Tilburg University

Where is the European JOBS Act?

Legislative approaches to solving the crises

Paul van Helvoort – s322834

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Abstract

This thesis focuses on the regulatory and legislative measures in the United States and Europe to overcome the crises. As the JOBS Act is the latest big measure from the United States to stimulate economic growth, the research will try to find similar legislation on a European scale. As it transpires, there is no common European approach to stimulate economic growth. The research has analysed what would be necessary for European businesses and established a great need for capital and business incubation. Investor confidence and successful businesses are the crucial elements of economic growth and should take precedence in any European approach that aims to create economic growth. The thesis concludes that creating viable ecosystems of businesses, investors and governments is the key to economic recovery for Europe.

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1. Introduction

The financial crisis of 2008 and the Eurozone crisis of 2011 had a great impact on financial institutions and the global economic system. Economic growth slowed down and economies even shrunk while stock markets plummeted. Financial institutions from the United States such as BearSterns and later Lehman Brothers, AIG, Fannie Mae and Freddie Mac were on the verge of collapsing or even collapsed. Banks in America were failing month after month. In Europe too, banks were collapsing or hovering over the edge. Governments in both the United States and Europe were forced to intervene with public money to keep banks from going bankrupt. The public money that had to be raised now had to come from a broken system as the global cash-flow was drying up. The financial system that was usually relied on to provide the necessary cash now had to be infused itself to prevent further damage. This complicated matters greatly and made it extremely difficult to solve the situation. As a result of these rapidly deteriorating market circumstances, countless jobs were lost globally and there was severe damage to most economies.

The economic troubles of the Eurozone created even more hurdles for global economic recovery. In 2010, it emerged that Greece had committed fraud and that the Greek economy was in a far worse state than was known. This breach of trust of investors coupled with the inability of a great deal of other European governments to sort out their budget was the cause for the new crisis in Europe. The number of initial public offerings, often described as the biggest job creation event in a company's existence, has decreased significantly since the outbreak of the financial crisis in 2008 in both Europe and the United States. The United States therefore tried to remedy that situation by introducing legislation to boost the number of IPO's and thus spur job and economic growth. It enacted the JOBS Act in 2012. Since Europe is still facing the effects of both crises, it might benefit from similar legislation.

This thesis will try to determine whether Europe has its own JOBS Act. The research question will be: Where is the European JOBS Act? It will be guiding in this thesis and each chapter aims to provide a part of the answer to that question. The relevance of this question seems obvious.

The European economy is still reeling and any legislative proposal that might change this situation is worth considering. The United States believes it has some answer to the problem with its JOBS Act. Therefore this thesis will consider that Act in a European context.

First the thesis will examine why the United States opted to implement the JOBS Act themselves. It will try to determine what other measures were taken and what exactly the JOBS Act means to companies in the United States. The second chapter will examine the economic situation and the study that proposed the JOBS Act as well. Then the JOBS Act itself will be examined in order to determine the possible success of the various provisions in the Act and the effects they should have.

The next chapters focus on the European situation. The JOBS Act may prove to be very useful to the United States but transplanting it in Europe might be impossible due to differing legislations and demands. Therefore the third chapter will first examine the European economic situation and what measures were implemented so far. To determine the success of those measures and the potential of recovery the chapter will conclude by evaluating those measures.

The fourth chapter will be crucial in establishing the usefulness of a JOBS Act in Europe as it will look at the needs of European businesses and investors. The American companies were allegedly overburdened by regulations yet this may not hold for European companies. If IPO's are to be a success then the basic ingredients for that success are successful businesses and willing investors. Whether those ingredients are present and what might be done to increase their presence will be discussed in chapter four.

The fifth chapter explores a possible solution to the European situation by assessing all the information acquired in the previous chapters and coupling it to determine the best course of action for Europe. The latter part of the chapter does so by exploring both past examples and national programs already present in Europe and how those might inspire Europe as a whole to successfully fight off the crises. As this research is very limited, the thesis will refrain from making any direct policy recommendations.

Yet it will recommend a general direction to Europe in order to implement legislation that could help solve the economic troubles. For it seems certain that additional legislation is needed in Europe to overcome the crises.

The conclusion will answer the main question and determine whether Europe has its own JOBS Act and whether it needs one or whether other additional measures are needed as well. It will summarize the findings of the previous chapters and impress upon Europe the need for action. If the United States can enact stimulating legislation then why could Europe not do the same or even surpass their efforts?

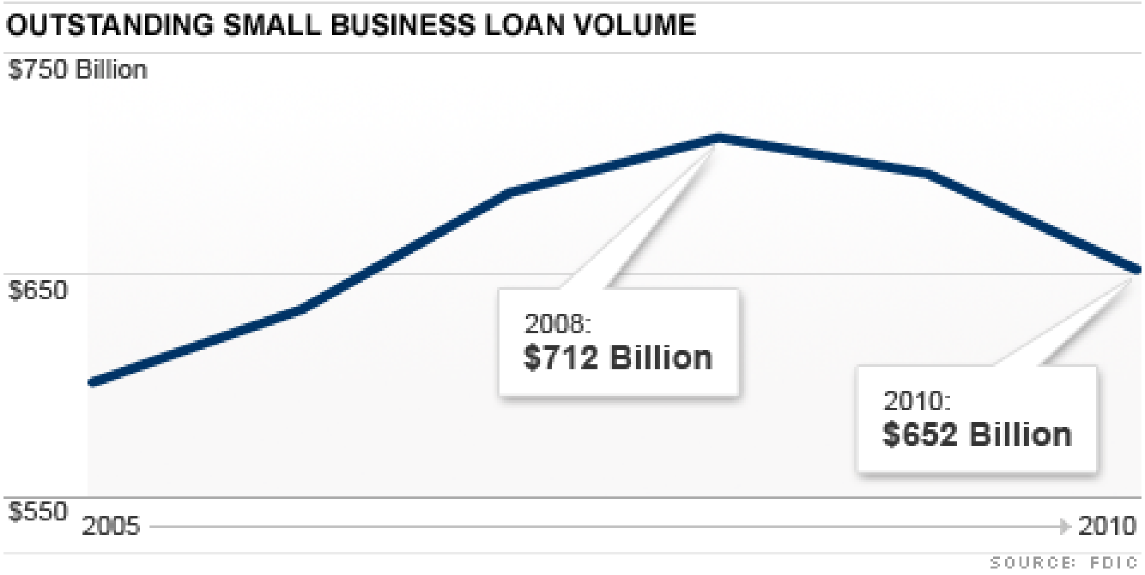
2. The approach to solving the crisis by the United States: JOBS Act

2.1. The economic situation in the United States before the JOBS Act

This chapter will examine the US Economy and subsequently the US JOBS Act. What were the reasons for implementing the JOBS Act and what are the consequences? The first paragraph will look at the economic situation in the US before the JOBS Act. Then it will discuss the IPO Task Force that preceded the JOBS Act. The next paragraphs will examine the JOBS Act itself. What is in the act and what does it aim to achieve? Finally, the last part of this chapter will examine whether there are certain flaws in the Act that ought to be dealt with by Europe should it implement its own version of a JOBS Act.

2.1.1. The economic situation in the United States

As described in the introduction, the United States suffered significantly from the financial crisis. The economy shrank and many financial institutions had trouble to gain access to capital. The reduced availability of capital also had debilitating effects on other companies as lending by banks decreased. It was grinding the US economy to a halt as is illustrated by the graph below which displays the lending to small businesses.



Source: FDIC in (CNN Money, Banks slashed small business lending by $43 billion, 2011)

Just how dire the situation was becomes evident when looking at the numbers of failed banks in the United States.

From 2000 to 2007 there were 27 bank failures throughout the US in comparison to a stunning 483 bank failures from 2008 to June 2013.[1] Therefore action by the government was of the utmost importance to help stabilize the situation as banks are such vital parts of the economy. In addition to banks, large car manufacturers also faced possible bankruptcies because of falling consumer demand. Large American corporations such as General Motors, Chrysler and Ford appealed to the government for support and received it as will be discussed in the following paragraph.

2.1.2. Bail-outs

As the American government was aware of the grave troubles that suddenly faced its economy it took drastic measures to prevent too much damage occurring. In September 2008 the US federal government had to bail out AIG, Fannie Mae and Freddie Mac who suffered liquidity problems. In the case of Fannie Mae and Freddie Mac the US government decided to purchase debt from these enterprises and place them into federal conservatorship.[2] In the case of AIG, the US government provided a secured loan facility of up to $85 billion in exchange for warrants for 79.9% of the AIG equity.[3] To further combat the crisis, President Bush signed into law a $700 billion rescue plan on 3 October 2008.[4] It was called the Emergency Economic Stabilization Act and included a range of measures to help stabilize the economic tide. The measures included, among others, tax breaks and the purchase of troubled assets as well as the insurance of troubled assets under the 'Troubled Assets Relief Programme' or TARP. The federal government had not infused so much capital since the New Deal by Roosevelt.[5] The main goal was stopping the panic and preventing rapidly collapsing banks and illiquidity problems. The Emergency Economic Stabilization Act provided the US federal government with capital that could be distributed to ailing banks in exchange for conservatorship.

[1] (FDIC, Failed Banks List, 2013)
[2] (CBO, CBO's Budgetary Treatment of Fannie Mae and Freddie Mac, 2010)
[3] (Federal Reserve, Press Release, 2008)
[4] (Bloomberg, Bush Signs Bank Rescue to End 'Threat to Economy', 2008)
[5] Ibid

As it transpired, the financial system was not alone and the automotive sector also needed capital infusions by the government as US car sales dropped as much as 28%.[6] President Bush stepped in personally to provide loans to the US auto industry with capital from TARP.[7]

When President Obama was elected he continued the stimulus of the economy by implementing a similar set of measures such as the American Recovery and Reinvestment Act of 2009, the Consumer and Business Lending Initiative, The Public-Private Investment Programme and the Financial Stability Plan. The US sovereign debt rose significantly because of all the interventions but the economy recovered and has managed to keep growing, albeit slowly, since 2010 unlike the European economy. The quantitative easing used by the Federal Reserve is still on-going at the time of writing and will continue to do so for an unforeseen time. The fact that the Federal Reserve feels it cannot stop the quantitative easing just yet indicates that the financial system has not recovered yet despite all the measures.

2.1.3. Dodd-Frank Act

To prevent the financial system from experiencing a similar crisis in the future, the US government sought to implement regulation that would revise the entire financial regulatory system in the United States. It did so by enacting the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. It focused on improving bank regulation by redistributing regulatory authority.[8] It also aimed to avoid the occurrence of "too big to fail" financial institutions in the future.[9] To ensure better consumer protection, the Dodd-Frank Act implemented a Consumer Financial Protection Bureau within the U.S. Treasury. The purpose of this Bureau is to avoid consumers entering into financial transaction they may not be able to afford. As the financial crisis was caused by subprime mortgages and securities based on those mortgages, it is thought that the Bureau could prevent this from happening again.

[6] (Bloomberg, GM and Chrysler Will Get $13.4 Billion in U.S. Loans, 2008)
[7] Ibid
[8] (Choi & Pritchard, Securities Regulation: Cases and Analysis Third Edition, 2012)
[9] Ibid

The Dodd-Frank Act also grants the SEC a great deal of rulemaking authority to better address "its core functions such as disclosure regulation, investor protection, and the regulation of counterparties, intermediaries, and other institutions most relevant to the capital markets".[10]

Effectively, the Dodd-Frank Act imposed a great deal of disclosure regulations on banks and companies which raised costs and administrative burdens. As the next paragraph will discuss, it is thought that these particular costs and the administration involved have proven to be too large a burden to some and especially to companies considering an IPO. The measures that were implemented in the Dodd-Frank Act extend beyond financial institutions as some also apply to listed companies. It imposes all sorts of corporate governance rules differing from clawback and say-on-pay provisions to increased shareholder voting and advisory rights. This corporate governance part is what allegedly frightens small businesses considering an IPO. Whether the Dodd-Frank Act is successful in preventing scandals or fraud is too early to tell as it was enacted only three years and many of its rules were implemented far later. The United States government in any case has sought to mitigate some of the regulations through the JOBS Act.

2.1.4 The IPO Task Force

On the fifth of April 2012, United States President Obama signed into law the JOBS Act (Jumpstart Our Business Startups). It aims to create growth and jobs by providing a number of solutions that among others include: deregulation, tax incentives and softer securities' rules. All of these solutions aim to raise the number of start-ups in the United States as the idea is that this will also increase the number of jobs and thus boost the overall economy.[11] It is when a company goes public that it experiences the fastest growth.[12] The JOBS Act was the result of the outcome of a study by the so-called IPO Task force. In 2011, this task force investigated the reasons for the decline in IPO's and what could be done to change this decline.[13]

[10] (Choi & Pritchard, Securities Regulation: Cases and Analysis Third Edition, 2012)
[11] (IPO Task Force, Rebuilding the IPO On-Ramp, 2011)
[12] Ibid
[13] Ibid

The task force was made up of venture capitalists, public investors, entrepreneurs, securities attorneys, academics/accountants, investment bankers and the investors and exchanges.[14] It concluded that IPO's in general had gone down but particularly the smaller IPO's, smaller meaning deals below $50 million.[15] It also concluded that the average age at the time of the IPO had doubled from 4.8 years in the 1980's to 9.4 years since 2007.[16] Instead of going public, the task force found that companies increasingly chose to go for a merger or acquisition by larger companies instead. Instead of creating jobs, the task force argued this reduced the number of US jobs.[17] As mentioned before, the task force interviewed CEO's and asked them to list the most challenging aspects of an IPO.

An overwhelming 92% chose the administrative burden of public reporting. 91% chose reallocation of CEO's time to reporting/compliance vs. Company building, 89% administrative burden of regulatory compliance and 88% managing public company communications restrictions.[18]

In addition to its findings, the task force also proposed recommendations to turn around the IPO decline and generate job growth. It broke down its recommendations to the policymakers in three areas; regulatory "on-ramp", information flow and IPO tax incentive[19]:

1. Provide an "On-Ramp" for emerging growth companies using existing principles of scaled regulation.

2. Improve the availability and flow of information for investors before and after an IPO.

3. Lower the capital gains tax rate for investors who purchase shares in an IPO and hold these shares for a minimum of two years.[20]

An additional but nonetheless very important recommendation is one to everyone involved in the emerging growth ecosystem.

[14] (IPO Task Force, Rebuilding the IPO On-Ramp, 2011)
[15] Ibid
[16] Ibid
[17] Ibid
[18] Ibid
[19] Ibid
[20] Ibid

The recommendation suggests that members of the ecosystem have to educate issuers about the ecosystem. It also recognizes that this is not just the responsibility of policymakers in that respect but it does not provide any recommendations to policymakers either.

The areas discussed were deemed to be the most important areas where changes could be made to affect economic growth through the increase of the number of IPO's. It is questionable though whether the decline in IPO's can truly be considered a decline. The figures that the task force examined are contaminated by the dot com bubble at the end of the 1990's and the beginning of the 2000's. This is also suggested by Ritter in an article on re-energizing the IPO market[21] and Kathleen Smith in her testimony[22] where she argues that over 70% of the IPO's in that time period were unprofitable companies. This is not taken into account by the task force however. It is odd that such a significant event in economic history was largely ignored by such an influential body. The findings and recommendations of the Task Force were transposed into the JOBS Act which was signed into law on 5 April 2012.

2.2. The JOBS Act

2.2.1. Title I of the JOBS Act – Reopening American capital markets to emerging growth companies

Title I of the JOBS Act begins by defining the 'emerging growth company' (hereafter: 'EGC') in section 101. The definition of an 'EGC' is added to the 1933 Securities Act by amending it with the JOBS Act title I. The definition is as follows: "An 'EGC' is an issuer with less than $1.000.000.000 in annual gross revenues". [23]

[21] (Ritter, Re-energizing the IPO Market, 2013)
[22] (Smith, Spurring Job Growth Through Capital Formation, 2012)
[23] (Title I - US JOBS Act, 2012)

The status of 'EGC' shall be deemed to continue unless:

- The annual gross revenues exceed $ 1.000.000.000
- Five years have passed since the Initial Public Offering
- The issuer has issued more than $1.000.000.000 in non-convertible debt in a three-year period
- The issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b– 2 of title 17, Code of Federal Regulations, or any successor thereto.[24]

This last provision means that when the total value of publicly traded shares exceeds $700 million the 'EGC' status ceases to continue.[25] The definition of an 'EGC' was introduced to help start-ups and make sure only they were helped by these conditions. However, since there is no specified time frame, any company that does not yet exceed the annual gross revenues can seek a listing under the conditions of the JOBS Act. The most notorious example of a listing under the JOBS Act that was not envisioned was the IPO of Manchester United.[26] Manchester United is an English football club which was founded in 1878. It is by no means a small, American start-up company. This goes to show that the definition of an 'EGC' as it stands now may be over-inclusive. It may make it easier for some companies to seek a listing but it also means that established firms that are not emergent can avoid disclosure obligations. A barrier to entry could have been used to influence the type of companies seeking a listing under the JOBS Act. Limiting it to rapidly growing companies or companies that were founded recently might have made more sense. It certainly could have avoided the listing of companies that will not contribute to the American economy such as Manchester United as most of its jobs are in the United Kingdom. One way to avoid the 'wrong' companies seeking a listing is by lowering the annual gross revenues requirement and/or market capitalisation cap. Most of the small companies remain below a $50 million threshold or $200 million market capitalisation which implies that the thresholds can be lowered significantly.[27]

[24] (Title I - US JOBS Act, 2012)

[25] (Securities and Exchange Commission, Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports, 2005)

[26] (Blackden, Manchester United IPO critcised over use of JOBS Act, 2012)

[27] (Smith, Spurring Job Growth Through Capital Formation, 2012)

What might also cause trouble is the possibility of eternal 'EGC' status. The maximum 'EGC' term of five years only applies to equity IPO's. When a company issues non-convertible debt and remains below the $1 billion threshold over any three years it does not trigger the end of its EGC status and keep issuing debt eternally.

Section 102(a) of title I of the JOBS Act lists amendments of the 1934 Securities Exchange Act.[28] It exempts emerging growth companies from the requirements in Section 14A subsections (a) and (b) which require shareholder approval on executive compensation and golden parachutes. The 'EGC' will not have to seek shareholder approval on these plans which can be quite difficult for small or starting companies that usually deal with very concentrated ownership. The concentrated ownership means a few shareholders could easily block the plans making it harder for the company to get things done. This in turn might have made it unattractive for a company to seek a listing as the owners do not want to lose control over such matters. Relieving starting companies from the duty to seek shareholder approval for a while seems to be a good idea. Section 102(b) subsection (a) amends the 1933 Securities act to exempt 'EGC's from the requirement to present more than two years of audited financial statements in order for the registration statement of an IPO.[29] Section 102(b) subsection (b) also exempts the 'EGC's from the requirement to comply with new or revised financial accounting standards until private companies are also required to comply. Even though this is not a big change it could make it a bit more attractive at it temporarily relieves the company from such requirements.[30] Section 103 of title I of the JOBS Act exempts companies from having to comply with the auditor attestation requirement of section 404(b) of the Sarbanes-Oxley Act.[31] Section 104 of the JOBS Act also relieves 'EGC's from some of the obligations formulated in section 103(a)3 of the Sarbanes-Oxley act with regard to auditing standards.

[28] (Title I - US JOBS Act, 2012)
[29] Ibid
[30] Ibid
[31] Ibid

Section 105(a) of the JOBS Act contains another important change as it amends section 2(a)3 of the 1933 Securities Act. A research report about the company that was written up by a broker or dealer shall not be deemed an offer for sale or offer to sell a security even when that broker or dealer also participates or will participate in a registered offering of the securities of the company.[32] Previously it was forbidden for brokers or dealers to publish a research report about an 'EGC' if they were in any way participating in the registered offering. By allowing this, the availability of information will increase significantly which makes the company more interesting for potential buyers as it gains attention. Subsections B and D also contain amendments which ensure that the SEC and FINRA cannot adopt rules that would contradict subsection A.[33]

Section 106 of the JOBS Act allows 'EGC's to submit a confidential registration statement as long as the submissions and all its amendments are publicly filed with the Commission not later than 21 days before the date on which the issuer conducts a road show.[34] By allowing confidentiality, a company that is exploring an IPO can do so while working together with the SEC without having to disclose this to the public. This means that any irregularities will not be revealed to the public immediately and the company will get a chance to rectify the mistakes without having to deal with the media. This happened to Groupon for example which came under close scrutiny after the SEC disagreed with Groupon's accounting practices.[35] Another important reason to allow confidential registration is that most of the high-tech 'EGC's are reluctant to reveal any sensitive information to competitors.[36] Although it can again be questioned whether the JOBS Act is not over-inclusive in this respect as companies that also used the confidential filing include Manchester United, MGM Studios and the company behind the grocery Fair Market.[37]

[32] (Title I - US JOBS Act, 2012)
[33] Ibid
[34] Ibid
[35] (Lagorio, Public Offerings: How 'Confidential' IPOs Are Changing the Market, 2012)
[36] Ibid
[37] Ibid

Section 107 of the JOBS Act provides an opt-in right for 'EGC's to comply with the standards that would apply to a 'normal issuer'.[38] However, the choice to do so has to be made when the company is first required to file a registration statement, periodic report or other report.[39] Also, the 'EGC' cannot simply pick a few of the standards; it will have to comply in full and it will have to continue to do so like a 'normal' issuer would.[40]

A reason to do so may be to increase the trustworthiness of a company as it voluntarily abstains from using the exemptions in the JOBS Act.

2.2.2. Title II of the JOBS Act – Access to capital for job creators

Section 201 of Title II of the JOBS Act ordered the SEC to modify Rules 144A and 506 of title 17 section 230 under the 1933 Securities Act.[41] It removes the prohibition on general solicitation or general advertising of Rule 506 offerings. It also permits general solicitation for offerings under Rule 144A. It concerns Regulation D issuers which are small companies that benefit from exemptions in order to access the capital market. Previously, those issuers could not use general solicitation. The SEC proposed its changes on 29 August 2012 and adjusted the requirement that securities must be "offered and sold" to qualified institutional buyers to "sold" only.[42] This means that under Rule 144A general solicitation is no longer prohibited when general solicitation has occurred as long as the buyers are qualified institutional buyers.[43] The same goes for Rule 506 where, if the purchasers are accredited investors and the issuer has reasonably checked this, general solicitation is permitted.[44] Being able to use general solicitation should allow for greater capital access for smaller companies as it would generate a larger pool of potential investors.

[38] (Title I - US JOBS Act, 2012)
[39] Ibid
[40] Ibid
[41] (Title II - US JOBS Act, 2012)
[42] (Latham & Watkins, The JOBS Act, Part Deux, 2012)
[43] Ibid
[44] Ibid

2.2.3. Title III of the JOBS Act – Crowdfunding

Title III of the JOBS Act creates an exemption for crowdfunding so that it may now be used to issue securities.

There are a few conditions that must be met to make sure that the crowdfunding is indeed exempted. First of all, under section 302 subsection A of title III of the JOBS Act, the aggregate amount of money raised cannot be more than $1.000.000 in any 12-month period. Section 302 subsection B states that no investor can invest more than specified in subsection B namely;

''(i) the greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000;

''(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor isequal to or more than $100,000.''[45]

Section 302 subsection C demands that the transaction is conducted through a broker or funding portal. This means that the company cannot go looking for crowdfunding itself. It has to rely on an intermediary to do this job. The reason for including an intermediary is to prevent widespread abuse of crowdfunding and reducing the risks involved. Title III opens the option to retail investors to invest their money in start-ups. This is important because crowdfunding could provide money in the earliest stage of financing of a company when other, accredited, types of investors are not interested yet. Another upside is that these investors are very dispersed which means they will have little power over the company contrary to venture capital firms or other institutional or angel investors who usually claim a large stake in the company. Section 302 subsection D imposes some requirements on the issuer which have to do with disclosures to the SEC, intermediaries and investors.

2.2.4. Title IV of the JOBS Act – Small Company Capital Formation

Title IV of the JOBS Act amends Section 3(b) of the Securities Act of 1933 which concerns Regulation A. The amendment raises the aggregate offering amount of securities that can be sold in any 12-month period from $5 million to $50 million.[46]

[45] (Title III - US JOBS Act, 2012)

Before the JOBS Act, Regulation A was not used much because of the low cap and the need to comply with state securities laws.[47]

Even though this mitigates the low cap it is uncertain if this will increase the attractiveness enough so that it will be used more.[48] On the other hand, the Regulation A offering is cheaper as there are less disclosure obligations, which means less costs of legal and auditing counsel, and it is faster than a registered offering.[49] The Regulation A offering could be used as a step towards an eventual IPO and thus raising the aggregate amount of securities that can be sold may make it easier to grow towards an IPO.

2.2.5. Title V of the JOBS Act – Private Company Flexibility and Growth

Section 501 of Title V of the JOBS Act amends the 1934 Securities Exchange Act by raising the registration threshold of shareholders from 500 persons to 2,000 persons or 500 unaccredited investors.[50] In addition, shares held by employees which were gained as part of a compensation plan are excluded from the threshold as are the shares gained through crowdfunding. Raising the shareholder threshold will be greeted warmly by 'EGC's as those high growth companies usually use stock options as compensation to attract employees since money is often tight and used to invest. The stock options serve as an incentive for the employees to perform well and profit from an eventual launch. In the past the issuing of stock to employees led to unwanted IPO's such as the one by Google. It had issued shares to too many employees which forced the company to disclose sensitive information and do an IPO.[51] At the time, Google was not yet ready for an IPO and being forced into it was not in their interest at the time. The same threatened Facebook as employees began selling stock on secondary markets which meant the number of shareholders grew rapidly. In response, Facebook started to charge a fee for employees selling their stock to avoid being forced to register.[52]

[46] (Title IV - US JOBS Act, 2012)
[47] (Morrison & Foerster, A Quick Guide To The JOBS Act, 2012)
[48] (Snell & Wilmer, The JOBS Act: Improving Access to Capital, 2012)
[49] (Morrison & Foerster, A Quick Guide To The JOBS Act, 2012)
[50] (Title V - US JOBS Act, 2012)
[51] (Carlson, SEC Investigation Could Force Facebook To IPO, 2010)
[52] (Pepitone, Facebook employees must pay big to cash out, 2010)

Even though the employees and crowdfunding shares are now excluded from the total, there is still the fact that 500 unaccredited investors may trigger registration.

In addition, the costs for keeping records on this increased amount of persons could be rather costly and cumbersome. Yet it would seem to weigh up against the possibility of a forced IPO and the ability to keep hiring the right talent through the use of stock options.

2.2.6. Title VI of the JOBS Act – Capital Expansion

Section 601 of the Title VI of the JOBS Act has the same effect as Title V of the JOBS Act only for banks or bank holding companies. It raises the threshold for registration from 500 shareholders to 2,000 shareholders.[53] It gives the banks and bank holding companies more flexibility to raise capital while avoiding the costs and administrative burdens of a registrations. The capital raised by those banks can then be invested which in turn could create jobs as well.

2.3. Review of the JOBS Act

At the time of writing, the JOBS Act has been in force for one year. The opinions on the act varied widely before and after its introduction. As discussed in previous paragraphs there is a whole range of up- and downsides to this act. First of all, there is disagreement about the findings of the IPO task force as to their accuracy and bias. Ritter and Coffee both argue that the IPO task force rushed its work to 'justify significant deregulation'.[54] They disagree with the findings that seem to put the blame mostly with overregulation such as the Sarbanes-Oxley Act and the Dodd-Frank Act. Instead they propose different explanations for the fall in IPO's which if correct would mean that the JOBS Act is to have very little effect.[55] According to Ritter, the IPO market is mostly suffering from unprofitable small IPO's.[56] Companies and investors also seem to disagree on the parts of the JOBS Act that are most important. The CEO's found regulation and administrative burdens the most challenging aspects which had to be mitigated.[57]

[53] (Title VI - US JOBS Act, 2012)
[54] (Coffee Jr., Gone with the wind: Small IPO's, the JOBS Act, and Reality, 2013)
[55] (Ritter, Re-energizing the IPO Market, 2013)
[56] Ibid
[57] (IPO Task Force, Rebuilding the IPO On-Ramp, 2011)

On the other hand a survey by Ernst and Young found that investors think the changes to the offering process are far more significant.[58]

The most profound critique is that the JOBS Act does not adequately address the problems of small companies which appear not to be profitable after an IPO.[59] [60] Those companies are more profitable when they merge with a larger company that can use economies of scale.[61]

The JOBS Act itself seems to address a need in any case. Over 90% of 'EGC's that filed a first registration statement after the introduction on 5 April 2012 used at least one accommodation from the JOBS Act.[62] It seems certain that the JOBS Act will change the IPO landscape. Most companies qualify for the requirements as set by the JOBS Act and the reduced costs and regulatory burdens will be appealing to many start-ups. As discussed before, it remains questionable whether this regulatory relief is not too big and whether or not the requirements are over-inclusive. It would seem that policymakers should focus more on the smaller companies instead of providing a sort of catch-all rule. On the other hand, companies will definitely benefit from the temporary exemption from deregulation as it will save costs. Whether this will come at the expense of investors remains to be seen as eventually the EGC's will be forced to fully comply with the existing regulation once they lose the status of EGC. Thus the worry that the JOBS Act will create Enron-like scandals does not appear to be justified as the existing regulation remains intact for all public companies.

There are definitely aspects about the JOBS Act that are very positive. To highlight a few; the exemption of shares of employees from the shareholder threshold that triggers registration, reduced costs for going public, crowdfunding (through intermediaries) and the small company capital formation which raises the threshold for capital from $5 million to $50 million. The exemption for employee shares might effectively create jobs as high growth companies can now hire employees more easily without having to fear forced registration. The reduced costs for going public could potentially raise the number of IPO's as it becomes cheaper to raise capital this way.

[58] (Ernst & Young, The JOBS Act: One Year Anniversary, 2013)
[59] (Coffee Jr., Gone with the wind: Small IPO's, the JOBS Act, and Reality, 2013)
[60] (Ritter, Re-energizing the IPO Market, 2013)
[61] Ibid
[62] (Latham & Watkins, The JOBS Act after one year: A Review of the new IPO Playbook, 2013)

The crowdfunding aspect seems promising although at the time of writing[63] the SEC has yet to publish its rules on this particular part of the JOBS Act. Nonetheless, the crowdfunding could be a real boost to start-ups that are still too small or risky for venture capital firms to invest their money in. It could function as a first and therefore vital stage of the funding cycle. The small company capital formation allows those companies to raise significantly more capital which will increase their ability to invest and create more jobs.

There are many opinions on the JOBS Act which vary widely as to its use and effects. The actual effects of the JOBS Act will be uncertain for a long time still and it will likely remain a hot topic for discussion. After one year, the JOBS Act does not appear to have the effect that was anticipated by some. The number of IPO’s has fallen in 2012 instead of risen.[64] Although a one year performance review is very limited, it does not bode well for the future. One of the most important explanations for a JOBS Act failure according to John Coffee Jr. is the reduced investor confidence.[65] He fears that the debate over what takes precedence (restoring investor confidence vs. further deregulation) is won by strong lobbyists that support deregulation.[66] Yet what is certain is that at the very least the US government has provided some answer to the economic struggles. Whether Europe has done so as well remains to be seen in the next chapters.

[63] May 2013

[64] (Seward, The JOBS Act Turns 1—and It's an Utter Failure, 2013)

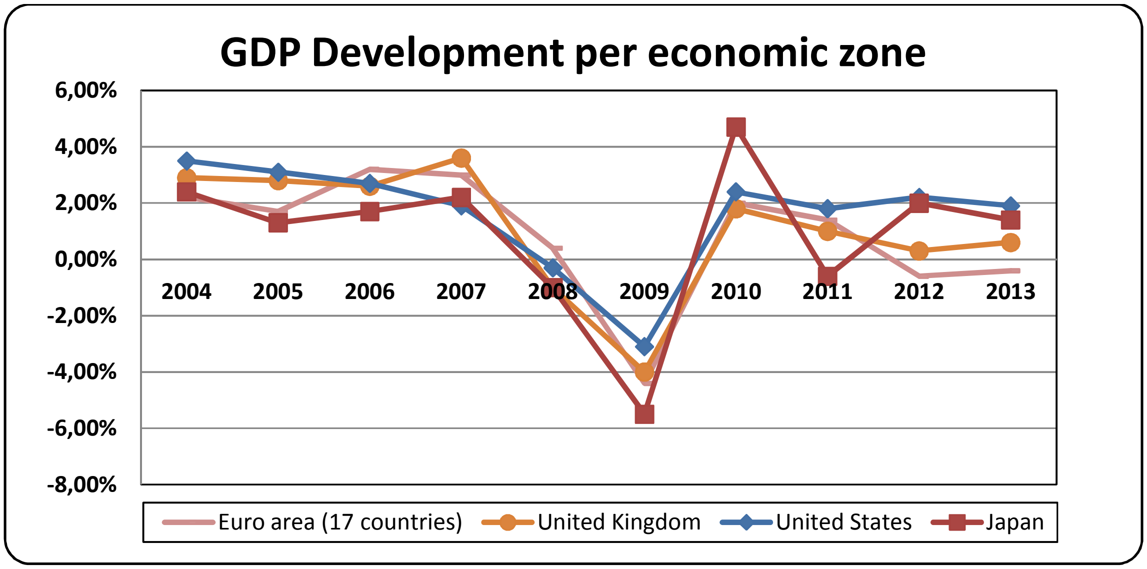
[65] (Coffee Jr., Gone with the wind: Small IPO's, the JOBS Act, and Reality, 2013)

[66] Ibid

3. The European economic situation

3.1. The European measures to fight its crises

When determining whether Europe could benefit from the JOBS Act it is important to determine first what the European situation requires and check for similarities or differences. First of all, the crises were experienced differently on both continents. While the United States suffered a tough blow from the financial crisis in 2008, as of 2011, Europe had to deal with its sovereign debt crisis as well. Europe had not recovered yet from the financial crisis of 2008 when the focus shifted from the banks to the states. The Euro itself came under threat of collapsing because of the fiscal deficits and growing national debt of some of the member states. Nations had to be bailed out to keep the Euro from collapsing as investor confidence in the Eurozone was rapidly decreasing. As a result, the economic growth in most of the European countries stalled and at the time of writing it still has not recovered. The graph below shows GDP development in the various economic zones.



Source: (Eurostat, Real GDP growth rate - volume, 2013)

What it clearly shows is that the Eurozone development has taken serious hits since 2007. It also shows that of all the economic zones, the Eurozone shows the worst performance. Instead of stimulating economic recovery since 2008, Europe suddenly had to try to contain the sovereign debt crisis.

It follows that most of the measures taken by Europe were focused on solving its sovereign debt crisis and restoring investor confidence. This paragraph will sum up the most prominent measures taken to overcome the crises.

3.1.1. Bailouts

Various countries across Europe had been forced to bailout banks or financial institutions since 2008 because of the credit crunch. Most of those bailouts had been national affairs although sometimes a few other countries were involved. The first collective European effort was in 2010 when Greece needed a bailout. The European Union and the IMF agreed to bail out Greece together by providing them with €110 billion.[67] This was the first of many bailouts across the European continent. The European Central Bank (hereafter ECB) also provided assistance by buying sovereign bonds.[68] The latter was done in an effort to reduce the interest on those bonds which, at that rate, would have had a crippling effect on the economy. The buying of sovereign bonds by the ECB was strengthened as the ECB approved a program which would allow for unlimited bond-buying.[69]

At the same time, the ECB also tried to stimulate economic activity by lending more money. It loaned €489 billion at a 1% rate to 523 banks on 23 December 2011.[70] The reason for doing so was that the ECB hoped the banks would then use the money to buy high-yield bonds from troubled Member States but the banks were very hesitant to do so. A few months later the ECB loaned out another €529,5 billion to 800 financial institutions.[71]These loans were termed LTRO or Long-Term Refinancing Operations. It was only after the second LTRO that there was some economic stimulus.[72]

3.1.2. European Stability Mechanism

In the midst of bailouts of nations and banks, Europe decided to install a rescue mechanism in the form of the EFSF; the European Financial Stability Facility.[73]

[67] (Reuters, EU, IMF agree $147 billion bailout for Greece, 2010)
[68] (Wall Street Journal, ECB Buys Italian, Spanish Bonds, 2011)
[69] (Reuters, Draghi gets ECB backing for unlimited bond-buying, 2012)
[70] (Fasano Thomsen, What Measures Did Europe Take to Contain the Crisis?, 2012)
[71] Ibid
[72] Ibid
[73] (EFSF, About EFSF, 2013)

This was a temporary solution which would provide financial relief to Member States. The capital that was needed to do so was raised through bonds and other debt instruments.[74] The capital was backed by guarantees from Member States. As the EFSF was a temporary solution, Europe also looked to incorporate the mechanism more permanently and to avoid having to do the bailouts. The problem with bailouts was that they had to be approved by all individual member states each time which made it a very cumbersome progress leading to pressure from financial markets. Europe proposed the European Stability Mechanism which would replace the EFSF as a permanent solution. It was inaugurated on 8 October 2012 via the ESM Treaty.[75] At the time of writing, both the EFSF and the ESM are in force. The EFSF will cease to exist once all the loans and bonds have been repaid.

3.1.3. European Banking Union

On 12 September 2012 the European Commission proposed a single supervision mechanism for banks led by the ECB.[76] The intention is to strengthen the Economic and Monetary Union this way. Even though this proposal is only a first step, the eventual banking union should include a single rulebook, common deposit protection and single bank resolution mechanisms.[77] The responsibility to monitor and aid banks will shift from Member States to the European level. By moving the supervision from individual Member States to the European level, citizens and financial markets ought to gain more confidence in the system and the banks. In the current situation the effort to save failing banks might prove to be too demanding on individual Member States as was the case in Spain for example.[78] Spain’s third-largest bank ‘Bankia’ was in dire need of capital but the Spanish government could only provide this by asking for a bailout from Europe. This caused great uncertainty which in turn hurt the financial markets. The plans for a European Banking Union are not fully worked out at the time of writing. There is still discussion among Member States about the precise way to set it up.[79]

[74] (EFSF, About EFSF, 2013)
[75] (ESM, About ESM, 2013)
[76] (European Commission, A Roadmap towards a Banking Union, 2012)
[77] Ibid
[78] (Bloomberg, Bankia Bailout Cost Too High as Investors Shun Spain Debt, 2012)
[79] (Wall Street Journal, Euro-Zone Views Split on Banking Union, 2013)

One of the most crucial elements is that national authorities will lose control over 'their' banks. The Banking Union would get control over what happens to a bank that is in trouble and what to do with it. This could mean that that particular bank is not helped at all which in turn hurts the local economy. The question of who gets how much control is a very delicate political matter and one that will have to be resolved quickly.

3.1.4. Financial Transaction Tax

In 2011, the European Commission proposed to introduce a Financial Transaction Tax.[80] The idea behind it was that the financial sector had been saved with considerable amounts of public money that had to be repaid in full to benefit the public finances. By implementing a Financial Transaction Tax, the Commission hopes to rebuild the economies and generate income. It may also serve to discourage speculative trading and short-termism on the financial markets. In February 2013, the European Commission adopted a proposal for a Council Directive which in turn followed the Council decision by the Council to authorise enhanced cooperation between 11 Member States.[81] Only 11 Member States are involved at this point as there is great disagreement about the tax itself, its implication and its costs and benefits. The disagreement reached a height when the United Kingdom launched a legal challenge against the Financial Transaction Tax at the European Court of Justice.[82] The UK Chancellor Osborne has stated that the UK feels the tax is not going to affect banks and other financial institutions but rather citizens and pension funds. This view is supported by the Dutch Central Bank which has calculated the tax would cost the Dutch financial sector approximately €4 billion.[83] It also stated that the benefits of a Financial Transaction Tax were doubtful whereas the negative impact on the economy was certain.[84] A transaction tax is not new however as there are current and past examples.

[80] (European Commission, Taxation of the financial sector, 2013)
[81] (European Commission, Taxation of the financial sector, 2013)
[82] (BBC News, Financial transactions tax: UK launches legal challenge, 2013)
[83] (Bloomberg, EU Transaction Tax Is 'Undesirable,' Dutch Central Bank Says, 2012)
[84] Ibid

The UK is fighting the transaction tax proposed by the European Commission but it has implemented one itself in 1986 called the Stamp Duty Reserve Tax but in reality 70% of transactions are exempted from it.[85] Then there is also Sweden that implemented a financial transaction tax in 1984. The tax in Sweden was a disaster as it provided less than 5% of projected revenue[86] while 90-99% of traders in securities moved from Stockholm to London.[87] The tax was abolished in 1991 but the traders have not returned. A study by Campbell and Froot in 1993 found that the effects of a transaction tax can be very large. The effects they found were the reduction in overall trade, a migration of trade into offshore markets for the same securities, a migration of trade into local substitutes. This held true for both the Swedish situation as well as the UK situation. In response to the European plans concerning the tax, the Swedish minister for finance, Anders Borg, stated that a financial transaction tax would be a very bad idea. Partly because of the poor Swedish experience yet also because the United States has not expressed a desire to introduce such a tax which would mean that the business would move again as it did in Sweden earlier. When taking the poor experiences from the past in account it seems odd that some European Member States are looking to introduce it nonetheless.

Indeed, France and Italy have already introduced financial transaction taxes in 2012 and 2013. The tax in France was introduced in August 2012 and it means a 0.2% on the purchase of securities. The principle of the tax is issuance. It looks at the location of the issuer to determine whether the tax is due. This also applies in the UK and Italy. The EU tax however would look at the residence of the parties involved to levy the tax.[88] The latter creates a much wider definition of possible parties yet it would also mean that parties would move offshore as the location becomes crucial. It would therefore also affect Member States that are not part of the FTT pact. The failed tax in Sweden was also based on a residence principle and demonstrated much the same effect. The early introductions of such taxes by France and Italy allow for some scrutiny as to its effects if any.

[85] (Parliament United Kingdom, Towards a Financial Transactions Tax?, 2012)
[86] (Campbell & Froot, International Experiences with Securities Transaction Taxes, 1993)
[87] (BBC News, European financial tax not a good idea, says Sweden, 2011)
[88] (Poncelet, French and EU financial transaction taxation: "Grasp all, lose all"?, 2013)

The trade volume in French equity dropped by 16% in the first three months after the introduction of the tax while at the same time the volume of equity that was not affected rose by 19%.[89] The biggest effect could be observed among low-capitalised stocks. [90] This last part may be the most worrying as smaller firms may lose tradability and thus access to capital. Italy has also introduced a financial transaction tax in 2013. Some parts of the act went into effect on 1 March 2013 while the entire act will be in force from 1 July 2013. Although it is extremely difficult to measure yet, it is estimated that the regulation in Italy too caused a severe drop in trading volume within the first two weeks of implementation.[91]

Taking into account that the European tax would apply to all transactions and both purchase and sale it could mean that the tax effect would be cumulative. By the time an investor acquires a share he might have indirectly paid a 1% tax fee because of intermediaries. The current proposal also seems to work counterproductive in the sense that the European tax would look at the location which could provoke funds moving offshore. It also seems that the smaller firms would suffer as their tradability will indeed suffer from this tax which is hardly the intent of this act. The banks will not be harmed as they can forward the cost to their clients. Under the current system all banks will pay the taxes as will their customers so perhaps it would be better to reward 'good' banks which in turn could make the bank cheaper for its clients. Doing so might challenge banks to change the behaviour as desired by the European Member States that are looking to implement this piece of legislation. Whether the French and Italian systems generate the projected revenues is unclear at this moment but it seems that the possible side effects from the Financial Transaction Tax hit undesired targets such as small companies already struggling for capital and ordinary citizens as their savings, investments and pension funds will yield less return. Europe would do well to reconsider its current proposal and the shape it takes.

It might look to Belgium for inspiration on how to deal with taxes, debt and equity. Both the financial crises in 2008 and 2011 were related to debt.

[89] (The Economist, Skimming the froth, 2012)
[90] Ibid
[91] (Financial Times, Tax blow to Italian Stock Trading, 2013)

It would therefore make more sense to discourage the use of debt and encourage the use of equity as a means of finance. Europe could so by avoiding or abolishing taxes on equity and levying taxes on debt instead of the other way around. Most countries levy two or more taxes on equity (at purchase, dividends or capital gains, and at sale) while debts are often tax deductable. It is thus astonishing to see that Europe proposes to introduce yet another tax on equity. Equity is a more sustainable way of funding a company as it creates a partnership between investor and investee while debt merely creates an additional financial obligation for companies. By stimulating the use of equity Europe could also provoke more investments as it will yield a greater return for investors. Reinvigorating investments is paramount to the European economy. Belgium has experience in this respect as it introduced a tax, the Notional Interest Deduction, which no longer favoured debt over equity in 2006. It provided companies with a means to deduct an interest charge over equity as well. The tax was evaluated by a study published in May 2013 which found that companies responded strongly to the tax neutrality concerning debt and equity.[92] The share of equity in the capital structure went up overall and went up mostly in new and in large firms.[93] New firms financing themselves with equity rather than debt is very positive as it reduces costs which means they can grow more rapidly. It also means they will not have to pay interest even if the company is not making a profit which it would have to in case of a loan. On the other hand, some investors may prefer to provide a loan as, in case of default, it takes precedence over equity and it also generates a return irrespective of profits whereas dividends will only be paid when the company is turning a profit. The study was also able to exclude other variables that might possibly be responsible for the shift from debt to equity. This is promising as equity is a more favourable method of financing a company as it is cheaper, leads to greater stability and also provides other benefits such as an investors' network. Participation and involvement of investors is particularly helpful to new companies and should be encouraged. It is also striking that this effect was already this significant with a neutral tax that merely corrected a bias towards debt.

[92] (Panier, Pérez-González, & Villanueva, Capital Structure and Taxes: What happens when you also subsidize equity?, 2013)
[93] Ibid

A tax that would favour equity only might produce even bigger results. The Belgium experience would suggest that Europe is creating a potentially destructive tax. If Europe is looking to create safer banks and reduce risks it would do better to encourage the use of equity rather than debt.

3.2. Other types of initiatives

The previous measures all seem to have one thing in common; they were intended to fight the instability of the financial system in Europe. None of these measures however had economic growth and job creation as its key target. This may be the reason for the lack of economic growth in Europe. However, Europe has also employed some initiatives that seek to foster the entrepreneurial spirit and spur economic growth and job creation. A few of those initiatives will be highlighted in the following paragraphs.

3.2.1. Small Business Act

In 2008, the European Union adopted the Small Business Act.[94] Its purpose was to promote Small and Medium Enterprises growth and stimulate the European entrepreneurial environment. It provided ten principles that ought to guide European and national policy makers when designing legislation applying to SME's. The following are a few of those principles:

- Create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded[95]
- Adapt public policy to SME's needs[96]
- Facilitate SME's access to finance and develop a legal and business environment supportive to timely payments in commercial transactions[97]

Each principle was also accompanied by a way in which the Commission or Member States would seek to turn principle into practice.

[94] (European Commission, A "Small Business Act" for Europe, 2008)
[95] Ibid
[96] Ibid
[97] Ibid

With regard to the first principle, the Commission launched a number of initiatives such as the 'annual European SME's week', the 'Erasmus for Young Entrepreneurs' and establishing an 'EU network of female entrepreneur ambassadors'. Contrary to the Commission's commitment to turn the principles into practice, the Member States were invited to do so. There was no obligation to follow suit however. This seems to contradict the intention to provide a similar climate throughout the European Union. Whereas one Member State might launch a whole range of initiatives, another Member State may choose not to do so or to install entirely different measures. In order to determine the success of the Small Business Act, the Commission reviewed the first two years of the Act. The review revealed that although there were some successes, there was still a lot to be done. On the one hand it found that 120,000 jobs had been created as 100,000 SME's received EU loans.[98] On the other hand it also concluded that access to finance had to be improved, smart EU legislation to help SME's concentrate on core business was needed, making full use of the Single Market had to be encouraged and that SME's should be helped with globalisation and climate change challenges.[99]

When looking at those initiatives, it is clear they have done very little to stimulate the European economy. 120,000 additional jobs is obviously a nice achievement but when you look at the amount of SME's that received loans it seems less so. It seems that the EU policy was completely lacking focus when those loans were provided. This is mostly suggested by the 100,000 companies that received a loan. It is a huge number of SME's that have received funding and it seems impressive. However, only a few of those SME's will actually continue to grow and create long-term growth and more jobs. They would have been able to grow far more rapidly and thus create much more jobs if they had received more capital. The EU would have done better to select only the best 1,000 SME's. It is quite likely that in a few years time, most of the 120,000 jobs that were created are lost again. Spreading the resources so thin is simply a waste of said resources. This lack of focus also seems to be resonating when looking at the various initiatives.

[98] (European Commission, Review of the "Small Business Act" for Europe, 2011)
[99] Ibid

There are special programs for each part of the population; young people, women, migrants, senior citizens and even 'honest entrepreneurs that went bankrupt'.[100] The Erasmus for Young Entrepreneurs Exchange programme facilitates exchanges between young and experienced entrepreneurs cross-border. In principle this seems to be a commendable initiative. When looking at the 'success stories' listed however, it may be less of a good initiative. One of the stories includes two entrepreneurs from Spain and Germany and the outcome of their exchange is worded as follows:

"... Raquel is intending to start up an academy in Spain. José, in turn, is planning to recommend her courses to his students. Thus, this relationship is evolving into a promising cooperation." [101]

The success of this story is based on the 'intention' to start an academy and the consequent 'planned' recommendation of that academy to others. This hardly seems the kind of success the programme should be aiming for. One would expect the measure of success to be a rapidly developing enterprise on either side of the exchange. Yet as the next chapter will also show, the challenges faced across Europe differ entirely. This may explain why the cross-border exchange, while no doubt very educational to the parties involved, is not delivering the type of results one would expect to see. Perhaps Europe ought to stick to its own motto of 'Think small first'.[102] Starting entrepreneurs might learn more from local experienced entrepreneurs and when the business is up and running and they are looking to expand cross-border, then should they participate in the cross-border exchange.

3.2.2. The EU Venture Capital Regulation

On 25 March 2013, the European Union official journal published the European Union Venture Capital Regulation or the Regulation on European Venture Capital Funds. The regulation was formed to create easier capital access to SME's by reducing the fragmented nature of European venture capital funds. It introduces an EU wide passport system that would allow venture capital funds to raise capital across Europe without having to register in all the separate Member States. A fund would simply apply for a passport in one of the countries and once acquired it would be able to attract investments from all others.

[100] (European Commission, A "Small Business Act" for Europe, 2008)
[101] (Erasmus for Young Entrepreneurs, Recent testimonies of successful business networking, 2012)
[102] (European Commission, A "Small Business Act" for Europe, 2008)

By opening up cross-border fundraising the funds should grow bigger and thus be able to invest more into SME's. Initially the EU considered creating a separate Venture Capital passport in the AIFMD regulation yet the AIFMD regulation would impose large administrative burdens as well as large compliance costs. For that reason, a separate regulation aimed specifically at Venture Capital was introduced. At the moment, the average fund size in Europe is about €60 million[103] while the optimal fund size is between €100 million and €400 million.[104] In comparison, the average VC fund in the United States is €130 million.[105] In this respect, the new venture capital regulation is likely to succeed yet there are still quite a few hurdles which will hamper the success of the regulation. The hurdles that have to be addressed are:

- Tax issues
- Evolving venture capital cycle
- VC management

The tax issues are related to the different tax regimes that apply in Europe. Each Member State has its own tax regime making it very opaque what tax regime will apply. This contrasts the United States where a single tax system is in place. For the regulation to be a success, the European Union would do well to mitigate the effects of the differing tax regimes. The uncertainty affects both investors and the venture capital funds. A report by a tax experts group concluded that there are two possible issues for venture capital funds. The first problem is related to a possible 'permanent establishment'. Cross-border investments still require a local presence to look after the investments in those other countries. This local presence would often be a fund manager and some staff. The manager's activities might risk creating a 'permanent establishment'.[106] This permanent establishment could trigger double taxation for either funds and its investors as the Member State where the investment originates as well as the Member State where the investment is made impose a tax.

[103] (European Commission, Proposal for a regulation of the European parliament and of the Council on European Venture Capital Funds, 2011)

[104] (Vermeulen & Pereira Dias Nunes, The Evolution and Regulation of Venture Capital Funds, 2012)

[105] (European Commission, Proposal for a regulation of the European parliament and of the Council on European Venture Capital Funds, 2011)

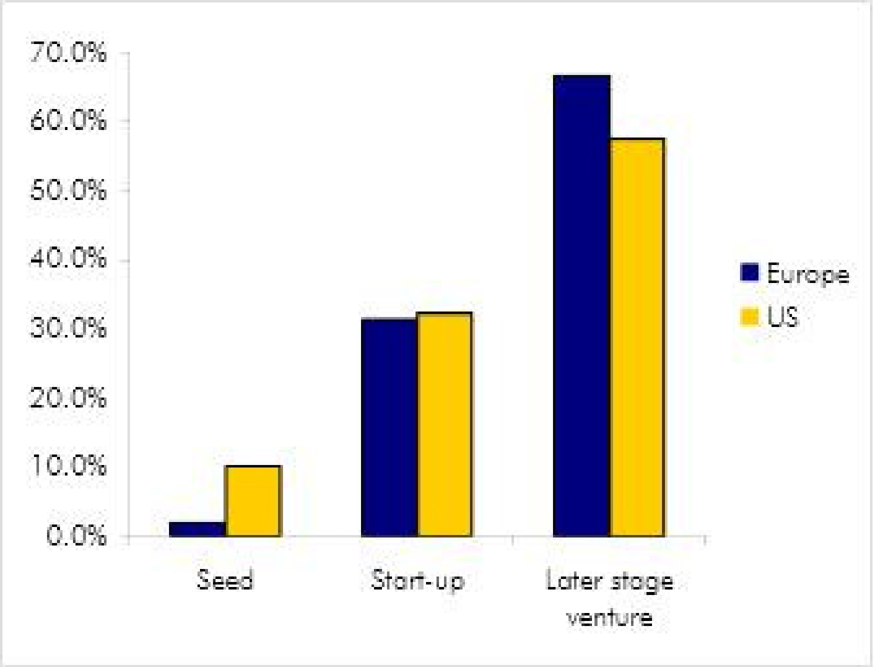
[106] (European Commission, Report of Expert Group on removing tax obstacles to cross-border Venture Capital Investments, 2010)

This would mean additional costs which deters investors. The tax issue can be circumvented by using local companies or advisors to provide the investees with advice.[107] That particular strategy also involves a great deal of cost however making it unattractive and inefficient to do so. Then there are also possible problems between differing tax regimes which regard the funds as transparent or non-transparent, subject to tax or not and trading or not.[108] The differences could also lead to double taxation issues for either the funds or its investors. What is particularly curious is that the report was published in 2010 while the tax issues have not been mitigated in the final draft of the regulation in 2013. This calls into question how successful the regulation will turn out to be.

Then there is also the evolving venture capital cycle. Because of the various investment disappointments over the past decade, investors have grown very careful. This has also resulted in a concentration of investments in high quality funds reducing the total number of funds.[109] Venture capital funds have responded by investing in less risky companies. Instead of pouring capital in early-stage companies the funds are now investing in later-stage companies.[110] This means that a gap has appeared in the venture capital cycle as there are less venture capital funds that also avoid investing in seed or early-stage companies.[111] It would appear that the new venture capital regulation will only aggravate this funding gap. After all, when cross-border capital-raising becomes possible, the bigger funds will grow bigger which leaves even less funds.

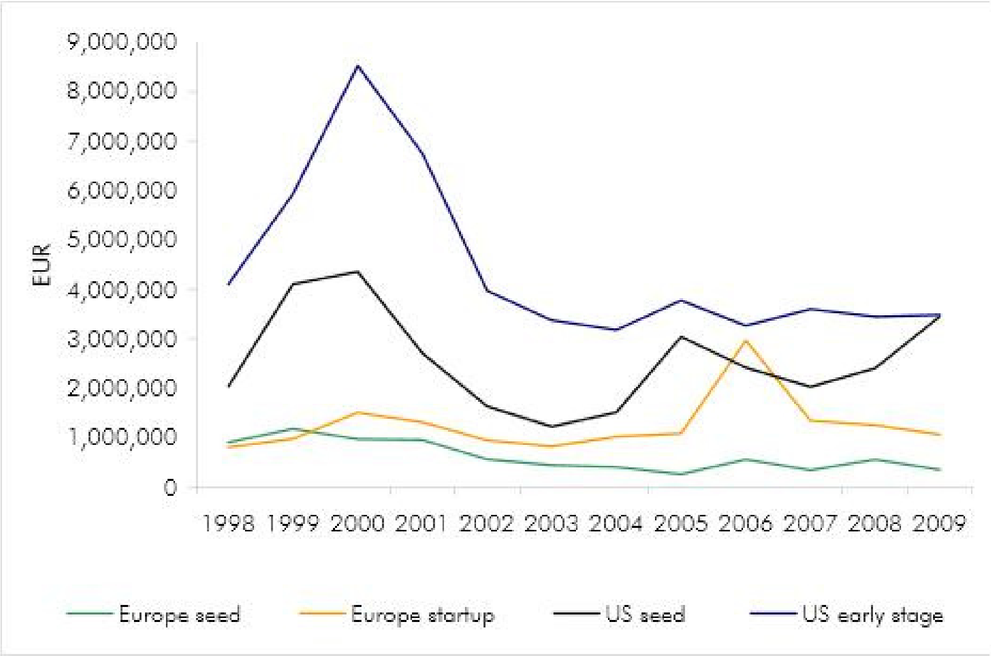
[107] (European Commission, Report of Expert Group on removing tax obstacles to cross-border Venture Capital Investments, 2010)
[108] Ibid
[109] (Vermeulen & Mendoza, The 'New' Venture Capital Cycle (part I), 2011)
[110] Ibid
[111] Ibid

The difference in funding throughout the various stages is illustrated in the table below which shows the investment share per stage:



Source: EVCA/NVCA in (Kelly, The Performance and Prospects of European Venture Capital, 2011)

On top of the previous issues, Europe also faces a problem in venture capital management in Europe. The capital that is invested by European venture capital funds is spread over nearly twice as many companies[112] as compared to the United States while Europe invests far less in aggregate than the United States invests as illustrated below.



Source: EVCA/NVCA in (Kelly, The Performance and Prospects of European Venture Capital, 2011)

The thin spreading of resources over a larger base of companies seems to indicate a lack of focus among the managers of European venture capital funds. Instead of trying to pool their efforts and resources into a few high potentials, the funds seem to rather play it safe by investing across the whole range of companies. This means that capital and efforts are wasted as only a few companies will actually succeed. It also means that the companies involved get less money from the VC funds. In turn this would lead to slowed growth as the companies can do less research or investments themselves.

[112] (Kelly, The Performance and Prospects of European Venture Capital, 2011)

In conclusion, the regulation might prove beneficial to a few European Venture Capital Funds but there is much work to be done. If the issues surrounding the regulation are not solved, it seems hardly likely that the regulation will fulfil the expectations. It is worrying in that respect that some of the issues were known but nonetheless were not dealt with.

3.3. Conclusions

When looking at the whole range of initiatives and measures Europe deployed what stands out most is the nature of most of those measures or initiatives. Most are still aimed at fighting the causes of the financial crises and preventing the causes from happening again. Although the rescue and prevention plans are admirable, it is paramount that Europe also starts its recovery. At the moment it does not appear to be aware of the dire need for reform that should lead to economic recovery. Instead, it would appear that Europe is convinced that removing the causes of the financial crises is enough to turn around the economic tide. What is more, the effectiveness of the rescue attempts can also be questioned. The first crisis in Europe broke out in 2008 and since then time has been wasted by imposing rules and regulations that have failed to be successful. Most of these attempts to recover the European economy look good on the surface but lack substantial reform. What this is leading to is becoming abundantly clear as, at the time of writing, recovery in Europe is further away than ever. The European Commission has projected the European economy to shrink by 0.6% in 2013 and emphasizes that the need for reform is of the utmost importance. [113] The development of the Gross Domestic Product of the Eurozone compared to other economies also indicates that Europe has not yet found the right solution to its troubles. Meanwhile, Europe continues to implement measures that have very little do with speedy recovery such as the Financial Transaction Tax. Quite the opposite may be true as the effects of the Financial Transaction Tax may actually hamper economic recovery. Europe has to examine very carefully what businesses and investors really need in order to jump-start the economy. Those needs will be addressed in the next chapter.

[113] (Reuters, EU shifts policy focus in quest for growth, 2013)

4. What does Europe need?

To determine if and how the JOBS Act could benefit Europe, its needs must be mapped and examined. Since this may prove to be difficult due to differing legal systems, tax regimes and cultural backgrounds, the six largest economies of Europe will be examined. These are: Germany, the United Kingdom, France, Italy, Spain and the Netherlands.[114] These countries represent a total of 72.87% of the European Union economy.[115] Addressing their needs would therefore have a significant impact on the overall European economy especially given the fact that the other economies will benefit from the recovery of the six largest economies. This chapter will begin by examining the needs of businesses in each of those countries and of Europe as a whole. Then the chapter will continue to examine the needs of the investors in Europe. Finally the chapter will conclude by summing up the most important needs.

4.1. The needs of businesses

To determine how businesses can be helped best to grow, the hurdles they face in trying to grow are of key importance. Removing the hurdles or helping companies to navigate them would go a long way in boosting economic growth. Yet those hurdles will be different in each of the European countries, which is why the six largest countries were picked. Appendix I on page 58 shows what companies in each of those countries perceive to be the biggest obstacles in doing business. Although great differences are visible there are also some general patterns apparent when examining the top five obstacles of all countries. Three of the countries, Spain, the UK and the Netherlands, list access to financing as the most problematic factor in doing business while the other countries also list it in the top five. What is also illustrative of the diversity of European countries is the range between responses. While 7.9% of German responses lists access to finance as being problematic, Spanish responses show an overwhelming 27.8% that feel capital access is problematic. This is also apparent for topics such as tax rates or tax regulations which are not in the top five of problems in the Netherlands but which are in every other top five.

[114] (IMF, World Economic Outlook Database, 2012)
[115] Author's own calculations based on IMF figures. Data can be found in Appendix II

Restrictive labour regulations are also highly ranked by all countries except for the United Kingdom. What is impossible to determine from the data presented by the graphs is to what extent national or European rules and regulations are to blame. This makes it difficult to examine where the problems are rooted and even more difficult to solve them. What the graphs also suggest is that any European approach will have different effects in each of the countries. Europe will therefore have to rely on reforms on the national level as well. The difficulty in that respect lies in the enforcement of the recommendations Europe would make. Currently, the European Commission already publishes recommendations for each individual Member State yet those suggestions, although strongly recommended, are not binding.

Yet there are a few prominent themes; access to finance, tax rates, tax regulations and restrictive labour regulations. In order to limit the scope of the research, this thesis will look only into access to finance. It is regarded the most problematic hurdle and therefore needs the most attention. It must also be emphasized that, given the length and severity of the crises, no single solution will prove to be sufficient to solve the problems.

On 12 October 2012, the Securities Markets Stakeholder group published a report to ESMA (European Securities and Markets Authority) which was rather similar to the study that preceded the JOBS Act. It examined how Small and Medium Enterprises could be helped in accessing funding. In its report and examination it considered what barriers SME's face, how regulations impact those barriers and it contained policy recommendations. The short diagnosis in the report contained a few crucial observations. First of all it also found access to funding to be the most crucial problem for SME's in Europe.[116] The disastrous effect of stunted SME growth was illustrated by the fact that between 2002 and 2010, SME's were responsible for 85% of net new jobs in the European Union.[117] This proves just how vital the companies are for economic recovery and that action is needed. Secondly, the report observed that if companies use capital markets this would mean a rise in economic contribution and employment.[118]

[116] (ESMA, Report on Helping Small and Medium Sized Companies Access Funding, 2012)
[117] Ibid
[118] Ibid

It lists a few benefits of having a listing such as higher public profile and brand recognition but also the ability to attract talented employees.[119] It would also provide the company with a highly diverse range of potential investors.[120] However, the report also recognized that not every company will be successful in accessing capital through the capital markets. It noted that a company needs to have a history, a sound projection of earnings and growth and also be of reasonable size and market cap so that its shares will be more attractive to investors.[121] It also provides an interpretation of the cause of the reduced capital provision. The report argues that banks are mostly to 'blame' for the reduction in access to finance as banks, due to new regulations, need more capital themselves. This is plausible as several policy initiatives such as Basel III, CRD IV and Solvency II[122] require banks and insurance companies to create larger capital buffers to prevent the problems of the financial crisis from happening again. This is currently at the expense of the economy and SME's in particular as they do not get the necessary funding. Therefore the report argues that deregulation should be the answer to the troubles. Deregulation, it is argued, would provide companies and investors with lesser administrative and financial burdens. Whether deregulation would indeed be effective remains to be seen as the US JOBS Act did just that but did little to turn the tide so far. It also remains to be seen whether deregulation is really the answer to the crisis. Deregulating, although perhaps the right answer to alleviate burdens, might send the wrong signal to a group of investors that has little confidence as it is. Investor confidence may be another crucial factor in trying to solve this crisis as the next paragraph will examine just that.

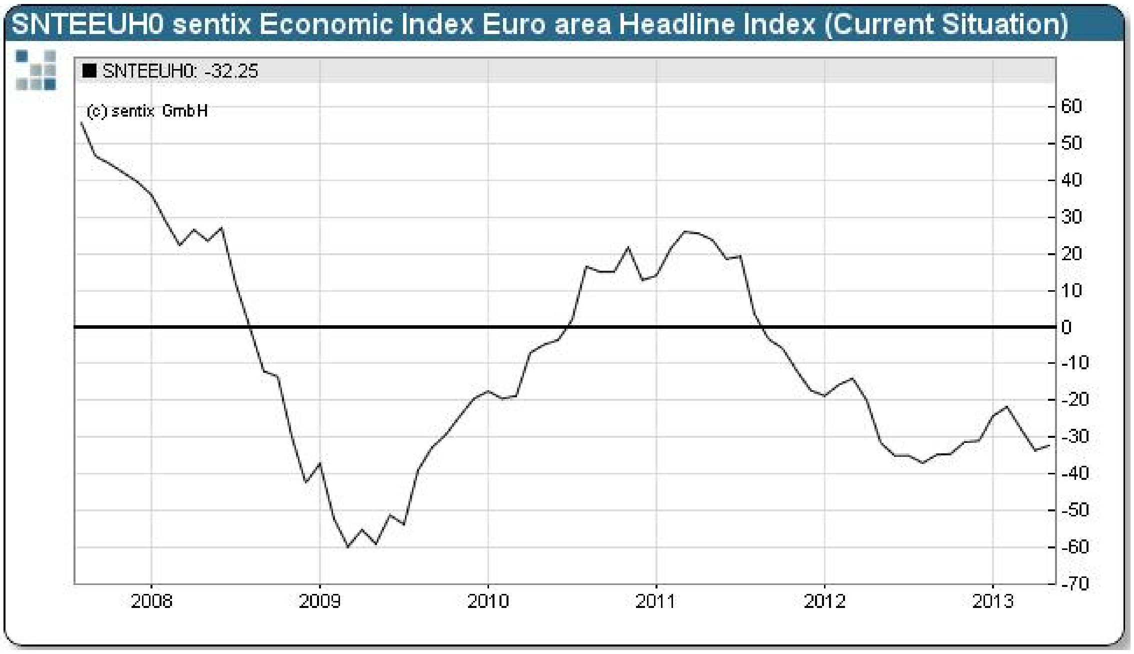
It should be noted that the stakeholders responsible for the report to ESMA may not be impartial as it was produced by the Securities Markets Stakeholder group that obviously stands to gain from any increase in public trading but their diagnosis is valid. The overall spirit of the report is rather similar to the study that preceded the JOBS Act.

[119] (ESMA, Report on Helping Small and Medium Sized Companies Access Funding, 2012)
[120] Ibid
[121] Ibid
[122] Ibid

What is disappointing though is that most of the claims in the report are not backed up by data or facts. Although some of the claims will no doubt be true it is not prudent to recommend policies based on the basis of unsupported statements. This is contrary to the IPO report ("Rebuilding the IPO On-Ramp") published in the United States which did use data to supplement its findings and recommendations as was discussed before. Therefore it is questionable to what extent the recommendations from the report to ESMA can be used.

4.2. The needs of investors

The access to finance problem is partly caused by banks that are shirking away from their usual support to SME's. Instead of providing capital the banks need capital themselves which makes it extremely difficult for SME's to find financing. However, banks and insurance companies are not the only investors in Europe. Venture capital, institutional investors and retail investors to name a few are also shying away from providing capital access as investor confidence in Europe is still extremely weak. The graph below illustrates investor confidence over time in Europe. Above 0 indicates a positive sentiment while beneath 0 indicates a negative sentiment.



Source: (Sentix, Eco Report Euro area, 2013)

What it shows is that investor confidence is still very weak and prone to sudden shocks as the sudden drop in the beginning of 2013 shows which is associated with the unfavourable outcome in the Italian elections.[123] It also shows that it took quite a few beatings over the past years as first the financial crisis erupted and later the sovereign debt crisis also broke out. The sovereign debt crisis and the different impact that had can be seen globally as well. Japanese and American investors for example are far more positive at this moment and are on the highest confidence levels since January respectively March 2011.[124] The European sentiment experienced another dip around the bail-out of Cyprus.[125] It seems that for economic recovery to begin, the investor confidence will have to be boosted. This will be extremely difficult if investors fear that new measures or regulations will hurt either them or the businesses they invest in. According to the report to ESMA it is especially the SME's that are suffering from the lack of confidence.[126] The SME's are less liquid which makes investors more vulnerable as the shares cannot be traded as well as those of large companies with a large market capitalisation. Policy changes will not be able to change the liquidity of SME stock. Efforts to spur investments in SME's will therefore have to focus on other measures that might boost investor confidence by reducing risks. The responsibility to restore confidence lies especially with European Member States as their sovereign debt crisis worsened the crisis severely. Not only are banks distrusted, sovereign banks are also still suffering from distrust. Measures that hurt liquidity and discourage investments could therefore act as a boomerang as investors grow even more discontent and move their capital to large companies or even non-European markets. As discussed before, this is exactly what happened in France when it introduced a transaction tax and trading in smaller companies decreased significantly. It is therefore questionable whether or not some of the proposed rules and regulations are timed right. Even if they are just in principle, the timing might be completely wrong. The ECB recognised the need for clarity and trust from investors when it bought sovereign bonds to keep the interest down.

[123] (Sentix, Eco Report Euro area, 2013)
[124] Ibid
[125] Ibid
[126] (ESMA, Report on Helping Small and Medium Sized Companies Access Funding, 2012)

It also assured it would keep doing so if the situation required it. This action reduced fears among investors that Euro nations might default because of unsustainable bond interest rates. Although this stabilised the interest rates on sovereign bonds it was not enough to spur investor confidence.

It shows that investors at this point in time need clarity and trust to gain confidence in Europe, both in governments and businesses, and that it takes a long time to restore it. Measures that could reduce the access to information might also cripple investments even though it may remove important hurdles for companies looking to list. The balance between the two needs is a very precarious one in that respect. If policy makers focus their efforts only in stimulating companies to seek a listing then the policies will fail as there will be little investors ready to invest.

4.3. Conclusions

At this point in time, Europe has taken several steps to address the needs of investors but as the figures show, it still has a long way to go. The various steps were focused either on helping the companies gain capital or restoring investor confidence. Yet it would appear that the measures were unsuccessful so far while some upcoming and proposed regulations might even nullify the efforts from the past. Most of the well-known measures were aimed at stabilizing the system and restoring confidence of both consumers and investors. The monetary crisis seems to have been averted at the moment and ailing banks have received ample help. Yet it seems that ailing and prospering businesses alike receive little help unless they qualify for one of the special entrepreneurial programmes. Even now, the proposed measures might be perceived to be beneficial for small enterprises but as discussed before this is highly questionable. In fact, in some cases it might be the complete reverse. Therefore it is important Europe acts now in further restoring investor confidence and help kick-start the economic recovery. It seems to have successfully restored confidence in the Member States as the interest rates on sovereign debt have dropped significantly from the record-high levels in 2011 and 2012. Yet Europe still has a lot to do to help businesses grow again and restore confidence. It would seem that the best option to create jobs would be for Europe to bring the promising and successful companies and investors together.

Companies need the capital while investors are looking for less risky investments. At the moment, both sides seem to be unable to find each other which suggests that Europe should take an active approach in helping both sides. It cannot replace either side but it can facilitate an environment that brings the two sides together. It could help businesses by providing financial support and assistance in tackling administrative or legal hurdles. It would not have take that burden alone as investors, attracted by the reduced risk, could co-invest and also provide substantial support as they have the necessary practical experience. The next chapter will review and propose in what way Europe might effectively do so and how the JOBS Act might inspire Europe as well.

5. The European solution

After assessing the current situation in Europe and reviewing the measures at the time of writing, it can be concluded that more needs to be done. The JOBS Act could be used as inspiration but at this point in time, Europe needs much more than the JOBS Act. The plan that could bring about change in Europe would be too broad to be compacted in a single act. However, Europe could introduce an entire rescue plan complementary to its other long-term frameworks such as the Europe 2020 programme or the Horizon 2020 programme. This rescue programme could then include useful parts of the JOBS Act for example. The reason it should be implemented alongside those programmes is obvious. While the long-term strategy should always be leading, the short-term situation is so dire that action is needed now. The key is business incubation. This chapter will explore business incubation in several steps. First of all, it will outline why business incubation might be the solution for Europe. Then it will offer practical examples and solutions and finally it will conclude by imploring Europe to act.

5.1. Business incubation

The importance of business incubation was underlined in a survey conducted by the Directorate General Enterprise and Industry of the European Commission in 2012. In the survey it transpired that a majority of no less than 86.43% of people thought “Targeted training, finance, internationalisation support programmes for high growth potential SMEs” were important to very important.[127] The same survey produced similar results on questions about the importance of ‘A tax-environment that favours early-stage financing’ and ‘Increase and improve business support service’.[128] The survey was conducted to identify the bottlenecks for entrepreneurship in Europe. 40% of the people interviewed were entrepreneurs themselves and their scores were also published separately. This showed rather similar results which confirm the need for action regarding business incubation and access to capital. The question is how this should be done though.

[127] (DG Enterprise and Industry, Report on the results of public consultation on The Entrepreneurship 2020 Action Plan, 2012)

[128] Ibid

There are ample examples in the world when it concerns business incubation strategies and ecosystems. In most of the successful cases, the government has played a big role in creating and developing a sustainable environment for small businesses.

Some of the crucial technologies that were used in Silicon Valley were the result of government grants.[129] Many technologies and inventions from Israel have been funded in part by the government through the inception of its Yozma programme.[130] It combined capital provided by the Israeli government and venture capital. The German High-tech-Gründerfund also funded many technology start-ups and it too was a co-investment of the government and large companies.[131] The past examples illustrate that partnerships between governments and private enterprises can be very successful and beneficial to all parties involved. The recipe for the successful ecosystems is very difficult and it will take time to perfect it even when all the necessary ingredients are present. As the 'recipe' is so complicated this chapter will not venture down that path too deeply as it would be impossible to describe and mention all possible factors in a single chapter. Instead, the following paragraph will attempt to mix the best of everything specifically for the European situation.

5.2. The European JOBS Plan

When attempting to solve the European problems it should be clear that a single act such as the JOBS Act will not suffice. The JOBS Act aimed to clear the path for start-ups to IPO. Although that is indeed desirable it is not just the businesses that need help. However there are parts in the JOBS Act that benefit companies even if they do not seek an IPO immediately. Obviously it should be noted that the various parts of the JOBS Act might be difficult to implement in Europe due to varying legal systems.

Title III of the JOBS Act on crowdfunding might prove an important addition to early-stage financing. It is also preferable that companies can reward their employees with shares more easily. Not only can companies keep creating new jobs but it also ensures they can hire the right talent.

[129] (Mazzucato, The Entrepreneurial State, 2011)
[130] (Yozma, About Yozma: Overview, 2013)
[131] (High-Tech Gründerfonds, About us: Investors of the Fund, 2013)

Both of those effects are desirable and were sought under Title V of the JOBS Act. A similar measure would be laudable in a European counterpart. However, more has to be done for as long as the investors have little confidence they will neglect the start-ups in favour of large established companies.

The JOBS Act reduced the amount of disclosure to limit the burdens and costs. It would not be wise to implement that particular part of the JOBS Act as it would limit the information for potential investors. The investors have little trust already and less information would do more harm than good.

5.2.1. Co-investing governments

European governments ought to take the lead in providing funds for innovative start-ups. During a time when capital is very scarce and investors are anxiously waiting for positive signs, governments should step in. It should not do so alone however. If European governments were to undertake such investments alone they would run all the risk and the investment size would be too big in all likelihood, especially since Europe is very keen on austerity. Instead it should pool a substantial sum of money in a fund. Investors should then be invited to do the same with the government matching their investment. The co-investment is a useful tool as it will raise trust in the start-ups. If a government-sponsored fund feels confident enough about investing in a particular start-up then that will raise the profile of that start-up drawing in additional investors. The upside of co-investing government is that the investors bare less risk while the government is not looking to turn a large profit. If it was, the investors would not be interested. Although the government will not be seeking a large profit it should at least try to make a small profit so that it may be reinvested again to keep the cycle going. If the investments are successful in creating more jobs and sustainable enterprises then the tax income will rise as well mitigating the necessity to claim huge profits.

Arguably the most successful example where a government co-invested in start-ups was Israel with its Yozma programme. Israel succeeded in attracting a great deal of foreign capital and expertise by promising to match the investments and leaving most of the profits to the investors. The Netherlands has introduced a similar programme recently with its Seed Capital Regulation.

The Dutch government simply provides investment funds with a loan that does not need to be repaid until there is any income. Once the loan is repaid any income that is left is divided 80-20 between investors and the State.[132] This means there is a very reasonable division of profits and investors have a chance of turning a profit while running much less risk. If the government is willing to take the risk then investors should be willing as well especially since they stand to gain the most profits. The conditions for companies under the Dutch Seed Capital regulation are far stricter than the 'EGC' status in the United States. It only applies to technological or creative start-ups launching a new product or service. The maximum age of the company is five years whereas the JOBS Act does not limit the 'EGC' status by age or by company identity. In that sense the Dutch regulation does not provide a loophole to a company such as Manchester United. Yet it may be possible for subsidiaries to file as a start-up and benefit from the programme.

A European Jobs plan should include a regulation that promotes the use of government resources to co-invest in small and promising companies. It would ease capital access for businesses and it would stimulate investor appetite and confidence. The growth of SME's through co-investment would also create growth in other companies as the SME's will need suppliers and services. Thus it creates a chain reaction throughout the economy which only requires a single investment. A regulation that promotes the use of government resources would cost capital that may be hard to come by because of austerity measures yet it would most likely pay its way.

[132] (NL Agency - Ministry of Economic Affairs, Seed Capital, 2012)

5.2.2. Providing support

As mentioned earlier, targeted training, financial and internationalisation support programmes for high growth potential SME's was thought to be important by the survey from the DG Enterprise and Industry.[133] Governments can help those high growth potentials by providing assistance in navigating various administrative burdens and tax issues. Yet governments have little actual expertise in the field. Established enterprises and seasoned investors do have that experience and can be of assistance to the new companies.

The provision of assistance and support has various benefits. First of all, the start-up can focus on growth instead of having to comply with a range of administrative and fiscal burdens. Then there is often a range of subsidies, grants and benefits for which the company might qualify. However, without proper guidance it may never find those specific funds. The government could help out in that respect; by helping the companies locate that capital.

In April 2013, the UK government launched a programme which provides support by a mix of public and private sector experts to 50 of the best high growth businesses.[134] The programme, called Future Fifty, aims to guide those promising companies and help them to keep growing. In order to qualify for the programme, companies must have seen a 100% growth in revenue each year. This will exclude quite a few companies no doubt making it a rather exclusive programme. That is the idea though as each enterprise will have its own individual consultant to connect with each month. By setting narrow entry requirements, it avoids an avalanche of companies seeking assistance. It is contrary to the 'EGC' status under the JOBS Act in that respect as that included far too many companies. In doing so, the UK government hopes to offer tailor-made advice and support to the high growth potentials. The ultimate goal is a successful listing of the company in the UK.[135] Although the programme is brand new and little is actually known at the time of writing, it does offer a completely different approach to the slumped IPO market. The UK government apparently feels that incubating is a more suitable strategy to boost the number of IPO's.

[133] (DG Enterprise and Industry, Report on the results of public consultation on The Entrepreneurship 2020 Action Plan, 2012)
[134] (Future Fifty, 2013)
[135] (Warman, Future Fifty aims to drive tech growth, 2013)

Whether or not the programme will prove to be success is impossible to tell as it was only just unveiled but it certainly has a few promising features. It also lacks a capital investment by the government however. If the UK government were to co-invest the growth might be accelerated even more.

5.2.3. Creating a sustainable ecosystem

This is probably the most difficult part of the plan. Creating an ecosystem that nurtures businesses is challenging as each industry, each location and its people have different traits. The trick is to find the right combination of those factors. Even when it appears all the right characteristics are present, the ecosystem might fail.

This is the case in Chicago for example where it would appear all the necessary qualities are present yet it never really produced the same results as Silicon Valley.[136] However, it would be prudent for Europe to stimulate the development of several ecosystems. The ecosystems would combine the efforts by governments, businesses and investors. An ecosystem would provide a platform for all the parties involved and connect them. It should also be clear that those ecosystems will not be likely to rival Silicon Valley. It would be foolish to use Silicon Valley as the standard as there are no comparable regions in the world. Therefore Europe should not expect to create a few areas that generate the same rate of success. Instead, it should try to focus on creating a sustainable environment. The latter might prove difficult as most ecosystems still require a physical platform. Europe has launched an initiative that seeks to create a European-wide ecosystem for Web Entrepreneurs though. 'Start-up Europe' was introduced in 2013 and aims to provide a network of business accelerators.[137] To what extent the web entrepreneurs will be able to benefit from it remains to be seen as the efforts will span the entire continent. The effort to create a viable ecosystem will no doubt meet its greatest challenge in overcoming national sentiments. Not every country can have its own ecosystem as it would be a strain on resources and not every country has the right conditions. Yet Europe is often divided and the prospect of stimulating several Member States' local economies with ecosystems will trigger discussion.

[136] (Hwang & Horowitt, The Rainforest, 2012)

[137] (European Commission, Commission Staff Working Document on Strengthening the environment for Web entrepreneurs in the EU, 2013)

The same is visible in the introduction of the Financial Transaction Tax for example which is supported by only eleven Member States out of a possible 27. Europe will have to emphasize the benefits of creating viable ecosystems to countries or areas that are not included. The ecosystems will need suppliers which will benefit a larger area than just the ecosystem.

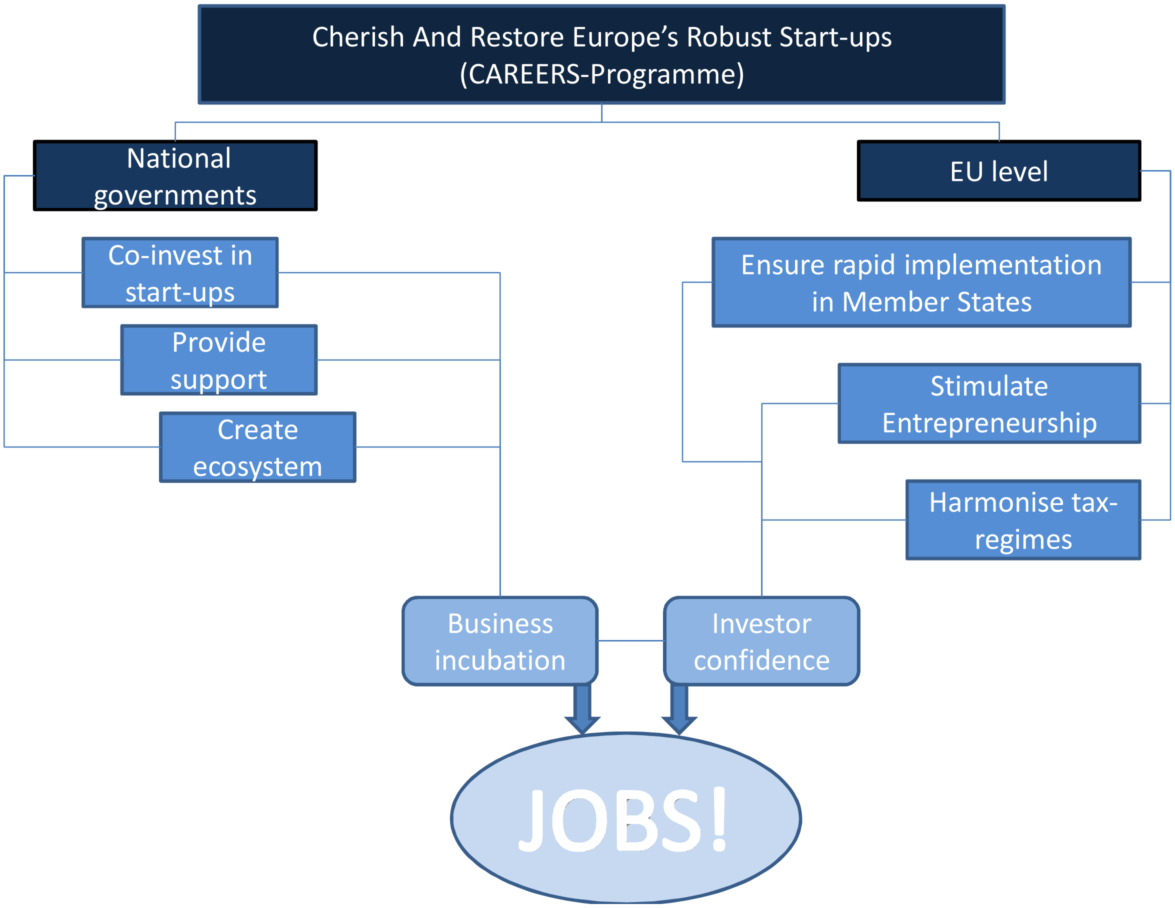
5.3. Conclusions

As was discussed in this chapter, Europe needs to take action and it needs to do so now. There is a great need for capital, mentoring, trust and stability. Europe can only deliver all those components when it takes a range of measures instead of solitary acts. Business incubation within an ecosystem would deal with all of the needs.

Whether Europe can figure out how to establish viable ecosystems remains to be seen as individual Member States may object and demand compromise. Yet there are few alternatives that would yield the same results. Even though some individual Member States are already introducing similar plans, none have introduced plans that actively tackle all of the needs at once. Either the initiatives are too narrow or they are too broad. There is little coordination either which is odd since the crises are by no means limited to specific countries. Combining efforts to overcome the crises would be the best step forward. Whether Europe can successfully launch a total package, which includes various regulations to address all the current needs, is uncertain but it has little other options.

What a possible European approach could resemble can be found on the next page. It also uses an acronym that immediately reveals what the programme intends to achieve. This resembles the American tendency to use catchy names or acronyms that make it clear what it intends to do. By doing so, it helps spread the message of the programme.

Proposal: CAREERS Programme (Cherish And Restore Europe's Robust Start-ups)


Cherish And Restore Europe's Robust Start-ups (CAREERS-Programme)
National governments
EU level
Co-invest in start-ups
Provide support
Create ecosystem
Ensure rapid implementation in Member States
Stimulate Entrepreneurship
Harmonise tax-regimes
Business incubation
Investor confidence
JOBS!

6. Conclusions

This research started with the question ‘Where is the European JOBS Act?’ The short answer is that there is no European JOBS Act so far and there is no similar act on the horizon either. Unfortunately, the European situation does not allow for a single fix either. There are many complicated issues in Europe that need fixing in order to restore economic growth. It may take a few lessons from the American example but it will need to do much more than that.

This thesis established that the JOBS Act could prove to be a useful tool to restore the IPO market and thus spur job and economic growth in the United States. Although it has certain flaws, it does have certain commendable features which would also prove useful in Europe. Financial authorities working together with small businesses seeking an IPO and helping them ‘test the water’ is an example of a feature that could be beneficial to Europe. Yet as mentioned above, the JOBS Act would do little to resolve the European problems.

It was also established that the current and proposed legislative actions on the European level did and will do very little to help businesses. In fact, a strong case can be made arguing that Europe will aggravate the situation with certain initiatives such as the Financial Transaction Tax. It is pushing the European Banking Union as an important measure to prevent the financial crisis from occurring again. Although such plans are in principle just it is questionable whether Europe is not facing more pressing matters that need attention. The efforts that are put into creating and implementing those regulations would be put to better use by reviving the European economy instead. The economic crises and Europe’s attempts to overcome them can be described as a large oil spill in a still pond affecting the entire pond. Europe is only trying to contain the oil spill and avoid it spreading further. Yet it is not removing the oil from the pond. Because of that, the area in the pond where the spill took place remains contaminated and cannot recover until the right course of action is taken.

This research also found that European businesses in general are looking for capital access and believe that incubation and mentorship are (very) important.

It was explored whether Europe had already taken measures to fulfil these needs yet it was found that Europe, although several sector initiatives were employed, did not adequately address the needs so far. The solutions to these needs were presented in the last chapter which argued that business incubation may be the best answer to Europe's problems.

Business incubation could address both businesses and investors' needs. It helps businesses gain capital access while it will lower the risk for investors and demonstrate a willingness to turn the economic tide. This could help boost the investor sentiment ultimately leading to a rise in the number of successful IPO's and subsequently the number of jobs in Europe. What should be taken into account when contemplating business incubation is that it takes time to achieve results. Creating viable ecosystems is a lengthy process which means that Europe should start immediately. A continent that is able to decide on bail-outs within weeks should not take five years to implement ecosystems. Too many regulations are still to be implemented or can be adopted voluntarily. More harmonisation is needed especially concerning taxes.

The lack of speed in Europe is perhaps the defining characteristic of the approach to the crises so far. The European report to ESMA that resembled the American study into IPO's was commissioned early 2012 while the United States implemented the JOBS Act shortly thereafter. The report itself was published long after the JOBS Act implementation illustrating the European tendency to follow the United States instead of taking the lead. The quality of the report was also questionable as it lacked substantive evidence to back most of the claims. Furthermore, its call for European deregulation is also curious as this does not seem to stroke with the needs as determined by this thesis. Deregulation would not help ease capital access and it seems unlikely that deregulation would boost investor sentiment. Europe could, by devising an act that encompasses all of the necessary legislative features for business incubation, take the lead for a change. It will require harmonisation of a great deal of areas such as legal systems and taxes but it appears the only possible route for Europe.

In that respect it is promising that individual governments appear to be introducing schemes that are looking to incubate businesses. They are taking an active role in stimulating businesses. It was shown that governments can take that active role without having to fear upsetting the natural balance. Indeed, past examples reveal quite the opposite although it is never certain that past success can be recreated. The fact that national governments do seem to realise what is needed is good but it is high time that Europe comes to the same conclusion. It would normally be prudent to research the various needs and options available yet Europe has lost enough time as it is. A new study into a possible programme installing business incubation and viable ecosystems would take months and its implementation could take years as it needs agreement from national governments. That is why Europe must unite in a desire to create lasting economic recovery. For united it stands, divided it falls.

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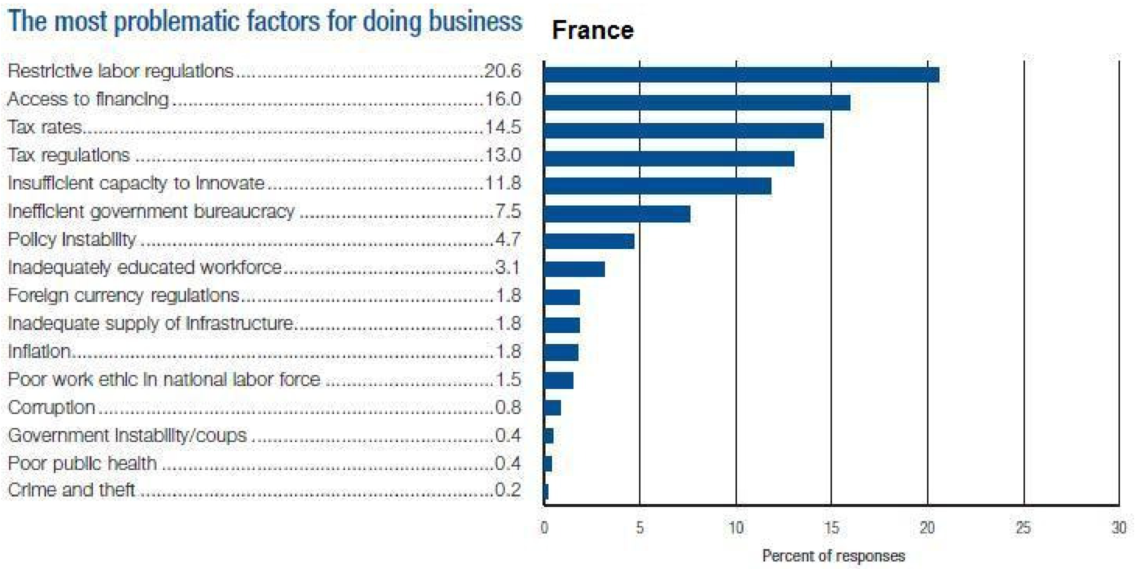
Appendix I – Most problematic factors for doing business

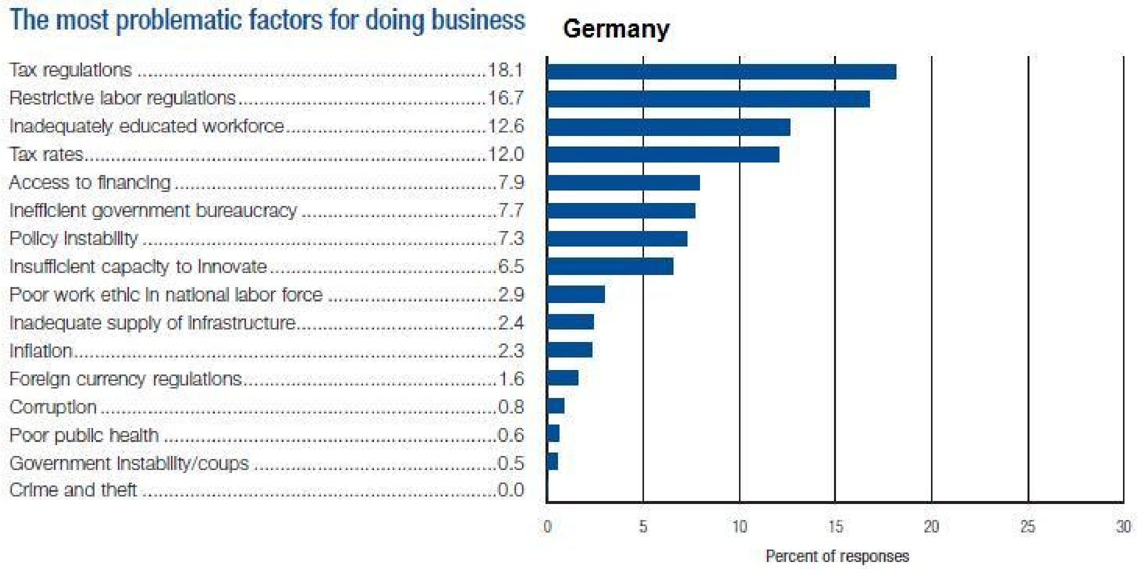
Alphabetical order of six largest European economies listing their most problematic factors for doing business. Source: (World Economic Forum, Global Competitiveness Report, 2012-2013)



The most problematic factors for doing business

France

Restrictive labor regulations	20.6
Access to financing	16.0
Tax rates	14.5
Tax regulations	13.0
Insufficient capacity to innovate	11.8
Inefficient government bureaucracy	7.5
Policy instability	4.7
Inadequately educated workforce	3.1
Foreign currency regulations	1.8
Inadequate supply of infrastructure	1.8
Inflation	1.8
Poor work ethic in national labor force	1.5
Corruption	0.8
Government instability/coups	0.4
Poor public health	0.4
Crime and theft	0.2



The most problematic factors for doing business

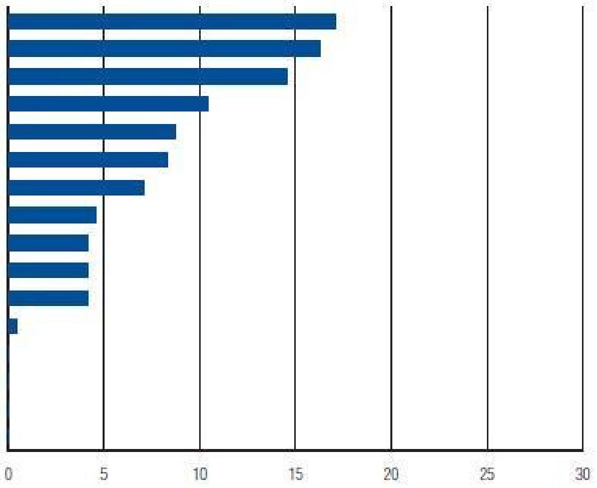
Germany

Tax regulations	18.1
Restrictive labor regulations	16.7
Inadequately educated workforce	12.6
Tax rates	12.0
Access to financing	7.9
Inefficient government bureaucracy	7.7
Policy instability	7.3
Insufficient capacity to innovate	6.5
Poor work ethic in national labor force	2.9
Inadequate supply of infrastructure	2.4
Inflation	2.3
Foreign currency regulations	1.6
Corruption	0.8
Poor public health	0.6
Government instability/coups	0.5
Crime and theft	0.0

The most problematic factors for doing business

Italy

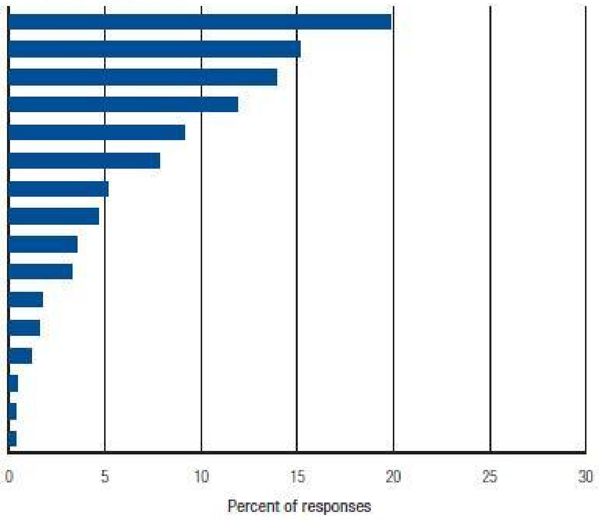
Tax rates	17.1
Inefficient government bureaucracy	16.3
Access to financing	14.6
Restrictive labor regulations	10.4
Tax regulations	8.8
Inadequate supply of infrastructure	8.3
Corruption	7.1
Insufficient capacity to innovate	4.6
Crime and theft	4.2
Policy instability	4.2
Poor work ethic in national labor force	4.2
Inadequately educated workforce	0.4
Foreign currency regulations	0.0
Government instability/coups	0.0
Inflation	0.0
Poor public health	0.0

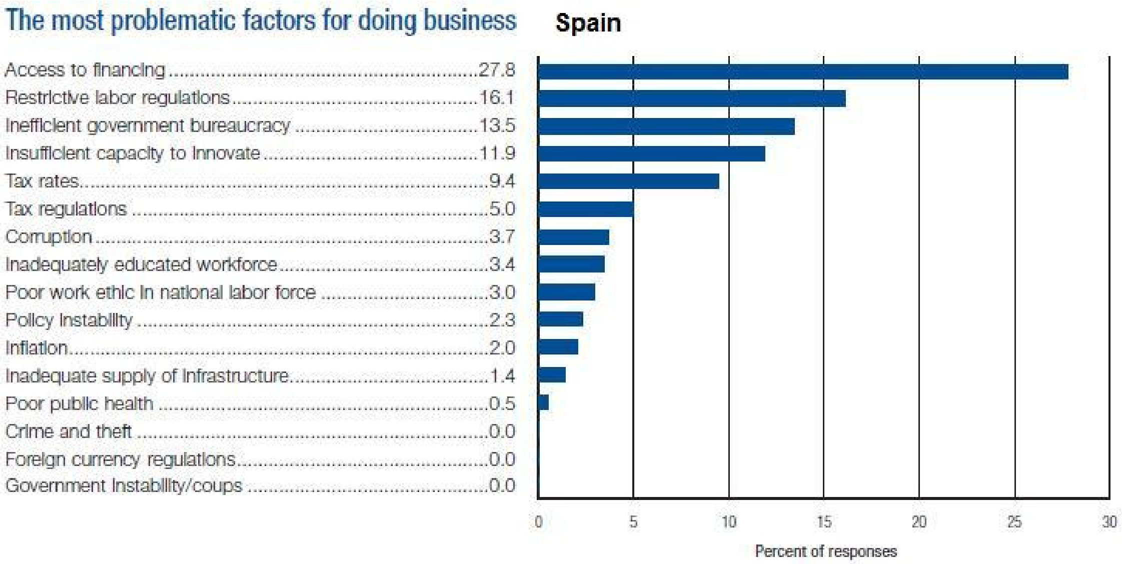


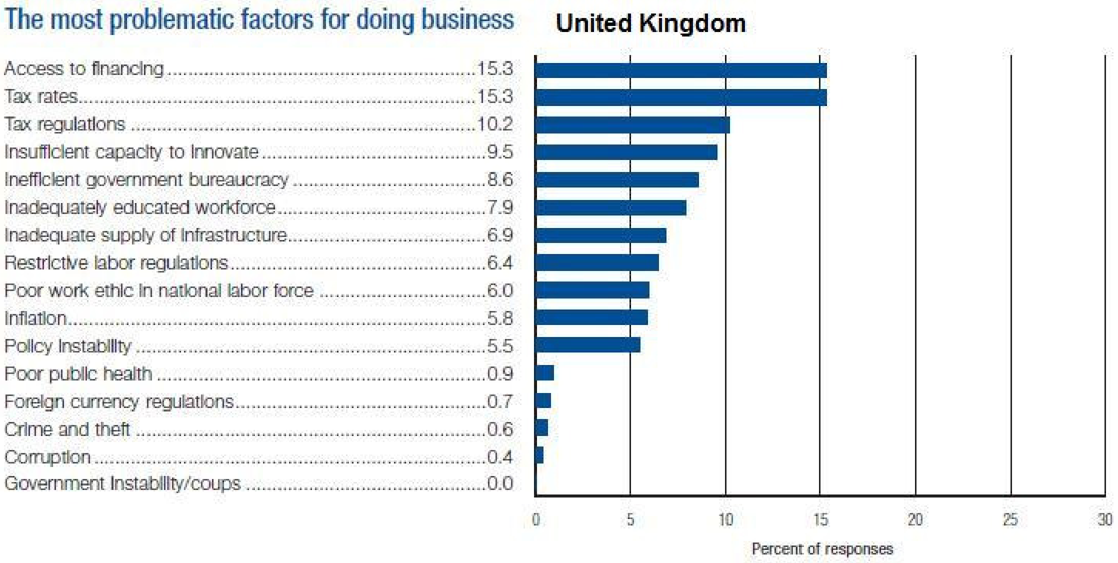
The most problematic factors for doing business

Netherlands

Access to financing	19.9
Restrictive labor regulations	15.2
Insufficient capacity to innovate	13.9
Inefficient government bureaucracy	11.9
Policy instability	9.1
Inadequately educated workforce	7.8
Tax rates	5.1
Poor work ethic in national labor force	4.7
Inflation	3.5
Tax regulations	3.3
Inadequate supply of infrastructure	1.7
Government instability/coups	1.6
Foreign currency regulations	1.2
Crime and theft	0.5
Corruption	0.4
Poor public health	0.4







Appendix II: European economies

Country/Group of countries:	Gross domestic product based on purchasing-power-parity (PPP) valuation of country GDP in 2012
European Union	**16.073.550.000**
France	2.252.536.000
Germany	3.194.199.000
Italy	1.833.945.000
the Netherlands	709.522.000
Spain	1.406.684.000
the United Kingdom	2.316.246.000
Total of six economies	**11.713.132.000**

Source: (IMF, World Economic Outlook Database, 2012)