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Foreign Direct Investment Success In Ireland: Can Poland Duplicate Ireland's Economic Success Based On Foreign Direct Investment Policies?

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FOREIGN DIRECT INVESTMENT SUCCESS IN IRELAND: CAN POLAND DUPLICATE IRELAND'S ECONOMIC SUCCESS BASED ON FOREIGN DIRECT INVESTMENT POLICIES?

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"The Warsaw uprising began August 1, 1944. Throughout the day young men and women crowded the streets, hurrying to get situated. The surprise attack was brilliant. The Home Army knew little or nothing about combat; men of military age were mostly in exile or in prison camps, and many of these young fighters had been at school when the war began. With red-and-white armbands, these patriots stormed one German-held building after another. Civilians poured onto the streets, hugging and kissing the soldiers and tearing up the paving to raise barricades on every corner. The forbidden Polish flag proudly waved from roofs and windows.

So began the greatest and most tragic urban insurrection in European history. Nobody on that day could foresee that it would last 63 days before the city surrendered, that 200,000 lives would be lost, and that central Warsaw would be deliberately destroyed by the victorious Nazis.

In retrospect, the Home Army's revolt seemed hopeless. Roosevelt and Churchill had already accepted that Stalin would dominate all of Eastern Europe after the war. By August 1, 1944 Soviet *troops were nearing Warsaw. Their guns could be heard and a Soviet broadcast urged the people of Warsaw to rise against the Germans. But then the Red Army halted. Stalin saw that Poles were preparing for an anti-Soviet uprising. For many weeks, Stalin refused to let allied aircraft use Soviet airfields to supply the besieged city. The Soviet divisions stayed on the other side of the river and watched Warsaw burn. The Nazis were doing Stalin's work for him.*

For weeks, Poles struggled to maintain control of their capital. With few weapons and supplies they hoped to free the city and meet advancing Soviet troops. But the Soviet standstill allowed the Germans to concentrate on Warsaw. By mid-August German tanks had segregated the city into pockets. By mid-September, the last strongholds of resistance were beginning to fall. Finally, on October 1, the Home Army commander called a cease-fire. The next day, his troops surrendered and became German POWs. The civilian survivors were marched out of the city to internment camps. Hitler ordered Warsaw to be razed, so that no human settlement would ever arise there again."[1]

Over the next forty years of communist rule, a moral legacy grew from the ruins of Warsaw. Poland, already well on its way to becoming a sovereign nation, was on the cusp of its first democratic elections by 1989.

I. Introduction

When the Berlin wall toppled in 1990, so too did the Soviet Union and the concept of centrally-planned economies in Central and Eastern Europe.[2] The United States and Western European powers rushed into Central Europe spreading the gospels of democracy and

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1 Neal Ascherson, *Warsaw's Uprising*, WALL ST. J., July 29,2004, at A15 [hereinafter Warsaw's Uprising].

2 *See* Bartol Letica, *Europe's Second Chance: European Union Enlargement to Croatia and the Western Balkans*, 28:2 FLETCHER F. WORLD AFF. 209 (2004) (discussing Western Europe's welcoming party for Central and Eastern European countries in 1990).

liberal economics.[3] The Western Europeans opened their arms to those nations that had been signed away by the Warsaw Pact for nearly a half-century of Soviet strong-arming. Inspired by the end of the Cold War that divided the world into two civilizational blocs, the leaders of Western Europe hoped to reunite the European continent by encouraging its Eastern brethren to embrace economic development by liberalizing trade.[4] These Western powers[5] tried to show that state-owned industries and overpowering, bureaucratic governments would only inhibit growth, and deregulating and privatizing industries could lead to powerful market-based economies. The emergence of Central and Eastern European democratic governments caused former Warsaw pact members to begin embracing free trade thereby promoting European and global integration.[6]

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> ...Liberal economics as developed by Adam Smith and David Ricardo sought to demonstrate that free markets, unfettered by state regulation, would result in the greatest prosperity for all. It advocated a policy of free trade that permits each state to specialize in the production of goods and services in which it has a comparative advantage, and then trade its products for others that it wants but cannot produce as efficiently. Through economics of specialization and scale, a state maximizes its productivity. As a result, liberalism has been associated with a policy of export-led growth. Liberalism has also advocated the free movement of capital across borders. Free movement of capital complements free trade... A state's ability to produce goods for trade depends on it endowment of the factors of production—capital, labor, land, and technology. Foreign investment augments the supply of the factors of production and thereby facilitates a state's production of goods for export...

See Kenneth J. Vandevelde, *The Political Economy of a Bilateral Investment Treaty*, 92 AM. J. INT'L L 621 (1998).

4 *See generally* ROBERT GILPIN, THE POLITICAL ECONOMY OF INTERNATIONAL RELATIONS 265-270 (Princeton University Press ed., Princeton University Press 1987) (discussing unifying effects of liberal economics).

5 "West" refers to the democratic countries that flourished after World War II including Germany, France, England, and the United States.

6 The Warsaw Pact went into effect May 1, 1955. The Warsaw Pact members were Albania, Bulgaria, Hungary, East Germany, U.S.S.R., Czech Republic and Romania, THE WARSAW PACT *available at*

During the 1990s Poland and other former Soviet satellites struggled to effect change in their economies. However, within fifteen years of breaking away from the shackles of communism, Central and Eastern Europe are peacefully reinventing themselves—shrouded in democracy and free market principles.

This comment/note examines recent European Union (EU)[7] member Poland as an example of an optimistic Central European country

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http://www.fordham.edu/halsall/mod/1955warsawpact.html (last visited April 13, 2005).

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> The EU originated in the 1948 Hague Congress and the 1950 Schuman Declaration, which sought economic solutions to post-World War II problems in Germany and France...The real landmark institutions of the EU are the Treaty of Paris establishing the European Coal and Steel Community, and the two Treaties of Rome establishing the European Economic Community (EEC) and the European Atomic Energy Community (ECSC). The ECSC and the EEC share the same six original members: Belgium, France, Germany, Italy, Luxembourg, and the Netherlands...The EEC Treaty included...economic provisions [and] formulated political and judicial institutions: The European Commission, the European Parliament, and the European Court. These new institutions, as well as the subsequent Single European Act, further buttressed the supranational character of the EEC and opened the doors to European integration...Though, officially, the EEC remained an economic organization until the 1990s, European integration commenced with its inception. Given the EU's complex origins, it should come as no surprise that its accession process requires both a political and economic analysis of each candidate for membership...During the 1990s, new challenges of globalization and short-lived, but propitious, economic times changed the official nature of the EEC. As a result of the EEC's focus on the implementation of the single market program, a greater sense of political and economic integration ensued. Finally, the EEC gave way to the EU in December 1991, and started to resemble a federation in many political and economic respects. This shift concluded with the Treaty on European Union. During this time, the EU was focused on regional economic and social issues...

transforming a centrally-planned economy into a vibrant, stable, market economy in an era of globalization.[8] In particular, it looks at recent EU star Ireland and questions whether its economic miracle could be repeated in Poland in their quest to grow a stressed economy and modernize society. Part II briefly examines Poland's history and transition into post-communist social and economic development, the recent development of the European Union and the process by which Poland acceded into the European Union. Part II also reflects on Poland's recent economic data and certain governmental policies. Part III considers the EU's biggest success story, Ireland, and how it was able to transform high inflation, huge government budget deficits and debts, and double-digit unemployment into one of the world's leading economies by implementing corporate-friendly policies to attract foreign direct investment. In Part IV, the comment looks at Poland's recent legislative strides made to attract the foreign entrepreneur. Finally, in Part V, I conclude that competition in the EU for foreign direct investment, especially among recent members, makes it unlikely that Ireland's extraordinary successes can be duplicated in Poland. However, by implementing some of Ireland's strategies to lure foreign capital, it is entirely possible for Poland to develop a strong economy and knowledge-based society.

II. Background on Poland

A. Poland's Cathartic Rise and Fall and Rise Again

Poland achieved its independence in 1918 following World War I and the government was run authoritatively for the next 21 years.[9] In

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Dana Neacsu, *Romania, Bulgaria, the United States, and the Rules of Empowerment at the Outskirts of Europe,* 30 BROOK. J. INT'L L 185, 195-96 (2004) [hereinafter Neacsu].

[8] "The new global community is the result of a phenomenon referred to as 'globalization.' Globalization has been defined as 'the process of reducing barriers between countries and encouraging closer economic, political, and social interaction." *See* Teresa Edwards, *The Relocation of Production and Effects on the Global Community,* 13 COLO.J.INT'L ENVTL. L. & POL'Y 183 (2002) [hereinafter Edwards]; *see also* JAMES H. MITTELMAN, THE GLOBALIZATION SYNDROME: TRANSFORMATION AND RESISTANCE (Princeton University Press 2000) (1997), for a discussion on globalization.

[9] *See* COUNTRIES OF THE WORLD AND THEIR LEADERS 2005 1414 (Karen Ellicot ed., Vol. 2 2004) [hereinafter COUNTRIES OF THE WORLD 2005].

1939 Germany and the Soviet Union signed a nonaggression pact which provided for the dismemberment of Poland into Nazi and Soviet-controlled zones.[10] By 1941, German troops completely occupied Poland.[11] The Poles formed an underground resistance movement and a government in exile in London that was recognized by the Soviet Union.[12] In 1945, this resistance against the Nazis culminated with the Warsaw uprising.[13] The war ultimately cost 6 million Poles their lives and the deportation of 2.5 million Poles to Germany as forced labor.[14]

Following the Yalta Conference, which ended World War II, communists backed by the Soviets came to power in Warsaw and established a regime entirely under their authority.[15] By the 1970s the growing dissent with living and working conditions among Poles resulted in strikes in port cities and, ultimately, new leadership.[16] Poland had one of the world's highest growth rates in the early 1970s, which was energized by Western credit; however, the money was wastefully spent and resulted in negative growth by 1979.[17]

The year 1980 brought another round of strikes that would change the course of Poland's future.[18] The strikes triggered a national

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[10] The secret protocol was known as the Hitler-Stalin Pact. For a short history of Poland during World War II, *see* Oliver Sampson, *Liberation Without Freedom*, http://www6.dw-world.de/en/2030.php (last visited April 9, 2005).

[11] *See* COUNTRIES OF THE WORLD 2005, *supra* note 9, at 1415.

[12] *Id.*

[13] *See* Warsaw's Uprising, *supra* note 1, at A15.

[14] *See* COUNTRIES OF THE WORLD 2005, *supra* note 9, at 1415. (This was the largest civilian loss suffered by any country in Europe during World War II)

[15] The Yalta conference is also seen as the beginning of the Cold War. The meeting of Churchill, Roosevelt, and Stalin took place at the former palace of Czar Nicholas on the Crimean southern shore on the Black Sea in February 1945. By this point, Stalin's army commanded the whole of Poland and was the biggest force on the continent at 12 million soldiers. Roosevelt, who died soon after would be later accused of giving away Eastern Europe to Stalin. *See* Steve Schoenherr, *The Cold War Begins*, http://history.acusd.edu/gen/20th/coldwar1.html (last visited April 13, 2005).

[16] *See* U.S. Department of State, *Bureau of Eurpoean and Eurasian Affairs*, http://www.state.gov/r/pa/ei/bgn/2875.htm (last visited April 9, 2005) [hereinafter U.S. Department of State].

[17] *Id.*

[18] Workers, led by Lech Walesa, at a shipyard in Gdansk signed a twenty-one point agreement that ended a strike. Similar agreements were signed in other

union movement—"Solidarity". Solidarity exposed widespread corruption and mismanagement within the Polish state and party system and ultimately brought down the country's leader.[19]

The abrupt weakening of the communist leadership spurred a Soviet military buildup along Poland's border in December 1980.[20] In 1981 the Polish regime, under Soviet supervision,[21] declared martial law and crushed the Solidarity union and placed most of its leaders in detention.[22] Martial law ended in 1983, and the following year brought general amnesty to nearly all political prisoners. Authorities continued to harass and intimidate dissidents and Solidarity activists[23] as the communist regime tightened its grip on society.[24]

The 1980s brought continued economic decline which led to strikes across the country in 1988 and eventually to the government's

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Baltic cities. The key provision of the Gdansk agreement guaranteed the workers' right to form independent trade unions and the right to strike. *See id.*; *see also* Public Broadcasting Service, *A Force More Powerful – A Centruy of Non-Violent Conflict*, http://www.pbs.org/weta/forcemorepowerful/poland/ (last visited April 13, 2005).

[19] U.S. Department of State, *supra* note 16; *see also* Public Broadcasting Service, *A Force More Powerful – A Century of Non-Violent Conflict*, http://www.pbs.org/weta/forcemorepowerful/poland/ (last visited April 13, 2005).

[20] U.S. Department of State, *supra* note 16; *see also* NATO, *North Atlantic Council Meeting of December 1980*, http://www.nato.int/docu/comm/49-95/c801211a.htm (last visited April 13, 2005) (The grave situation in Poland by the end of 1980 resulted in meetings in December 1980 between NATO members to discuss détente and its doubtful future in Soviet-Poland relations).

[21] Defense Minister Gen. Wojciech Jaruzelski, backed by the Soviets, became Prime Minister and was named First Secretary in October 1981. Lech Walesa was elected national chairman of the first Solidarity National Congress in 1981. *See* COUNTRIES OF THE WORLD 2005, *supra* note 9, at 1416; *see also* U.S. Department of State, *supra* note 16;

[22] *See* U.S. Department of State, *supra* note 16; see also Vojtech Mastney, *The Soviet Non-Invasion of Poland in 1980/81 and the End of the Cold War, in* COLD WAR INTERNATIONAL HISTORY PROJECT 5, 5-20 (working paper no. 23 1998), *available at* http://wwics.si.edu/topics/pubs/ACFB35.PDF (last visited April 13, 2005) (General background concerning Polish imposition of martial law).

[23] Solidarity remained proscribed and its publications banned. Independent publications were censored. *See* U.S. Department of State, *supra* note 16;

[24] *Id.*

recognition of Solidarity.[25] This in turn led to "roundtable" discussions and partially-opened elections in 1989 that ended in a political crisis for the Communists.[26] The roundtable agreement called for a communist president, and on July 19, the National Assembly elected General Jaruzelski.[27] Later that year a new branch of government was formed by Solidarity activists known as the Sejm.[28] In September 1989 a new prime minister was freely elected,[29] and for the first time in more than forty years, Poland had a non-communist government.

In December 1989, the Sejm approved the government's reform program, "Shock Therapy". The goal of "Shock Therapy" was to rapidly transform the Polish economy rapidly from one centrally planned to free-market.[30] The Sejm also amended the constitution to eliminate references to the leading role of the Communist Party, and renamed the country the "Republic of Poland."[31] In May of 1990, general elections were held and

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[25] *Id.*

[26] *Id.*; *see also* Beata Pasek, *The 1989 Roundtable Agreements in Poland: An Incomplete Elite Settlement?* (1997), *available at* http://www.ciaonet.org/conf/ece01/ece01pab.html (last visited April 13, 2005)(Discussing general background of the 1989 elections).

[27] *See* Beata Pasek, *The 1989 Roundtable Agreements in Poland: An Incomplete Elite Settlement?* (1997), *available at* http://www.ciaonet.org/conf/ece01/ece01pab.html (last visited April 13, 2005).

[28] The election produced a lower house, composed of one-third communists, one-third communists patners, and one-third freely elected officials. *See* U.S. Department of State, *supra* note 16.

[29] *See* COUNTRIES OF THE WORLD 2005, *supra* note 9, at 1416.

[30] The new democratic government instituted "shock therapy" by decontrolling prices, slashing subsidies, and drastically reducing import barriers. Leszek Belcerowicz, as Deputy Prime Minister of Poland and Minister of Finance, was responsible for implementing Shock Therapy. He believed that if Poland had chosen the "gradualist approach" it would have been condemned to failure. For a debate on shock therapy, *see* Public Broadcasting System, *Up for Debate: Shock Therapy: Bolivia, Poland, Russia, Same Policies-Different Results*, http://www.pbs.org/wgbh/commandingheights/shared/minitextlo/ufd_shocktherapy.html (last visited April 13, 2005).

[31] *See* U.S. Department of State, *supra* note 16; *see also* Poland Constitutional Revisions After 1989, http://www.photius.com/countries/poland/government/poland_government_constitutional_revis~10511.html (last visited April 13, 2005) (further commentary concerning Polish constitutional revisions).

Solidarity candidates won most of the races they contested.[32] Later that year, holdovers from the previous communist government, including President Jaruzelski, were ousted, and in December Lech Walesa became the first popularly elected President of Poland.[33]

When the doors to Western Europe opened, Poland and Walesa struggled towards capitalism.[34] The uneasy transition to privatization,[35] world prices, and trade liberalization[36] left Poland dealing with high unemployment,[37] high government debt,[38] high inflation,[39] and political instability in the early 1990s.[40] However, by the mid-1990s, fueled by

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[32] *See* U.S. Department of State, *supra* note 16.

[33] *See id.* (Walesa was president of Poland from 1990 to 1995); *see also* Lech Walesa, *In Solidarity,* WALL ST. J., (June 11, 2004), at A8 (Walesa comments about the United States' involvement in the Polish political transition).

[34] "Shock Therapy" economic reform brought an end to chronic shortages of consumer goods, but Poland still suffered a severe recession in the early 1990s. The economy began to bounce back in 1992. COUNTRIES OF THE WORLD AND THEIR LEADERS 2000 1027, 1030-3 (Brian Rajewski ed., 1999).

[35] Most of the growth since 1991 has come from the private sector which by the late nineties accounted for nearly two thirds of the gross domestic product and employed approximately 60% of the Polish workforce. Large-scale industry still remained mostly in state hands throughout the nineties. *See id.*

[36] COUNTRIES OF THE WORLD AND THEIR LEADERS 2003 1045, 1050 (Daiva Marija Ziedonis ed., 2002). When the ruble-based COMECON trading bloc collapsed in 1990, Poland reoriented its trade. By 1996, Poland conducted 70% of its trade with EU members. Germany became Poland's dominant trading partner. Poland also began to facilitate trading between its neighbors through the Central European Free Trade Agreement.

[37] COUNTRIES OF THE WORLD AND THEIR LEADERS 2000, *supra* note 34 at 1033. As of May 1997 unemployment was 11.7%.

[38] *See id.* As for external debt (approximately $44 billion at yearend 1996), the burden was sharply reduced by reschedulings and write-offs of both private and official debt during 1991-1995.

[39] *See id.* It is estimated that inflation in 1996 was 19%.

[40] COUNTRIES OF THE WORLD AND THEIR LEADERS 2003, *supra* note 36 at 1048-9. Following Poland's first free parliamentary elections, Waldemar Pawlak became Prime Minister. Relations between President Walesa and Pawlak were poor and following many scandals implicating Pawlak, President Walesa demanded his resignation in January 1995. In November 1995, Poland held its second post-war free presidential elections. Walesa was defeated by current president Alksander Kwasniewski. Soon after Interior Minister Andrzej Milczanowski accused then-Prime Minister Oleksy of longtime collaboration

privatization and growth in industries such as iron, steel, shipbuilding, and coal mining, the Polish economy began to experience rapid growth.[41] Unfortunately, several state-owned sectors, including the railroad, mining, and defense, remained resistant to the change and downsizing required to survive in an open market economy. The resistance contributed to an economic malaise that affected Poland through 2002.[42] Adding to the recession was Poland's agriculture sector, which throughout the 1990s employed nearly a third of the population, yet contributed very little growth.[43]

The 1990s allowed Poland to transition into free enterprise economy, and permitted its leaders to restructure and improve foreign trade and relations.[44] As a result, Poland forged trade and investment relationships with the United States,[45] the EU, former communist satellites, and became a member of several international organizations.[46] This in turn helped to promote political stability and foreign direct investment,[47] as Poland prepared for its greatest achievement: accession into the EU on May 1, 2004.[48]

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with Soviet and later Russian intelligence. Olesky later resigned and prosecutors later determined there was inadequate evidence to charge Olesky, and a parliamentary commission decided that the intelligence service may have violated rules of procedure on gathering evidence.

[41] *Id.*

[42] *See* COUNTRIES OF THE WORLD 2005, *supra* note 9, at 1418. GDP grew only 1.3% in 2002 while unemployment ballooned to 18.1% with a budget deficit of 5.1% of GDP by 2002.

[43] *See* Alan Cowell, *The New Europe – After May 1, East Europe's 'Haves' May Have More*, N.Y. TIMES ,Mar. 27, 2004, at A6 [hereinafter Cowell]. (As of March 2004, Poland employed 19% of its work force in agriculture compared with 6% in Hungary and 4% in France).

[44] Poland became a member of the World Trade Organization, the Organization for Economic Co-operation and Development (OECD), and NATO in the 1990s. COUNTRIES OF THE WORLD 2000, *supra* note 34, at 1051.

[45] The American Chamber of Commerce Poland, founded in 1991 with seven members, now has more than 300 members. *See* COUNTRIES OF THE WORLD 2005, *supra* note 9, at 1419.

[46] *See id.*

[47] Foreign direct investment is an activity in which an investor resident in one country obtains a lasting interest in, and a significant influence on the management of, an entity resident in another country. This may involve creating an entirely new enterprise ("greenfield investment") or changing the ownership of existing enterprises. Foreign direct investment throughout OECD countries

B. European Union's Expansion from 15 to 25 Countries

During the Cold War, one of the biggest factors in the economic and social resurrection of Western Europe was the development of the European Union[49] and the internal market program.[50] The idea to build a common market to achieve interdependence and avoid another intra-continental war was so fundamental to Europe's leaders that when the Berlin Wall fell, it spurred an idea to expand eastward and further unify the European continent through a series of treaties.[51] The signing of

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increased significantly throughout the nineties, as countries reconsidered restrictions previously imposed on inward FDI. Between 1990-96, investors pumped over $14 billion into Poland. Since 1996, Poland has changed many of its laws, allowing foreign investors to take part in industries that were formerly state-owned or wholly nationalized. For more information on Poland's inward foreign direct investment in the 1990s *see* Krzysztof Sidor, *Foreign Direct Investment in Poland's Economic Transition*, http://www.masterpage.com.pl/outlook/11.html (last visited April 8, 2005).

[48] With Poland's accession into the EU in May 2004, Poland became subject to the Treaty [on European Union] and to its internal market, agriculture, competition, social, environmental, transport, and other legislative rules, otherwise known as the *"acquis communautaire."* *See* Roger J. Goebel, The European Union in Transition: The Treaty of Nice in Effect; Enlargement in Sight; A Constitution in Doubt, 27 FORDHAM INT'L L.J. 455, 473, 478 (2004).

[49] *See generally* Neacsu, *supra* note 7.

[50] The Internal Market was enacted in June 1985 with the historic White Paper. The White Paper established a marketplace across Europe by removing barriers to the free movement of goods, persons, services and capital. *See*, Commission of the European Communities, *Completing the Internal Market: White Paper from the Commission to the European Council*, COM (85) 310 final (June 14, 1985).

[51] The Treaty of Maastricht, or Treaty on European Union (TEU), established the EU in 1993. In 1997, the Treaty of Amsterdam amended the TEU. In 2000, the Treaty of Nice was drafted to modify the Union's political and judicial institutions to enable the entry of several countries by May 1, 2004. The Treaty of Nice was ratified on February 1, 2003, thereby easing the transition for countries that hoped to gain EU membership. For a discussion of the political, economic, and social consequences of ratifying the Treaty of Nice, *see* Peter Katz, *The Treaty of Nice and European Union Enlargement: The Political, Economic and Social Consequences of Ratifying the Treaty of Nice*, 24 U. PA. J. INT'L ECON. L. 225 (2003) [hereinafter *Treaty of Nice*].

these treaties ultimately resulted in the accession of ten central, eastern, and Mediterranean European nations into the European Union in 2004.[52]

1. Central and Eastern European Countries' Accession into the EU

The process by which a nation joins the EU is demanding.[53] For the countries of Central and Eastern Europe initial steps in joining the EU were to enter into Europe Agreements in the early nineties[54] and consent to three preconditions to join the EU known as the "Copenhagen criteria."[55] The Copenhagen criteria called for the creation of: "1) stable institutions guaranteeing democracy and the rule of law, with full respect for basic human rights and the protection of minorities; 2) a functional market economy, with free market competition, and the ability to 'cope with competitive pressure and market forces within the Union;' and

[52] The new members are Poland, Hungary, Czech Republic, Slovakia, Slovenia, Lithuania, Latvia, Estonia, Cyprus, and Malta. *See id.* For an article discussing the $23 billion in structural aid to help develop the economies of the poorest of the new members, see Elaine Sciolino, *Europeans Smooth Over Differences, but Tensions Remain*, N.Y. TIMES, October 26, 2002, at A4.

[53] Roger Goebel, *Joining the European Union: The Accession Procedures for the Central European and Mediterranean States*, 1 LOY. UNIV. CHI. INT'L L.REV 320 (2004).

[54] Essentially, the Europe Agreements contain provisions for the liberalization of trade and investment, the adoption of competition rules, and the adoption of many of the key legislative measures of the internal market by the central European applicant countries. *See* Roger J. Goebel, *The European Union in Transition: The Treaty of Nice in Effect; Enlargement in Sight; A Constitution in Doubt*, 27 FORDHAM INT'L L.J. 455, 474 (2004) [hereinafter *The European Union in Transition*]. For a discussion of the essential terms of the Europe Agreements, see Roger Goebel, *The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden*, 18 FORDHAM INT'L L.J. 1092, 1106-07 (1995). For a discussion on the Europe Agreements' major economic impact that included the elimination of restrictions on industrial goods that Central European countries exported to the EU *see* Directorate Gen. for Economic & Financial Affairs, *European Commission, Enlargement Papers: the Economic Impact of Enlargement*, at 21 (2001), *available at* http://europa.eu.int/comm/economy_finance/publications/enlargement_papers/2001/elp04en.pdf (last visited Oct. 10, 2005).

[55] "In 1993, the Council of the European Union held its meeting in Copenhagen, realizing that enlargement was soon approaching. The parties agreed that 'the associated countries in Central and Eastern Europe that so desire shall become members of the European Union.'" *See* Treaty of Nice, supra note 51, at 230.

building 3) the infrastructure necessary to fulfill all of the obligations of membership, including that in the Economic and Monetary Union (EMU)."[56]

After entering into the Agreements, all ten Central European nations applied for accession into the EU between 1994-96.[57] Accession negotiations followed and finally, in October 2002, all ten applicant nations were deemed to be on pace to meet the Copenhagen criteria by May 2004.[58] Prior to each new EU member entering into the formal Treaty of Accession on April 16, 2003,[59] the European Parliament voted in overwhelming majority for each applicant country's accession.[60] The parliament concluded:

> [T]he accession of the ten new Member States would be an important step in building an even stronger and more effective European Union which will be needed to further stabilize the whole continent, consolidating democracy and peace, strengthening its economy and sustainable development and incorporating a cultural and human dimension based upon the shared values of liberty, respect for fundamental rights, good governance and the rule of law.[61]

2. Poland Struggles to Unionize

In 2002, the EU Commission was not satisfied with Poland's progress and pointed to problems that needed legislative corrections

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[56] *See* 26 E.C. Bull., no.6, at 13 (1993); *see also* Roger J. Goebel, The European Union in Transition: The Treaty of Nice in Effect; Enlargement in Sight; A Constitution in Doubt, 27 FORDHAM INT'L L.J. 455, 474, FN 76 (2004).

[57] *See* The European Union in Transition, *supra* note 54, at 474.

[58] *See Comprehensive Monitoring Report on Poland's preparations for membership*, *available at:* http://europa.eu.int/comm/enlargement/report_2003/pdf/cmr_pl_final.pdf (last visited Feb. 7, 2006) [hereinafter *Monitoring Report*].

[59] *See id.*

[60] *See id.*

[61] *See* The European Union in Transition, *supra* note 54 at 477; *see also* the Treaty of Accession, available at: http://europa.eu.int/comm/enlargement/negotiations/treaty_of_accession_2003/index.htm (last visited Feb. 7, 2006).

before joining the Community in 2004.[62] First, although bankruptcy law was in line with modern market economies, the inefficiency of the court system[63] remained a major obstacle to the proper enforcement of laws and contracts.[64] Second, Poland's excessive public expenditures coupled with a rapid rise in public debt were cause for concern.[65] In addition, progress in restructuring heavy industries such as energy distribution, defense, and agriculture were problematic.[66]

The EU also felt Poland's privatization process was not complete as of 2002.[67] With over 2,100 firms still owned by the State in 2002, a major goal highlighted by the EU was for Poland to find investors for those businesses.[68]

Finally, Poland's antiquated land registry system was highlighted as a problem because of difficulties associated in establishing ownership over land. This, in turn, affected banking because property could not easily be used as collateral in loan agreements.[69] The antiquated land

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[62] *See Monitoring Report, supra* note 58.

[63] Despite the Polish judiciary's steady reform, efforts are still needed to improve the efficiency and transparency of the courts. Extensive IT projects are under way in the judiciary, including a nationwide communication network for courts to facilitate access to the central databases on legislation. The public's access to the judiciary system remains limited, especially access to general information on procedures and legal aid. Public trust in the efficiency and fairness of the judicial system remains. For a more detailed analysis of the court system see Monitoring Report, *supra* note 58, at 14-16.

[64] *See* Monitoring Report, *supra* note 58, at 9, 14-16.

[65] "Poland's government debt made up 47.4% of GDP in 2003. Compared to the U.S. (62.4%) and Germany (64.2%), Poland's debt is of good standing; however, there are forecasts that the ratio of public debt to GDP will exceed 55% of GDP in 2005. At such relatively high levels of the public-debt-to-GDP ratio, the Polish government is under legal pressure to further tighten fiscal policy in the short term to meet not only public finance law, but also EU membership requirements (EU limit is 60%)" *See* The McKeever Institute of Economic Policy Analysis, *Poland: Economic Analysis*, http://www.mkeever.com/poland.html (last visited Oct. 10, 2005).

[66] *See* Monitoring Report, *supra* note 58, at 11-14.

[67] *See id.* at 8 (76% of GDP was produced by the private sector in 2002 and the Treasury still had a majority or a controlling stake in 2100 firms).

[68] *See id., supra* note 58, at 8-9; unfortunately, finding investors will prove to be difficult because many of the businesses held by the Treasury are not attractive.

[69] *See id.* at 9.

registry system was concluded as also hampering "greenfield investment."[70]

Despite these shortfalls, Poland met numerous legislative goals outlined by the EU Commission to gain admission into the EU by 2004.[71]

C. Poland's Convergence Programme[72]

On the eve of accession into the EU, Poland's Council of Ministers approved the "Convergence Programme," a macroeconomic policy with the goal of helping Poland catch up to members in the "euro zone."[73]

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[70] *See id. at* 9. "The absence of a properly functioning land registry makes it difficult to establish ownership over land" which discourages potential investors from owning land.

[71] In order for Poland to be accepted in the EU it had to address many legislative requirements prompted by the EC including: provisions for: the free movement of goods, the free movements of persons, the freedom to provide services, the free movement of capital, agriculture, fisheries, taxation, the economic and monetary union, energy, social policy, science and research, environment, consumer and health protection, customs union, financial control, and financial and budgetary provisions. Monitoring Report, *supra* note 58 at 11-16.

[72] Poland's "Convergence Programme, approved in 2002, got its name from a November, 2001 speech of Dr. Willem F. Duisenberg, President of the European Central Bank. Addressing the Frankfurt European Banking Congress, Dr. Duisenberg said: "By 'real convergence' I mean the broad adjustments through structural reforms and economic development of the [new EU member] economies towards structures prevailing in the EU. This requires ... the completion of the market economy transition agenda, further privatization in some areas, and the strengthening of the institutional and legal framework. Real convergence is seen as facilitating economic cohesion among member states.... Hence, in order to enhance the process of real convergence as much as possible, accession countries should ensure that they make progress in the restructuring of their economies and gradually realign them with those of the euro area. Real convergence is often interpreted as a catching-up in real income with the EU...." For the complete speech, *see* The ECB and the Acession Process, Nov. 23, 2001, http://www.ecb.int/press/key/date/2001/html/sp011123.en.html (last visited Oct. 15, 2005).

[73] The Convergence Programme is a framework outlining Poland's economic policy as a new member in the European Union and in preparation of becoming part of the "euro zone." The euro zone denotes those EU countries that are using the euro. Marta Baranczak, REPUBLIC OF POLAND CONVERGENCE PROGRAMME, (Warsaw April 30, 2004), *available at*

The main objective was to achieve a sustainable high growth rate[74]- a goal Poland felt necessary to converge with the "EU-15."[75] The second goal was to decrease government debt and the deficit to build a base for long-term macro-economic stability.[76] A third set of goals included the implementation of structural changes in the labor market, changes in the tax system, and reducing red tape.[77] Finally, the Programme briefly addressed problems in Poland's infrastructure.[78]

1. Monetary Policy: Achieving a High Long-term Growth Rate While Maintaining Macroeconomic Stability

a. Past and Present Growth

The years 1998-2001 witnessed a steady decrease in GDP growth. In 2002 private consumption and net exports increased. This helped to decrease inflation rates and stabilize a worsening

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http://www.mofnet.gov.pl/_files_/raporty_analizy_statystyki/program_konwergencji/cep_20041.pdf (last visited April 1, 2005) [hereinafter Convergence Programme]; for a critique of the Convergence Programme, *see* EUROPEAN COMMISSION, COMMISSION'S ASSESSMENT OF THE NOVEMBER 2004 UPDATE FOR THE CONVERGENCE PROGRAMME OF POLAND (Brussels, Feb. 2, 2005), *available at* http://europa.eu.int/comm/economy_finance/about/activities/sgp/country/commass/pl/ass_pl20042005.pdf (last visited April 5, 2005).

[74] Convergence Programme, *supra* note 73, at 5.

[75] Gross domestic product per capita in Purchasing Power Standard is the main indicator measuring real convergence of acceding countries towards the EU-15. In 1998, at the beginning of accession negotiations with the EU, this measure for Poland amounted to 40.4% of the EU-15 average. From 1998-2003 the gap decreased slightly to 42.9% due to faster economic growth. Real convergence can also be measured with the level of production factors productivity comparing to developing countries. This productivity is usually far lower in transition economies. Labor productivity in Poland was 42.5% of the EU-15 average in 1998. The EU-15 means the fifteen member states as of April 30, 2004: France, Germany, the United Kingdom, Ireland, Spain, Portugal, Greece, Italy, Austria, Belgium, Denmark, Finland, Luxembourg, the Netherlands, and Sweden. Poland's goal is to be economically aligned with Western Europe, and not be economically associated with eastern European newcomers. *See id.* at 10.

[76] *See id.*, at 5.

[77] *Id.*

[78] *Id.*

macroeconomic condition.[79] With 69% of Polish exports going to the EU-15 during this period, the euro's strength positively affected exports and GDP growth.[80]

b. Factors Necessary to Achieve High Growth

The Convergence Programme laid out several factors for achieving high growth in Poland. A critical short-term goal was to re-establish an appropriate balance between fiscal and monetary policy[81] in order to achieve a stable macroeconomic framework. Poland must also increase employment, especially among younger and older workers.[82] With only slightly more than one in two Poles of working age employed and the unemployment rate over 19 percent, getting people back to work will be essential for high growth.

Investment conditions need improvement in order to increase the economic growth rate and the demand for labor. Capital is a necessary factor in achieving these ends. Between 1995-2002 level of investments increased substantially, but by 2003 were still very low compared with the EU-15.[83] Further, from 1999-2003 Poland was left with a largely obsolete and worn out capital base.[84] However, the forecasted rise in investments for 2004-2007 should improve the prospects for long-term potential growth through an increase in production capital[85].

The Convergence Programme also addressed simple measures such as implementing new management techniques and the reorganization of production. Such measures have already been largely

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[79] GDP was 4.8% in 1998, 4.1% in 1999, and by 2000 was 1.0%. By 2003, growth rebounded to 3.8%. Growth rates are projected to be 5.0% and 5.6% in 2005 and 2006, respectively. Unemployment went from 10.2% in 1998 increasing steadily to 19.9% by 2003. *See Monitoring Report, supra* note 58, at 5.

[80] *See* Convergence Programme, *supra* note 73, at 14.

[81] ORGANIZATION FOR ECON. CO-OPERATION AND DEV., ECONOMIC SURVEY – POLAND 2004: THE CHALLENGE OF REGAINING SUSTAINABLE AND FAST GROWTH (2004) [hereinafter Economic Survey].

[82] *Id*; *see* also generally, Andrew Burns and Przemyslaw Kowalski, ORGANIZATION FOR ECON. CO-OPERATION AND DEV., THE JOBS CHALLENGE IN POLAND: POLICIES TO RAISE EMPLOYMENT (2004) [hereinafter Jobs Challenge].

[83] *See Convergence Programme, supra* note 73, at 11.

[84] *Id.* at 17.

[85] *Id.*

utilized in Poland,[86] but improving technologies and research and development (R&D)[87] have not been exploited in Poland as they have been in other EU countries.[88] Until 2004 the Polish Government lacked clearly defined and efficiently enforced objectives for R&D. Since then the government enacted an R&D policy that would raise expenditure significantly.[89]

A decreased corporate tax rate of 19 percent and a restructuring in the labor code will also play a part in achieving growth,[90] as will reducing red tape.[91] Critics contended, however, that little was done to achieve growth by way of improving the judiciary and reduce governmental corruption.[92]

c. Relations with the Global Market

Advances in information technology[93] and globalization, [94] as well as integration with the EU-15, have made Poland more vulnerable to

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[86] *Id.*

[87] *See id.* at 11 and 17. Poland's R&D expenditure was just 0.59% of GDP in 2002 down from 0.75% in 1999 (the EU-15 average in 2002 was 1.99%).

[88] Poland's domestic spending on R&D was severely cut-off in the early nineties. Even now, Poland's R&D spending is lower in relative terms than other countries in the region such as Slovenia and Hungary. Malgorzata Jakubiak, TRANSMISSION OF KNOWLEDGE AND INNOVATION INTO POLAND: ROLE OF TRADE AND FOREIGN INVESTMENT (2001), at 3.

[89] The *Strategy of increasing R&D expenditure towards attaining the Lisbon Strategy targets* sets Poland's budgetary spending at 1.5% of GDP. Convergence Programme, *supra* note 73, at 11.

[90] *See generally* Monitoring Report, *supra* note 58.

[91] For an argument that better regulation does not always mean less regulation, see generally THE CORPORATE RESPONSIBILITY COALITION, FROM RED TAPE TO ROAD SIGNS: REDEFINING REGULATION AND ITS PURPOSE, *available at* http://www.foe.co.uk/resource/reports/red_tape_to_roadsigns0.pdf (last visited April 9, 2005).

[92] Many scandals become public and a recent poll found that 91 percent of Poles believe the threat of corruption in their country is "very high" or "rather high" and that 71 percent think senior government officials reap unwarranted benefits from holding public office. For more information on corruption, see THE MCKEEVER INSTITUTE OF ECONOMIC POLICY ANALYSIS, POLAND: ECONOMIC POLICY ANALYSIS, *available at* http://www.mkeever.com/poland.html (last visited April 9, 2005).

[93] It is suggested that "information technology, which carries the news of freedom, is rapidly creating a situation that might be described as the twilight of

external shocks. Foreign trade has played a significant role in the development and restructuring of the Polish economy since 1990. The export potential, however, has been underused. Not only are exports per capita lower in comparison to countries of the EU-15, they are also below the level achieved by other countries that acceded in 2004.[95]

d. Inflation and Exchange Rates

Poland hopes to build macroeconomic stability.[96] Stability requires a low inflation level and a steady current account balance.[97] According to the Constitution of Poland of April 2, 1997[98] and the Act on the National Bank of Poland of August 29, 1997 (Act),[99] the National Bank of Poland (NBP) is exclusively responsible for the implementation of monetary policy.[100]

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sovereignty since the absolute power of the state to act alone both internally against its own citizens and externally against other nations' affairs is rapidly being attenuated." Walter Wriston, THE TWILIGHT OF SOVEREIGNTY: HOW THE INFORMATION REVOLUTION IS TRANSFORMING OUR WORLD (1992), at xii-xiii.

[94] "The new global community is the result of a phenomenon referred to as 'globalization.' Globalization has been defined as 'the process of reducing barriers between countries and encouraging closer economic, political, and social interaction." *See* Edwards, *supra* note 8, at 185.

[95] Convergence Programme, *supra* note 73, at 5.

[96] Convergence Programme, *supra* note 73, at 5.

[97] DEFINITION OF A CURRENT ACCOUNT BALANCE *available at* http://economics.about.com/cs/economicsglossary/g/current_account.htm "The current account balance is defined by the sum of the value of imports of goods and services plus net returns on investments abroad, minus the value of exports of goods and services, where all these elements are measured in the domestic currency." (last visited January 26, 2006).

[98] *See* CONSTITUTION OF THE REPUBLIC OF POLAND ART. 227, *available at* http://www.oefre.unibe.ch/law/icl/pl00000_.html (last visited April 4, 2005).

[99] *See* THE ACT ON THE NATIONAL BANK OF POLAND OF AUGUST 29, 1997, *available at* http://www.nbp.pl/en/aktyprawne/theactonthenbp.pdf (last visited April 4, 2005) [hereinafter Act].

[100] *See* http://www.nbp.pl/Homen.aspx?f=en/onbp/informacje/dzialalnosc_nbp.html (last visited January 10, 2005).

The Act also outlines the primary objective of the NBP—to maintain price stability, while at the same time acting in support of Government economic policy,[101] insofar as it does not constrain the pursuit of the basic objective of the NBP.[102] Since 1998, price stability and monetary policy have been conducted to thwart inflation.[103] By December 2003, the policy successfully reduced inflation to 1.7%.[104]

The Convergence Programme also calls for a floating exchange rate system that will allow for unexpected shocks. The floating exchange rate system will also reduce the risk of currency crisis and keep inflation low.[105]

The monetary policies[106] approved in the Convergence Programme will strengthen Poland's monetary system.[107] Moreover, the

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[101] The Monetary Policy Council, chaired by the President of the NBP, is responsible for setting the inflation targets and the levels of monetary policy instruments. The President of the Republic of Poland, the Sejm, and the Senate shall appoint MPC members in equal numbers. The President of the NBP shall be appointed by the Sejm, on the recommendation of the President of the Republic of Poland. *See* Act, supra note 99, at 3.

[102] *Id.*

[103] *See generally* Inflation Reports 1998-2004, *available at:* http://www.nbp.pl/homen.aspx?f=en/publikacje/raport_inflacja/raport_inflacja.html (last visited February 9, 2006).

[104] *See generally* Inflation Report 2003, *available at:* http://www.nbp.pl/en/publikacje/raport_inflacja/iraport_2001_gb.pdf (last visited February 9, 2006).

[105] *See* Convergence Programme, *supra* note 73, at 8.

[106] *See* MONETARY GUIDELINES FOR THE YEAR 2004, *available a:t* http://www.nbp.pl/en/publikacje/o_polityce_pienieznej/zal2004a.pdf (last visited April 5, 2005).

[107] In accordance with the provisions of the E.C. Treaty and the Athens Treaty of Accession, new member states, including Poland, participate in the European Monetary Union (EMU). The new members, in essence, agreed they will adopt the euro within the next ten years, and the EMU is the path to get them there. An important provision called the European Rate Mechanism II helps new EU members to join the system by coordinating national currency exchange rates to the Euro. Hence, the reason why Poland has floating exchange rates with the Euro in place. For a great article on the challenges the new EU members have in trying to finalize their membership in the EMU, *see* Andrej Fatur, *What Challenges do the Central European and Mediterranean States Face in Trying to Join the Third Stage of European Monetary Union?*, 28 FORDHAM INT'L L.J. 145 (2004).

monetary policies adopted encourage introducing the Euro to Poland at the earliest possible date. This, in turn, will further economic integration with the EU-15.

2. Fiscal Policy: Decreasing Government Debt and Deficits

Currently, fiscal policy is too relaxed, requiring higher than desirable interest rates, which has adverse consequences on investment, activity and potential output. Poland believes that high economic growth can facilitate a tighter fiscal policy.[108] This high growth, along with the implementation of public finance reform, should result in the reduction of Poland's high deficit and in a stabilization of the debt to GDP ratio.[109]

Fiscal policy and principles of public debt are set out in the Constitution of the Republic of Poland of 1997[110] and the Public Finance Act of November 26, 1998.[111] Under both legal acts, public debt is limited to 60 percent of GDP and general government deficit to three percent of GDP.[112] This is consistent with Article 104 of the Treaty establishing the European Union, which mandates the Member States to avoid excessive debts and deficits.[113]

Poland intends on making the most of its financial and organizational potential and has recently enacted the "Programme for Rationalisation and Reduction of Public Expenditure,"[114] which will

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[108] As I argue below, accession into the EU was one of many causes for Ireland's high growth rate throughout the nineties and into the present day. Yet, Ireland, understood very early on the importance of having a stable fiscal policy to achieve growth.

[109] Debt as a percentage of GDP in 2003 was 45.3% and in 2004 was 49%. *See* Convergence Programme, *supra* note 73, at 28.

[110] *See* THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2 APRIL 1997 art. 216, *available at* http://www.sejm.gov.pl/english/konstytucja/kon1.htm (last visited April 13, 2005).

[111] *See* PUBLIC FINANCE ACT, *available at* http://www.pnb.pl/3_ls_i.shtml (last visited April 2, 2005).

[112] *See* Convergence Programme, *supra* note 73, at 6.

[113] *See Treaty Establishing the European Economic Community*, March.25, 1957, Pmbl., 258 U.N.T.S. 11 (1958), amended by Single European Act, 1987 O.J. (L 169) 1 (effective July 1, 1987).

[114] For a detailed explanation of the *Programme for Rationalisation and Reduction of Public Expenditure, see* National Bank of Poland, *Monetary Policy Guidelines for 2005, available at*

greatly consolidate government spending. The main objectives of the "Programme for Rationalisation and Reduction of Public Expenditure" are to eliminate the high general government deficit and constrain the debt growth[115] by reducing government expenditures and improving revenue through tax reform.[116] The shrinking of government, as a result of social and administrative spending cuts, will decrease debt.[117]

It is particularly important for Poland, as a transition economy, to decrease its government debt; recently government debt has been growing faster than its GDP.[118] When government debt grows faster than GDP it makes Poland more susceptible to a variety of economic risk factors. The main risk factors for Poland are sustained low economic growth, a significant weakening of the zloty, an increase in inflation and a tightening of monetary policy, and the lack of regulations regarding privatization.[119]

3. Structural Changes in the Labor Market[120]

Poland has experienced high unemployment levels as a negative side-effect resulting from the transformation from a state-socialist economy into a free-market economy.[121] Growing unemployment rates throughout the nineties constituted a shock for Polish society, for whom the former system provided relative security of employment, despite its association with labor inefficiency.[122] Contrary to present day Poland where long lasting structural unemployment is perceived as a fact of life,

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http://www.nbp.pl/en/publikacje/o_polityce_pienieznej/zal2005a.pdf (last visited April 9, 2005) [hereinafter NPB].

[115] Actions on the expenditure side focus mainly on reductions in administrative spending through limiting employment in the public administration, liquidating certain units of the general government, cuts in other costs and the reform of social expenditure. *Id.*

[116] Convergence Programme, *supra* note 73, at 34.

[117] *See id.*, at 24-26.

[118] *See id.*, at 27.

[119] *See id.* at 29.

[120] With almost fifty percent of the working age population not working, improving labor market performance represents an essential and daunting challenge for Poland. While some of today's joblessness is cyclical in a nature, most of the problems in Poland appear to be structural. *See id.*

[121] See Krzystof Zagorski, UNEMPLOYMENT IN POLISH AND BULGARIAN PUBLIC OPINION (Warsaw, 1998).

[122] *See id.*

the effects of unemployment were not fully imagined by a population accustomed to a high level of job security during the communist years.[123]

Although the unemployment rate in 1990 was at 6.3%, the rate has steadily increased until recent figures reported it at 20%.[124] The difficult situation in the labor market[125] was caused by insufficient flexibility, an increase of the labor force,[126] as well as low economic growth in the years 2001-2002.[127]

Poland, with one of the largest populations in Europe,[128] has the highest rate of unemployment and the lowest productivity per worker in Europe.[129] A recent study suggests that Poland must lower the costs of low-skill labor, reduce associated administrative and regulatory costs, and focus on reducing the inactivity traps inherent in the Polish transfer system.[130]

Actions aimed at improvement of the labor market, job creation, and protection of existing workplaces began with the implementation of two Government programs. The program "First Job"[131] took initiatives to promote the employment of young graduates, and

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[123] *See id.*

[124] *See Monitoring Report, supra* note 58 at 5.

[125] Poland is one of the youngest countries in Europe. With thirty-five percent of the population under twenty-five, the near future will bring 14 million people into the labor market. *See* I.F.F.I.S.O, *Invest in Poland, at* http://www.iffiso.com/investinpoland.htm (last visited April 8, 2005).

[126] *See* Convergence Programme, supra note 73, at 16.

[127] GDP growth slowed to 1.2% in 2001-2002. *See* Poland, *at* http://www.unece.org/stats/trend/pol.pdf (last visited January 26, 2005).

[128] Poland has the 9th largest population in Europe at 38.5 million people. *See* Convergence Programme, *supra* note 73, at 38.

[129] *See* Cowell, *supra* note 43, at A6.

[130] *See* Andrew Burns & Przemyslaw Kowalski, *The Jobs Challenge in Poland: Policies to Raise Employment* (Org. for Econ. Co-operation and Dev., Working Paper No. 414, 2004), *available at* www.oecd.org/SearchResult/0,2665,en_2649_201185_1_1_1_1_1,00.html. This study outlines reforms in each of the above areas which, if implemented, would serve to reverse the recent decline in employment and improve the fairness of income distribution, thereby reducing poverty, raising the rate of growth of incomes, and speeding economic convergence with the rest of the OECD countries (which Poland has been a part of since 1996).

[131] Unemployment among young people in Poland was around 45.5% in 2002. Over recent years, the situation of young people in the labor market has been deteriorating dramatically: in 1998 the unemployment rate for the 15-24 age

the program "Entrepreneurship Above All"[132] took initiatives to grow medium business. Projects to adjust the education system to the needs of the labor market, creating job consulting enterprises, and employment agencies are envisaged.[133]

4. **Structural Reforms in Infrastructure**

Investing in infrastructure is a major prerequisite for economic growth and development.[134] A composite infrastructure index published by the Economic Intelligence Unit grades Poland as lagging far behind compared to other EU countries.[135] Without significant improvements in infrastructure, and because the economy starts to expand more rapidly, transition countries like Poland typically encounter serious energy and transportation problems which prevent the realization of productive

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group stood at 25.6% in 1999, rising to 29.9%, 41.2% in 2000 and 41.1% in 2001. The two key factors in this rising unemployment are: first, economic stagnation, which in 2002 was 1.4%; and second, the entry into the labor market of nationals born in the demographic explosion of the first half of the 1980s - the Ministry of Labor and Social Policy estimated that in 2002 about 1 million young people left post-grammar schools, and around 360,000 of them registered as job-seekers. With First Job small and medium-sized enterprises will employ young people, with the government assisting the employers, refunding these employees' pay and social insurance contributions. First Job has many advantages but the most cited disadvantage are the fixed-term employment contracts. *See* International Labor Office, *European Industrial Relations Observatory, First Job Programme, at* http://www.logos-net.net/ilo/150_base/en/init/pol_2.htm [hereinafter First Job].

132 "Enterprise above all" is aimed at growing the number of small and medium businesses throughout Poland by enacting legislation to: remove bureaucratic procedures, simplify the tax system, simplify the social insurance system, and decrease the costs of labor and make labor regulations more flexible. *See* http://poland.gov.pl/?document=473e. (last visited February 9, 2006).

133 *See* Convergence Programme, *supra* note 73, at 44.

134 *See* Kenneth Davies, REGULATORY TREATMENT OF FOREIGN DIRECT INVESTMENT IN INFRASTRUCTURE AND PUBLIC UTILITIES AND RECENT TRENDS: THE OECD EXPERIENCE 3(2004), *available at* http://www.oecd.org/dataoecd/53/20/33803491.pdf [hereinafter FDI in Infrastructure]. (website last visited April 10, 2005).

135 *See* Economist Intelligence Unit, http://www.eiu.com (last visited March 10, 2005).

potential. These inhibitors include a lack of port and airport[136] capacity as well as roadways and railways.[137] Additionally, low telecommunications coverage can impede the flow of information throughout the economy.[138]

5. Where do all of the Corrective Measures Leave Poland?

In many respects, Poland's economic condition at the time it joined the EU in May 2004 resembled that of Ireland's when it became an EU member in 1973. Both countries faced fiscal and monetary problems headlined by high unemployment and low growth, yet at the time of accession, both seemed determined to achieve high growth with smaller governments.

Through its Convergence Programme Poland has implemented a broad strategy in the hopes of expediting its convergence with the EU-15. Like Ireland, Poland is transforming its tax system and is encouraged by high levels of European Union aid.[139] As a matter of strategy, Poland should try to emulate Ireland's economic dependence on foreign direct investment.

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[136] In the first half of 2004 airports in Poland serviced twenty percent more people than in the same time period in 2003. *See* Consulate General of Poland in Hong Kong, *at* http://www.polandtrade.com.hk/new/eng/news_july2004.htm (last visited April 5, 2005).

[137] "High-profile auto plants landed by Slovakia have flashed a warning to other Central European countries: build better roads and keep a lid on wage growth, or risk losing out on foreign investment." Poland attributes bad roads to Kia Motors choosing Slovakia over Poland for a factory in 2003. *See* Leos Rousek, *Slovakia Wins New Auto Plants With Low Wages, Better Roads*, WALL ST. J., May 17, 2004, at A18.

[138] It is suggested that "information technology, which carries the news of freedom, is rapidly creating a situation that might be described as the twilight of sovereignty, since the absolute power of the state to act alone both internally against its own citizens and externally against other nations' affairs is rapidly being attenuated." *See* Walter Wriston, THE TWILIGHT OF SOVEREIGNTY: HOW THE INFORMATION REVOLUTION IS TRANSFORMING OUR WORLD, at xii-xiii (1992).

[139] Poland will receive forty billion zloty in EU aid from 2007 until 2013. Currently, Poland receives the fourth highest amount of aid in the EU.

III. Ireland: "The Celtic Tiger"

Ireland transitioned from Europe's worst to Europe's best-performing economy.[140] In order to fully appreciate Ireland's boom, it may be important to examine briefly the country's past.

From the time Ireland gained its independence from England in 1921, through a depression blamed on decreased exports in the 1930s, to a failure of per capita income that was half of Great Britain by the 1950s,[141] protectionism was Ireland's economic policy.[142] Ireland was heavily dependent on agriculture, relying almost wholly on exports to Britain.[143] In the late 1950's however, newly enacted directives diverted economic attention from agriculture to export-based GDP growth, primarily in manufacturing. In 1957, corporate tax rates for multinational companies were cut to zero to encourage industrialization and cross-border transactions.[144] When Ireland joined Europe by becoming an EEC member in 1973, the "Emerald Isle" officially relinquished protectionism and embraced free trade.

Unfortunately, two oil crises in the 1970s led the Irish government to implement monetary and fiscal policies which backfired into high inflation, high unemployment, and slow growth throughout the 1980s.[145] Due to an increased presence of transnational corporations,[146]

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[140]For a general history of Ireland, *see* Fintan O'Toole, THE IRISH TIMES BOOK OF THE CENTURY: 1900-1999 (GILL & MACMILLAN) (1999); *see also* CIA, THE WORLD FACT BOOK, IRELAND, *available at* http://www.cia.gov/cia/publications/factbook/ge; *see also* The Ireland Government Home Page (the Republic of Ireland's official website), http://www.irlgov.ie/default.htm (last visited Feb. 1, 2005); Ireland Online,http://home.iol.ie (last visited Feb. 1, 2005).

[141] Rob Norton, *The Luck of the Irish*, FORTUNE, Oct. 25, 1999, at 199.

[142] *See id.*

[143] *See* John Peet, *The Luck of the Irish, A Survey of Ireland*, THE ECONOMIST, Oct. 16, 2004, at 4, [hereinafter The Luck of the Irish].

[144] *See id.*

[145] *See id.* Unemployment was 17% in 1987, government debt was 112% of GDP, annual inflation was over 10%, and an average budget deficit was over 7% of gross domestic product. *See also, Hot and Sticky in Ireland,* THE ECONOMIST, Jul. 27, 2000, at 47 (wondering whether its shaky government and booming economy could coincide).

[146] G. Honor Fagan, *Globalization and Culture: Placing Ireland*, 581 ANNALS AM. ACAD. POL. & SOC. SCI. 133, 138 (2002). [hereinafter Fagan].

Ireland added to its massive unemployment throughout the 1970s and 1980s by closing many nationally-owned industries

In 1987, the election of Charles Haughey's Fianna Fail party finally achieved the split among traditional socialist, big government, and high tax philosophy.[147] When the Fianna Fail party rose to power, Ireland "labored under 58% income tax, virulent industrial disputes, a national debt requiring a third of tax receipts to service, and 17.1% unemployment."[148] Coinciding with lost jobs, by 1987, emigration hit a new high, particularly among graduates, as the Irish moved to England and throughout Europe.[149] The government tightened its fiscal budget, slashed taxes, and aggressively attracted foreign businesses through the Industrial Development Agency.[150]

By 1994, Ireland was dubbed the "Celtic Tiger," referencing the high-growth east-Asian economic miracles of the 1980s.[151] By 1995, Ireland was Europe's fastest growing economy.[152] Today, Ireland enjoys renewed growth after a brief slowdown in 2001 and 2002[153] with GDP growth expected to be 5% in 2005 and 2006.[154]

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[147] *See Ireland Business Report 2001: Tiger Burning Bright*, EUROBUSINESS, June 2001 at 134 [hereinafter Business Report].

[148] *See id.*, at 134.

[149] The Luck of the Irish, *supra* note 143, at 4, noting Irish GDP per person was 69% of the EU Average in 1987 and 136% of the EU average in 2003.

[150] The Industrial Development Agency is discussed below.

[151] *See* Fagan, *supra* note 146, at 138.

[152] World Factbook, *supra* note 140, at 7, noting that from 1995-2002 Ireland's economy was growing at an average rate of 8% of gross domestic product); *see also A Gaelic Boom*, THE ECONOMIST, Apr. 27, 1996, at 58 (explaining that while in 1995 Ireland's economy grew by approximately 8% inflation rates remained low); *see also* Ireland Infoplease, http://www.infoplease.com/ipa/A0107648.html (last visited March 5, 2005).

[153] The Luck of the Irish, supra note 143, at 4 (Ireland's slowdown was in reaction to the Information Technology (IT) slowdown and American economic recession).

[154] Org. for Econ. Co-operation and Dev. [OECD], *OECD Economic Outlook No. 76*, at 85 (December 2004).

A. Factors leading to Ireland's Economic Boom[155]

Since becoming an EU member state in 1973, Ireland's economy has grown with the help of €2.8 billion of annual economic aid from the EU, averaging 6.9 percent in the nineties.[156] Credited to Ireland's economic miracle has been the Isle's ability to attract foreign industry and service providers.[157] Economists suggest, however, that a combination of external and internal factors including Ireland's foreign direct investment policies, its accession into the EU, fiscal and monetary consolidation throughout the 1980s, a superior educational system, successful corruption regulation, and demographics combined to produce the Emerald Isle economic miracle.[158]

1. Foreign Direct Investment[159]

The most widely regarded explanation for Ireland's tremendous economic development[160] has been the influx of foreign direct

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[155] See OECD ECONOMIC SURVEYS - IRELAND 1999 26 (1999) [hereinafter OECD Survey]; see also OECD, *Economic Policy Reforms 2005, Ireland Country Note, available at* http://www.oecd.org/dataoecd/39/56/34486576.pdf (last visited April 9, 2005). It explains that with the fastest rate of GDP per capita among OECD countries from 1995-2004, Ireland has caught up with leading countries in terms of productivity and, to a lesser extent, income levels. *See also, Ireland: Europe's Economic Tiger*, THE ECONOMIST, May 15, 1997.

[156] "Although the Germans, the chief EU payor of subsidies, argue that Ireland's miracle was due to huge transfers from Brussels...the most authoritative studies suggest EU subsidies may have added 0.5 percent a year to growth in the 1990s-useful, but modest in the context of average growth of 6.9%." The Luck of the Irish, *supra* note 143, at 5.

[157] OECD Survey, *supra* note 155, at 17 (describing the single, overriding policy that could be adopted elsewhere in order to emulate the Irish experience).

[158] The Luck of the Irish, *supra* note 143, at 4.

[159] For an examination on Ireland's foreign direct investment policies *see* OECD REVIEWS OF FOREIGN DIRECT INVESTMENT - IRELAND *(1994)* [hereinafter *FDI* Ireland]; for an article arguing for the importance of foreign direct investment regulation and its having resulted in FDI growth outpacing, by as much as a factor of four, the growth of international trade, its providing the host state with numerous other benefits such as new technologies, management skills, capital, creation of new jobs, and improved competition among competing firms within a domestic market see Michael A. Geist, *Toward a General Agreement on the Regulation of Foreign Direct Investment*, 26 LAW & POL'Y INT'L BUS. 673 (1995).

investment (FDI).[161] Fueled by strong government policy initiatives throughout the 1980s and 1990s,[162] including initiatives offering government grants and until recently the lowest effective corporate tax rate in Europe, Ireland has been very successful in attracting foreign businesses. Over 1050 overseas companies have established operations in Ireland![163] Among the more prominent to be lured since 1989 are

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[160] Countries with faster economic growth have more rapid improvement in health and education outcomes, progressively freer political system, increasingly more equitable distribution of wealth and enhanced capacity for environmental management. *See* Xiaolun Sun, *FOREIGN DIRECT INVESTMENT AND ECONOMIC DEVELOPMENT: WHAT DO THE STATES NEED TO DO?* 3 (2002), *available at* http://unpan1.un.org/intradoc/groups/public/documents/un/unpan006348.pdf.

[161] Prior to the 1970s, Ireland was considered a developing country. As a developing country Ireland needed to undertake programs of rapid economic development that utilized technology-intensive methods. This was done by employing the skills and technological resources of the developed world. Because Ireland was without spare domestic capital, foreign capital was necessary for the transformation. Through government intervention, Ireland was able to stimulate FDI.

[162] *See* Erin O'Malley, *Ireland: From Inward to Outward Policies, in* EUROPEAN INDUSTRIAL POLICY: THE TWENTIETH-CENTURY EXPERIENCE 228 (Foreman-Peck & Federico eds., 1999) [hereinafter O'Malley]. In the mid-1980s there was a policy shift towards the development of indigenous firms. This policy was set out in the 1984 White Paper on Industrial Policy. The White Paper recognized that there were limits to the benefits that could be expected from foreign investment and that the relatively poor long-term performance of indigenous industry called for a greater focus of addressing that problem. More specifically, policy statements since 1984 have referred to a need for policy towards indigenous industry to be more selective, aiming to develop larger and stronger firms with good prospects for sustained growth in international markets, rather than assisting a great many firms indiscriminately. Policy was intended correct specific areas of disadvantage or weakness which would be common in indigenous firms such as technological capability, export marketing, and skills. It was intended to shift expenditures on industrial policy from supporting capital investments towards improving technology and export marketing. As a result, after the mid-1980s, the award of capital investment grants was increasingly dependent on firms having prepared overall company development plans. Moreover the government started explicitly targeting industries into which they want to attract FDI like electronics, pharmaceuticals, software, and financial services.

[163] *See* IDA Ireland, http://www.idaireland.com (last visited March 7, 2005).

high-tech companies such as Apple, Intel, Microsoft, and Phizer.[164] The success of low corporate tax rates and government grants in attracting foreign direct investment has encouraged Irish policy makers to transform Ireland into a knowledge-based economy.[165]

The Irish Government has had particular success in attracting U.S. foreign investment. According to the American Chamber of Commerce Ireland, Ireland, with only one percent of the EU's population, attracted twenty-five percent of all new U.S. investment in the E.U. from 1994-2004.[166] In 2003, U.S. investment flow into Ireland was USD 9.1 billion.[167] There are 580 U.S. firms employing over 90,000 workers the following Irish sectors: chemicals, biopharmaceuticals and healthcare, computer hardware and software, electronics, and financial services.[168] The attraction of U.S. firms to Ireland lies in many factors, both historic and present: Irish culture being "inconceivable without America,"[169] Ireland's access to the EU market, a 12.5 percent rate of corporate tax, the quality and flexibility of the English-speaking work

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[164] *See id.*

[165] *See id.* A "Knowledge Economy" refers to Ireland's dependence on highly educated skilled labor and attracting high-tech industries like biotechnology, pharmaceuticals, and information and communications technology. Ireland believes these industries and a workforce able to participate and learn in these industries will be the key to sustainable growth in the future.

[166] *See* The American Chamber of Commerce Ireland, http://www.amcham.ie/about/ (noting the Mission statement: "To promote a business environment that is attractive to US companies located in Ireland by representing their interests at a government level, in the media and by providing a forum through which ideas and information can be shared") [hereinafter American Chamber of Commerce] (last visited January, 26 2005).

[167] In 2003, U.S. investment flow into Ireland was 2.5 times the amount flowing into China. *See* U.S. Department of State, *2005 Investment Climate Statement: Ireland*, (2005), http://www.state.gov/e/eb/ifd/2005/42063.htm [hereinafter Investment Climate].

[168] *See id.* Ireland's major FDI project in 2004 was the Intel Feb 24 plant, which will produce the company's next generation of microchips. For more information on the costs in constructing the new plant and Intel's projected FDI figures into Ireland, see Taoiseach Bertie Ahern, *IDA is Praised as Intel's Fab 24 opens*, ELECTRICNEWS.NET, June 14, 2004, http://www.enn.ie/news.html?code=9539399 (last visited March 19, 2005).

[169] For a discussion on Irish culture and capitalism, *see* Fagan, *supra* note 146.

force,[170] and, the bandwagon effect of existing companies operating successfully in Ireland.[171]

a. Ireland's Recognition of FDI Came Early

Ireland, a country with few natural resources, has recognized the technological, financial, managerial, and employment benefits of foreign direct investment since the 1970's.[172] Among the world's smaller, geographically isolated economies, Ireland was one of the first to fully embrace an outward-looking approach to international direct investment.[173] For Ireland, attracting FDI has been mainly a marketing issue. In Ireland's case, the relevant market has been developed countries throughout Europe, the United States, and more recently, Asia.[174]

b. E.U. Membership

Ireland's membership in the European Union on January 1, 1973 accelerated the country's integration into the European and global economy, and encouraged foreign investment into Ireland.[175] By 1994,[176] seventy percent of the manufacturing companies established operations on the Isle after its joining the EU in 1973.[177] In fact, foreign firms accounted for half of Ireland's industrial output and three-quarters

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[170] *See* Investment Climate, *supra* note 167 (of all OECD countries, only the Japanese workforce has a higher proportion of trained engineers and scientists).
[171] *See* American Chamber of Commerce, supra note 166.
[172] *See* O'Malley, supra note 162, at 224-25 (after the 1950s, Ireland shifted its industrial policy to an outward-looking strategy focusing on encouraging investment through investment incentives. The main incentive tactics were: capital investment grants; exemption of tax for profits earned on export sales above the 1956 level; and accelerated depreciation).
[173] *See* FDI Ireland, *supra* note 159, at 7.
[174] *See* RICHARD MORAWETZ, RECENT FDI IN EASTERN EUROPE: TOWARDS A POSSIBLE ROLE FOR THE TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICIES 1 (ILO Working Paper No. 71, 1991). Referring to Eastern Europe, the author notes, new investment is designed to attract Western capital and technology.
[175] *See* FDI Ireland, supra note 159, at 7.
[176] Ireland's Economic boom did not officially begin until 1994.
[177] *See* FDI Ireland, *supra* note 159, at 7.

of its manufactured exports by 1994.[178] Foreign firms in Ireland[179] have contributed to "expanded output, higher productivity, and export growth," and the fastest growing sectors in the Irish economy have been technologically advanced with high growth potential.[180]

In addition, membership in the E.U. has brought important financial benefits to Ireland in the form of structural and cohesion funds, which were used primarily to update infrastructure and make Ireland's economy more competitive with established EU members like Germany and France.[181]

c. Foreign Direct Investment: Net effect

Foreign direct investment plays a significant part in Ireland's economy when measured against factors besides GDP. Industrial employment and output in Ireland are extremely dependent on foreign firms.[182] Employment growth has largely come from foreign private firms, which, since 1973, have increased both in their number and in the number of persons they employ.[183] From 1987 to 1994, foreign-owned firms provided a net gain of 10,400 jobs, while Irish companies lost 600 jobs over the same period.[184] Manufacturing employment, which fell by 20% from 1979-87, increased by 13% from1988-96.[185]

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[178] *See id.* at 11 (explaining that U.S. companies are by far the largest investors in Ireland, employing more people, investing more capital and controlling more firms than investors from any other country. The next largest investors in Ireland are the United Kingdom and Germany).

[179] IDA Ireland, *Ireland Economy, Overseas Investment, Irish Tax, Ireland Investment*,http://www.idaireland.com/home/sitetool.aspx?id=3&content_id=1#twotwo (Germany currently has 149 firms in Ireland, the UK has 118, and the rest of Europe have 214 firms).

[180] *See* FDI Ireland, *supra* note 159, at 11.

[181] *See id.* at 7.

[182] *See id.* at 19 (noting that by 1994 half of the employment in the industrial sector and 75 percent of its output are attributed to foreign firms; as of 1994 foreign firms employed 80 percent of all those employed in the chemicals sector, 70 percent in beverage and tobacco, and 55 percent in financial and other services).

[183] *See id.*

[184] *See id.*

[185] *See* O'Malley, *supra* note 162, at 230 (crediting the manufacturing employment rise to both an increase in FDI and an improvement in performance by indigenous firms).

FDI provides a strong export-led contribution to economic growth, which has been a key driver in Ireland's intensive employment growth.[186] FDI has helped to create positive economic byproducts such as infrastructure investment,[187] a business friendly society,[188] human resource development, and regulatory change. FDI has given Ireland scale and critical mass in new technologies far faster than could otherwise have been achieved and provided a breeding ground for Irish entrepreneurs.[189]

Ireland ranked seventh among FDI recipient countries in 2003.[190] FDI flows into Ireland increased from an annual average of USD 140 million in the mid-1980s to USD 2.7 billion per year in the second half of the 1990s. This in turn yielded a total FDI stock of USD 223 billion by 2003, or 127 percent of nominal 2003 GDP.[191] It has also given Ireland substantial corporate tax revenues[192] which provided a base for new infrastructure and human resource development, essential tools for sustaining economic growth in the future.

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[186] IDA Ireland, *Ireland Economy, Overseas Investment, Irish Tax, Ireland Investment*, http://www.idaireland.com/home/sitetool.aspx?id=3&content_id=1 (last visited March 16, 2005).

[187] *See* FDI in Infrastructure, supra note 134, at 4.

[188] Ireland's entire economy is geared towards creating a broad business infrastructure. For more information visit Enterprise-Ireland, http://www.enterprise-ireland.com (last visited April 9, 2005).

[189] FDI in Infrastructure, *supra* note 134, at 4.

[190] Investment Climate, *supra* note 167. For a discussion of a European country having an economic miracle similar to Ireland, but achieving success with a "regime of draconian restrictions" on foreign investment, arguably the most restrictive in the developed world, see Ha-Joon Chang, FOREIGN INVESTMENT REGULATION IN HISTORICAL PERSPECTIVE: LESSONS FOR THE PROPOSED WTO AGREEMENT ON INVESTMENT (2003), *available at* http://www.globalpolicy.org/socecon/ffd/2003/03historical.htm (explaining that Finland was extremely wary of foreign investment and implemented measures to restrict it, and that companies with more than 20% foreign ownership were officially classified as "dangerous companies" and therefore foreign ownership of companies was restricted to 20%).

[191] *See* Investment Climate, *supra* note 167.

[192] IDA Ireland, *Ireland Economy, Overseas Investment, Irish Tax, Ireland Investment*, http://www.idaireland.com/home/sitetool.aspx?id=3&content_id=1. Tax revenues from foreign companies were €2.2 billion in 2002 alone.

Traditionally, the principal goal of investment promotion in Ireland has been employment creation, especially in technology-intensive and high-skill industries.[193] More recently, the Irish government, through FDI, has sought to assist established foreign companies to sustain their international competitiveness through research and development enhancements, and through the marketing and sales of higher-value goods and services.[194]

d. Establishing a Business in Ireland

There are no restrictions governing foreign direct investment in Ireland,[195] no limits on the percentage of foreign ownership, and profits can be freely expatriated.[196] With few exceptions, there are no requirements that corporations established in Ireland must be owned by Irish nationals,[197] and citizens of other EU and non-EU countries may

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[193] *Id.*

[194] *Id.*

[195] Among OECD countries, Ireland ranks one of the lowest in foreign direct investment restrictions. According to an FDI restrictions study on OECD countries from 1998-2000, which looked at ceilings on foreign equity holdings in manufacturing and non-manufacturing sectors, screening requirements, and restrictions on foreign personnel and operational freedom, Ireland was the second lowest, measuring 0.06 on a scale of 0-1 (1 being the most restrictive). The United States was at 0.17, Poland was at 0.21, and Turkey, Canada, and Iceland were the highest, at numbers above 0.35. *See generally*, S. Golub, MEASURES OF RESTRICTIONS ON INWARD FOREIGN DIRECT INVESTMENT FOR OECD COUNTRIES (2003) [hereinafter Restrictions on FDI].

[196] *See generally* COMPANIES ACTS, 1963-1990 *available at* http://www.irishstatutebook.ie/ZZA33Y1963.html, http://www.irishstatutebook.ie/ZZA33Y1990.html, http://www.irishstatutebook.ie/ZZA25Y1986.html, http://www.irishstatutebook.ie/ZZA13Y1983.html, http://www.irishstatutebook.ie/ZZA10Y1982.html, and http://www.irishstatutebook.ie/ZZA31Y1977.html; see also MERGERS, TAKEOVERS & MONOPOLIES CONTROL ACTS, 1978-1996, *available at* www.entemp.ie/publications/ general/2000/mergersannualreport.pdf (last visited April 8, 2005).

[197] *See* Investment Climate, supra note 167 (noting the most significant of these exceptions is that, as with other EU countries, Irish airlines must be at least fifty percent-owned by EU residents in order to have access to the single European aviation market. There are also requirements relating to the purchase of

purchase land for industrial and residential purposes without restriction.[198]

Ireland's close and public corporations as well as foreign branches are governed by the Companies Acts 1963-1990.[199] However, partnerships,[200] limited partnerships,[201] and investment limited partnerships[202] are governed under separate acts and have restrictions as to foreign ownership, screening requirements, as well as limited restrictions on foreign personnel and operational freedom.

Under the Companies Act 1963-1990 there is no requirement that entrepreneurs be of Irish nationality in forming a corporation or a

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agriculture lands that require all non-EU nationals to get written consent of the Land Commission before acquiring an interest in agricultural land).

198 All non-EU nationals must get written consent of Land Commission before purchasing agriculture land. There are no restrictions on urban land. *See* LAND ACT 1965 sec. 45, *available at* http://www.irishstatutebook.ie/ZZA2Y1965.html.

199 COMPANIES ACTS, 1963-1990 include: COMANPIES ACT, NO. 33 (1963); COMPANIES (AMENDMENT) ACT, NO.31 (1977); COMPANIES (AMENDMENT) ACT, NO. 10 (1982); COMPANIES (AMENDMENT) ACT, NO. 13 (1983); COMPANIES (AMENDMENT) ACT, NO. 25 (1986); COMPANIES ACT, NO. 33 (1990). The business enterprises that may be established under the Companies Act 1963-1990 are: private company limited by shares (close corporation); public company limited by shares (public corporation); branch of overseas company; non-resident company (as of 1999, under the Finance Act, no. 2 (1999), all Irish corporations are resident).

200 Partners, as in the United States, are individually liable for the debts of the partnership. Partnerships do not need to file accounts or be audited. General Partnerships fall under the PARTNERSHIP ACT (1890), *available at* http://www.inlandrevenue.gov.uk/manuals/bimmanual/BIM72505.htm (last visited April 4, 2005).

201 Limited partnerships are governed by the LIMITED PARTNERSHIP ACT (1907), *available at* http://www.inlandrevenue.gov.uk/manuals/bimmanual/BIM72515.htm (last visited April 4, 2005).

202 Investment limited partnerships were realized in 1994 under the INVESTMENT LIMITED PARTNERSHIP ACT, NO. 24 (1994). There are one or more general partners, one of whom must be an Irish incorporated company, with its head office in Ireland. General partners must be approved by the Irish Central Bank, and there must be an Irish custodian. At least two directors must be Irish. The Act is *available at* http://www.irishstatutebook.ie/ZZA24Y1994.html (last visited April 10, 2005).

branch of a foreign corporation.[203] Furthermore, the Companies Acts 1963-1990 provide no stipulations as to profit repatriation, nor are there restrictions in land ownership in establishing a corporation in Ireland.[204]

There is no formal screening process for foreigners establishing businesses in Ireland.[205] However, investors looking to receive Government grants or assistance through one of the four state agencies responsible for promoting foreign investment in Ireland are required to meet certain employment and investment criteria.[206]

Ireland has encouraged an active industrial policy designed to increase employment, improve the standard of living across its population, and make its economy more competitive. Ireland supports industrial development through the broad use of grants believing they are necessary to compete for internationally-mobile projects, especially as a small open economy on the periphery of Europe.[207] Through the Industrial Development Authority, discussed *infra*, grants have been closely monitored for their employment effects and investment promotion.[208] Finally, Irish leaders have enforced the notion that industrial policy emphasizing research, technology, and company development between Irish and foreign firms must constantly evolve through the continued use of grants and other incentive agreements.[209] At the same time, Irish authorities recognize that incentives can never substitute for sound economic policies, reliable infrastructure and a competitive workforce. Nevertheless, as competition for foreign

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[203] *See generally* Companies Acts 1963-1990.

[204] *See* FDI Ireland, *supra* note 159, at 25.

[205] *See id.*

[206] *See id.*

[207] *See id.* at 29 (explaining that Ireland's grants to foreign companies came under close scrutiny throughout the 1980s and 1990s because foreign enterprises were not able to prevent rising unemployment despite substantial investment).

[208] *See id.* at 30 (noting that the IDA has enacted "clawback provisions" to ensure that firms that come to Ireland do not take maximum advantage of the grants and then leave the market).

[209] *See id*; *see also* Culliton Report, *available at* http://historical-debates.oireachtas.ie/en.toc.D.0432.19930609.html (concluding in a major policy review that by 1992 Ireland had become overly dependant on foreign-owned enterprises and that efforts were necessary to develop its indigenous industrial sectors).

investment increases grants become an important incentive to attract international capital.[210]

Ireland, like other countries seeking to attract FDI, found itself in bidding wars to win investments.[211] It is apparent, however, that Ireland has needed more than attractive incentives to entice would-be investors. Ireland also needed to maintain a transparent and predictable investment climate, with contract laws enforced by a sound judicial system, embedded in a solid macroeconomic climate.[212] With investors in a global economy easily able to move capital to the country with the most favorable conditions, it has been important for Ireland to have a competitive labor force, healthy human resource development, transparent taxation policies, a strong infrastructure, and generally accepted accounting standards in order to build lasting relationships with foreign investors.[213]

2. Low Corporate Tax Rates Helped in Attracting FDI and grow GDP.

The Corporation Tax Act of 1976, as amended by the Finance Acts of 1977 to 1999, governs corporate tax in Ireland.[214] Under the Corporation Tax Act of 1976, a resident company of Ireland owes on a percentage of its international profits and income regardless of which country generates such profits, whereas a non-resident company owes on a percentage of its income arising only from its Irish operations.[215] From

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[210] *See* FDI Ireland, *supra* note 159, at 33.

[211] Paul R. McDaniel, *The U.S. Treatment of Foreign source Income Earned in Developing Countries: A Policy Analysis*, 35 GEO. WASH. INT'L L.REV. 265 (2003).

[212] Avi Nov, *Tax Incentives to Entice Foreign Direct Investment: Should There Be a Distinction Between Developed Countries and Developing Countries?*, 23 VA. TAX REV. 685.

[213] U.N. INTERNATIONAL CONFERENCE ON FINANCING FOR DEVELOPMENT, ITEM II OF THE PROVISIONAL AGENDA FINAL OUTCOME OF THE INTERNATIONAL CONFERENCE ON FINANCING FOR DEVELOPMENT, at P21, U.N. Doc. A/CONF. 198/3 (2002), *available at* http://www.un.org/esa/ffd/0302finalMonterreyConsensus.pdf.

[214] *See* A&L Goodbody, *Legal and Tax Aspects of Corporate Investment in Ireland-Corporation Tax-Income*, BUS. MONITOR, Jan. 26, 1995 [hereinafter Tax Aspects].

[215] James F. Bradley, *Corporate Tax Relief Schemes in the Republic of Ireland: An Evaluation of Recent Changes*, BRITISH TAX REV. 387 (1991) (discussing

1976, when Ireland's standard corporate tax rate was fifty percent,[216] until the Finance Act of 1999, when the standard corporate tax rate was twenty-eight percent,[217] Ireland's tax rates have been decreasing.

Ireland's surge in FDI really started after the Irish government introduced a special ten-percent corporate tax rate on the sale of goods "manufactured" in Ireland.[218] The ten percent rate was part of the Finance Act of 1980[219] and was limited to "manufacturing" and "manufacturing related services" operated within the International Financial Service Centre in Dublin and in the Shannon Customs-Free Airport Zone.[220] The Finance Act of 1980 also allowed a tax credit for the difference between the corporate tax rate applicable to all corporations in Ireland[221] and the ten percent rate.[222] Subsequent Finance Acts extended the ten percent rate to other types of businesses including shipbuilding, engineering services and "software development services."[223] Through the Finance Act of 1990, Ireland extended the ten percent rate, which was initially to remain in effect until December 31, 2000,[224] until December 31, 2010.[225]

CORPORATE TAX ACT, NO. 7 (1976). After 1999 All Irish incorporated companies were rendered resident; see FINANCE ACT, no. 21 (1999) *available at* http://www.ucc.ie/law/irlii/statutes/1999_2.htm#z21 (last visited April 9, 2005); *see also* Law & TaxNews Ireland, *at* http://www.lawandtax-news.com/html/ireland/jirlatcos.html (last visited April 9, 2005).

216 *See* http://www.acts.ie/print/zza7y1976.1.html (last visited February 9, 2006).

217 *Id.*

218 *See* IRELAND: REVIEW 1999, EUR. REV. OF WORLD INFO., Nov. 11, 1999, *available at* LEXIS, News Library, Questd file.

219 *See* Robert Bartholomew, *Not Just the Luck of the Irish*, WORLD TRADE, Apr. 1996, at 29. From 1956 to 1980, Ireland offered the Export Sales Relief (ESR) to corporations manufacturing goods in Ireland. ESR granted up to fifty percent tax relief to companies on profits derived from export sales of goods manufactured in Ireland and eventually increased that relief to one-hundred percent tax relief by the Finance Act of 1956. However, when Ireland joined the EU in 1973, the ESR under the 1956 Finance Act was deemed discriminatory.

220 *See* FINANCE ACT, No. 1439 (1980).

221 *See* FINANCE ACT, 1980 available at: http://www.irishstatutebook.ie/ZZA14Y1980.html (last visited February 9, 2006).

222 *See* FINANCE ACT, No. 1439 (1980).

223 *See* FINANCE ACT, No. 1617 (1981) and Finance Act, No. 945 (1984).

224 See FINANCE ACT, No. 1439 (1980).

225 See FINANCE ACT, No. 1041 (1990).

The ten percent tax rate was codified at Section 448 of the Taxes Consolidation Act of 1997.[226] The ten percent corporate rate applied to the "sale of goods in the course of a trade which consists of or includes the manufacturer of goods." Goods were defined in section 443 as "goods manufactured in [Ireland] in the course of a trade by the company claiming relief." The definition included fish produced on a fish farm, plants cultivated as part of a trade, and meat processed in accordance with the European Community's regulations.[227] What was not included in the Act was a definition for the term "manufacture."[228] Instead, the Act relied on liberal court decisions that resulted in a broad interpretation of the term.[229] Courts also issued broad guidelines to determine whether a process was to be considered "manufactured."[230] The net result was that a foreign manufacturer could meet the "manufacture" threshold quite easily.[231]

a. New Corporate Tax Scheme: Ireland's Low Corporate Taxes Lead to Disputes Within the European Union

The tax rates were a very successful marketing tool in attracting FDI. The rates led to a decrease in the national debt,[232] and unemployment rates fell from seventeen percent to four percent from 1987 until 2003.[233]

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226 TAXES CONSOLIDATION ACT OF 1997, No. 39 (1997).
227 *See id.*
228 *See* Meredith J. Coleman, *The Republic of Ireland's Economic Boom: Can the Emerald Isle Sustain its Exponential Growth*, 21 U. PA. J. INT'L ECON. L. 833 (2000) [hereinafter Coleman].
229 See *id.* at 849 for a concise summary of how the Irish courts arrived at their broad interpretation of "manufacture."
230 *See id.*
231 *See id.*
232 *See* Julia R. Blue, *The Celtic Tiger Roars Defiantly: Corporation Tax in Ireland and Competition Within the E.U.*, 10 DUKE J. COMP. & INT'L L. 443, 457 (2000) [hereinafter Blue].
233 See ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, ECONOMIC OUTLOOK- IRELAND, NO.76 (2002).

b. Germany Fights Ireland's Low Corporate Tax Rates

Contrary to Ireland's low tax rates, Germany, with forty-five percent corporate tax rates, retained the highest rate in Europe by 1997. Germany thereafter began experiencing negative effects from its comparatively high corporate tax rate.[234] With lower tax rates offered elsewhere in the EU, the cost of doing business in Germany became prohibitive when compared with countries like Ireland. With GDP growth near zero percent, and unemployment at eleven percent, political pressure from German citizens began mounting.[235]

After years of accumulating only slow growth and witnessing the flight of workers and investors to Ireland, Germany soon led an attack on Ireland's low corporate tax rates.[236] Germans pointed to the fact that their €11.46 billion annual contribution to the EU constituted 60% of the EU's budget in 1998,[237] while Ireland was a net beneficiary, receiving €2.8 billion annually.

From 1997 to 1999 Germany pressured the EU to force Ireland to raise its corporate tax rate[238] and to phase out its preferential treatment of businesses within the Shannon Customs-Free Airport Zone (SCAZ)

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[234] *See id.*

[235] *See* World Factbook, *supra* note 140 (explaining that Germany in 2003 had real GDP of -0.1%, unemployment of 10.5%; France by 2003 had real GDP of 0.5% and unemployment of 9.7%).

[236] See Dennis Staunton, *Hoping to Impress Europe's Paymaster – the Strong Links Between Ireland and Germany Will be Confirmed When the Taoiseach Meets the German Chancellor, Mr. Schroeder, In Bonn Today, But All Is Not Sweetness and Light*, IR. TIMES, Dec. 15, 1998, at 17, available in LEXIS, News Library, Itimes Files.

[237] *Id.*

[238] There was wide support for tax harmonization in France and Germany. However, in Ireland, harmonization was and still is widely refuted. Tax harmonization could be justified if there was real evidence that undair tax competition was damaging some EU members at the expense of others. However, evidence does not widely support this notion. *See* Kevin Brown & Jim Kelly, *Tax Harmony? No Thanks: Attempts to Reform Taxation Across the EU Will Meet Huge Resistance, Comment & Analysis*, FIN. TIMES, Mar. 1, 1999, at 17; for an in depth article by a British Parliament member regarding tax harmonization in the EU see Theresa Villiers, *European Tax Harmonization-The Impending Threat,* (June 2001), *available at* http://www.cps.org.uk/pdf/pub/13.pdf (last visited March 13, 2005).

and the International Financial Service Centre (IFSC).[239] In 1998, the Commission declared the tax schemes for the SCAZ and IFSC incompatible with the Common Market and revoked the approval for the IFSC and SCAZ as regions in need of State Aid.[240]

The Commission, under the jurisdiction of the Code of Conduct[241] then addressed the status of the Irish Republic as an approved region for State Aid under Article 92(1) of the EC Treaty.[242] The Commission concluded that tax systems could be considered state aid because reduced tax receipts for a Member State are "equivalent to the

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[239] Member States agreed in the Code of Conduct that the European Commission on Finance must approve any policy of taxation that may have an adverse effect on competition in the Common Market. Since this is a political commitment and does not have the force of law, the Commission turned to State Aid provisions in Article 100 (requires a unanimous EU Council vote to challenge a national tax policy) as the legal basis to reform its corporation tax and IDA grant policies. In July 1987 Ireland applied to the European Commission to have its special 10 percent corporate tax rate extended to certain income derived from trading operations in areas known as the Shannon Customs-Free Airport Zone (SCAZ) and the International Financial Service Centre (IFSC). The Commission cleared the extension of the 10 percent rate under an exception that State Aid given to underdeveloped areas or areas suffering from an unusually low standard of living will not be considered harmful to the Common Market. Blue, *supra* note 232; *see also* EUROPA Taxation and Customs, *Harmful Tax Competition*, http://europa.eu.int/comm/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm (last visited March 12, 2005).

[240] *See* Eur. Comm., *Proposal for Appropriate Measures under Article 93(1) of the EC Treaty Concerning the International Financial Services Centre and Shannon Customs-Free Airport Zone* (December 18, 1998), Commission Notice 395/14, 1998 J.O. (C 395/14).

[241] *See* Council-Conclusion of the Ecofin Council Meeting concerning taxation policy (December 1, 1997) (98/C 2/01) *available at* http://europa.eu.int/comm/taxation_customs/resources/documents/COC_EN.pdf.

[242] TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY, March.25, 1957, Pmbl., 258 U.N.T.S. 11 (1958), amended by SINGLE EUROPEAN ACT, 1987 O.J. (L 169) 1 (effective July 1, 1987) [hereinafter EC Treaty] (defining state aid in 92(1) as "representing a benefit to an undertaking by enabling it to retain a greater proportion of profits either for distribution to its members or its shareholders or for reinvestment and therefore confers an advantage on eligible undertakings").

consumption of state resources."[243] Next, in order for a state action to be considered State Aid, it must favor "production of certain goods."[244] The Commission ruled that this condition was satisfied through the Irish preferential corporate tax scheme and that a justification for a lower rate of tax in certain sectors of the economy no longer existed.[245] The Commission determined that there was unfair competition between Ireland and other Member states because the lower tax rate improves a corporation's competitive position due to higher profit withholdings. Thus, the Commission concluded that the Irish ten percent tax regime benefiting the IFCZ and SCAZ constituted State Aid.

In response, under the Finance Act of 1999, Ireland enacted a 12.5 percent corporate tax rate on "trading income" and a twenty-five percent rate on "non-trading income."[246] These new tax rates, the result of an agreement between the EU and Ireland, could potentially eliminate all incompatibilities for Ireland with the Common Market[247] if the national tax scheme is applied generally to all corporate operating income in a nondiscriminatory fashion.[248]

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[243] Proposal For Appropriate Measures Under Article 93(1) of the EC Treaty Concerning Irish Corporation Tax (December 12, 1998), COMMISSION REGULATION 395/09, 1998 J.O. (C 395/19) 1 [hereinafter EC Tax Proposal].

[244] EC Treaty, supra note 242, at art. 92(1).

[245] EC Tax Proposal, *supra* note 243.

[246] Finance Act, No. 2 (1999) *available at* http://www.irishstatutebook.ie/ZZA2Y1999S71.html (last visited March 13, 2005) (noting the new 12.5 percent corporate rate is effective January 2003 through 2025). Arrangements were made to phase out the ten percent rate; the length of the transition period depends on the industry and when a company received eligibility for IDA grants or preferential treatment by operating within the IFCZ or SCAZ regimes. The EU approved the extension of a 10 percent rate through 2010 for inbound investment projects approved by the IDA before June 1998; the EU then approved 10 percent rate for companies operating under IFSC and SCAZ through 2005. *See* Blue, *supra* note 232, at 461-62.

[247] *See generally* K.R. Goode & K.R. Simmonds, COMMERCIAL OPERATIONS IN EUROPE (1st ed. 1977) (a historical perspective on the European Common Market); *see generally* C.W. Bellamy and Graham D. Child, COMMON MARKET LAW OF COMPETITION (1st ed. 1978) (EC treaties on competition in the European Economic Community); *see generally* Josephine Steiner, EC LAW, (4th ed. 1988) (information on the Internal EC Market).

[248] Blue *supra* note 232, at 463.

With the Finance Act of 1999, the European Commission could no longer characterize Ireland's corporation tax rate as illegal State Aid.[249] The Commission has defined operating aid as aid aimed at reducing a firm's operating expenses,[250] and Article 92(3)(a) of the EC Treaty authorizes such aid in areas of abnormally low living standards and/or serious underemployment.[251] Ireland no longer qualifies for either of these exemptions.[252] Therefore, insofar as Ireland continues its evenly applied corporate tax rate, the country avoids violating the EC Treaty's State Aid provisions.[253]

3. State Organizations like "IDA" Promote Inward Investment into Ireland.

Ireland has been able to effectively market its comparative advantages: the lowest corporate tax rate in the EU,[254] a young, skilled, and educated workforce,[255] a competitive economy,[256] R&D

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[249] *See id.*

[250] *See* European Commission Press Release IP/98/691/B, Commission Addresses Recommendations to Ireland Regarding Corporate Tax, July 1998, *available at* http://www.hri.org/news/europe/midex/.

[251] *See* EC Treaty, *supra* note 242, at Art. 92(3).

[252] See ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, OECD ECONOMIC SURVEYS 1998-1999 – IRELAND 9 (May 1999) (explaining that Ireland's growth throughout the 1990s rendered it the fastest growing economy in Europe and the most economically successful).

[253] The "main criterion in applying Article 92(1) to a tax measure is therefore that the measure provides in favor of certain undertakings an exception to the application of the tax system. The common system applicable should thus first be determined. It must then be examined whether the exception to the system or differentiations within the system derive directly from the basic or guiding principles of the tax system in the Member State. If this is not the case, then State Aid is involved." Blue, *supra* note 232, at 464.

[254] IDA Ireland, *available at* http://www.idaireland.com/home/index.aspx?id=659 (last visited March 19, 2005).

[255] "The characteristics that define Ireland are embedded in its people and their attitude to work and life. Knowledge is in their nature." IDA Ireland, http://www.idaireland.com/home/index.aspx?id=33 (last visited March 19 2005) (providing vital statistics like: Ireland's workforce being among the youngest in terms of future availability; Ireland's workforce being the world leader in "Flexibility and Adaptability of Workforce when faced with new challenges; Ireland's leading labor productivity measured in GDP per person employed per

environment,[257] an advanced and competitive infrastructure,[258] and its education system[259] through development agencies whose role is to entice foreigners and Irish investors to start businesses in Ireland. The four primary agencies are the Industrial Development Agency Ireland (IDA Ireland),[260] Enterprise Ireland,[261] Shannon Free Airport Development Company (SFADCO),[262] and Udaras na Gaeltachta.[263]

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hour; a statistic of Ireland beating out the United States for "Worker Motivation"; Ireland statistically being the most skilled workforce in Europe).

256 "The forces of growth are firmly rooted in Ireland's economy, through favorable demographics, increasing investments in education and a high rate of technology-oriented investments." IDA Ireland, http://www.idaireland.com/home/index.aspx?id=32 (last visited March 19, 2005) (providing GDP numbers that ranked Ireland the highest among OECD countries from 2000-2005).

257 "R&D in Ireland is growing at a phenomenal rate exemplifying the Irish Government's vision for Ireland to become a knowledge economy with leadership in the areas of life sciences, medical technologies, software and information technologies." IDA Ireland, http://www.idaireland.com/home/index.aspx?id=65 (noting the Irish Government is giving "high priority" to funding R&D in Ireland; the National Development Plan 2000-2006 commits to expenditure of €2.48 for research, technological development, and innovation).

258 €64 billion is being invested by private investors in new "high quality" property across the country. "Ireland has access to an EU market of 537 million people. A highly efficient distribution network brings most of Europe within 24-48 hours by truck. An increasing number of companies are gaining additional advantage by centralizing their pan-European distribution logistics in Ireland." €1.27 billion to the National Roads Authority was recently authorized and the Government is commitment to channeling funds for roads. Seaports, which handle three-quarters of Irish trade with the rest of the world, are receiving €142 million in improving port infrastructure from 2000-2006. "Ireland has one of the most advanced and competitive telecommunications infrastructures in Europe. The investment of over $5bn in recent years has resulted in state-of-the-art optical networks. The telecommunications market is fully de-regulated and currently over 20 companies compete on the basis of value-added services." IDA Ireland, http://www.idaireland.com/home/index.aspx?id=34.

259 *See* IDA Ireland, http://www.idaireland.com/home/index.aspx?id=97 ("Ireland has one of the best education systems in the world according to the 2004 independent IMD World Competitiveness Report; [a]lmost 1 million people are in full time education").

260 *See* IDA Ireland, http://www.idaireland.com (last visited March 19, 2005).

IDA Ireland, SFADCO and Udaras have regulatory authority for administering grant aid to investors for capital equipment, land, buildings, training, and research and development.[264] Of the four primary agencies, the most influential in attracting foreign direct investment is the Industrial Development Agency Ireland (IDA Ireland).

a. Background on Industrial Development Agency Ireland

IDA Ireland is an autonomous government-sponsored corporation originally part of Ireland's Department of Industry and Commerce.[265] The Department of Industry and Commerce was re-named

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[261] Enterprise Ireland is the Government organization charged with assisting the development of Irish enterprise. Its clients are mainly Irish manufacturing and internationally traded services companies employing ten or more people, and overseas food and natural resources companies operating in Ireland. Enterprise Ireland also administers National and EU supports for building technological innovation capability and co-operation between industry and higher educational institutions. Finally, it provides a range of services to help international business access and evaluate appropriate and competitive sources of supply in Ireland. *See* Enterprise Ireland, http://www.enterprise-ireland.com/AboutUs; for the statute see INDUSTRIAL DEVELOPMENT (ENTERPRISE IRELAND) ACT, 1998 *available at* http://www.irishstatutebook.ie/ZZA34Y1998.html.

[262] Shannon Development, http://www.shannondev.ie (Shannon Development is primarily responsible to develop industry, tourism, and rural developments in the wider Shannon area); for statute see SHANNON FREE AIRPORT DEVELOPMENT COMPANY LIMITED (AMENDMENT) ACT, 1970 *available at* http://www.irishstatutebook.ie/ZZA9Y1970.html.

[263] Údarás na Gaeltachta's role combines economic development (creating sustainable jobs and attracting investment to the Gaeltacht) with community cultural and language-development activities working in partnership with local communities and organizations in Gaeltacht area. The word "Gaeltacht" refers to areas where the Irish language is the community language. *See* http://www.udaras.ie/udaras/proifil.asp?lang=eng; *see also* the ACT TO ESTABLISH ÚDARÁS NA GAELTACHTA, 1979, *available at* http://www.irishstatutebook.ie/ZZA5Y1979S1.html.

[264] *See generally* INDUSTRIAL DEVELOPMENT ACT, 1995, *available at* http://www.irishstatutebook.ie/1995_28.html; *see also* SHANNON FREE AIRPORT DEVELOPMENT COMPANY LIMITED (AMENDMENT) ACT, 1989, *available at* http://www.irishstatutebook.ie/1989_13.html.

[265] *See Wooing the Foreigner*, THE ECONOMIST, Apr. 9, 1977, at 13 (for Ireland's plan to encourage investing in Ireland).

the Department of Enterprise and Employment after an agency restructuring in 1969, and IDA Ireland became an independent agency.[266] The Industrial Development Act of 1993 outlines the functions of IDA Ireland, the state agency accountable for attracting overseas investment.[267]

IDA Ireland assists foreign businesses in finding plant locations, hiring necessary staff, facilitating grants and government subsidies, helping companies meet governmental requirements, and encouraging research and development.[268] IDA Ireland also encourages existing investors to expand and develop their businesses,[269] and it is currently promoting Ireland as a site for headquartering functions.[270] Its strategy is

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[266] *See id.*

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> The functions of IDA shall be, as an agency of Forfás- (*a*) to promote the establishment and development, in the State, of industrial undertakings from outside the State, (*b*) to make investments in and provide supports to industrial undertakings which comply with the requirements of the enactments for the time being in force, (*c*) to administer such schemes, grants and other financial facilities requiring the disbursement of European Community Funds as may from time to time be authorised by the Minister with the concurrence of the Minister for Finance, and (*d*) to carry out such other functions as may from time to time be assigned to it by Forfás with the consent of the Minister.

The INDUSTRIAL DEVELOPMENT ACT, 1993, *available at* http://www.irishstatutebook.ie/1993_19.html.

[268] IDA Ireland, http://www.idaireland.com/home/index.aspx?id=80; *see also* the FINANCE ACT 2004, *available at* www.finance.gov.ie/documents/publications/legi/financeact04.pdf (introduced tax incentives to encourage firms to conduct research and development); *see also* Deloitte, *available at* http://www.deloitte.com/dtt/cda/doc/content/ie_R%26DFinanceAct_060904.pdf ("A credit of 20% of the incremental expenditure on revenue items, royalties, plants and machinery related to R&D can be offset by a company's corporation tax liability in the year in which it is incurred; a credit of 20% of the cost of a building used for the purposes of R&D and in the respect of which capital allowances are granted is available on a straight-line basis over four years…")

[269] IDA Ireland, http://www.idaireland.com/home/index.aspx?id=3.

[270] *See id.*; *see also* The FINANCE ACT 2004, *available at* http://www.finance.gov.ie/documents/publications/legi/financeact04.pdf (last

to attract foreign investors who are seeking locations for advanced manufacturing or office-based activities which depend on highly skilled processes or are involved in high value-added activities such as biotechnology.[271] It promotes Ireland as a pro-business, knowledge intensive, low-tax, transparent country with an advanced telecommunications infrastructure.[272]

b. Grant Aid Administered by IDA Ireland

In addition to its technical assistance, IDA Ireland provides funding assistance through various grant programs to foreign companies wishing to establish or expand operations in Ireland. Grants are the most commonly used incentive to attract FDI in Ireland,[273] as the "Government continues to believe grants are necessary to compete for internationally-mobile projects."[274] This is particularly true given Ireland's peripheral location and small domestic market.[275]

IDA Ireland has provisions in its incentive agreements to ensure that grant-aided firms meet such obligations as creating and maintaining jobs and exporting a significant percentage of their output. The Government goes even further by making grants more cost-effective and ensuring strict adherence to grant budgets and employment targets.[276] Before any grant payment is made IDA must be satisfied that all conditions set out in the incentive agreement are satisfied.[277] With respect to employment grants, half of the negotiated grant is paid on certification that the job exists; the balance is paid one year later provided the job continues to exist.[278] Progress on each project is monitored by an IDA executive who maintains regular contact with client companies and serves as liaison between the company and IDA Ireland.[279]

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visited April 14, 2005) [hereinafter Headquarters] (introduced tax incentives to encourage firms to set up headquarters in Ireland).

[271] *See* O'Malley, *supra* note 162, at 27.

[272] *See id.*

[273] *See id.* at 34.

[274] *See id* at 29.

[275] *See id.*

[276] *See id.*

[277] *See id.*

[278] *See id.*

[279] *See id.*

IDA Ireland administers capital grants, training grants, research and development grants, and other assistance for production facilities and business offices.[280] Capital grants include those for buildings, site development, building modifications, all equipment except transport-related items, and other fixed assets relating to the project.[281]

Training grants may be awarded to pay up to 100 percent of the costs of training operatives in start-up companies and 50 percent for existing firms.[282] The grants cover the cost of trainees' wages during their training in Ireland, and the grant may also cover management training.[283]

Employment grants are for employers who, in the manufacturing, services, or agriculture industry, increase their workforce over a base level of employment by recruiting eligible full-time employees.[284] IDA Ireland administers Research and Development grants for consulting, wages, travel, subsistence, patents, prototypes and technical assistance from a pool of €2.48 billion.[285]

The unique characteristics of any proposed project, particularly its location, will determine the incentive package available.[286] IDA Ireland evaluates potential projects through a process of negotiation[287]

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[280] *See* IDA Ireland, http://www.idaireland.com/home/index.aspx?id=80. Shozo Nakamura, vice president at Takeda Chemicals Industries, Ltd., says Takeda required the human infrastructure that Ireland provides in order to establish a 24/7 formulation plant for its U.S. and European market in Bray, Ireland in 1997 and its chemical synthesis facility in Dublin; a large benefit cited by Mr. Nakamura for Takeda's European base being established in Ireland was the availability of capital and operations grants. *See also* IDA website, *available at* http://www.idaireland.com/home/news.aspx?id=274&content_id=198; *see also* IDA Ireland – Grant Forms, http://www.idaireland.com/home/index.aspx?id=290 (last visited April 9, 2005).

[281] *See* FDI Ireland, *supra* note 159, at 36.

[282] *Id.*

[283] *Id.*

[284] *Id.*

[285] *See* The National Development Plan 2004-06, www.ndp.ie/ (last visited March 27, 2005).

[286] See FDI Ireland, *supra* note 159, at 37.

[287] "The process of negotiations can take a number of months, the timescale being largely dictated by the speed with which the applicant company can respond to IDA Ireland and provide it with information. Following an introductory meeting IDA Ireland will, if it is interested in the project, request

and is predominately interested in supporting businesses that wish to locate outside of Dublin.[288] As a result of "Agenda 2000"[289] Ireland has been treated as two regions for the purpose of EU structural funding[290]

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the submission of a formal business plan. In broad terms, the business plan should cover the following areas: Background information on the company, including a brief history of the company, a description of its product range and markets, a commentary on the company's financial status and a brief resume of key individuals in the company; a description of the project which it proposes to locate in Ireland and the reasons for selecting Ireland. This description should cover expected number of jobs to be created, markets to be served from Ireland, the level of investment and the expected contribution to the Irish economy; ownership structure for the Irish operation; financial projections for five years, with details of assumptions underlying these projections." *See* IDA Ireland, *Ireland Economy, Overseas Investment, Irish Tax, Ireland Investment*, http://www.idaireland.com/home/sitetool.aspx?id=3&content_id=1#twotwo (last visited October 10, 2005).

[288] "While investors are free to choose the location of their investment, IDA Ireland has since the 1990s differentiated grant aid levels in favor of regions outside Dublin." *See* Investment Climate, *supra* note 167. For a comprehensive view of Ireland's developmental goals from 2002 through 2020 *see* The National Spatial Strategy, *available at* http://www.irishspatialstrategy.ie (The National Spatial Strategy (NSS) was adopted in 2001 with the goal of spreading investment more evenly across the country. The NSS will sustain Dublin's role as the engine of the economy while strengthening the drawing power of other areas, bringing people, employment and services closer together. One of the strategy's stated goals was to direct fifty percent of all new jobs related to greenfield investment to the border, midlands, and western counties of Ireland, where the economy is less-developed. In 1999, roughly twenty-five percent of jobs related to greenfield investment were located in the border, midlands, and western counties of Ireland; by 2003 this figure was forty-six percent).

[289] On 26 March 1999, at the Berlin European Council, the Heads of Government or States concluded a political agreement on Agenda 2000. Agenda 2000 is an action program whose main objectives are to strengthen Community policies and to give the European Union a new financial framework for the period 2000-06 with a view to enlargement. One of the priorities of the agreement was to increase the effectiveness of the Structural Funds and the Cohesion Fund by greater "thematic and geographic concentration of projects" on specific objectives and geographical areas and thus improving management. EUROPA, Agenda 2000, http://europa.eu.int/comm/agenda2000/index_en.htm. (last visited March 27, 2005)

[290] European Structural Funds allocate "more than a third of the EU's budget giving practical shape to European solidarity for the benefit of economic and

and maximum "regional aid."[291] Under the new rules, maximum grant aid to companies (forty percent of capital investment) is only available to companies located in the 13 "Objective 1"[292] border, midland, and western (BMW) counties of Ireland where infrastructure is less developed.[293] Companies located in the remaining 15 counties in the more prosperous south and east are entitled to restricted grant aid up to a maximum 17.5% to 20% of their capital investment, depending on location.[294]

Grant aid is paid out only after externally-audited performance targets have been attained.[295] Generally parent companies must guarantee repayment of the government grant in the event that the company closes before an agreed period of time elapses (normally ten years after the grant has been paid).[296] These so-called "clawback" provisions[297] are seldom invoked but useful to ensure that firms that

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social cohesion and the exploitation of Europe's competitive advantages, which are essential for growth and employment." Europe Regional Policy: The European Structural Funds (2000 - 2006), *available at* http://europa.eu.int/comm/regional_policy/atlas/ireland/factsheets/pdf/fact_ie_en.pdf. (last visited March 28, 2005).

[291] During 2000-2006 Ireland is receiving €4.31 billion from European funds in order to finalize the catching up process of its lagging economy and thus consolidate the country's recent economic development. *See id.*

[292] The general issues covered by "Objective 1" in Ireland are: (1) pursuit of economic growth and development with a view to sustainable development; (2) enhancing the country's international competitiveness; (3) promoting balanced regional development; (4) promoting social inclusion and equitably distributing the income from growth. These sectoral programs have been implemented to deal with common problems like economic and social infrastructure (i.e. modernizing of the national road network, improvements to public transport, renewable energies, and health and housing), employment and human resources (i.e. gender equality, entrepreneurship, and reinsertion into the job market), productive sector (research and development), and technical assistance (information, financial and IT management). *See id.*

[293] Poland is entirely Objective 1. *See Id.*

[294] *See id;*

[295] *See id.*

[296] *See* FDI Ireland, *supra* note 159, at 29.

[297] *See id.* (Noting that a grant can be canceled or revoked if one or more of the following condition is broken: "(a) the company fails to complete the provision of the fixed assets within an agreed time period; (b) the company fails to comply to the satisfaction of the IDA with any of the conditions relating to the grant

come to Ireland do not take maximum advantage of the grants and then leave the market.[298]

IDA Ireland will also guarantee loans, subsidize interest on loans, and provide financial assistance with rent for necessary factories. Occasionally, IDA Ireland facilitates joint ventures between foreign and indigenous companies.[299]

c. IDA Ireland's Contributions to Economic Boom

One of IDA Ireland's contributions was the creation of approximately 23,000 jobs to Ireland in 2000 and over 9,200 jobs in 2003.[300] It is also credited with bringing over 1050 foreign-owned companies to Ireland.[301] IDA Ireland has been instrumental in attracting high tech industry[302] and has helped Ireland become a worldwide leader in pharmaceutical manufacturing, software development, medical technologies and engineering.[303] In all, the 1050 firms employ approximately 130,000 people accounting for over one quarter of GDP and eighty percent of exports.[304]

A profound effect of attracting foreign firms to Ireland is the positive spillovers generated. The combination of foreign firms' annual

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offer; (c) steps are taken to wind up the company; (d) a receiver is appointed over the company's property; and (e) the company, without the consent of the IDA, ceases to carry on the undertaking.")

[298] *Id.*, at 29.

[299] Investment Climate, *supra* note 167.

[300] IDA, *IDA Ireland Annual Report* (2004), http://www.idaireland.com/home/index.aspx?id=83 (last visited October 14, 2005) [hereinafter IDA Annual Report].

[301] IDA, *IDA Ireland Business Sectors* (2005), http://www.idaireland.com/home/index.aspx?id=4 (noting that foreign-owned firms account for 80% of the exports, one-quarter of the GDP, and 130,000 jobs directly and indirectly).

[302] *Id.* (the IDA focuses on attracting advanced manufacturing projects in the ICT, Pharmaceuticals and Biopharmaceuticals, Medical Technologies, Engineering and Consumer Products sectors as well as high value Internationally Traded Services sectors in Software, Financial Services, Shared Services, Customer Support activities, and a new sector: digital media, which has attracted Google, Ebay, and Overture to Ireland).

[303] *Id.*; *see also* The Luck of the Irish, *supra* note 143, at 5.

[304] *See* IDA Annual Report, *supra* note 300.

wage bill and money spent on Irish services and components alone is an important factor for the Irish economy.[305] In addition, foreign companies transferred technology, skills, and managerial expertise to Ireland, improving productivity throughout the country.[306] This "linkage" factor has in turn raised the national welfare in Ireland[307] and improved competition among multinational and indigenous firms.[308] Finally, with multinational firms bringing new technology into Ireland, local firms have benefited by being able to hire workers whose training costs have in effect been paid for by the multinational. Of course, many of these multinational firms retain workers, in which case domestic labor captures the full benefit of worker training.[309] In either case, multinational firms raise national welfare and IDA Ireland is partly responsible.[310]

IDA Ireland selectively targets high-growth potential industries that produce sophisticated products and services because they will provide long-term sustainable employment in Ireland.[311] IDA Ireland also recognizes the correlation between advanced technology and U.S. businesses, IDA Ireland concludes it necessary to maintain offices in New York, Boston, Chicago, Los Angeles, San Jose, and Atlanta.[312]

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[305] *Id.*

[306] Gordon H. Hanson, SHOULD COUNTRIES PROMOTE FOREIGN DIRECT INVESTMENT? (Feb. 2001) at 10. (Suggesting that the arrival of multinational companies increases an economy's access to specialized intermediate inputs (which are produced in more developed economies and accessible abroad only through multinationals), which in turn raises the economy's total factor production. Multinationals give less developed economies access to the stock of knowledge capital in more developed economies. This access makes labor and other factors in the host economy (Ireland) more productive).

[307] *Id.*, at 11.

[308] *Id.*

[309] *Id.*

[310] *Id.*

[311] Ireland's targeted sectors are: pharmaceuticals, biopharma, healthcare, e-commerce, information and communications technology, software, and internationally traded services. IDA Ireland, *Ireland Economy, Overseas Investment, Irish Tax, Ireland Investment,* http://www.idaireland.com/home/sitetool.aspx?id=3&content_id=1#twotwo (last visited October 10, 2005).

[312] *See* Investment Climate, *supra* note 167.

IDA Ireland also maintains offices throughout Europe and Asia to attract advanced technology businesses.[313]

d. Quality, not Quantity, of FDI Drives Ireland

Because of IDA Ireland and other agencies[314] and foundations,[315] the quality of the flow of foreign investment is even more important than the quantity. The assumption is that not all types of investment will be equally good and/or automatically lead to economic growth and development. The objective for Ireland was to view investment flows in terms of the need to improve opportunities for investors in developed countries, like the United States and Europe. Thus, Ireland caters to the particular high growth industries that follow.

IDA Ireland's marketing is helped out greatly by the Irish Government's active and effective State intervention. When Ireland started becoming a net recipient of FDI, regulations on foreign investors were imposed, like the "clawback" provisions, in order to ensure that such investment contributed to their long-term national development. When Ireland took a strategic approach to foreign investment, it meant that different sectors could be subject to different policies at the same time. It also meant that policy was able to evolve over time according to changes in their economic structure and external conditions. Hence, Ireland's latest attempts to remain an attractive FDI recipient are (1)offering grants to lure top scientists and researchers through Science Foundation Ireland [316] and (2)solidifying FDI by encouraging companies to establish headquarters in Ireland through the Finance Act, 2004.[317]

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313 *Id.*

314 *See* Enterprise Ireland, *Transforming Irish Industry*, Dec. 12, 2005, http://www.enterprise-ireland.com/AboutUs/Organisation/other_agencies.htm (last visited October 10, 2005).

315 Science Foundation Ireland uses grants to lure top scientists and researchers in the fields of biotechnology and information technology. Science Foundation Ireland is responsible for the management, allocation, disbursement, evaluation and expenditure of over €600 million for strategic research in the years 2000 to 2006 under the National Development Plan. *See* Science Foundation Ireland, http://www.sfi.ie/home/index.asp. (last visited April 10, 2005)[hereinafter Science Foundation Ireland].

316 *See* FORFAS Science Foundation Ireland, http://www.irishscientist.ie/2001/contents.asp?contentxml=01p12.xml&contentxsl=IS01pages.xsl (last visited April 14, 2005).

317 *See* Headquarters, *supra* note 270.

i. Pharmaceutical Industry

Ireland is the world's largest exporter of pharmaceuticals with €34 billion in intermediates and finished pharmaceuticals exported in 2002.[318] The sector's success is evidenced by several examples of repeat investment with major pharmaceutical companies having multiple plants in the country. For example, Pfizer operates six manufacturing sites in Ireland, in addition to a Corporate Bank and a European Financial Shared Services Centre.[319]

The pharmaceuticals sector has become increasingly integrated in recent years. Early investment in fine chemical plants producing bulk active materials was followed by investment in finished product pharmaceuticals. Many plants now engage in product development for Irish and other plants.[320]

ii. Information Communications Technology (ICT)

IDA Ireland was successful in attracting over 300 foreign ICT companies to develop, market, and manufacture advanced products.[321] Seven top-tier ICT companies, including IBM, Intel, Hewlett Packard, Dell and Microsoft, employ 45,000 workers in Ireland.[322] In 2003, exports in this sector exceeded €21 billion, representing twenty-six percent of all exports.[323]

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[318] *See* IDA Ireland, http://www.idaireland.com/home/index.aspx?id=64 (last visited April 14, 2005).

[319] *Id.*

[320] *Id.*

[321] *See* IDA Ireland, *Information Communications Technology Industry Profile*, http://www.idaireland.com/home/index.aspx?id=56 (last visited April 9, 2005). "Many of the worlds leading ICT companies have Irish operations that have expanded to take advantage of Irelands unique set of competitive advantages. Functions such as shared services, supply chain management, technical support, software development and R&D are increasingly included in the range of operations carried out by ICT companies in Ireland."

[322] *See id.*

[323] *See id.*

iii. Medical Technologies

As of 2005, the Medical Technologies sector brought 110 companies, who employ over 22,000, to Ireland[324] Sales are in excess of €4 billion annually with annual growth approaching ten percent.[325] Global firms chose Ireland to develop, manufacture and market products ranging from disposable plastic and wound care products to pacemakers, microelectronic devices, orthopedic implants, diagnostics, and contact lenses.

iv. Engineering

Over 170 international engineering companies have invested directly in Ireland to carry out a broad range of activities in the automotive, electrical engineering, materials handling, and automation.[326]

e. Conclusion on IDA Ireland

IDA Ireland plays a crucial role in making Ireland a transparent and investor-friendly nation. More than 1050 foreign IDA-supported companies in Ireland employ around 130,000 people. The companies account for one quarter of GDP and over 80% of exports.[327] Through the attraction of large amounts of FDI, IDA Ireland plays a significant role in Ireland's technological, infrastructure, and human resource development, as well as promoting its business friendly environment. IDA Ireland's biggest contribution to Ireland's success is its ability to acquire high-tech investment from the pharmaceutical, healthcare, information technology, and communications industries.

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[324] *See* IDA Ireland, *Medical Technologies Industry Profile*, http://www.idaireland.com/home/index.aspx?id=57 (last visited April 9, 2005).

[325] *See id.* "this sector in Ireland has comparable scale to the largest clusters globally in Minnesota and Massachusetts."

[326] *See* IDA Ireland, *Engineering Industry Profile*, http://www.idaireland.com/home/index.aspx?id=59 (last visited April 9, 2005). Major global engineering companies operating in Ireland include; ABB, Cardo, Eaton, Honeywell, Ingersoll Rand, Magna, Kostal, Kone, Liebherr, Pratt & Whitney, and Siemens.

[327] *See* IDA Ireland, http://www.idaireland.com/home/index.aspx?id=4 (last visited January 27, 2006).

4. Other Sources of Success

a. Education

One of Ireland's bigger attractions is a ready supply of skilled workers including scientists, engineers, and business graduates.[328] The Irish government has invested heavily in both secondary and higher education since the 1960s.[329] Dublin's two main universities, in addition to universities in Cork and Galway, became crucial to the information technology, health-care, and pharmaceutical companies that invested in those regions.[330] Studies suggest that foreign investors consider the quality and education levels of Ireland's population to be two of the country's greatest advantages.[331]

With over forty percent of the population under the age of twenty-five, Ireland currently has the youngest population in Europe.[332] Ireland prepared this new, young population to enter the workforce by investing heavily in public and private spending on higher education over the past decade. The result of the investment is that Ireland has one of the best education systems[333] and one of the world's highest populations of tertiary education graduates in Europe.[334] Ireland produces over 35,000

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[328] In the 20-29 age bracket Ireland has more science and technology graduates per thousand (23.2) than France (19.6), the UK (16.2), USA (10.2), Germany (8.2), Portugal (6.3), and the Netherlands (5.8). It only trails Japan. For more information about education throughout Europe, *see* Education Across Europe 2003, *available at* http://epp.eurostat.cec.eu.int/cache/ITY_OFFPUB/KS-58-04-869/EN/KS-58-04-869-EN.PDF. (last visited April 3, 2005).

[329] For information on Ireland's past and future educational endeavors *see* Higher Education Authority, http://www.hea.ie/ (last visited October 10, 2005); *see also* Ireland's National Access Plan 2005-2007 *available at* http://www.hea.ie/index.cfm/page/publications/category/143/section/details/id/856. (last visited October 10, 2005).

[330] *See* http://foreignaffairs.gov.ie/information/publications/facts/fai/services.asp (last visited February 9, 2006).

[331] IDA Ireland, Education, Workforce, and Population Statistics, http://www.idaireland.com/home/index.aspx?id=33 (last visited October 10, 2005).

[332] *See id.*

[333] *See* IMD World Competitiveness Yearbook, 2004 *available at* http://www02.imd.ch/wcc/ranking/ (last visited April 3, 2005).

[334] Ireland boasts 47.85% of its working population has achieved higher education. This is compared with United Kingdom at 39.5% and the United

college graduates each year, and since 1992, there has been a thirty-five percent increase in students studying college-level engineering and technology courses.[335]

b. Lack of Corruption

Adding to the transparency in Ireland is the well-established body of law against corruption. Ireland has a laundry list of legislation related to anti-bribery and corruption including the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, and the Prevention and Corruption (Amendment) Act, 2001, which amended all previous corruption Acts.[336] This body of law makes it illegal for Irish public servants to accept bribes. It also criminalizes bribery by foreign officials and may invalidate a contract that a party is seeking to enforce in Ireland.[337]

Ireland strengthened its stance against corruption in 2003 by signing the UN Convention against Corruption.[338] In addition, increasing amounts of judicial Tribunals investigate whether political donations by certain Irish companies in the 1980s and 1990s are linked to favorable government decisions made mostly at local levels, in zoning and tax matters.[339] However, there remains no indication that foreign businesses or investors have had to make such payments or been approached to make such payments to conduct business during the period in question.[340]

States at 39%, *see* http://www02.imd.ch/wcc/ranking/. (last visited April 3, 2005); *see also* Measuring Ireland's Progress 2004, Central Statistics Office Ireland, *available at* http://www.cso.ie/releasespublications/documents/other_releases/2004/progress/measuringirelandsprogress.pdf (last visited April 3, 2005).

335 IDA Ireland, *Education Ireland, European Market Research Facts About Ireland*, http://www.idaireland.com/home/index.aspx?id=97 (last visited April 3, 2005).

336 Prevention and Corruption (Amendment) Act, 2001 (Act. No. 27/2001)(Ir.) *available at* http://www.ucc.ie/law/irlii/statutes/2001_27.htm (last visited April 3, 2005).

337 *See id.*

338 See United Nations Office on Drugs and Crime, http://www.unodc.org/unodc/en/crime_signatures_corruption.html (last visited April 1, 2005). Ireland is one of 133 signatories to the Convention.

339 *See* Investment Climate, *supra* note 167.

340 *See id.*

c. **Demographics**

Recent estimates put the Republic of Ireland's population at around 3.8 million people, about one percent of Europe's total population, with over thirty-five percent of the population living within sixty miles of Dublin. With a large population around Dublin, Ireland was able to the Dublin metropolitan area effectively to foreign investors despite lags in infrastructure from the 1970s until today.

With over forty percent of its population under twenty-five, Ireland has the youngest population on the European continent.[341] In addition, Ireland has a low level of welfare support. Hence, where other European economies faced ageing populations and rising unemployment in the 1980s, 1990s and today, resulting in Welfare crises, Ireland, throughout its economic miracle, was helped by its youthfulness and high employment demand.[342]

B. Conclusion on Ireland

As Ireland moved up the technological and production ladder, and as their export structure shifted from a dependency on commodity exports toward exports of higher value-added and innovation-based products, incomes and standards of living increased and became more sustainable in the long run. However, with the increase in standard of living in Ireland and competition increasing across the globe, Ireland saw its low-cost advantage slip away. Instead of keeling over, the Irish economy reinvented itself by building a knowledge-driven society.

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[341] *See* http://www.letsgo.com/IRE/03-SoftGI-38.

[342] Between 1989 and 1999, social security transfers as a percentage of GDP in Ireland fell from 14.2% in 1989 to 9.6% in 1999. This contrasts with Germany in the same period (increased from 15.7% to 18.9%), Spain (increased from 15.4% to 17.2%) and Sweden, which experienced a slight drop from 19.4% to 18.9%. The average for the EU over this period stayed broadly the same, at 16.9% in 1989 and 16.8% in 1999. A number of factors influence social expenditure levels in different countries. Some of the difference between Irish and EU social expenditure levels can be attributed to the reduction in unemployment supports as Irish employment grew. The proportion of the Irish elder population is a third lower than the EU average. This reduces pension and elder care expenditure and Ireland's proportionately larger share of foreign owned profits as a component of GDP reduces the national income available for social expenditure. For a comparative analysis of social expenditure across the globe, *see* Dr. Virpi Timonen, IRISH SOCIAL EXPENDITURE IN COMPARATIVE INTERNATIONAL CONTEXT (2003).

It is debatable whether one cause can be attributed to the success of the Irish economy. However, observers should note that foreign direct investment is critically important to the Irish economy. In terms of employment and employment growth, industrial growth and output, productivity growth, the expansion and diversification of exports, and contributions to the treasury, foreign firms have contributed significantly to Ireland's economic growth and development.[343]

There is no question that the early decision by the government to welcome and support foreign firms helped bring more FDI into the country.[344] The Irish Government's sound economic policy, generous tax and financial incentives, and its push to have a competitive workforce have all contributed to Ireland's industrial development. With the continued efforts of IDA Ireland in selectively targeting firms with high-growth potential for foreign direct investment in Ireland, Ireland's economic growth will continue indefinitely.[345]

IV. Foreign Direct Investment in Poland

After a false start in the early 1990s when Poland tried to protect jobs in communist-era industries, and privatization schemes led to corruption, Poland figured out that only the foreign companies had the capital and management know-how to restructure their economy.[346] Since the early 1990s, aided by low labor costs and a central location, international business invested over $84 billion in Poland.[347]

However, Poland's still-bloated public bureaucracy hampers registering properties, which takes approximately 200 days,[348] and the

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343 *See* FDI Ireland, *supra* note 159, at 53.

344 *See id.*

345 *See* The Luck of the Irish, *supra* note 143, at 7.

346 *See* Marcus Walker & Matthew Karnitschnig, *Fifteen Years After the Berlin Wall Fell, Economic Situations Are Reverse of Expectations*, WALL ST. J., Nov. 9, 2004, at A16 [hereinafter Walker].

347 *See* Polish Information and Foreign Investment Agency, http://www.paiz.gov.pl/index/?id=a87ff679a2f3e71d9181a67b7542122c (last visited April 10, 2005).

348 The OECD average is 4 steps and 33 days. *See* The World Bank Group, *Explore Economies Doing Business*, http://rru.worldbank.org/DoingBusiness/ExploreEconomies/BusinessClimateSnapshot.aspx?economyid=154 (last visited April 10, 2005) [hereinafter Explore Economies]

corporate tax law requires companies to file returns on a monthly basis.[349] In addition, enforcing contracts in the Polish court system takes an average of 1,000 days, four times the OECD average.[350] An addition obstacle is the country's creaking physical infrastructure, even in contrast to the former East Germany, where west-German money poured in to build roads and improve transit. Poland has very few highways, and Warsaw has just one subway line.[351]

With unemployment at an EU-worst 19.2 percent, privatization cooling, and a deteriorating banking sector led by non-performing loans,[352] Poland was forced to take an affirmative stance on foreign direct investment to improve its economy.[353] Only lately has Poland reassessed its laws and policies on foreign direct investment to do this.[354]

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[349] *See* Walker, *supra* note 346, at A16.

[350] The OECD average is 232 days. *See* Explore Economies, *supra* note 348.

[351] *See* Walker, *supra* note 346, at A16. Currently three major expressways spanning the entire country are being planned or built, to be finished some time in the next decade, a level of development achieved in Western Europe decades ago. Poland also has many two-lane and a few four-lane highways which connect all areas of the country not serviced by the main expressways. These are supplemented by a network of generally poorly maintained side roads and local paved routes. For more information on the Polish road system and legislative action regarding roadways, *see* Roads and Expressways in Poland, http://www.absoluteastronomy.com/encyclopedia/R/Ro/Roads_and_Expressways_in_Poland.htm (last visited October 16, 2005). For information on the subway transit system *see*: http://www.urbanrail.net/eu/war/warszawa.htm (last visited January 27, 2006).

[352] For a paper analyzing Poland's commercial banking sector in the context of modern market-based economic systems and concluding that Poland must develop a two-tiered system that divorces the central bank from making commercial credit decisions; the need to establish a clear legal and supervisory framework that regulates banking activities; and ways to deal with bad debts and ensure that banks are adequately capitalized see Tracy Hofer, A Tale of Two Nations: Commercial Banking in Poland and Ukraine, Central Wisconsin Economic Research Bureau (2002), *available at* http://www.uwsp.edu/business/cwerb/3rdQtr02/SpecialReportQtr3_02.htm. (last visited October 16, 2005).

[353] *See* Cowell, *supra* note 43, at A6.

[354] From 1991 until January 1, 2001, under the "Foreign Investment Law of June 14th 1991," Poland had restrictive foreign direct investment statutes. *See* Restrictions on FDI, *supra* note 195, at 5, stating Poland from 1998-2000 was

The operative assumption has been, and still is, that transitioning countries can stimulate FDI through their investment laws and regulations.[355] Because the use of foreign investment laws to attract FDI is, in significant part, a marketing issue, it is important that Poland assess its target market to establish efficient laws.[356]

From the European business perspective, Poland is an interesting place for investment. It is situated between highly developed Western Europe and underdeveloped Eastern European markets such as Russia and the Ukraine.[357] This geographic location creates a number of opportunities for investment across Europe. In addition, because of Europe's world power, investment from the United States and Asia can be channeled into and through Poland. Moreover, Poland, with thirty-eight million inhabitants, has a remarkable local market.

A. Business Enterprises in Poland

Poland's businesses, both foreign and domestic, were recognized under the "Business Activity Law," from November 1999 until July 2004.[358] Under this law, foreign investors and Polish investors for the first time had equal rights in creating and conducting for-profit business in Poland.[359] Foreign entrepreneurs could, subject to the principle of reciprocity, take up and conduct business on the basis of the same principles, as those applicable to the process of obtaining permanent

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well below the median for ease of FDI statute restrictions among OECD countries.

[355] A common theme in law circles is that development is a function of a particular country's legal system. Proponents of this theme cite the work of Max Weber for the proposition that Western industrial development has its genesis in the development of a rational legal system. *See* Scott Norman Carlson, *Foreign Investment Laws and Foreign Direct Investment in Developing Countries: Albania's Experiment*, 29 INT'L LAW. 577 (1995) [hereinafter Carlson].

[356] *See id.* at 581.

[357] *See* OECD, *Secretary-General to Meet Russian President*, http://oecdmoscow.9.com1.ru/engweb/russianvisit.htm; *See also* OCECD, *Challenges and Policy Reforms for Improved Investment Environment in Ukraine* (Feb. 2002), http://www.oecd.org/dataoecd/21/29/1832745.pdf (last visited April 10, 2005).

[358] *See* Business Activity Law, Nov. 19, 1999, (Journal of Laws, No. 101, Item 1178), art. 2. [hereinafter Business Activity Law].

[359] *See* Business Activity Law (1999) at art. 5.

residency or opening a registered office in Poland.[360] For foreigners from countries not providing reciprocity, only the limited partnership, private limited company, or a public limited company applied.[361]

1. Companies

The Polish legal system now allows for a wide range of commercial legal entities. The private limited company[362] allows for foreign capital participation up to 100 percent with the exception of certain activities. The private limited company is the most popular type of commercial legal entity as it has limited liability, flexibility, and simplicity.[363] It is mainly regulated by the Commercial Companies Code[364] and is easy to establish. It is managed by a management board,

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[360] Reciprocity refers to the "EU Reciprocity" rule in paragraph 11, item 2, in Appendix XII to the EU Accession Treaty, which stipulates the terms to Poland's accession. Reciprocity allows countries to consider the freedom of workers throughout the EU. For instance on April 30, 2004 Poland issued a decree that limited the amount of workers from all EU-15 members except Ireland, Sweden and the United Kingdom that can work in Poland without a work permit. What the decree means is that people from 12 these countries still need a work permit to work in Poland after April 30, 2004, and workers from the three remaining countries can work unrestricted in Poland. It also means that Polish workers may go to Ireland, Sweden, and the United Kingdom without worker permits. Furthermore, if a Polish national is working in one of the 12 countries continuously for 12 months prior to April 30, 2004, he has unrestricted access to that particular labor market, and vice versa for EU foreign nationals in Poland. *See* Malgorzata Kania, *Poland's EU Membership Gives Rise to Change in Residency and Work Permit Rules Affecting Workers from Other EU Member States*, http://www.us.kpmg.com/microsite/tax/ies/2004_Flash_Alerts/fa04-098.pdf (last visited October 16, 2005).

[361] *See id.*

[362] This is more commonly known in the United States as a limited liability company (LLC).

[363] *See* Baker Tilley Int'l., *Doing Business in Poland* 9 (2003), http://www.bakertillyinternational.com/PDF/DoingBusinessinPoland2003_04.pdf (last visited October 16, 2005). [hereinafter Doing Business in Poland].

[364] The Commercial Code came into effect in June 1934 (with later amendments), and regulates the economic activity. "The provisions of the Commercial Code apply to commercial companies (registered partnerships, limited partnerships, limited liability companies and joint stock companies) as well as firms, procuration and the right of lien, the commercial register and liquidation of companies. A section of the Commercial Code, dealing with

which may have one member or more. A supervisory board and an audit committee are optional.[365] The minimum initial capital is 50,000 zloty.[366]

Poland also has a public corporation known as the "public limited company."[367] The Public limited company is governed under the Commercial Companies Code.[368] Foreign capital participation is allowed up to 100 percent for certain types of activities.[369]

2. Branches

For the first time in Poland's history, in accordance with article 35 of the Business Activity Act,[370] foreign entrepreneurs were able to establish branches in Poland, as long as international agreements ratified by Poland did not provide otherwise. When establishing a branch, a foreign entrepreneur must conduct business activity only within the

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commercial contracts (agency, consignment, mediation and storage) was repealed in 1964 and it is now a part of the Civil Code. All Commercial Code provisions take precedence over those of the Civil Code. The Commercial Code guarantees a certain degree of leeway for parties negotiating the terms or founding the agreements of new firms. The provisions of the agreements take precedence over those of the Commercial Code. Amendments to the Commercial Code, which have been in preparation for over a year, are aimed at modernizing its legal norms and adapting them to models prevailing in the EU. The provisions of the Commercial Code are strictly linked to such normative Acts as that of Act of August 30th 1996, dealing with the privatization of State-owned enterprises, or the Act of 14th June 1991, concerning companies with foreign capital investment (Joint Ventures). The Commercial Code also includes: the 1926 law on restricting unfair competition; the bankruptcy law of the 1936 Decree of the President of the Republic of Poland; the law on settlement procedures from the Decree of the President of the Republic of Poland of 1934." Law and Regulations, http://www.polandonline.com/law.html, (last visited October 16, 2005). To view the ACT OF 14TH JUNE 1991, *see* http://www.prawo.org.pl/statutes/stat22.html, (last visited October 16, 2005). For the ACT OF AUGUST 30TH, 1996 ON THE COMMERCIALISATION AND PRIVITISATION OF STATE ENTERPRISES, *see* http://www.prawo.org.pl/statutes/stat20.html, (last visited October 16, 2005).

365 *See* Doing Business in Poland, *supra* note 363, at 9.

366 *See id.*

367 *See id. at 11.*

368 *See* Law and Regulations, *supra* note 364.

369 *See* Doing Business in Poland, *supra* note 363, at 11.

370 *See* Business Activity Law (1999), *supra* note 358, art. 35.

scope of activity of the parent company.[371] The foreign entrepreneur must nominate a person authorized in the branch to represent him. A branch of a foreign company may start operations after entering the register of entrepreneurs[372] kept by the National Court Registry.[373]

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[371] Branches are required to use the business name of the parent company in the language of the country of that company together with the legal status of that company translated into Polish adding the phrase "oddział w Polsce" ("Branch in Poland"). Branches are also required to keep separate accounting in Polish, in accordance with the accounting regulations, and to keep the relevant minister informed about any factual or legal changes in their operations. *See* Business Activity Law (1999), *supra* note 358 at art. 36.

[372] *See* Business Activity Law (1999), *supra* note 358 at art. 38. With his application the foreign entrepreneur has to provide the following: (1) The full name and address in Poland of the person authorised in the branch to represent the foreign entrepreneur; (2) notarized specimen signature of the person authorized in the branch to represent the parent company in Poland; (3) certificate from a relevant Polish diplomatic agency abroad confirming that, in accordance with the principle of reciprocity, Polish entrepreneurs are allowed to conduct business activity in the country in which the foreign person is domiciled or has its registered seat, on the same principles as the entrepreneurs domiciled or having their registered seat in such country. The above certificate is not required if there is an agreement signed between the said country and the Republic of Poland including the principle of reciprocity; (4) if a branch operates on the basis of a foundation act, deed of company formation or articles of association, they must be attached to the registration documents of the branch together with certified translation into Polish (if the foreign entrepreneur sets up more than one branch in the territory of Poland, he can file the above documents in the records of only one of the branches, but the branch in which the documents have been filed must be indicated in the records of the remaining branches, together with the court in which the records are kept, as well as the number of the branch in the register); (5) if the foreign entrepreneur exists or conducts business activity on the basis of the entry into the commercial register, he must submit to the registration files a certified extract from such register, together with its certified translation into Polish; if the parent company is not incorporated under the law of one of the EU member states, he must submit a statement about the portion of the share (stock) capital that has been paid up. *See* Starting business activity in the Republic of Poland by foreigners, http://www.wroclaw.pl/p/4167/ (last visited April 7, 2005).

[373] *See generally* http://www.wroclaw.pl/m/88/ (last visited February 9, 2006).

3. Representative Offices

Under the Business Activity Act, foreign entrepreneurs may also establish representative offices based in Poland.[374] Representative offices are only entitled to conduct advertising and promotion activities for and on behalf of the business of the foreign entrepreneur within the territory of Poland. In order to establish a representative office, a foreign entrepreneur needs to apply for an entry in the Register of Representative Offices of Foreign Companies, kept by the Ministry of Economy.[375]

4. Sole Proprietorships and Partnerships

Foreign entrepreneurs may conduct business activity in all forms allowed to Polish citizens, such as: the limited capital partnership, the professional partnership, registered partnership, the civil partnership, and the sole trader. Foreign persons have the status of a domestic entrepreneur[376] if (1) based on the principle of reciprocity, they

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[374] *See* Business Activity Law (1999), *supra* note 358 at arts. 43 & 44.

[375] *See* Business Activity Law (1999), *supra* note 358 at art 45. Drawn up in Polish, the application should include the (1) name, registered seat and legal status of the foreign entrepreneur setting up a representative office; (2) amount of share capital or other founding funds of the foreign company setting up a representative office; (3) scope of business activity of the foreign company setting up a representative office; (4) full name and address in Poland of the person authorized in the representative office to represent the foreign entrepreneur, and (5) address of the representative office in Poland. It also should include: (1) the founding act (articles of partnership, articles of association) of the foreign entrepreneur; (2) an official copy from the commercial register or its counterpart; (3) a letter of representation from the foreign entrepreneur about setting up a representative office in the Republic of Poland; (4) a letter of representation from the foreign entrepreneur, if it is a partnership, about what portion of its founding capital (share capital) has been paid, if the law in the place of the company's seat allows for partial contribution of capital; (5) document confirming the foreign entrepreneur's title to the premises (real estate), in which the business activity is to be conducted. See Starting Business Activity in the Republic of Poland by Foreigners, http://www.wroclaw.pl/p/4167/ (last visited April 7, 2005) [hereinafter Starting Business].

[376] The entrepreneur is subject to Polish law. See Starting Business, *supra* note 375.

personally conduct business activity in Poland, or (2) they are partners in limited partnerships.[377]

B. Act of 2 July 2004 on Freedom of Economic Activity

President Kwasniewski signed the Act on Freedom of Economic Activity in July 2004 (Law on Economic Activity), replacing the Business Activity Act as the sole authority for principles in undertaking, conducting, and terminating economic activities in Poland.[378]

The Law on Economic Activity is an improvement on the Business Activity Act. Unlike the Business Activity Act, the Law on Economic Activity explicitly mandates public aid to anyone establishing a business in Poland.[379] The Law on Economic Activity further directs public administration authorities who implement aid programs to establish websites providing grant information and forms for potential investors within thirty days of their establishment.[380] It also mandates public administration authorities to co-operate with organizations of employers and entrepreneurs in order to establish good relations between investors and the government.[381]

The Law on Economic Activity also improves on the Business Act by stipulating that European Union Member States and European Free Trade member countries (EFTA)[382] may undertake economic activity on the same terms as Polish entrepreneurs in any business organization, as well as establish branch offices and representative offices, regardless of reciprocity.[383] As a result, countries outside of the EU and EFTA are allowed to conduct business as part of a limited partnership, limited joint-stock partnership, private limited company and

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[377] General partnerships are subject to Polish law, within the scope of business activity conducted. See *id.*

[378] *See* Act of 2 July 2004 on Freedom of Economic Activity, http://www.mgip.gov.pl/NR/rdonly/res/2541317F-0706-4402-9743-E1F1CFFB5F52/0/act_free_act.rtf (last visited October 16, 2005). [hereinafter Law on Economic Activity.]

[379] *See id.* at art. 7.

[380] *See id.* at art. 8.

[381] *See id.*

[382] EFTA is: Iceland, Norway, Sweden, and Liechtenstein. *See* European Free Trade Association, http://www.efta.int/ (last visited April 8, 2005).

[383] Law on Economic Activity, *supra* note 380, art. 13(2).

a public limited company, and also may join partnerships and joint ventures.[384]

C. Formal and Legal Conditions for Starting a Business

Businesses can be registered in Poland following two procedures. Depending on their future legal status, newly established businesses are registered in two types of registries[385] and, consequently, by two different institutions handling the individual registration procedures. In the future, the Polish government hopes to streamline the process.

At present, a person who wants to establish a company must apply to the respective commune office or the registry court.[386] In addition, he must file an application for obtaining a tax identification number (NIP) in the revenue office and a statistical identification number (REGON) in a statistical office division. If the foreigner wants to pay insurance premiums himself, he is additionally obliged to file a registration application to the Social Insurance Company.[387]

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[384] *Id.* at art. 13(3). These countries must still comply with reciprocity in order to establish branches and representative offices. *See* art. 5.

[385] Sole Proprietorships and general partnerships are registered with the Register of Business Activity, at a local commune office. The entrepreneur must file the registration statement which is *available at* www.wroclaw.pl/rtf/wniosek-rdz.rtf. The cost to register is 100,00 zolty. The cost to amend the registration data is 50,00 zolty. After filing, the entrepreneur will receive the confirmation known as a "certificate of registration with the Register of Business Activity." All other types of business organizations are registered with the Register of Entrepreneurs, at the District Court for Wrocław Fabryczna in Wrocław. This includes limited partnerships, unlimited partnerships, professional partnerships, limited joint stock partnerships, private limited companies, joint stock companies, foundations, branch offices, and representative offices. After filing the registration form, *available at* www.ms.gov.pl, the entrepreneur must receive the document confirming entry known as "Registry court decision on the registration" to be a valid enterprise. The cost to register is 1,000.00 zolty plus 500.00 zolty for an immediate announcement in the Court and Economic Monitor. For more information on setting up a business in Poland *see* Starting Business, *supra* note 375.

[386] *See* Starting Business, *supra* note 375.

[387] A draft of the amended Law on Economic Activity envisages shortening the time of registering economic activity in commune offices and in the National Court Register. Parliament discussed the draft for the first time on August 26, 2003. In keeping with the government draft, as of 2004 the entrepreneur is able

1. Grant Aid

Poland, unlike Ireland, composed a rigid statutory scheme for administering grant aid to foreign investors. In compliance with the "Law on Financial Support for Investment of March 20, 2002,"[388] the Minister Responsible for the Economy may only grant aid if investors meet one of the following requirements: (1) invest a minimum 10 million euros; or, (2) if the value of the investment is not lower than 500,000, and it involves expanding or modernizing an existing enterprise and maintaining at least 100 jobs, or if the investment is made in one of the areas of support, fifty jobs for not less than five years; or (3) the new investment results in at least twenty new jobs being created and maintained for not less than five years; or (4) the new investment introduces technological innovation; or (5) the new investment has a positive impact on the environment.[389]

However, an investor may still receive grant aid if the investment meets two of the following: it has an impact on the economic growth of the region, (2) it is located in any of the areas of support, (3) it will introduce technology, (4) it will contribute to the R&D basis, (5) or if the investment has an impact on the local labor market.[390]

Depending on the location, investors may qualify for more or less aid.[391] For example, investors in rural Poland may receive up to fifty percent in regional aid, whereas investors in Warsaw are limited to thirty

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to file applications for obtaining NIP and REGON numbers in the commune office or registry court and will not have to visit the statistical office himself. Clerks will help in obtaining the numbers, which will be mailed to the applicants. As of 2004, physical persons launching their economic activity will be able to register themselves in the commune office. The government project introduces advantageous solutions also for companies, which must be registered in the National Court Register (e.g. limited liability or joint-stock companies). See Embassy of the Republic of Poland in Washington D.C., http://www.polandembassy.org (last visited April 7, 2005).

[388] *See* THE LAW OF 20 MARCH 2002 ON THE FINANCIAL SUPPORT FOR INVESTMENT, *available at* http://baltic.mg.gov.pl/invest/u_wsp_invest.pdf (last visited April 10, 2005) [hereinafter Law of 20 March 2002]. For more information on grant aid, *see* Invest in Poland, http://www.iffiso.com/investinpoland.htm (last visited April 10, 2005).

[389] *See* Law of 20 March 2002, *supra* note 388.

[390] *See id.* at art. 4.

[391] *See id.* at art. 5.

percent.[392] The size of the project may also impact the amount of aid. Using a complex equation, the investor can expect to have his aid reduced by up to fifteen percent for large projects. For smaller projects, the investor's aid might increase by fifteen percent.

The grant system seems more taxing than inviting. The apparent rigidity makes it difficult to perceive investors trying to negotiate better deals. Unlike Ireland, where grants are distributed by an autonomous agency, Poland Economic Ministry, a governmental body, is in charge. This may lead to bureaucratic tendencies that tend to inhibit rather than promote grant aid.

2. Taxes

Despite cutting its corporate tax rate from twenty-seven percent in 2003 to nineteen percent in 2004,[393] Poland is not among the lowest effective tax rates in Europe,[394] which adversely affects its marketability. If a multinational enterprise is interested in establishing a subsidiary in a certain geographical region, but does not have any preference for a

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392 Invest In Poland, http://www.iffiso.com/investinpoland.htm (last visited April 13, 2005).

393 See Embassy of the Republic of Poland in Washington D.C., http://www.polandembassy.org/News/Biuletyny_news/p2003-06-17.htm (last visited April 7, 2005).

394 Besides Estonia, whose tax base is not linked to profits, Latvia, Lithuania, and Cyprus have effective tax rates below fifteen percent. Poland's effective tax rate is 17.5%. Ireland's effective tax rate is approximately the lowest at 13.14% in Europe. The *See* Eur. Comm., *Measuring the effective levels of company taxation in the new member States: A quantitative analysis* (working paper no. 7 2004), *available at* http://europa.eu.int/comm/taxation_customs/taxation/taxation/htm (last visited March 7, 2005) [hereinafter Effective Tax], at 16. *See also* David Smyth & Mechthild Pietrek, *Corporate Tax Rates in Accession States*, FINANCE DUBLIN (2004), *at* http://www.ey.com/global/download.nsf/Ireland/Corporate_Tax_Rates_In_The_Accession_States/$file/Corporate%20Tax%20Rates%20in%20the%20Accession%20States.pdf (last visited April 13, 2005). ("The effective tax rate takes into account the total effective tax liabilities for corporations, with respect to all types of relevant taxes, assessment bases, and tax rates. The comparison of effective tax rates is a "notoriously difficult task. The tax rules in all countries are so different that there is always an element of comparing apples and oranges.")

particular country, Poland is not be a leading candidate among Central European countries.[395] Because an investor in Central Europe would earn higher after tax profits from the country offering the lowest effective tax burden, Slovakia would be the leading candidate for investment.[396] Outside Central Europe, Ireland and Lithuania are the leading candidates. Despite other countries' incentives, Poland is still the second lowest of all Central European countries,[397] thereby not hurting Poland's attractiveness among investors.[398]

Poland also offers tax incentives to foreign investors who qualify for investment grants discussed above. These include tax exemptions in "special economic zones" (SEZs).[399] A SEZ is a designated area in which manufacturing or distribution activities can be conducted on preferential terms. The purpose is to support regional development. There are fourteen SEZs in Poland, and they work in the same way that Ireland's Shannon Customs-Free Airport Zone (SCAZ) and the International Financial Service Centre (IFSC) did throughout the 1990s.[400]

3. Real Estate

EU residents are Polish nationals for purposes of real estate purchasing. However, non-EU citizens attempting to purchase real estate must obtain permission from the Interior Ministry. This is more restrictive than Ireland's policy for non-EU nationals, which allows ownership of properties without the consent of the Interior Ministry. Poland does, however, offer exemptions for small parcels of land.

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395 Czeck Republic, Hungary, Poland, Slovenia, and Slovak Republic comprise Central Europe.

396 *See* Effective Tax, *supra* note 394, at 26.

397 *See id.*

398 *See id. at* 44.

399 For more information on SEZs visit the Polish Information and Foreign Investment Agency, *at* http://www.paiz.gov.pl/index/?id=7cbbc409ec990f19c78c75bd1e06f215 (last visited April 13, 2005).

400 Blue, *supra* note 232 at 458.

4. Corruption

A key reason for the hesitant inflow of foreign direct investment[401] is the high level of corruption[402] throughout all Soviet-successor states, including Poland.[403] Corruption is an obstacle for foreign direct investment because it discourages investors from establishing themselves in these countries.[404] This, in turn, has a negative impact on growth.[405]

In 2002 Poland enacted its "Anti-Corruption Strategy."[406] The strategy is aimed at amending regulations in areas of public activity that are perceived as most susceptible to corruption.[407] The strategy promotes legislative reforms that should be adopted and names the institutions responsible for preparing the legislation.[408] However, the strategy has

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[401] Foreign Direct Investment refers to the acquisition or building of production units in a foreign country into domestic structures, equipment, and organizations. Gilman, The Financing of Foreign Direct Investment: A Study of the Determinants of Capital Flows in Multinational Enterprises (Frances Pinter Publishers, London 1981).

[402] Robert Klitgaard, Controlling Corruption, Berkeley, CA: University of California Press (1988). Corruption occurs when a public official diverges from the established rules of the state for personal interest. Corruption can be culturally accepted in certain countries. Investors may not share the foreign country's tolerant attitude. Corruption breaks down trust, confidence, and the rule of law. Corruption can affect every level of government, from the top executive, legislative, and judicial branches down to regional and local officials.

[403] *See* Andrea Kennedy King, THE LINK BETWEEN FOREIGN DIRECT INVESTMENT AND CORRUPT IN TRANSITIONAL ECONOMIES (2003), at 1 [hereinafter Corruption]. This particular study was done with local and foreign investors, legal experts, NGOs, international institutions and government officials throughout Central and Eastern Europe. The paper notes corruption has been recognized as an urgent international problem. Recently there has been research that has linked decreased FDI and corruption.

[404] See *id.* at 8. Investors see corruption as an additional cost they must incur and an impediment to doing business in Poland.

[405] See *id.*

[406] The Anti-Corruption Strategy, *available at* http://www.worldbank.org.pl/assets/images/HLG_Strategy_May_30_01_EN.pdf . (last visited February 2, 2005).

[407] *See* Monitoring Report, *supra* note 58, at 16.

[408] *See id.*

been generally ineffective, leaving corruption in Poland compromising many public spheres.[409]

V. Can Poland Duplicate the Irish Economic Miracle?

Despite recent progress in the legislative arena to improve the business environment, the general wisdom is that Poland still faces considerable challenges in engineering macroeconomic and foreign direct investment policies that can deliver sustainable high growth. Top priorities must be downsizing the public sector and removal of impediments to investment. Major obstacles include a poor infrastructure, a weak judiciary and widespread corruption.

It is essential that Poland continue to monitor foreign direct investment and its effect on growth and unemployment levels. If Poland is able to attract more EU-15, American, Russian, and Asian companies, FDI will have a significant impact on Poland's development and eventual convergence into the euro zone.

Poland needs to raise the level of investment in order to sustain high growth and create jobs. Inflows of foreign direct investment can contribute to these objectives, and Poland must understand that investors are looking for rules that reduce the barriers to investment.

For Poland, the quality of the flow of foreign direct investment should be even more important than the quantity, an approach Ireland has so magnificently displayed over the past fifteen years. The assumption is that not all types of investment will be equally good and/or automatically lead to economic growth and development. The objective for Poland should be to view investment flows in terms of the need to improve opportunities for investors in developed countries of the EU-15 and the United States.

Poland can learn from Ireland on how to promote FDI. One aspect that Poland can take from Ireland's success is the passion and marketing that the Irish government displayed in attracting over 1050 foreign companies to Ireland. Whether it be implementing the lowest effective tax rates in Europe, educating its competent and productive

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[409] According to a report on the Supreme Chamber of Control's (NIK)activity in 2001, presented to the Sejm by the President of the NIK in October 2002, out of 136 motions calling for urgent changes of the law with a view to counteracting mismanagement of public funds and corruption, only 22 were carried out fully and 12 partly. For more information in corruption, *see id.* at 17.

workforce, or developing a world-class operation in IDA Ireland, the Emerald Isle has been effective in attracting FDI.

In addition, Poland must target specific industries that are technologically-oriented and that have capabilities for high growth. When looking at Ireland it is easy to see why. Because Ireland chose to design its foreign direct investment around high-growth potential sectors, sustainable growth is being realized and the Irish society has been transformed from largely agrarian to knowledge-based. Where other countries may have chosen safer, low growth industries, Ireland aggressively sought industries and service sectors that could pay off in the future, thus reducing the chances that competition from other countries and rising labor costs could evaporate Ireland's economic progress.

Most importantly, Poland must realize, like Ireland has, that FDI policies should evolve with the demands of the market and with changes within their own economy. As Ireland demonstrated, constantly tweaking foreign investment policies insures that current companies in Ireland and future companies coming to Ireland will be fully satisfied in their decision to establish operations there. Examples include Ireland's passing of a statute in 2004 for companies to establish headquarters, and another which gives grants to companies focusing on research and development. For Ireland, not only do these measures help cater to prospective and current investors, they also cater to Irish society by ensuring FDI remains a prominent source of wealth.

Although Poland will probably see an increase in FDI in the coming years due to both their arrival in the EU and increased transparency, competition in the EU for FDI, especially among recent members, makes it unlikely that Ireland's extraordinary successes can be duplicated in Poland. However, by implementing some of Ireland's strategies to lure foreign capital, Poland's society will continue to advance, and positive spillover effects from FDI will occur. While it is unlikely that Poland, a country of thirty-eight million, can duplicate Ireland's economic miracle, it is entirely possible for Poland to decrease unemployment, continue to transform Western European economy, and cultivate a knowledge-based society.