon and Brussels regions, inheritance taxation has been reduced to 3%. Federal law of 1998 reduced the gift tax rate to 3%. *Contacts for inheritance taxation:*

Flanders region: Ministerie van de Vlaamse Gemeenschap, Departement Algemene Zaken en Financiën, Administratie Budgettering, Accounting en Financieel Management, tel. +32 2 553 54 05, fax. +32 2 553 58 02, www.vlaanderen.be

Brussels region: Ministère de la Région Bruxelles-Capitale, Administration des finances et du budget - Ministerie Brussels Hoofdstedelijk Gewest, Bestuur Financiën en Begroting, tel. +32 2 204 21 11, fax. +32 2 204 0135

Walloon region: Direction générale de l'économie et de l'emploi, Division de la Politique économique, Direction de la coordination, de la réglementation et des labels, +32 81 33 39 46, fax. +32 81 33 37 44, www.wallonie.be

Contact for the gift tax: Ministère des Finances, Administration du Cadastre, de l'Enregistrement et des Domaines - Ministerie van Financiën, Administratie van het Kadaster, Registratie en Domeinen, tel. +32 2 210 66 11, fax. +32 2 210 27 40, information officer: +32 2 210 35 58

1.2. Transfer of business to third parties

Good practice case 5 - the Netherlands: The Silent Transfer

From 2001 it is possible to transfer the company to a successor, including one outside the family circle, through the *silent transfer*, i.e. without any fiscal consequences in the income taxation. The transferor and the successor should co-operate as entrepreneurs for at least three years before the transfer takes place (exceptions, for example, in the case of death or divorce) and the successor accepts the transferor's balance-sheet valuation. The entrepreneur should also be at least 55 years old or be unable to work for 45% of the time or more. The company can be transferred in total or partially. *Contact: Ministry of Finance, P.O Box 20201, 2500 EE Den Haag, tel. +31 70 342 8000, fax. +31 70 342 7900, www.minfin.nl*

Good practice case 6 – Denmark: Relief for early retirement

In Denmark it is possible to deposit taxable profits on the sale of a business to a *pension savings account*. The deposit is limited to DKK 2 million (~ EUR 268 000) and the pension saver gets a full deduction of the deposits in the year of the deposit. It is required that the pension saver has carried on an activity for business purposes or has been the controlling shareholder in a company that has carried on an activity for business purposes for a period of at least ten years before the deposit. The pension saver must be at least 55 years old at the year of the sale and the business activity should not mainly have consisted of real estate rental, ownership of cash, bonds, shares, etc. ”Mainly” is defined as more than 25% of the total income or assets of the business activity. Finally, the deposit has to be made to a pension savings account with disbursements in instalments. *Contact: Danish Ministry of Taxation, tel. +45 3392 3392, fax. +45 3314 9105, e-mail: skm@skm.dk, www.skat.dk*

2. SUPPORT MEASURES

2.1. Information

Good practice case 7 – Germany: One-stop-shop for business transfers

The Chamber of Commerce and Industry (Industrie- und Handelskammer, IHK) of Erfurt, has established a *one-stop-shop for entrepreneurs in the transfer phase*. Interested sellers and buyers of enterprises can meet lawyers, tax advisers, representatives of development banks and the community that can provide them with all the necessary information on business transfer at once on one single office floor. The advisor of the IHK who is familiar with the interested enterprise and has been responsible for it in the past organises the meeting with the experts and takes part in the consulting. *Contact: Ms. Sabine Wechsung, Industrie- und Handelskammer (IHK) Erfurt, tel. +49 361 3484222, fax. +49 361 3485 977, e-mail: wechsung@erfurt.ihk.de, www.erfurt.ihk.de*

Good practice case 8 – Germany: *“nexxt”* Information portal

The *“nexxt”* initiative on transfer of business is a project of the Federal Ministry of Economics and Technology in co-operation with many organisations and banks. It aims to stimulate the transfer of business in Germany. Under the common label “nexxt”, a platform of action was built in order to put together all the forces involved in the transfer of business. All kinds of information related to transfer of businesses can be found on the website www.nexxt.org. The partners of the initiative will organise seminars and other activities under the label nexxt in order to provide information about the generational change and show concrete ways of solving problems. This initiative should help the entrepreneur to deal with the transfer of business in good time. *Contact: Federal Ministry of Economics and Technology, Mr Joachim Laurich, tel. +49 (030) 2014 7563, fax. +49 (030) 2014 7056, e-mail: laurich@bmwi.bund.de, www.nexxt.org*

Good practice case 9 – Italy: Systematic information

In Italy, *Formaper*, the training organisation of the Milan Chamber of Commerce, systematically informs junior entrepreneurs and new entrepreneurs about the opportunity of continuing an enterprise, and not only of starting up a new one. This information activity is also integrated by special training activities, where junior entrepreneurs can meet senior ones. In the last four years, more than 1 000 participants have been reached by such information activity, and a specially designed course – named “The succession in family enterprise between reasoning and wishing factors” has been set up and run. *Contact: Formaper, Chamber of Commerce of Milan, Ms Silvia Valentini, tel. +39 02 8515 5395 or -5373, fax. +39 02 8515 5290, e-mail: valentini@mi.camcom.it, www.formaper.it*

Good practice case 10 – Italy: *Transfbiz* - On-line transfer of business newsletter

Transfbiz - On-line ExchangeLetter on Business Transfer - is a newsletter, which is sent every two months to institutions, managers, consultants, intermediaries, entrepreneurs about what’s on concerning business transfers in Europe and in the world. It provides information about Business Centres, experts, institutions, surveys, research, articles, and institutional initiatives on business transfers. It is produced by the Italian Centro Produttività Veneto (Fondazione Rumor) of Vicenza Chamber of Commerce, in co-operation with the Venitian Atelier StudioCentroVeneto on Business Transfer. *Contact*: *Fondazione Rumor, Centro Produttività Veneto, Chamber of Commerce of Vicenza, Mr Antonio Girardi, tel. +39 0444 994 770, e-mail: girardi@cpv.org, www.cpv.org*

Good practice case 11 - the Netherlands: Co-ordinated support

The Council for Entrepreneurship (RZO) developed in co-operation with a bank (RABO) and an accountancy firm (BDO) a support structure for succession in family businesses called *“From single project to a path of overall support: Towards an integrated method of information and advice on the transfer of family businesses”*. It includes connected activities aimed at improving awareness, workshops and individual advice. The pilots were organised together with the Chamber of Commerce Rijnland and the branch organisation for bakers (regional and sectoral tests). Hundreds of entrepreneurs attended the meetings and gave a very high positive response. The whole project was described and put in a plan for action. This was offered to the other Chambers of Commerce and branch organisations so they have all the background information to organise similar meetings. *Contact: Mr Rob van Engelenburg, Raad voor het Zelfstandig Ondernemerschap, tel. + 31 70 306 5020, fax +31 70 351 2632, e-mail: rzo@rzo.nl*

2.2. Education and training

Good practice case 12 – Spain: Training for business transfers

The Industrial Organisation School (*Escuela de Organización Industria EOI*) has organised a *"Higher Programme for the Consolidation of Family Businesses"* aimed at the transferors and the potential successors of family businesses.

Its objectives are to inspire transferors so that they face the transfer of business with the same rationality used in facing other business processes and to guide potential successors in preparing a strategic plan for the business that they will soon have to manage.

The Programme lasts approximately 11 weeks and it is organised in two modules: "Managing Succession" and "Strategic Plan." The former carries out a diagnosis of the business in light of succession and provides a forum for the discussion of practical cases. The second module comprises a number of seminars on basic business management topics, laying bare the strengths and weaknesses of businesses for the future. *Contact: Escuela de Organización Industria EOI, Mr Braulio Vivas Moreno, tel. +34 91 349 5681, fax. +34 91 554 2394, e-mail: Bvivas@eoi.es, http://www.eoi.es*

Good practice case 13 – Italy: *Kit.brunello* - A self-analysis check-up

Kit.brunello is a self analysis check-up for SMEs, very specifically focused on (family) business transfer processes, which has been applied to more than 400 firms in Italy. It contains 100 questions to help entrepreneurs, managers, consultants and accountants understand the strong and weak points of the transfer of businesses. This can be done:

(1) In a very personalised way for the individual business. Such an analysis is useful for planning a multiannual specific business transfer process in a tailor-made project, in four stages. It includes not only technical (financial, fiscal, legal, organisational, insurance, etc.) aspects, but also emotional, psychological/interpersonal and leadership analysis.

(2) In a more impersonal way for a group of SMEs (maybe the same individual ones, but in an anonymous way). Such group analyses can help institutional organisations or quasi-institutions (an Association, a regional government, a Chamber of Commerce) focus on and understand, in a homogeneous way, the different sides of business transfers in a specific area. It provides a database for effective information on the territory, and "shows" very directly how to plan and structure some co-ordinated and coherent response actions.

Contact: *Mr* Toni Brunello, StudioCentroVeneto, tel. + 39 0444 51 27 33, fax. +39 0444 51 24 20, e-mail: *info@studiocentroveneto.com*, *www.studiocentro.com/veneto*

Good practice case 14 – Italy: *Laboratorium* - Analysis of the transfer situation for companies and regions

Laboratorium for business transfer is a structured procedure, composed of standard and repeatable sub-actions. Its objectives are to analyse the transfer situation for individual companies and also for specific regions. It contains the following parts:

(1) A survey on characteristics of local potential business transfers (structured through a short, standard questionnaire);

(2) Information on a local level of the survey results, addressed to all the stakeholders, such as local institutions and quasi-institutional leaders, senior and junior entrepreneurs, potential successors, venture capitalists and banks, professionals and consultants, and the press and the media;

(3) Information meetings to sensitise the companies concerned;

(4) A more focused consultancy to help selected companies, both in group and individually;

(5) Launch of a regional website on business transfers;

(6) A final report presented in a concluding seminar.

Contact: Unioncamere: Mr Carlo Spagnoli, tel. + 39 06 047 041, fax. +39 06 470 4222, e-mail: carlo.spagnoli@unioncamere.it, http://www. unioncamere.it, http://www.asseforcamere.it or Atelier StudioCentroVeneto: Mr Toni Brunello, tel. +39 0444 51 27 33, fax. +39 0444 51 24 20, e-mail: info@studiocentroveneto.com

Good practice case 15 – Finland: *"Passing the baton"* - Training for business transfers

There are 15 Employment and Economic Development Centres throughout Finland. These T&E Centres house the combined regional units of the Ministry of Trade and Industry, the Ministry of Labour and the Ministry of Agriculture and Forestry. In the regional T&E Centres in Pirkanmaa, Varsinais-Suomi and Uusimaa a *"Passing the baton"* -consultant service was piloted in 2001. The service has been set up to manage the transfer of a business to the next generation. It will be launched in March 2002. The service is based on the idea that a successful transfer of business needs to be carefully planned well in advance. All the parties involved in the process need to analyse the alternatives carefully from different perspectives: finance, taxation, personal and personnel issues, type of transfer and business development. The continuity and growth of the firm is best secured by transferring and maintaining the expertise and know-how of the company. The service provides the companies with a tool for planning and analysis of the different options in the case of transfer. The service consists of three consulting days and it is provided by experienced management consultants on a confidential firm-to-firm basis. The consultants used in this service have to complete a separate test. *Contact: Mrs Sirpa Alitalo, Ministry of Trade and Industry, tel. +358-9-160 3680, fax. +358-9-160 2666, e-mail: sirpa.alitalo@ktm.fi*

Good practice case 16 – Finland: Training for business transfers

The Small Business Institute (SBI) is a part of the Business Research and Development Centre within the Turku School of Economics and Business Administration. The Small Business Institute has developed a *Business Succession and Development programme for SMEs* to assist in the transfer of a business to next generation. The programme takes from 9 to 12 months and it is organised around training sessions, workgroup meetings, consulting sessions and assignments. The idea of the programme is to coach both the current owners and the successors from various point-of-views and to help the successors improve their business skills. Legal and taxation issues are important, but on the basis of the experience of earlier programmes it has been noted that the emotional aspects are important also, and need to be taken into account as well. The purpose of the programme is for both the current owners and the successors to participate in the programme. As a concrete end result of the programme all the participants will have prepared a plan for the transfer of the business and also an updated business plan. The contents of the programme are, however, tailored to the needs of the particular region and participating companies. *Contact: Mrs Irma Vento, Turku School of Economics and Business Administration/ Small Business Institute, tel. +358-2-3383 480, fax. +358-2-3383 393, e-mail: irma.vento@tukkk.fi, http://www.tukkk.fi/sbi*

2.3. Coaching/Counselling

Good practice case 17 – France: *C.R.A.*

C.R.A., "club des cédants et repreneurs d'affaires", (club of transferors and successors), is a national association that consists of former company managers who participate in it on a voluntarily basis. The association has 30 regional offices and its aim is to facilitate transfer of businesses by establishing contacts between entrepreneurs and by providing information and assistance. CRA runs a register of transfer offers which it disseminates through its website and bulletin. It arranges contacts between transferors, successors and experts and organises training sessions. The advisors assist in preparing the company presentation files for the transferors. *Contact: CRA – cédants et repreneurs d'affaires, tel. +33 1 40 26 74 16, fax. +33 1 40 26 74 17, www.business.village.fr/CRA*

Good practice case 18 - the Netherlands: Stichting Ondernemersklankbord

In 1979 the *Foundation Ondernemersklankbord* started with counselling and coaching SMEs with serious problems. It is an organisation of more than 200 retired entrepreneurs, general managers with entrepreneurial experience and experts providing assistance on a voluntary basis. Each year more than 2000 entrepreneurs seek the advice of the foundation. Preparation of business transfer is a major item in the assistance provided. Private organisations founded and financed the foundation. All advisors have worked for many years in the private sector and mainly work on the basis of a longer coaching relationship with the firms. *Contact: Stichting Ondernemersklankbord, Director Drs A. Vrind RA, tel. +31 70 349 0600,* *fax. +31 70 349 0675, e-mail: avrind@vno-ncw.nl, www.ondernemersklankbord.nl*

Good practice case 19 – Austria: Forum for discussion

Team Beratung is a programme of the Austrian Economic Chamber in the federal states of Vienna and Lower Austria. It offers entrepreneurs the possibility to meet with experts in the fields of labour and social law to discuss the best ways of transferring their enterprise. *Contact: Ms. Claudia Mallin, Wirtschaftskammer Wien, Betriebsgründerservice, tel. +43 1 51450 1347, fax. +43 1 51450 1491, e-mail: claudia.mallin@wkw.at*

Good practice case 20 – Finland: Mentoring

The Association of Finnish Local and Regional Authorities is made up of the municipalities and towns in Finland. Four years ago, the Association started a project called *Enterprise Godfather* which is aimed to get former or current influential persons in the business life to help the development of the business activities of the municipalities and enterprises in their areas. At the moment there are 400 "godfathers" in 167 municipalities. These "godfathers" offer expert help for SMEs and organise seminars which include issues concerning the transfer of business. *Contact: The Association of Finnish Local and Regional Authorities, tel. +358 9 7711, fax +358 9 771 2291, e-mail: info@kuntaliitto.fi, www.kuntaliitto.fi*

2.4. Transfer market

Good practice case 21 – Denmark: www.ticmarked.dk

ticmarked.dk is an Internet based market place for buying and selling small and medium-sized enterprises. SMEs can also seek (equity) finance and investors might offer (equity) capital through it. The initiative has been established through a co-operation between all the different parties involved in business transfers, represented by the most important banks, accountants, lawyers, consultants, organisations etc. The market place is open to everyone with Internet access.

The criteria for searching prospective buyers and sellers are trade (NACE-codes), location, sales, number of employees and amount of capital. All the companies are described anonymously but with reference to the intermediary that made the registration. Only approved intermediaries can register companies into the market place and all initial contacts go through the intermediaries. Matching of buyers and sellers is done automatically and the intermediaries are informed of any new entries to the market place by e-mail.

www.ticmarked.dk was launched in September 1999. In July 2001, nearly 100 different intermediaries joined the market place. In the period between July 2000 and July 2001, around 900 buyers and sellers were registered and around 100 companies sold. Since April 2001 the market place has been extended to cover Southern Sweden and Northern Germany. *Contact: Mr Peter Dalkiær, Foreningen ticmarked.dk, tel. +45 3396 9798, e-mail: pda@tic.dk, www.ticmarked.dk*

Good practice case 22 – Germany: www.change-online.de

The *CHANGE/CHANCE initiative*, a joint project of the German Chambers of Commerce and Industry (DIHK), the Chambers of Craft (ZDH) and the banking sector (Deutsche Ausgleichsbank), offers both prospective and established entrepreneurs the opportunity to get into contact through an extensive countrywide network. It links local and regional services in the field of business succession and has set up a comprehensive database of buyers and sellers. In the first quarter of 2000 alone, 207 senior entrepreneurs found a qualified successor to their company. In the same period 29 prospective entrepreneurs benefited from CHANGE/CHANCE and found a company through the initiative. *Contact: Deutsche Ausgleichsbank (DtA), tel. +49 30 850 85 41 14, www.change-online.de*

Good practice case 23 – France: www.bnoa.net

With the support of the European Social Fund, the French Chambers of Trade have created a national virtual market place for buyers and sellers of enterprises in the craft industry. First, the advisers of the Chambers of Trade network make an evaluation (check-up) of the companies with the sellers. The offers are then disseminated on the national enterprise exchange for craft enterprises *BNOA - bourse nationale des opportunités artisanales* (www.bnoa.net). On the BNOA website, the sellers can easily locate potential buyers in France or in the European area. They can also analyse the main features of the companies that are for sale. The advisers of the network organise the first meeting between buyers and sellers, provide support, accompany the transition phase and follow-up through the transfer process. BNOA is also an Intranet tool for the French Chambers of Trade network: It is a management tool for business transfers and a tool containing information on potential buyers. *Contact: Sylvie Rucheton, Assemblée Permanente des Chambres de Métiers (APCM), tel. + 33 1 44 43 10 56, fax. + 33 1 47 20 34 48***,** *e-mail: rucheton@apcm.fr, www.apcm.com, www.bnoa.net*

Good practice case 24 – Italy: www.generazionimpresa.com

www.generazionimpresa.com is an online market place where SME buyers and sellers can meet and match. It was initially based on a project led by the Bologna Chamber of Commerce but it is now evolving into a wider Italian marketplace, involving the whole Italian and international chambers of commerce network. The sellers can register their offers when the owner is going to retire in the short time (1-2 years) or in medium term (within 3-4 years). The entrepreneur can turn to one of the partners of *GenerAzionImpresa* to register into the database. The database is managed by the Bologna Chamber of Commerce in a confidential way so that the information regarding sellers and buyers is only available to the partners. The on-line registering of potential buyers is assisted by a self check-up. *Contact: Camera di Commercio Industria, Artigianato e Agricoltura di Bologna, Mrs. Lauretta Grandi, tel. + 39 051 6093 485, fax. + 39 051 6093 451, e-mail: promozione@bo.camcom.it*

Good practice case 25 - Luxembourg: www.chambre-des-metiers.lu

The Craft Chambers *(Chambre des Métiers)* has set-up *an enterprise exchange* for buyers and sellers of craft companies. This service also provides personalised advice and a follow-up to the transfer process. This enterprise exchange has been very successful and, since January 2000, over 700 contacts have been established, more than 180 persons have joined the exchange, over 60 meetings between transferors and successors have been organised and 800 individual advertisements have been published. *Contact: Mr Charles Bassing, Chambre des Métiers du Grand-Duché de Luxembourg, tel. +352 42 67 67 1, fax. +352 42 67 87, e-mail: bourse-entreprises@cdm.lu, www.chambre-des-metiers.lu*

Good practice case 26 - Luxembourg: www.cc.lu

The Chambers of Commerce has set-up a similar *enterprise exchange* covering the economic sectors within its area of work. The Chamber offers its facilities and its advisors for the first meeting between the parties concerned and, on request, the advisors can accompany further negotiations. *Contact: Mr Yves Karier, Chambre de commerce du Grand-Duché de Luxembourg, tel. +352 42 39 39 331, fax. +352 43 83 26, e-mail: yves.karier@cc.lu, www.cc.lu*

Good practice case 27 - the Netherlands: www.kvk.nl

The largest database of buyers and sellers in the Netherlands, *"Enterprise Exchange"*, is managed by the Association of Chambers of Commerce. As well as clients and bidders, third parties can make use of this facility. Since 1994, more than 9 200 profiles have been entered on the file (in exchange for payment). In 1999, the corresponding figure was 1150+, rising to approximately 1300 in 2000. Work is now in progress on an internet application which will further strengthen co-operation with other organisations. The Chambers of Commerce play a supportive role which ends with profile matching resulting in the establishment of contact. Private organisations and entrepreneurs then proceed to conclude purchase/sales contracts. *Contact: Mr Mark Kikkert, Association of Chambers of Commerce in the Netherlands, tel. +31 348 426911, fax. +31 348 424368, e-mail: Post@vvk.kvk.nl, www.kvk.nl*

Good practice case 28 - Austria: www.nachfolgeboerse.at

www.nachfolgeboerse.at allows young entrepreneurs direct contact to enterprise owners looking for successors and preparing the transfer of the enterprise. *Nachfolgeboerse* includes data on entrepreneurs who want to retire completely or to remain in their former enterprise as a consultant and, thus, try to find a matching successor for their enterprise. In addition, data on young entrepreneurs, interested in taking over an already existing enterprise and data on young people who are willing to meet the challenge of independence are included. As entrepreneur or (possible) successor you may become member of the Nachfolgeboerse and read all electronic advertising, similar to a newspaper. In addition it is possible for members to answer directly. It is a quick, simple and unbureaucratic measure which ensures the anonymity of the advertisers. *Contact: Junge Wirtschaft Österreich,* *Wirtschaftskammer Österreich, tel. +43 1 501 05 3226, www.nachfolgeboerse.at*

Good practice case 29 – Finland: www.yrittajat.fi

The Federation of Finnish Enterprises has a *Company market service* directed to the sellers or buyers of businesses. The Company market was established in 1999 and it has yearly ca. 200-300 businesses to sell or buy. Advertisements that are linked to the selling or buying of a company or part of it and seeking or providing financing and exploiting a business idea (such as inventions) are published on the Company Market. Businesses can be sought by industrial branch. The advertisement package includes two advertisements in the journal of the Federation, two in Kauppalehti (leading Finnish business newspaper) and six months' appearance in the Internet pages of the Company market. To reply to the announcements on the Internet a person needs to fill in a reply sheet to the Federation with his or her background and contact information. It is also possible to send the replies by post or by fax. Still at the autumn 2001 this Company market was directed to the members of the Federation of Finnish Enterprises (in total 57 000 members). The seller of the business must be a member but the buyer can be anyone. *Contact: Director Mr Risto Suominen, The Federation of Finnish Enterprises, tel. +358-9-229 22932, fax. +358-9-229 22980, risto.suominen@yrittajat.fi*, *www.yrittajat.fi*

2.5. Finance

Good practice case 30 – Belgium: Special loans for business transfers

Even before 1998, a system of *special loans to help the transfer of businesses* had been set up. These loans are financed by a public institution, the “Fonds de Participation”. Applications for such loans are sent to a private bank that has an agreement with the “Fonds de Participation/Participatiefonds”. *Contact: Fonds de Participation/ Participatiefonds, tel. +32 2 210 87 87, fax. +32 2 210 87 79, e-mail: info@fonds.org, www.fonds.org*

Good practice case 31 – Denmark: *VækstKaution* - A Loan Guarantee Scheme

The aim of VaekstFonden (Danish Growth Fond - DGF) is strengthening the growth potential of Danish trade and industry through the promotion and business development of small and medium-sized enterprises. DGF meets its objectives by engaging into partnership venture companies with specific investment strategies. On 1 August 2000, DGF launched a Loan Guaranty Scheme *“VækstKaution”*. The objective and the main focus of the scheme is to help SMEs by financing their growth potential. The scheme supports business transfers by issuing guarantees covering the payment of goodwill financed by the bank, thereby enhancing the buyers' options and possibilities for putting together a suitable finance package. Guarantees are granted covering 75% of bank loans up to 2 Mio DKK (~ EUR 268 000) and 50% of the loans exceeding 2 Mio DKK up to a maximum total loan of 5 Mio DKK (~ EUR 672 000). All loan requirements are handled by the banks, complying with specific conditions. The scheme has supported business transfers in its first year by issuing 79 guarantees for a total of 117 Mio DKK (~ EUR 15.7 Mio) in bank loans. *Contact: Mr Kaj Dover, VækstKaution, tel. +45 3529 8600, fax. +45 3529 8635, e-mail: vf@vaekstfonden.dk, www.vaekstfonden.dk*

Good practice case 32 – France: *EDEN* - A programme to assist business transfers

The *EDEN* programme, "An incentive to new business development", is an initiative of the French Government to assist both the creation of new businesses (by young people and recipients of income support) and the transfer of the company to the employees (especially in the case of a take over by the employees in the event of a judicial settlement or winding-up by the court). The implementation of the programme is delegated to private agents. EDEN provides business start-ups an exemption from social security contributions for 12 months, a possibility for using specific cheques to pay special advisers *(chèques conseil)* and interest-free loans, the amount of which depends on the characteristics of the business plan. Currently, the maximum duration of the loans is five years. Since September 2001, a state subsidy replaced the interest-free loan. The state subsidy (like the previous interest-free loan) is granted if the project already obtained a loan by the delegated private agent – so called "prêt d'honneur"- or a bank loan. EDEN also gives support to new entrepreneurs after the start-up or transfer for the first three years. *(Articles L. 351-24 and R. 351-41 to R. 351-49 of the French labour code) Contact: Ministère de l'emploi et de la solidarité – DGEFP – mission promotion de l'emploi, tel. +33 1 44 38 29 60, fax. +33 1 44 38 34 06, www.emploi-solidarite.gouv.fr*

Good practice case 33 - Luxembourg: *Prêt au démarrage* - a guarantee-free loan for start-ups and take-overs

The *prêt au démarrage* was launched in March 2002 by the S.N.C.I. (Société Nationale de Crédit et d'investissement). This guarantee-free loan was created in order to help young entrepreneurs which lack their own capital when starting or taking over a business. To get access to this credit scheme, several conditions must be fulfilled by the entrepreneur: it must be his first business set-up, all legal authorisations must be obtained, at least 15% of the eligible investment must be financed by the entrepreneur's own capital, the viability of the project must be proven through a business plan. The loan has a lifetime of 10 years and its amount ranges from EUR 10 000 to 400 000. Its interest rate is fixed to the S.N.C.I.'s long term interest rate plus 1.5% points. No guarantee is required. *Contact: Société Nationale de Crédit et d'Investissement, tel. +352 46 19 71-1, fax. +352 46 19 79, e-mail: snci@snci.lu, http://www.snci.lu*

Good practice case 34 – Finland: Entrepreneur loan

Finnvera plc is a specialised financing company offering financing services to promote the domestic operations of Finnish businesses and to further exports and the internationalisation of enterprises. For business transfers, it is able to provide direct financing or different types of collateral for instance to increase the equity of the company, or for mezzanine financing, for paying the price of the company or for the investment and working capital needs. Finnvera does not provide venture capital. The financial instrument offered especially for business transfers is called *"Entrepreneur loan"* (in use from 1 September 2001). The Entrepreneur loan is intended for situations where the share capital of a public limited company, or the investment in a partnership or in a limited partnership is paid for or raised or for situations where shares or holdings are purchased. In these cases, the entrepreneur loan can be used when a company is founded or when its share capital is raised, when a change of generation is implemented, or when enterprises are acquired. The applicant for an entrepreneur loan must be a shareholder who holds at least 20% of the share capital and voting rights of a public limited company, or a partner in a partnership or an active partner in a limited partnership. Applicants must work full-time for the enterprise and must gain their livelihood through the enterprise. The loan is a personal loan to the entrepreneur. It can also be granted to several founders of the same company. The maximum amount for the loan is €85 000. *Contact: Finnvera plc, tel. 358 204 6011, www.finnvera.fi*

ANNEX 4: COMMISSION RECOMMENDATION ON THE TRANSFER OF SMALL AND MEDIUM-SIZED ENTERPRISES

COMMISSION RECOMMENDATION
of 7 December 1994
on the transfer of small and medium-sized enterprises (*)
(Text with EEA relevance)
(94/1069/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas the Council adopted Decision 89/490/EEC ([1]) relating inter alia to the improvement of the business environment; whereas the programme of support for small and medium-sized enterprises set up by that Decision was revised by Council Decision 91/319/EEC ([2]); whereas the Council reaffirmed its commitment to supporting the consolidation of measures for enterprises by adopting the resolution of 17 June 1992 ([3]);

Whereas, in its Decision 93/379/EEC ([4]), the Council adopted, with effect from 1 July 1993, a programme of measures to intensify the priority areas and to ensure the continuity of policy for enterprise; whereas this programme is concerned first and foremost with improving the legal, fiscal and administrative environment of enterprises and makes specific provision for examining the transfer of enterprises;

Whereas the White Paper on Growth, Competitiveness and Employment mentioned the transfer of businesses as a priority area requiring measures to improve the situation ([5]);

Whereas the integrated programme in favour of SMEs and the craft sector of 3 June 1994 ([6]) announced a Commission recommendation on the transfer of businesses, as part of the Community contribution towards improving the business environment;

Whereas the Commission in its communication on the improvement of the tax environment for small and medium-sized enterprises ([7]) announced an initiative aiming to limit the fiscal charges on succession or donation;

Whereas in its resolution of 10 October 1994 the Council ([8]) invited the Member States and the Commission to examine those measures in existence which caused difficulties for the creation, growth and transmission of enterprises;

Whereas the Commission has now conducted this examination and ascertained that several thousand enterprises are obliged to cease trading every year because of insuperable difficulties affecting their transfer; whereas the winding-up of these enterprises has negative repercussions on the economic fabric of businesses and on their creditors and employees;

Whereas this loss of jobs and economic activity is all the more regrettable for not being caused by market forces, but by insufficient preparation for succession and the inadequacy of certain aspects of Member States' law, especially concerning company law, inheritance law and fiscal law;

Whereas the chances of a successful transfer will be improved by efforts to enhance the awareness of entrepreneurs and to inform and educate them in such a way that they can effectively prepare the succession of their enterprises in their own lifetime;

Whereas, nevertheless, certain changes to the national law of the Member States would greatly increase the number of successful business transfers;

Whereas one of the obstacles to a successful transfer is the difficulty experienced by the successors in financing compensation for their co-heirs who do not wish to participate in the enterprise, and whereas adequate financial instruments should be available in all Member States;

Whereas it may be necessary to change the enterprise's legal form in order to prepare the transfer, giving the enterprise the legal form which is most conducive to the success of the operation; whereas not all Member States have legal provisions which allow changes to be made to an enterprise's legal form without first winding up the enterprise and creating a new entity; whereas these operations entail costs and administrative procedures and mean a period of uncertainty for partners and third parties;

Whereas public limited company status could be one of the legal forms which best meet the requirements of transfer operations; whereas however public limited company status imposes demanding conditions on its creation and day-to-day management; whereas these conditions are generally geared to the needs of limited companies with a broad shareholder base, with a view to protecting the members and third parties; whereas these particular conditions do not appear necessary in cases where an entrepreneur seeks to create a public limited company with other members of his family so as to facilitate its transfer;

Whereas certain methods or legal forms facilitate transfers because the management responsibility and ownership are separated;

Whereas the adoption by an enterprise of the legal form most appropriate to its transfer should not be hampered by fiscal procedures; whereas the same consideration applies to all other operations involved in preparing the transfer, such as transfers of assets, mergers, divisions and exchanges of shares;

Whereas, in most Member States, a partnership is wound up on the death of one of the partners unless the partnership agreement states otherwise; whereas, moreover, unilateral acts of one partner may conflict with the partnership agreement, and the relevant legislation may not indicate which provision takes precedence; whereas, on the death of such a partner, this discrepancy may give rise to a conflict which jeopardises the continued viability of the firm and may even cause it to go into liquidation;

Whereas, on the death of a partner or sole proprietor, the co-heirs are, in most Member States, required to make a unanimous decision on the continuation of the firm; whereas, as a result, the survival of the firm may be jeopardised if one of the heirs wishes the firm to cease trading;

Whereas one of the main obstacles preventing the successful transfer of a family business is the associated fiscal burden; whereas payment of inheritance or gift tax may threaten the financial equilibrium of the enterprise, and therefore also its survival; whereas this tax regime places European enterprises at a disadvantage vis-à-vis their international competitors;

Whereas the requirement of immediate payment of inheritance tax or gift tax may force the heirs of the enterprise to sell some of their shares, sell the enterprise in toto or even wind it up;

Whereas the assessment of the value of the enterprise should take into account the possible loss in the value of the enterprise as a result of its transfer;

Whereas it has become more difficult to find a successor within the family; whereas sale of the enterprise is a form of transfer which should be made easier, with a view to guaranteeing its survival, especially where this is not possible under family ownership; whereas it is essential to encourage the entrepreneur to make arrangements, in his own lifetime, for transfer of the enterprise;

Whereas the employee buy-out is a form of transfer which should be encouraged; whereas such a buy-out safeguards the existence of the enterprise and the transfer of know-how and previously acquired experience;

Whereas some Member States have already taken measures to facilitate transfers of enterprises; whereas certain practices can be adopted by other Member States,

HEREBY FORMULATES THIS RECOMMENDATION:

Article 1

Objectives

Member States are invited to take the necessary measures to facilitate the transfer of small and medium-sized enterprises in order to ensure their survival and to safeguard the jobs which depend upon them.

In particular, they are invited to take the most appropriate measures to extend their own legal, fiscal and administrative systems, in order to:

- make the business owner aware of the problems of transfer and thus encourage him to prepare for such an event within his lifetime,

- provide a financial environment which helps towards successful transfers,

- permit the businessman to prepare effectively for the transfer by offering suitable procedures,

- ensure the continuity of partnerships and sole proprietorships in the event of the death of a partner or the business owner,

- ensure the successful transfer within a family by seeing that inheritance or gift taxes do not endanger the survival of the business,

- encourage the owner, through taxation measures, to pass on his business by selling it or by transferring it to the employees, particularly when there is no successor in the family.

Article 2

Information

Public or private initiatives aimed at stimulating increased awareness, information and training of businessmen should be encouraged in order to ensure the right preparation for the successful transfer of small and medium-sized enterprises.

Article 3

Financial environment

Small and medium-sized enterprises should be provided with a financial environment which is conducive to successful transfers.

Article 4

Preparation for transfer

Businessmen should be provided with appropriate instruments which will allow the best preparation of the transfer. To this end, Member States are requested to:

(a) provide for a right of transformation for enterprises which allows them, whilst taking the rights of third parties and members into account, to change from one legal form to another without the need to wind up the firm or create a new legal entity;

(b) allow small and medium-sized enterprises to establish themselves in the form of public limited companies, with a very small number of shareholders, the establishment and management of which would be simplified in comparison to that of public limited companies whose shares are owned by large sections of the public;

(c) allow the creation of a public limited company with only one partner in accordance with Article 6 of the Twelfth Council Directive 89/667/EEC ([1]);

(d) when taxing any transactions designed to separate management powers and ownership, recognise the economic need for such legal operations in those cases where the objective is to facilitate transfers and, if necessary, take steps to authorise them and promote them;

(e) independently of the obligations stemming from Community law, apply the principle of fiscal neutrality to operations for the preparation of transfers such as transfers of assets, mergers, divisions and exchanges of shares; the principle of fiscal neutrality shall also apply to stamp duties, registration fees and other similar taxes.

Article 5

Continuity of partnerships and sole proprietorships.

The continuity of partnerships and sole proprietorships should be ensured in the event of the death of one of the partners or the owner. To this end, Member States are requested to:

(a) provide for the principle that, in the event of the death of one of the partners, a partnership should be kept as a going concern, allowing the remaining partners to decide on the continuation of the business with or without the participation of the deceased partner's heirs, with reimbursement of the share of the deceased; the partnership agreement may derogate from the principle as to the continuation of the business;

(b) when the possible contradiction between the partnership agreement and the terms of the will or gift is not resolved, introduce a provision in their national legislation to the effect that the partnership agreement shall take precedence over the unilateral actions of one of the partners;

(c) in the event of the death of a member of a partnership or a sole proprietor, ensure that family law and inheritance law, and in particular the unanimity rule for decisions taken within the framework of joint ownership, do not prevent the enterprise from being kept as a going concern;

(d) ensure that the reimbursement of the share of the deceased, provided for in point (a), as well as the payment of financial compensation to minority heirs, following on from point (c), do not jeopardise the survival of the enterprise. To this end, if the parties choose payment in instalments, it should be possible for the compensation to be calculated on the basis of the market value of the enterprise, including goodwill, whereas, should a party demand immediate payment, compensation should be calculated strictly on the basis of the book value.

Article 6

Inheritance and gift taxes

The survival of the enterprise should be ensured through appropriate fiscal treatment of succession and gifts. To this end, Member States are invited to take one or more of the following measures:

(a) reduce the taxes on assets exclusively used for the business in the case of transfer by gift or succession, including inheritance tax, gift tax and registration fees, provided that the business is genuinely kept as a going concern for a minimum period;

(b) offer the heirs the possibility of spreading or deferring payment of the gift or inheritance taxes, provided that they keep the business as a going concern, and shall grant interest exemptions;

(c) ensure that the tax assessment of the business can take account of how the value of the business changes some months after the death of the owner.

Article 7

Transfer to third parties

The businessman should be encouraged to consider a transfer before death to third parties, where this cannot be done within the family. To this end, Member States are invited to:

(a) waive taxation on at least part of the revenue from the added value or capital gains arising on the assets of a business in the event of sale, in particular when the businessman has reached the age of 55; provide tax incentives for the reinvestment of the profits made on the sale of a business in another enterprise not quoted on the stock exchange and actively engaged in the production or sale of goods and services;

(b) promote the transfer of the enterprise to the employees, by reducing the taxation on the capital gain realised on the transfer of the shares to the employees, by waiving the registration fees, or through tax advantages for the granting of resources to employees for acquiring the enterprise, or by deferring taxation until the employee sells his shares. These measures should be applied equally to an enterprise or to a workers' cooperative set up by the employees.

Article 8

Concerted action

Member States are invited to inform and consult one another, in liaison with the Commission, with a view to benefiting from exchanges of experience and best practice as regards the transfer of small and medium-sized enterprises, and in particular with a view to implementing the measures provided for in this recommendation.

Article 9

Report

To enable the Commission to evaluate what progress has been made, the Member States are invited to communicate, at the latest by 31 December 1996, the text of any legislation, regulations or administrative provisions which have been adopted in order to put this recommendation into effect, and to inform the Commission of all future proposals in this area.

Article 10

Addressees

This recommendation is addressed to the Member States.

Done at Brussels, 7 December 1994.

For the Commission
Raniero VANNI d'ARCHIRAFI
Member of the Commission

(*) The explanatory note of this recommendation is published as a communication in OJ No C 400, 31. 12. 1994, p. 1.
(1) OJ No L 239, 16. 8. 1989, p. 33.
(2) OJ No L 175, 4. 7. 1991, p. 32.
(3) OJ No C 178, 15. 7. 1992, p. 8.
(4) OJ No L 161, 2. 7. 1993, p. 68.
(5) White Paper, Part A, 'A more competitive economy', p. 14, and Part B, Section 2.8, 'Proposals and Remedies', p. 86.
(6) COM(94) 207 final of 3 June 1994.
(7) OJ No C 187, 9. 7. 1994, p. 5.
(8) OJ No C 296, 22. 10. 1994, p. 6.
(1) OJ No L 395, 30. 12. 1989, p. 40.