



Project funded by
the European Union



Towards the **FREE TRADE AREA**

**EUROMED MARKET PROGRAMME
(MAY 2002-APRIL 2009)**

Under the direction of Javier Sánchez Cano

Implemented by:



Institut Européen
d'Administration Publique – Centre Européen des Régions (IEA-CEER)
European Institute
of Public Administration – European Centre for the Regions (EIPA-ECR)



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EIPA-ECR website: www.eipa.eu

Typeset by Quinteam, c/ Ausiàs Marc 26, 08010 Barcelona, Spain.

Printed by Gràfiques Cuscó.

ACKNOWLEDGEMENTS

I would like to extend my most sincere thanks to EuropeAid Cooperation Office of the European Commission for having launched this ambitious initiative which has resulted in a successful programme thanks to our common efforts. My thanks also go to the relevant Meda Partners ministries and authorities which have supported us during the programme lifecycle by selecting and sending delegates to our activities and disseminating information on the programme in their respective countries. The same goes for the EU Member States which have taken an active part in the programme implementation by sending experts and hosting a number of activities. More particularly, I think of the National Focal Points appointed in the MPs and in the EU Member States whose valuable support has contributed to a large extent to the successful implementation of this programme.

My thanks also go out to the European Commission for its continuous support given through several Directorates-General, namely, DG Relex, DG Trade, DG Enterprise, DG Internal Market and DG Competition.

Furthermore I am most grateful to the experts for the quality of their presentations and the ensuing high level discussions, as well as for their availability during the whole programme.

Last but not least, my personal thanks also go to my predecessor, Eduardo Sánchez Monjo, whose restless efforts contributed to getting the programme and who was the Programme Supervisor during almost all the duration of the programme until August 2008. Thanks to his experience of and contacts in the region, he managed to establish close cooperation with MEDA high-level representatives, both in the MEDA countries and in Brussels, so ensuring the necessary political support.

As a matter of fact, the programme could not have been successful without the full and professional dedication of the members of the Programme Management Unit: Salvador Font Salas, Coordinator; Claude Rongione, Information Officer; Valérie Bernal Quesnel and Olga Caudet, Programme Organisers; as well as a number of internal staff of the European Centre for the Regions in Barcelona who were involved as backstopping, such as Miriam Escolá, Carol Layous and Raymond Pelzer.

My warmest thanks to all of them.

Javier Sánchez Cano
EuroMed Market Programme Supervisor
EIPA-ECR Director

The views expressed in this publication are those of the authors and are not in any way intended to reflect those of the European Union institutions and bodies nor of the organisations they represent.

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ACRONYMS

CONSIP: the Italian central purchasing body

DG: Directorate General

EC: European Commission

EIPA-ECR: European Institute of Public
Administration–European Centre for the Regions

EFTA: European Free Trade Association

ENP: European Neighbourhood Policy

ENPI: European Neighbourhood and Partnership In-
strument

EU: European Union

FTA: Free Trade Area

INAO: *Institut National des Appellations d'Origine*

MPs: Mediterranean Partners*

MS: Member State

NFP: National Focal Point

OECD: Organisation for Economic Co-operation and
Development

PMU: Programme Management Unit

SGAE: *Sociedad General de Autores y Editores*

UfM: Union for the Mediterranean

(*) The country symbols of the Mediterranean Partners
are as follows:

Algeria (DZ)

Egypt (EG)

Israel (IL)

Jordan (JO)

Lebanon (LB)

Morocco (MA)

Palestinian Authority (PA)

Syria (SY)

Tunisia (TN)

Turkey (TR)

INTRODUCTION

The aim of this publication is twofold. On the one hand, it gives an overview of the development of the EuroMed Market Programme between May 2002 and April 2009. It also explains the background which led the European Commission to launch this programme by giving some concrete examples of important milestones that marked the *making* of the programme.

Then the publication goes on with a detailed description of the overall programme development, reviewing its structure, approach, phases and activities.

The last part of this historical account is devoted to the main achievements of the programme and gives a series of concrete success stories that can be ascribed to the programme.

The second part of this publication is devoted to six sectoral comparative studies on each one of the 6 priority areas covered by the last two phases of the programme: Public Procurement, Customs cooperation and fight against counterfeiting and piracy; Intellectual Property Rights (Copyrights and related rights; Patents, trademarks and designs; and Geographical Indications); Auditing and Accounting, Financial Services (Banking and Insurance); and Competition Rules. These studies are the result of the working groups meetings and further work carried out in 2008 during the 5th phase of the programme. They have been carried out by EU experts in close collaboration with the MEDA members of the working groups.

Before going into the 6 sectoral chapters, the aim, scope and methodology applied to carry out the studies are also explained.

At the end of each thematic study, the authors make a series of recommendations for further action in their respective fields based on the replies given to a question-

naire by the MEDA members of the working groups and on the discussions held during the meetings. These recommendations show some common points on which to build on in the future in the framework of other regional initiatives within the Union for the Mediterranean.

Finally, the annexes include, *inter alia*, a full list of activities as well as useful statistical data on the EuroMed Market Programme development and performance.

I

Overview of the EuroMed Market Programme Development

By

Javier Sánchez Cano, Salvador Font Salas and Claude Rongione

I. GENERAL BACKGROUND OF THE PROGRAMME

The EuroMed Market Programme is a tool of the EU Euro-Mediterranean policy and falls under Chapter 2 of the Barcelona Declaration of November 1995 pursuing the establishment of a free trade area by 2010 in the Euro-Mediterranean region.

The EuroMed Market Programme belongs to the framework of the Industrial Co-operation of the EuroMed which aim is the promotion of Euro-Mediterranean market instruments and mechanisms.

Its beneficiaries are: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey. It should be noted that before May 2004, Cyprus and Malta were also considered as Mediterranean Partners and hence covered by the Programme. They left the programme when they became EU Member States in May 2004.

The Programme addresses 8 priority areas of the Internal Market:

Free Movement of Goods; Customs, Taxation and Rules of origin; Public Procurement; Intellectual Property Rights; Auditing and Accounting; Protection of Personal Data and e-Commerce; Competition Rules; and Financial Services.

The programme had initially 2 phases: 1st phase "Information" (May 2002-June 2003) and 2nd phase "Training and Networking" (July 2003-May 2005). The EU funding amounted to € 9.2 million. Its duration was initially 3 years (May 2002-May 2005). Due to its successful implementation and to the positive reaction of the MPs, the EC accepted to extend it by 3 more phases.

During the last two phases of the programme (Consolidation and Operational; and Working groups meet-

ings), since 2003 two priority areas were left out: Free Movement of Goods, and Protection of Personal Data and e-Commerce. The former was then covered by the EuroMed Quality Programme which was focused only on the FMG and the reason was to avoid redundant or overlapping activities. The latter, because there were no significant developments in the MPs and because the MPs did not show a common interest in this topic.

The Euro-Mediterranean Partnership today comprises 27 EU Member States and 10 Mediterranean Partners (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia and Turkey). Albania and Mauritania joined at the beginning of November 2007 and Libya has had observer status since 1999 and attends the Conferences of Ministers of Foreign Affairs.

1. Some milestones

The first seeds of the programme are to be found in the Euro-Mediterranean Conference¹ that took place in Barcelona in November 1995 and which marked the beginning of the Barcelona Process. During that conference it was agreed that the main aim was to create a space of peace and stability in the region, contributing to a better mutual understanding of the Mediterranean peoples and also to build an area of shared prosperity through enhanced economical co-operation and to regulate liberalisation of the exchanges inside of the Mediterranean space. Another goal was to remove obstacles to trade and investment inside the Euro-Mediterranean area in order to set up in 2010 a Free Trade Area (FTA) for the goods and to liberalise gradually the exchange of services.

Then on 23 September 1998, the European Commission adopted a Communication² regarding the Euro-Mediterranean Partnership and the Single Market, which aimed to take advantage of the experience acquired in

setting up a single market for creating gradually, from that moment on till 2010, a FTA of goods and guarantee gradual liberalisation of services in the Euro-Mediterranean area. This Communication was presented during the Euro-Mediterranean Conference of the Ministers of Industry held in Klagenfurt (Austria) in October 1998, and highlighted 8 priority areas of the single market of particular interest: *customs and taxation, free movement of goods, public procurement, intellectual property rights, financial services, data protection, auditing and accounting and competition rules*. However, the Communication did not lay down any obligation for the MEDA Partners nor any rule for the harmonisation of the legislations or other rules in order to set up a FTA.

The Working Group of Industrial Cooperation, which took place in Athens in October 1999, agreed to draw up a programme of multilateral actions for promoting the Euro-Mediterranean market, on the basis of the proposals included in the above-mentioned EC Communication. The programme was explicitly included in the MEDA Regional Indicative Programme 2000-2006, in the framework of industrial co-operation. The promotion of EuroMed Market Instruments and Mechanisms constituted one of the four priority axes of industrial co-operation. This regional MEDA programme should be implemented as complementary to bilateral initiatives launched under the Association Agreements. This programme had to be considered as a framework for the common efforts of the EU and the Meda Partners in order to get a better knowledge of the situation in the different countries regarding the legal framework and the mechanisms for implementation, sharing experience in good practices, identify the fields in which changes were necessary and to support such changes with targeted technical assistance. The aim was to facilitate economic cooperation and the FTA with the EU, while also supporting enhanced intra-regional economic cooperation on a South-South basis.

In 2000, economic indicators showed significant differences and an unequal level of development between the European Union Member States and the Mediterranean Partners. Despite the geographical proximity of these two areas, the volume of commercial transactions and the investment flow among them were at the beginning of the years 2000 not too high. Less than 10% of the EU foreign trade was with its Mediterranean neighbours. Conversely, the EU was the main trade partner of the Meda countries. At the beginning of the years 2000, the trade (commercial) flow among the MEDA countries themselves accounted for 4.8%.

In May 2002, EuropeAid Co-operation Office of the European Commission decided to entrust the European Centre for the Regions (ECR), the Barcelona Antenna of the European Institute of Public Administration, with the management of this extensive programme for industrial co-operation and internal market between the EU and the Mediterranean Partners³ (MPs), called « Regional Programme for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market » (EuroMed Market Programme). The European Centre for the Regions (ECR), EIPA's Antenna in Barcelona, is thus the Programme Management Unit (PMU) of this programme. Normally, the programme was due to end in May 2005, but the European Commission decided three times to extend it, first until May 2006, then until May 2007 and finally until April 2009. Consequently, the total duration of the programme is 7 years and it is structured around 5 phases instead of the 2 phases planned initially.

From the outset, one of the important conditions put by the European Commission for the programme to be successful was the commitment in the governments and administrations of the participating countries as this programme would produce no effect without a clear commitment at the highest governmental level in the beneficiary countries.

The programme covers a wide range of significant areas for a good functioning free trade area and offers several different activities, addressed to all Meda countries as a whole and also especially targeted to individual Meda countries. The aim is to support the necessary changes in the Meda countries through training, administrative cooperation and exchange of information and best practices.

2. Objectives

As already mentioned, the *overall objective* of the programme is to contribute to the establishment of a Euro-Mediterranean Free Trade Area by the year 2010 as well as to promote deeper economic co-operation among the European Union and the Mediterranean Partners, both in a regional and intra-regional framework.

In addition, the programme also had a number of **specific objectives** to achieve:

- to show the present situation in the MP in each of the priority areas covered;
- to train human resources;
- to identify the regulatory framework and best practices;
- to identify fields requiring change (technical assistance) and support networking;
- to promote economic cooperation with the aim of the creation of the Free Trade Area;
- to develop a shared understanding of the necessary regulatory framework and enforcement mechanisms, in particular in the 8 sectors covered by the Commission Communication;

- to draw up action plans in each priority area;
- to promote legislative actions and the common interpretation of the rules adopted;
- to support the development of efficient administrations in the Mediterranean Partners, facilitate the fulfilment of their obligations under the Association Agreements, and stimulate the setting up of necessary enforcement structures, including surveillance bodies, to implement the regulations;
- to improve co-operation among the administrations of the participating countries to permit easy contacts and smooth handling of day to day problems.

3. Structure and approach of the programme

Originally the EuroMed Market Programme was designed to be developed in two phases.

During the **1st phase (May 2002-June 2003) “Information”** it was foreseen to achieve a better understanding of the current situation in the MEDA Partners and in the European Union Member States and to identify the common necessary rules for the setting up of the Free Trade Area. The workshops were also designed to allow the Mediterranean partners to give an overview of the situation in their respective countries and to identify their priority needs in the field of technical assistance.

During the **2nd phase (July 2003-May 2005) “Training and Networking”**, the aim was to carry out in-depth training activities addressed to MEDA civil servants covering the needs identified and to organise study visits and expert missions. Also, an experts pool was set up during this phase with a view to contributing to targeted technical assistance in the priority areas covered by the programme. These experts were from the

Meda countries, EU Member States and the European Commission.

As already explained, throughout the Programme lifecycle, EuropeAid Cooperation Office decided on several occasions to extend it, based on a positive assessment of the programme both by the Mediterranean Partners and the EC, in order to consolidate some of the results and networks achieved during the previous phases, and analyse the developments in each MEDA Partner while taking into account their Action Plan and Association Agreement with the EU.

Extension period

During the **3rd phase (June 2005-May 2006) “Deepening/Implementation”**, the activities were geared at consolidating the knowledge acquired and the networks created during the previous phases, the ultimate objective remaining to contribute to the creation of a free trade area by 2010.

During the **4th phase (June 2006-December 2007) “Consolidation and operational” on 6 priority areas** (1) Customs 2) Public Procurement 3) Intellectual Property Rights 4) Auditing and Accounting 5) Financial Services 6) Competition rules).

The approach was as follows:

First, there was an initial seminar the objective of which was to take stock of the state of play in the respective field in each MP. A few months later, a final seminar was organised with a view to giving an overview of the concrete progresses - if any - in each MP from a domestic point of view and cooperation with other MPs, and take stock of the overall development in the MPs on the way to the Free Trade Area (FTA) (2010).

Finally, the **5th phase** of the programme (**January 2008-April 2009) “Working Groups Meetings: Towards the Free Trade Area”**

The objective of this 5th phase was to analyse the developments in each one of the 6 priority areas selected both in each Mediterranean Partner and at regional level, also taking into consideration the Action Plans concluded between the EU and each Mediterranean Partner whenever applicable. During the Working Groups meetings the starting point was:

- * the Association Agreements between each Meda Partner and the European Union
- * the European Neighbourhood Policy Action Plans concluded by each Meda Partner

II. OVERALL DEVELOPMENT OF THE EUROMED MARKET PROGRAMME

As already adumbrated, the programme had initially two phases which were based on three major components:

- 1) Information and exchange of experiences in order to promote in the Mediterranean Partners legislative action and a shared interpretation of the rules in force.
- 2) Training and targeted technical assistance.
- 3) Networking and co-operation among administrations of all countries involved.

The types of activities selected to achieve the set objectives were conferences, workshops, training seminars, train-the trainers seminars, tailor-made seminars, study visits, expert missions. It should be noted that most of these activities were of different scopes: regional, intra-regional and bilateral.

Some minor deviations from the set work plan and time schedule

In the course of the programme development, some adjustments were made to the original work plan, reducing the number of certain activities and cancelling some of them, always after due consultation of and in agreement with EuropeAid Cooperation Office.

At political level, the only event which hindered the normal programme development was the beginning of the war in Iraq when the programme was suspended during two months (March-April 2003). Nevertheless, the PMU managed to carry out the activities planned for the 1st phase within the set deadline.

1. General Development

The lifecycle of the EuroMed Market Programme has been long enough - almost seven years - to get a clear picture of the real evolution level in the Mediterranean region, based on its main general objective of promoting economic co-operation (both North-South and South-South) in order to contribute to the setting up of the free trade area. It can be said that the way has been paved but is not ready yet to launch a free trade area among the Euro-Mediterranean partners in 2010 as anticipated. However, the situation regarding the priority areas covered by the Euromed Market Programme has evolved positively and the Meda countries have advanced and progressed well when compared to the starting situation 7 years ago.

The EuroMed Market Programme started its activities following the recommendations of the 1st Euro-Mediterranean Ministerial meeting on Trade⁴, *Brussels, 29 May 2001*, and of the 4th Euro-Mediterranean Conference of Ministers of Industry⁵, *Malaga April 2002*. During the first three years of the programme (*first and second phases*), the programme mostly relied on information workshops about the situation in the EU Member States and in the MPs in the 8 priority fields covered by the programme –exchange of information on the legislative and institutional framework, and best practices-, on train the trainers' seminars, tailor-made seminars and networking, both institutional and experts, these networks being now consolidated on the Programme website (www.euromedmarket.org).

The main objectives of the thematic *workshops* of the first phase were an exchange of information about the situation in the 8 priority areas, but also to get to know the situation in the EU Member States as well as to make the participants familiar with the most relevant Community regulations. One of the aims of this first phase was to identify the priority needs of the MEDA Partners in order to decide the content of the activi-

ties of the second phase and the studies to be developed.

Moreover, taking into account the recommendations made by the *Euro-Mediterranean Trade ministers meeting in Palermo*⁶ on 7 July 2003 under the Italian Presidency of the EU which concern the whole programme, i.e. the 8 priority fields, the Programme Management Unit (PMU) requested the MPs to draft an action plan for future implementation in the 8 priority fields covered by the programme. These Action Plans had to consider the following aspects: adapting national legislation according to Community rules; evaluation of the means available in each MP, and administrative reform and setting up control and surveillance bodies.

The EuroMed Ministers of Trade encouraged Med Partners to fully utilise the then existing MEDA programmes, such as EuroMed Market, in particular with a view to encouraging greater participation of small and medium enterprises. These recommendations were:

- 1) Identification of priority sectors;
- 2) Acquaintance with the applicable EC legislation and conduct a gap analysis on the basis of the existing legislation;
- 3) Transposition of the necessary framework legislation and sectoral legislation;
- 4) Creation/Reformation of existing institutions;
- 5) Set up necessary certification and conformity assessment bodies;
- 6) Identification of the technical assistance needs and make most of the existing programmes.

As to the regional *train-the-trainers seminars*, their objective was to assist the MPs in drafting a national train-

ing programme in each one of the 8 priority fields for future implementation in each Mediterranean Partner. Regarding the content of these activities there was a presentation of training methodologies and of a draft Training Programme in the field concerned by each Mediterranean Partner. The aim was to try to help the MPs identify their needs and priorities for the future, but the EuroMed Market Programme did not have the necessary human and financial resources to follow-up the proposals made. Both the Action Plans and the Training Programmes received by the PMU were submitted to the EC for possible future action.

Another objective of the Euro Med Market Programme was to reinforce South-South co-operation. Therefore the *tailor-made training seminars* were addressed to sub-regional groups, such as the countries party to the Agadir Agreement or to countries which have concluded a free trade area amongst themselves. The Agadir process, an important sub-regional initiative, was initiated by Egypt, Jordan, Morocco and Tunisia in Agadir in May 2004. These four partners expressed in a Declaration their intention to set up a free-trade area amongst themselves to achieve the objectives of a EU-Mediterranean Free Trade Zone by 2010. This initiative was also significant since it links Maghreb and Mashrek countries in a South/South perspective.

The Agadir Agreement

Building on the common grounds that the four countries share within the context of their bilateral trade agreements and Association Agreements with the EU, the four countries perceived the importance of Arab joint cooperation in line with the Executive Program for Establishing the Greater Arab Free Trade Area, with the aim of establishing an Arab Common Market, and decided to conclude the Agadir Agreement.

This agreement would make it possible to boost trade exchanges, develop economic activity, support em-

ployment, increase productivity and improve the living standards in the countries concerned. It was agreed that any Arab state member of the Arab League and the Greater Arab Free Trade Area, linked to the EU through an Association Agreement or a free trade agreement, may request to accede the Agadir Agreement; such a request must be approved by all the Member Countries.

The Agadir Agreement aims to the creation of a market integrated by more than 100 million people among the four partner countries and offers new possibilities for European investors.

Considering this new development the EuroMed Market Programme further developed its intra-regional approach in order to achieve the objective of reinforcing South-South co-operation since the activities were addressed to sub-regional groups, their aim being to help the MPs to efficiently implement legislation, share the interpretation of standards and create control bodies and remedy mechanisms.

Meanwhile as this programme was launched, the EuroMed Market Programme organised 6 tailor-made seminars for the Agadir countries on: Free Movement of Goods, Pan-Euro-Mediterranean Rules of Origin, Public Procurement, Intellectual Property Rights, Customs cooperation and fight against counterfeiting and piracy, and Competition rules respectively.

Another major development which influenced the development and focus of the programme was the new European Neighbourhood Policy of the EU that started to be developed in 2004. The policy priorities under the European Neighbourhood Policy in the region until 2009 have been decided at political level by the Heads of State at the Second Euro-Mediterranean Summit of Barcelona in November 2005, with still the establishment of an EU-Mediterranean Free Trade zone by 2010. They relate to four broad domains: political and security

cooperation, sustainable socio-economic cooperation, education and culture, and migration.

In the wake of this development, the EuroMed Market Programme once again adapted its activities to this new policy and to its new ENPI instrument. Due to the different situation of the MEDA Partners and their varied will to cooperate in all the fields with the EU and also taking into account the flexibility that characterised the Barcelona Process, the PMU organised 59 *study visits* for MPs civil servants to public administrations of EU Member States. These visits were geared at making MP civil servants familiar with the relevant legislation and the legislative activity, as well as with the implementation or enforcement of measures covered by the EuroMed Market programme. During these visits, participants could benefit from the practical experience of the host administration in a EU Member State and lay the foundations for future co-operation between the said administration and their home administration. Still at bilateral level, the PMU also organised a number (4) of *expert missions* for *technical assistance* in the MP administrations with a view to assisting these administrations in implementing the legislation necessary for a free trade area to come about. Furthermore, 10 to 20 twinning actions were also foreseen, but due to a new twinning programme launched by EuropeAid it was decided to cancel these actions to avoid duplication.

One year later, the *VIIth Euro-Mediterranean Conference of Ministers of Foreign Affairs*⁷ took place in Luxembourg on 30-31 May 2005 to review the ten years of the Barcelona Process. The Commission issued a Communication entitled "A work programme to meet the challenges of the next five years". One of the conclusions was that (4) "*At the institutional level of the Partnership, substantial progress has been made, whereas all Association Agreements have been negotiated and whereas most are in force, some still need to be signed and/or ratified.*" (28)" *The Ministers recommended the elaboration of a road-map for the creation*

of a FTA by 2010, including the liberalisation of services and establishment, the liberalisation of trade in agriculture, processed agricultural and fisheries products, and building on existing bilateral and regional free trade agreements, including the Agadir agreement, as well as on the pan Euro-Med protocol of origin."

(31) "Approximation of technical legislation in the area of standards and conformity assessment bears an important potential in terms of trade facilitation, investment attraction and, eventually, integration of the economies. The objective is to promote trade by aligning standards and technical requirements, reducing costs related to duplicative testing and certification and thus facilitate market access. Work to harmonise economic legislation has already started on the basis of the work programme adopted at the EuroMed Trade Ministerial Conference of Palermo (July 2003) and a number of important steps towards eventual harmonisation and/or mutual recognition of trade-related standards across the EuroMed region have been achieved."

(32) "Ministers recognised that the expansion of South-South trade links in the region is of vital economic interest for the Mediterranean countries. In order to achieve a fully-fledged FTA in the Euro-Mediterranean region by the agreed deadline of 2010 it is necessary that many more agreements be concluded and existing ones upgraded. Ministers advocated that the Mediterranean countries should accelerate the conclusion of Free Trade Agreements between themselves. These FTAs will enable the implementation of the pan-Euromed cumulation of origin. This system of cumulation of origin presupposes in effect the existence of preferential relations between the partners involved. The pan-EuroMed cumulation of origin should bring substantial benefit to partners."

In this line, in June 2005, the **third phase** of the Programme was launched, still revolving around regional, intra-regional and bilateral activities at the same time.

At this stage, the main aim of the activities was to consolidate the knowledge acquired and the networks created during the previous phases. The approach here was through technical working groups rather than general presentations, with a view to facilitating the review of the state of play in the Mediterranean Partners, to identifying their needs in the field of legislative adjustments, and to strengthening the networks of expertise in the Euro-Mediterranean area.

During the Conference⁸ held in Barcelona on the occasion of the 10th anniversary of the Barcelona Declaration, the Heads of State and Government reaffirmed that the Barcelona Process "... should contribute to achieving an area of shared economic development by: fulfilling the undertaking to achieve a Euro-Mediterranean free trade area by 2010; promoting broad-based equitable sustainable economic development and employment by inter alia pursuing economic reform, supporting efforts to promote domestic and attract foreign investment in the region, enhancing public financial management, strengthening the role of the private sector, improving legal systems, reinforcing industrial cooperation, enhancing equitable access to basic service..."

From 2006 on, in order to avoid duplication with the bilateral activities deployed under the ENPI, the EuroMed Market Programme focused again only on regional activities, as it was the only EU Programme left working in a regional framework in these fields of the Internal Market.

The EU launched the European Neighbourhood Policy to reinforce and complement the Barcelona Process. The multilateral dimension supports and complements the bilateral actions and dialogue taking place under several Association Agreements which have been signed individually on a case-by-case approach between the EU and each of the members of the Partnership.

On October 21st 2007, the 6th *Euromed Conference of Trade Ministers*⁹ took place in Lisbon under the Portuguese Presidency of the European Union

The Ministers' main conclusions in the various issues of the trade agenda were, among others, as follows:

- *Liberalisation of trade in the services and investment sectors - an agreement was reached on the passing from a regional phase to a bilateral phase of the negotiation. This should start with those Mediterranean partners who are available and interested, with the objective of reaching a conclusion, as soon as possible, before 2010.*
- *The reinforcement of the convergence of regulations for industrial products - they stressed the importance of the progresses already achieved and recommended the opening of negotiations, as soon as possible, with a first set of countries conducive to the celebration of conformity and acceptance agreements.*

In this line of action, they have agreed on the reinforcement of technical and financial assistance to be given to their Mediterranean partners.

- *Reinforcement of regional integration - they encouraged Mediterranean partners to introduce greater dynamics in the process of «south-south» regional integration, creating the necessary conditions - together with progress in issues of harmonisation of regulations and the adoption of the Pan-Euromed cumulus system of rules of origin - to enable economic operators to gather maximum benefits from business opportunities.*

In 2008, the EuroMed Market Programme entered its 5th and last phase. At the same time, the idea of a Union for the Mediterranean was launched which would relay and complement the Euro-Mediterranean Partnership and give it fresh impetus. In this line, the EuroMed Market

Programme decided to focus its last phase on stock-taking of the real situation in each MP in the 6 priority areas being deepened. To this end, 6 working groups meetings took place with a view to contributing to a comprehensive comparative study on each of these priority areas carried out by leading EU experts.

2. Information and Dissemination Activities

For each activity organised within the framework of the EuroMed Market Programme, the PMU has produced and handed over to the participants CD-Roms containing all the basic documentation for each of the topics dealt with.

It also carried out at the end of the 1st phase of the programme a two-volume publication: 1) « Proceedings of the activities carried out during the 1st phase »; 2) « Comparative Studies on the state of affairs in the Mediterranean Partners regarding the 8 priority areas covered by the programme ». These two volumes were published in autumn 2004 and widely disseminated to the programme stakeholders.

Besides, we should also mention that 4 comparative studies have been carried out by external experts: 1) « Study on Intellectual Property : Comparative Study on the different MP and EU MS systems and best practices, material law, administrative and judicial procedures. » and 2) « Different Techniques to promote trade: traditional techniques, consumer protection, new techniques : e-Commerce. » These two studies were carried out by two external operators, respectively ANDEMA, the Spanish National Association for the Protection of Trademarks, and UNIONCAMERE, the Italian Federation of Chambers of Commerce and Industry, and were disseminated in autumn 2005. The 3rd and 4th comparative studies were published in June and July 2007 respectively and were entitled "Competition policy in the Euro-Mediterranean Partnership" by

the CEPS, and "Improving Repetitive purchases and e-Procurement in the Mediterranean Partners" by Lawyer Massimo Baldinato, member of the Bar of Vicenza, in collaboration with Stefano Ferrando, Lawyer, member of the Bar of Udine.

The Programme Website (www.euromedmarket.org)

A bilingual (English/French) programme website was also created and developed. This website contains general and updated information on the programme and its activities. In the restricted area, reserved to participants and experts, it offers networking possibilities and interactive functionalities, among which an experts' network. One can also find there the basic documentation on the priority areas, working groups reports, the legislation of the MEDA and European countries in these fields, etc. The total number of visits to date is 124,432, the total number of pages viewed 3,905,047 and the total number of hits 5,767,551.

Contents of the Public Part:

The public part, accessible to any Internet user, offers general information about the programme and its activities, as well as specific information about each activity in particular. It also has, among others, an agenda with a search facility per event, topic or venue, a list of participants, a list of national focal points, a country map with a search per topic, country and/or event. It also shows the programme, the final declaration and list of participants of each activity held to date.

The applications of the restricted part called 'EXTRANET' are:

The application '**Priority Areas**' allows -among others- to get information on our various thematic activities, to consult news about the programme, to consult the basic documentation in each priority area, to read the conclusions of a given activity, to read information about

a specific country, to get updated on the programme, consult the Agenda of activities, submit questions to experts on specific topics through the clickable e-mail address, exchange information and experience with colleagues from the Euro-Med Partners, etc.

The application "**Experts' Network**" contains a list of experts who will be able to exchange viewpoints, information and experience with their colleagues from the Euro-Mediterranean Partners, and who can clarify online some points which participants might not have fully understood during a given activity or possibly answer more specific questions. This application makes it possible to search an expert by topic or subtopic or even by subject within the 8 priority areas covered by the programme. The over 300 experts available are both from EU Member States and from the MEDA partners, as well as from international organisations operating in these fields.

A special section "**Working Group 2008**" was created under this application.

This section is only accessible to the members of the Working Group thanks to their login and password. It contains, among others, a list of the permanent representatives of the MPs in the WG as well as of the other members of the WG. It contains also a list of key EU experts involved in the WG; the questionnaire drafted by the expert which was the basis for the work of the WG; the replies of each Mediterranean Partner to this questionnaire; a list of international agreements signed by the MP in this area; a list of major relevant MP institutions operating in the priority area covered by the WG; a list of useful links to websites of each MP in this field, the draft study in each field, etc.

There is also a Forum application.

III. MAIN RESULTS OF THE PROGRAMME

The programme was to achieve the following results:

Updating and upgrading specialised knowledge of the Mediterranean Partners delegates, identify training needs and the sectors requiring legislative adjustments and contributing to these adjustments in the MPs, as well as to a possible legislative approximation between the MPs and the EU and between the MPs themselves. More concretely, the drafting by each MP of an Action plan and a Training programme in each one of the priority areas. Furthermore, the programme also had to promote networking among all participants, these networks being supported by the programme website (www.euromedmarket.org).

All in all, it can be said that at the end of the almost 7 years of the programme lifecycle, the PMU has carried out 130 information and training activities - both in the EU Member States and in the Mediterranean Partners - and that more than 2,300 participants have taken part in these activities, coming from the public administrations and also from the private sector of the MEDA Partners. They normally belong to the Ministry of Industry, Trade, Economy, Finances, Transports and Communication, and also to the Foreign Office. Although essentially of regional scope, the programme also allowed the PMU to implement activities of intra-regional and bilateral scope. Activities organised for all the 10 MP took place in general in the EU Member States, whereas those of intra-regional scope were carried out in the Mediterranean partner countries, as the PMU tried to have a fair distribution among host countries. It should be noted here that 6 activities were organised for the states party to the Agadir Agreement (Egypt, Jordan, Morocco and Tunisia) and that each of these countries hosted one or several such activities.

In total, 8 MEDA countries hosted 15 activities of the programme and 14 EU Member States hosted 54 activities, which represents a rather broad geographical coverage.

Generally speaking, we can say that almost all the indicators established by the European Commission when launching the programme have been reached as can be checked against the statistical data in annex. This applies both to the number of activities and participants, participants satisfaction rate, level of demand from MEDA partners' administrations, website (number of pages, frequency of updating the content of the pages, volume and frequency of the connections to the site, communication facilities and their usage, e.g. forums, mailing lists), number of publications prepared, number of studies achieved, etc.

Some references to a useful programme...

- Mid-term Euro-Mediterranean Conference¹⁰, Crete, 26-27 May 2003. In the Presidency Conclusions of the mid-term Euro-Mediterranean Foreign Ministers meeting which took place in Crete under the Greek presidency of the EU, ***Foreign Affairs Ministers welcomed the implementation of the EuroMed Market Programme permitting closer regulatory and legislative approximation of the Mediterranean partners to the EU's Internal Market.***
- On the occasion of the Euro-Mediterranean Trade Ministerial Conference¹¹ held in Palermo on 7 July 2003, the ***EuroMed Ministers encouraged Meda partners to fully utilise existing MEDA Programmes, such as Euro-Med Market, in particular with a view to encouraging greater participation of small medium size enterprises.***

Impact of the Programme

Generally speaking, it can be stated that the EuroMed Market Programme has supported through its activities institutional building and legislative approximation in most of the MPs, which in turn has led to the creation of several FTAs among some MPs and has paved the way for the Euro-Mediterranean Free Trade Area, the major aim of the programme. During the programme development, activities were permanently adjusted in order to achieve this goal according to a well-thought strategy. The programme also contributed to enhance the level of specialised knowledge of the participants and support exchange of experience and information between the participants. It should be underlined that most of the time, the events organised under this programme were the only opportunity for the participants from the MEDA countries to meet and exchange information and experience regarding the situation in their respective countries in their field of specialisation. So, not only did they learn from the EU experts, but also from each other, fostering in this way South-South co-operation, another objective of the programme. The programme activities were also a good opportunity to identify potentialities for bilateral actions in some of the priority areas and such actions were then taken in some of the MPs.

More concrete results were achieved in a number of the priority areas covered. Some of them are:

- *Pan-Euro-Med Protocol on rules of origin.* The participants attending the programme activities underlined that the correct and smooth implementation of the Pan-Euro-Med system of cumulation of origin was key to the creation of the Euro-Protocols on rules of origin in the framework of the respective Agreements with the EU, as well as to complete the FTA network with the other Pan-Euro-Mediterranean Partners. Participants also concluded that our activities have allowed them to promote a common approach to the

interpretation and implementation of Pan-Euro-Med rules of origin among the Mediterranean Partners. Through the programme, the PMU has organised 8 activities on this issue in total until 2006.

Rules of origin are among the most effective non tariff barriers to trade as they are sector specific and thus targeted by protectionist interest groups.

The rules of origin are no longer one of the priority areas covered by the EuroMed Market Programme, because of the creation of a permanent Pan-Euro-Mediterranean group on rules of origin that is addressed by DG Taxud of the European Commission. This Group has regular meetings, two per year, with the objective of promoting approximation among the Meda Partners on the Protocol of rules of origin.

- *Public Procurement:* the participants working in this field stated that the activities had allowed them to improve their knowledge in the field of Public Procurement and to make progress towards approximating the Meda Partners regulations, reinforcing relevant national entities, as well as identifying areas where technical assistance would be required. Participants made clearly positive assessment of the Programme activities in this field. They also identified the steps to take for the approximation of legislation and procedures between the Mediterranean Partners and the EU. Thanks to the EuroMed Market Programme networking tool, the General Authority for Government Services (GAGS) in Egypt has just invited the permanent representatives of the EuroMed Market Working Group on Public Procurement in Jordan, Syria and the Palestinian Authority to attend a regional workshop (30-31/3-1/4 2009) organised in close collaboration with the OECD Organisation, DFID, UNDP and the World Bank.

A new development in the area of public procurement, e-Procurement, was addressed during the

programme activities and object of a specific and detailed comparative study published in 2007.

- Another achievement of the Programme is its contribution to putting MEDA countries on the agenda of the annual *European Competition Day*. In this framework, the Meda participants were first invited by the *Bundeskartellamt* to attend the 14th European Competition Day in Munich on 26-29 March 2007 under the German Presidency of the EU; and in 2008, under the French Presidency of the EU, for the first time one day of the European Competition Day was fully dedicated to Meda and to the topic of building a Euro-Mediterranean Competition Policy. In addition, the activities of the EuroMed Market Programme in this field have also directly contributed to the creation of Competition Authorities in several Mediterranean Partner countries.
- After the intra-regional seminar on *customs co-operation* and fight against counterfeiting and piracy that took place in Nicosia on 7-10 March 2005 for customs officers from Cyprus, Algeria, Lebanon and Syria, the Cypriot customs informed us that the volume of seized counterfeited goods had registered a 200% increase.
- Last but not least, the programme succeeded in establishing and consolidating **Euro-Mediterranean networks**, more particularly in the field of *Competition, Auditing and Accounting, and Intellectual Property Rights*. In this framework the PMU has established solid and sustainable cooperation links with some of the major institutions operating in these fields, such as for Auditing and Accounting: the Federation of Mediterranean Chartered Accountants (FCM), based in Rome, and the Chartered Institute of Public Finance and Accountancy (CIPFA), London; for Public Procurement: with the Italian central purchasing body CONSIP, also based in Rome; for Intellectual Property Rights: with the French INAO for

Geographical Indications and the Spanish SGAE for Copyright and related rights, and for Banking: the Mediterranean Bank Network, based in Malta, just to name a few.

Contribution to South-South Cooperation

A low level of South-South economic integration can still be observed in the Mediterranean area in spite of the significant progress made following the conclusion of the Agadir Agreement in 2004.

The Agadir Agreement, which entered into force on 6 July 2006, adopts the Pan-EuroMed Rules of Origin that allow for diagonal accumulation of origin amongst its member countries through the possibility of using production input components originating in any of the member countries of Agadir Agreement, EU countries or EFTA countries.

On the occasion of the 6 activities organised for the countries party to the Agadir Agreement, at the end of each activity officials and experts from the countries involved in the Agadir Agreement agreed to set up an experts' committee entrusted with drafting an action plan aimed at approximation of existing regulations, harmonise all standards and technical regulations and at ensuring adequate protection in the countries concerned and establishing relevant mechanisms: training, information and awareness-raising programmes. (this applies to the six priority topics covered by these activities: intellectual property, free movement of goods, rules of origin, public procurement, customs cooperation and competition rules).

During the last 2 phases of the programme, the PMU invited on several occasions representatives of the Agadir Secretariat based in Amman to its activities so that they could explain their experience of South-South cooperation to the other MPs, and so doing encourage

them to join the Agadir Agreement or to develop other similar initiatives at sub-regional level.

A Legacy for the Union for the Mediterranean

The 2010 objective of establishing a Free Trade zone remains on paper, although nothing has been written or said about it during the Paris Summit creating the Union for the Mediterranean (UfM) in July 2008. Initiatives in this respect should be taken by the UFM Secretariat.

The UFM has the potential to introduce more flexibility into the Euro-Mediterranean process, thus enabling the region's governments to better manage their varied interests. That means variable geometry in project implementation, establishment of public-private partnerships, and acquisition of supplementary funding in addition to the EU Barcelona budget.

By attending the meeting launching the UfM, Mediterranean partners' governments sent a strong signal to Europe of the importance they attach to multilateral relations with European countries - provided they are able to influence negotiations.

The EU has tried to satisfy the political and economic preferences of each Mediterranean partner government in turn. Since 2003 this pattern has been reinforced by the bilateral ENP, which some South-Mediterranean countries have viewed as a means of benefiting from closer relations with Europe without having to wait for their neighbours.

All the countries covered by the Euro-Mediterranean Partnership are members of the UfM. In addition to them, there will also be some other Mediterranean neighbouring states (Albania, Bosnia-Herzegovina, Croatia, Mauritania, Monaco and Montenegro). Libya

has an observer status and is invited by the Presidency.

Following the Ministers' endorsement the Secretariat will seek the necessary additional funding from outside the traditional existing budget allocations. These funds are expected to come from the private sector, international financial institutions and bilateral cooperation as well as contributions from EU member States and Mediterranean Partners.

Bearing in mind the Barcelona 5-year work programme and the Declaration of the Paris Summit, ministers have outlined their Ministerial meetings agenda and agreed on the priorities for the 2009 work programme, in line with the key areas identified in Paris. Actions are planned for 2009 in the following sectors: Transports, Higher Education, Energy, Environment; Trade; Justice; Liberty and Security; Economy and Finance; Sustainable development; and Strengthening the role of women in society.

While the European Neighbourhood policy will continue to drive bilateral relations in the region with a differentiated approach, the Barcelona Process: the Union for the Mediterranean will complement this policy by strengthening regional and sub-regional cooperation.

Notes

- 1 Barcelona Declaration adopted at the Euro-Mediterranean Conference, 27-28/11/1995.
- 2 Communication from the Commission on the Euro-Mediterranean Partnership and the Single Market, Brussels, 23.09.1998, COM (1998) 538 final.
- 3 Initially there were 12 MPs: Algeria, Cyprus*, Egypt, Israel, Jordan, Lebanon, Malta*, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey. As of May 2004, the number of Mediterranean Partners was reduced to 10 as Cyprus* and Malta* joined the EU.
- 4 "...The Ministers further agreed to identify together those priority areas where a convergence of legislation is necessary to fully benefit from the potential in the Association Agreements. They referred in particular to norms and industrial standards, sanitary and phytosanitary legislation, intellectual and industrial property rights, competition and customs legislation. The Communication from the Commission on the Euro-Mediterranean Partnership and the single market provides guidance in these areas. The Euro-Med Market programme should be used to make concrete progress on these issues...". 1st Euro-Mediterranean ministerial meeting on trade, Brussels, 29 May 2001, Presidency conclusions.
- 5 "The Conference welcomes the launch of three programmes on... and on Euro-Mediterranean Market Mechanisms (EURO-MED MARKET)." 4th Euro-Mediterranean Conference of Ministers for Industry, Malaga, 9/10 April 2002, 7800/02 (Presse 92).
- 6 Conclusions of the Euro-Mediterranean Trade Ministerial Conference, Palermo, 7 July 2003, EUROMED REPORT, Issue No 64, 9 July 2003, EuropeAid Cooperation Office.
- 7 Conclusions of the VIth Euro-Mediterranean Conference of Ministers of Foreign Affairs, Luxembourg, 30-31 May 2005.
- 8 10th Anniversary Euro-Mediterranean Summit, Barcelona, 27 and 28 November 2005; Council of the European Union, Chairman's Statement, Brussels 28 November 2005, 15073/05 (Presse 326).
- 9 6th Euromed Trade Ministerial Conference, Presidency of the European Union, Portugal 2007.
- 10 Mid-Term Euro-Mediterranean Conference, Crete, 26-27 May 2003, Presidency Conclusions, 9890/83 (Presse 151).
- 11 Conclusions of the Presidency, No 6 op. cit.

II

Results of the working groups meetings and work carried out in 2008 in the framework of the 5th phase of the EuroMed Market Programme: “Towards the Free Trade Area”

6 COMPARATIVE STUDIES ON:

- 1) Public Procurement in the Euro-Mediterranean Partnership
- 2) Customs cooperation and fight against counterfeiting and piracy in the Euro-Mediterranean Partnership
- 3) Intellectual Property Rights in the Euro-Mediterranean Partnership
- 4) Auditing and Accounting in the Euro-Mediterranean Partnership
- 5) Financial Services in the Euro-Mediterranean Partnership
- 6) Competition Rules in the Euro-Mediterranean Partnership

Aim, Scope and Methodology of the Study

The aim of the study “Towards the Free Trade Area” and of the 5th Phase of the Programme was discussed and agreed on the occasion of the Launching Conference of the 5th Phase of the EuroMed Market Programme held in Brussels on 21-22 January 2008 and included in the Operational conclusions approved at the end of that conference. It was agreed to carry out an in-depth analysis of the evolution since 2002 in the 6 priority areas covered. (Public Procurement; Customs co-operation and fight against counterfeiting and piracy; Intellectual Property Rights; Auditing and Accounting; Competition Rules; and Financial Services).

General Objective

To analyse the real evolution level in each one of the six priorities areas of the internal market covered by the 5th phase of the EuroMed Market Programme in all the Mediterranean Partners and in each Mediterranean Partner, and in relation to the creation of the Free Trade Area in 2010.

The idea was to get a real picture of the current situation and to define future steps that could be taken. This has resulted in a study carried out by the main EU experts with the support of the working groups members for each topic.

During the Working Groups meetings and in order for them to analyze the real evolution level in the priority area of their interest, we took into account as starting point:

* the Association Agreements between each Mediterranean Partner and the European Union

* the European Neighbourhood Policy Action Plans concluded by each Mediterranean Partner

Methodology

The 6 Working Groups were set up on the occasion of the Launching Conference of this 5th Phase in Brussels on 21-22 January 2008 and the starting point was a questionnaire regarding the current situation in each priority area.

During each WG meeting, the members had an opportunity to discuss about the first results and answers to the questionnaire and each delegation could add remarks, suggestions and proposals to its country report.

General objectives of the WG meetings:

- Discuss common priorities of the Mediterranean Partners and propose the next steps to be taken.
- Promote a common approach in the Euro-Mediterranean area towards legislation, procedures and enforcement in the field covered in order to facilitate trade among the Euro-Mediterranean Partners.
- Encourage an exchange of experience, knowledge and best practices.
- Consolidate a network of expertise in the field covered among the Euro-Mediterranean Partners.
- Further develop contacts between administrations in the Euro-Mediterranean area in the respective fields.

Specific objectives

- Analyze the real evolution level in the priority area addressed in all the Mediterranean Partners and in relation to the creation of the Free Trade Area in 2010.
- Analyze the real evolution level of the priority area dealt with in each Mediterranean Partner.
- Set up the Working Group on the areas addressed, comprised of MP experts and experts of the EU Member States with a view to carrying out a comparative analysis on the following aspects:
 - Institutional development in each MP
 - Legislative approximation, norms and procedures, and actions fostering South-South co-operation.
 - Identify best practices in each MP
 - Draw up a table with a comparative analysis.
 - Prepare a publication: overview of such evolution in this area and final evaluation and recommendations.

Main features of the working groups

The WG operated through 2008 and the members of the WGs were in permanent contact, either during the 4 days meeting or through the Programme website, e-mail or telephone, in order to prepare the said publication/study, draw up final conclusions and make proposals contributing to the establishment of the Free Trade Area.

Participants

In general, each WG was composed of 30 members from the Mediterranean Partners (3 members per country) and 2 or 3 experts from European Union Members States. Each Mediterranean Partner was represented by maximum 3 participants who had already attended activities during the previous phases of the programme. Generally speaking, the participants were officials or practitioners responsible for the topic under discussion in their respective countries, with a minimum of five years of professional experience, from both the private and public sector, and have a good command of the English and/or French language. One of these 3 participants was the permanent representative of each MP in this working group.

Experts from the EU Member States or from the EC: in each WG meeting, there were 2, 3 or 4 experts who were in charge of analysing and discussing the topics with MP experts and of drawing up the operational conclusions in this priority area. These experts also analysed the status of this priority area in each MP and in the whole MEDA area.

It should be noted that for this 5th phase, a special functionality was created on the programme website in order to allow the members of the working groups to keep on working together between the WG meeting and the Plenary meetings of the WGs at the end of the 5th phase so that they can pay a useful contribution to the study that is being carried out by the experts, through an exchange of information and documentation. This functionality is only accessible to the members of the various Working Groups to facilitate exchange of information and documentation, follow-up the work of the Working Groups as it progresses and is intended as a networking tool among the members.

Public Procurement in the Euro-Mediterranean Partnership

A Study By

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Section 1

Executive summary

- 1.1. Framework
- 1.2. Methodology
- 1.3. Abstract

1.1. Framework

The “Regional Programme for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market” (EuroMed Market Programme) was launched in May 2002 within the framework of EU Euro-Mediterranean policy. During this 5th phase, a specific objective of the EuroMed Market Programme in this phase is to analyze the evolution since the beginning of the Programme and to carry out a comparative analysis of institutional and legal aspects, examining at the same time the status quo in every single MEDA country and in the area as a whole. The present study aims to analyse the evolution of public procurement in the MEDA region.

1.2. Methodology

With regard to public procurement, the analysis is based on the answers to a comprehensive questionnaire that national authorities have been asked to fill in. The questionnaire covered all the main topics related to institutional organisation, legal practice and development perspectives.

So, fifty-two questions have been grouped in the following key areas:

1. general framework: MEDA countries have been asked to provide some figures on the role played by public procurement in their economies;
2. the regulation of public procurement: this section of the questionnaire aims to investigate the national regulation of public procurement, in particular the structure of different regulations, any ongoing reforms, membership or not of the WTO, and, in case of membership, if it has also signed the Government Procurement Agreement;
3. bodies dealing with public procurement: what kind of bodies monitor the application of public procurement regulation? If they exist, what are the characteristics of this regulation?
4. awarding entities: how many awarding entities are in each country? Is public purchase centralized or coordinated in some way?
5. value of the public contract to be awarded: are there thresholds for the application of an individual regulation?
6. awarding procedures: MEDA countries have been asked to provide information on purchasing procedures, if and when publication of notices are mandatory, and whether domestic preference applies;
7. eProcurement: status quo in each MEDA country;
8. controls: in particular what kind of administrative controls are foreseen?
9. remedies;
10. contract execution;
11. public procurement and SMEs;
12. intra-regional cooperation.

These topics represent the most effective criteria to assess each national public procurement system. Since the goal of the Barcelona Process is the implementation of a free trade area, reference has also been made in the questionnaire to the EU legislative framework.

It is worth emphasizing that EU public procurement legislation is based on a set of principles contained in the EC Treaty: the free circulation of goods, services

and capital, and the freedom for companies to establish. These principles involve an obligation for public authorities not to discriminate against suppliers based in the EU when awarding procurement contracts.

These principles have been implemented by European directives which create a detailed regulatory mechanism. Following recent reform, there are two directives that regulate public procurement: directive 2004/18/EC (classic sectors), and directive 2004/17/EC (utilities). Two other directives regulate remedies: 89/665/EEC (classic sectors) and 92/13/EEC (utilities), both amended by directive 2007/66/EC.

Other aspects are to taken into consideration when analysing a public procurement system and establishing how close it is to the European model: the relevance of SME participation to competitive tendering procedures, the adoption of electronic procedures, and the existence of an independent authority charged with supervising the procedures.

This means that all the most relevant aspects have been analysed, verifying to what extent the national legislations of MEDA countries have adopted solutions in line with EU ones.

1.3. Abstract

Data and information have been organised and examined in order to obtain, in accordance with the objectives of the fifth phase of the EuroMed Market Programme, a comparative analysis of institutional development, legislative approximation, best practises and an overall evaluation.

All these aspects have been developed with the aim, on one hand, of highlighting similarities and differences among MEDA partners and, on the other hand, situations and trends within the MEDA area taken as a whole.

So, as regards legal texts and practical details, cross-reference is constantly made to official sources.

All the information reported and analysed herein is taken from the answers provided by MEDA delegations to the questionnaire supplied. A synthesis of their answers was submitted to each delegation for comments during the summer of 2008.

All the commentary which was received on these documents was then taken into account. When no commentary was received, it was assessed that the situation had been accurately described in the submitted document.

Section 2

Country Profiles

2.1 Algeria 2.2. Egypt 2.3. Israel 2.4. Jordan
2.5. Lebanon 2.6. Morocco 2.7. Palestinian
Authority 2.8. Syria 2.9. Tunisia 2.10. Turkey

2.1. Algeria

In Algeria the value of public purchasing in 2006 was higher than €18 billion, which represented about 30% of GDP. In 2007² this amount was higher and it is foreseen that it will be even higher in 2008, based on public contracts already awarded or still to be awarded, under the five-year plan 2005-2010, the value of which is more than €100 billion³.

2.1.1. General Framework and Regulation

Public procurement in Algeria is governed by the provisions of the Presidential Order of July 2002, modified in 2003, which promotes competition, transparency and equitable treatment in the management of public procurement⁴. All these texts form a code.

The regulation concerning public procurement is being adopted by the National Commission of public procurement, which acts under the control of the Ministry of Finance. Before adoption, all ministries and public institutions are consulted, in particular the technical services that manage public works, habitat and water resources.

A study which aims to modernise and computerise (e-government) all administrations and public institutions is currently being carried out. This reform will have a strong impact on public procurement.

Algeria is not a member of the WTO, but it enjoys observer status within the framework of the Government Procurement Agreement. An association agreement with the European Union is in force.

2.1.2. Bodies dealing with Public Procurement and Awarding Entities

Four Commissions are responsible for controlling the awarding of public contracts: the National Commission for public procurement, established at the level of the Ministry of Finance; the Ministry Commission (at the level of each government department); the *Wilaya* Commission (decentralised); and the Municipality Commission (at the level of local authorities).

There is external *a priori* control, at the level of each Commission, in addition to internal control. There is no specific authority charged with a *posteriori* control, but this role may be played by the National Commission, the Ministry of Finance and Justice, the Court of Auditors and the General Finance Inspection.

There is internal supervision within each authority and supervision following complaints. The internal supervision operates through bodies set up by regulation. Moreover, competitive tendering procedures are submitted, prior to being subjected to external control by the various Commissions, and this takes place independently from the other types of control.

Apart from the general training of civil servants, there is no specific training for officials charged with dealing with public procurement procedures. There is no specific control of the performance of the latter.

The application of public procurement legislation is mandatory for all public entities that manage public resources. During 2008, the scope of the *Code des*

Marchés Publics will be extended to include contracts awarded by public companies.

Each entity may purchase autonomously up to thresholds set by regulation.

There is no central purchasing authority.

2.1.3. Value of the Public Contract to be Awarded and Awarding Procedures

In relation to the value of the contracts, Algerian regulations set thresholds, above which formal rules concerning the awarding procedures apply, and notices are to be published.

Several awarding procedures are foreseen by law⁵. Publicity, by means of newspaper announcements, is obligatory for open procedures, restricted procedures, calls for pre-selection, and calls for tender.

The notice is to be written in the national language and in at least one foreign language. It is published in the Official Bulletin of Procurements of the Public Operator (*Bulletin Officiel des Marchés de l'Opérateur Public - BOMOP*) and at least in two national newspapers.

The members of a Tender Evaluation Committee are appointed by the person responsible for the relevant contracting authority. Membership of a Tender Evaluation Committee is incompatible with membership of a Bid Opening Committee for the same procedure.

Standard forms, standard technical specifications and standard contracts are made available to the awarding entities. Specifications, which constitute the main part of the notice, must contain all details needed by the suppliers to prepare and submit their offer.

In order to prevent any discrimination, the draft technical specifications are submitted for preliminary approval by the responsible procurement committee. Guidelines are available for awarding entities.

The award notice is published, specifying the reason why the contract was awarded to a specific bidder.

It is not mandatory for companies to be established in the country in order to submit an offer.

When awarding public contracts, a preferential quota is granted to local companies, including joint ventures, but in proportion to the shares owned by the Algerian side. The preferential quota amounts to 15% for all types of contract, to be applied in the evaluation of economic tenders. The existence of this preference must be stated in the contract notice.

No negotiation is permitted with the bidders after the opening of the bids and during the evaluation of tenders.

2.1.4. Electronic Procurement

E-Government in Algeria has been adopted, for the time being, by banks, insurance companies, some local entities, and judicial bodies. However all ministries have begun the process of switching to electronic procedures and tools.

The use of electronic signature is regulated by the civil code and the trade code.

Electronic tools and the Internet are available and sufficiently widespread in the country, which should make it easier for e-Procurement to become better established.

A study is being carried out.

2.1.5. Controls, Remedies and Contract Execution

In Algeria there are three types of controls, namely internal control, external control and a control “*de tutelle*”⁶.

In the event of a dispute concerning the awarding of a contract by an awarding authority, it is the Procurement Committee that is charged with dealing with this complaint. This complaint must be lodged within ten days of the publication of the provisional award notice. The Procurement Committee has ten days to deliver its opinion, which is notified to the contracting authority and to the complainant.

This kind of control is carried out applying the regulations of the contracting authorities and in compliance with the awarding rules. Within this framework a Bid Opening Committee is established within each authority⁷.

A complaint can be lodged with the responsible Committee and the National Commission before the execution of contract.

Bidders can also lodge a complaint before a judicial body.

The Algerian civil procedure code allows legal entities under public law to solve any dispute by means of international arbitration⁸. This possibility is granted only if an arbitration clause is foreseen in the contract⁹.

Regarding the execution phase, the regulations which apply are set down in the contract and make reference to the general rules on procurement. In addition to pre-execution disputes which fall within its competence, disputes that arise during the execution of the contract are lodged at the National Committee for Public Procurement.

2.1.6. Public Procurement and SMEs

In relation to public procurement and SMEs, there is no specific regulation aimed at stimulating their participation in competitive tendering procedures, and therefore the same rules apply to all bidders.

2.2. Egypt

In Egypt the value of public purchasing in relation to national *GDP*¹⁰ was about 2.4% in 2006 and in 2007. This total was distributed as follows: supplies represented 40%, services - 38%, and works 22%.

2.2.1. General Framework and Regulation

Egyptian public procurement is governed by law n. 89/1998 (as later amended)¹¹. The version in Arab of law n. 89 and its regulations are available on the websites of the Ministry of Finance and of the General Authority for Government Services¹².

As regards procurement regulations, they are adopted by all governmental administrative units¹³ and no regional variation of procurement law is permitted. No consultation with stakeholders or impact assessment was carried out before the adoption of the law.

The government's commitment to electronic procedures and tools has had a strong impact on public procurement. A Government Services Portal¹⁴ has been set up and an eProcurement portal has been developed¹⁵.

The role which Egypt plays at an international level has had important consequences for public procurement in Egypt. Egypt is member of the WTO, and is also party to several Trade agreements¹⁶. However, Egypt it's not a signatory of the Government Procurement Agreement within the framework of the WTO.

2.2.2. Bodies dealing with Public Procurement and Awarding Entities

The General Authority for Government Services (GAGS) is the authority which is responsible for monitoring the implementation of public procurement. In accordance

with the law, a Ministry of Finance's representative¹⁷ is appointed to procurement committees, which are set up by each contracting authority for all procurement transactions exceeding 250,000 Egyptian pounds (€30,232.1)¹⁸.

As far as the awarding entities are concerned, procurement is managed in an autonomous manner by each public authority (decentralized system). Each entity identifies a body which is responsible for the implementation of the law¹⁹.

There are around 625 awarding entities in Egypt. The application of public procurement regulation is mandatory for all public entities. There is no central purchasing body.

However, as it wishes to harmonize and standardize the purchase of commonly used commodities, the government is now adopting a bulk procurement approach. In that respect, the Government is making use of framework agreements for its Motor Vehicles Replacement Program.

In 2006 and 2007, GAGS launched and adopted a centralized procurement approach. Accordingly, five selected ministries have consolidated their annual procurement of commonly used items, agreed on standardized specifications and requirements and have delegated the procurement and supply management to GAGS²⁰.

2.2.3. Value of the Public Contract to be awarded and Awarding Procedures

Public procurement regulation does not distinguish between different values of the contracts to be awarded. Formal procurement procedures apply to all public procurement regardless of thresholds.

In general, there is no relation between procurement value and the method of procurement. The law defines procurement procedures and threshold authorities for emergency circumstances²¹. Local tendering methods can be used if the procurement value is up to LE 200,000 (€24,185.7), and in that case only local bidders are invited to submit an offer.

Standard bidding documents, such as requests for proposals, have been recently drafted and used by the Ministry of Finance for procurement of professional services and supply of commodities. Two standard contract forms are available: a contract for the supply of commodities and a contract for construction services. An administrative memorandum was issued for all government entities in order to introduce standard contracts.

According to the law, awarding decisions and evaluation conclusions must be published. As regards Procurement documents, the law stipulates that they must be issued in Arabic. In case of foreign procurement, tender documents must be issued in both Arabic and a foreign language²².

Bidders must have a legal status in Egypt and must be registered in accordance with the relevant laws. There is a domestic preference applied to the awarding of contracts, since offers including locally performed services and works or locally produced commodities are considered less expensive, provided that its price does not exceed bids including foreign or imported goods or services by 15%.

All offers are publicly opened on the due date and at a pre-determined location. Contracts are amended in the event of an increase or decrease in the quantities required or if construction services contracts are adjusted.

As regards work contracts, in 2008 law n. 89/1998 has been amended to mitigate the excessive increase in the cost of construction materials. This amendment requires all government bodies to conduct a price adjustment review on a quarterly basis for most awarded contracts.

2.2.4. Electronic Procurement

Egypt has been implementing eGovernment since July 2001²³. The law provides a specific regulation for eSignature: in some cases eSignature, eWriting and eDocuments are sufficient for the provision of legal evidence²⁴.

Consistently in line with the Egyptian eGovernment initiative and the first phase of the procurement cycle automation, an eProcurement portal has been developed and published on the Internet²⁵. The portal was made available to the public in August 2007 and suppliers have already started registering their data on the portal.

The implementation of eGovernment in Egypt takes into account the interoperability concept, which is being implemented in some current projects, and communication between different governmental sectors and units is ongoing. In that respect, a central portal for eProcurement has been activated in order to provide most of the tender procedures online²⁶.

IT tools and broadband connection are widespread in Egypt. The Government provides Internet for free and broadband connection is available at a minimal cost. Most Ministries are connected to the internet. The main obstacle to the development of a well functioning eProcurement system is the fact that the following elements are still partially missing: relevant legislation, public and private sector IT infrastructure, qualified resources, and adequate technical training.

E-signature is by now accepted in Egypt while implementing any eGovernment related projects. A certification authority has been duly empowered. Egypt does not make use of electronic auctions.

2.2.5. Controls, Remedies and Contract Execution

For each procurement transaction, the competent authority at the level of government body/unit/authority, must appoint a procurement committee, whose members have technical, financial and legal skills, to ensure that relevant laws are observed, and to manage and oversee the procurement process.

This committee must approve all actions and conclusions concerning the management of the procurement transaction. The appointed committee members have the right to appoint an additional subcommittee of technical members, in order to examine specific aspects identified by the committee as pertinent to the public contract.

There is a dedicated complaint office and well defined complaint procedures in place in order to give the bidder the possibility to lodge a complaint²⁷. The Ministry of Finance issued General Circular n. 1/2008 reiterating the need to specify in the tender documents a time frame for the bidders to submit complaints.

For the execution of the contract, once the procurement committee concludes its award decision and all award procedures have been completed, three copies of the contract must be signed and one copy is delivered to the winning bidder²⁸.

2.2.6. Public Procurement and SMEs

Between July 2006 and end of June 2007, SMEs²⁹ were awarded 1211 contracts from 94 government entities to the total value of LE 31,666,579 (€ 3,829,393)³⁰.

Law n. 89/1998 provides some provisions to stimulate SME participation and success in public contracts³¹. By virtue of this law, SMEs are given the right to supply no less than 10 percent of the value of all government procurement.

2.2.7. Intra-regional Co-operation

Cooperation within *COMESA* (Common Market for Eastern and Southern Africa) regarding e-public procurement is at an early stage. It is noteworthy that a legal sub-committee is currently reviewing and redrafting the *COMESA*³².

2.3. Israel

The value of public purchasing in relation to GDP³³ in Israel is 35%, distributed as follows: works 5%, services 20%, and supplies - 10%.

2.3.1. General Framework and Regulation

Israel Tender Law provides a legal framework for the field of public procurement. This regulation is part of a code. In Israel all central authorities must apply the Tender Law and also the regional authorities must adopt similar laws. Currently there are reforms underway that will strongly impact on public procurement.

Israel's membership of a number of organizations also has an important influence on public procurement. Israel is member of the WTO and a party to the Government Procurement Agreement. Moreover it has entered into bilateral and multilateral agreements with the EU, the USA, Mexico, Canada and Turkey.

2.3.2. Bodies dealing with Public Procurement and Awarding Entities

The Authority in charge of monitoring public procurement is the Governmental Purchasing Unit. It also carries out central tenders for governmental Authorities. The Board of the Authority is appointed by the Accountant General. As a central purchasing body, the Governmental Purchasing Unit also coordinates the public purchases of different entities.

As regards officials dealing with public contracts, specific training is not mandatory. The Governmental Purchasing Unit is the body charged with ensuring that the training of officials is sufficient and updated.

In Israel there are about 50 awarding entities. Only the central authorities and ministries must observe the public procurement regulation. Public procurement regulations are mandatory for most public entities.

2.3.3. Value of the Public Contract to be awarded and Awarding Procedures

Public procurement regulation distinguishes the different values of the contracts to be awarded. A general threshold is foreseen at about € 60,000³⁴, but formal rules already apply above a threshold of about € 7,000.

In general, standards forms, standard technical specifications or standard contracts are not made available to the awarding entities, whilst explanatory texts (e.g. guidelines) are made available on the web-site of the Governmental Purchasing Unit.

Israeli legislation identifies different methods for awarding contracts in relation to the contract value³⁵. At the end of the procedure, it is not mandatory to publish the results of the procedure. However, there is an obligation for tender bids to be opened in front of the bidders.

There is an obligation that awarding procedures are conducted in the national official language. There is also a rule of domestic preference, applying to a certain percentage of public contracts.

2.3.4. Electronic Procurement

Israel has developed an on-line system of e-tendering. IT tools and broadband connection are sufficiently widespread, so no obstacle is supposed to hinder the development of a well functioning e-procurement system.

Ongoing reform aims at running all purchasing procedure on-line. The law provides that contracts for more than \$ 100 million must be concluded using e-procurement tools. The on-line system is now targeting the electronic submission of financial bids.

Currently, there is no specific regulation governing e-signature, but reforms are now on-going in this field. As far as e-certification is concerned, Israeli authorities issue an annual plan for the use of electronic certificates in e-procurement. An audit procedure provides a certification service.

2.3.5. Controls, Remedies and Contract Execution

The body charged with administrative preventive control, limited to the awarding values, is the legal office within the Governmental Purchasing Unit. However, no tender is cancelled as a result of this control.

The law allows bidders or candidates in a public contract to lodge a complaint. There is a timeframe for asking questions and seeking clarifications. So, the bidder may submit questions to the contracting entity within a scheduled timeframe (several weeks).

If a dispute arises during the execution of the contract, the SLA – Service Legal Agreement is charged with settling it.

2.3.6. Public Procurement and SMEs

The Accountant General publishes guidelines in order to stimulate the participation of SMEs in public procurement procedures.

2.3.7. Intra-regional Co-operation

Israel has no experiences of co-operation with other Mediterranean partner countries in the sector of public procurement or e-procurement, apart from the EuroMed Market Programme.

2.4. Jordan

In Jordan the value of public procurement, including works, supplies, and services, approximately amounts to JD 1 billion (€ 1,008,941,849.82), while GDP in 2006 was JD 14.1 billion (€ 14,125,185,897.51).

2.4.1. General Framework and Regulation

The legislative framework mainly consists of three pieces of legislation: i) the Government Works Regulation No. 71 of 1986, as subsequently amended, dealing with works and engineering services; ii) the Government Supplies Act No. 32 of 1993, as subsequently amended, dealing with supplies and other services; and iii) the more specific Joint Procurement Regulation of Medicines and Medical Supplies of 2002.

Copies of these laws are available on the websites of the Government Tenders Directorate (GTD), of the General Supplies Department (GSD) and of the Joint Procurement Department (JPD) for the procurement of medicine and medical supplies³⁶.

Jordan has started a reform process in the public procurement sector, issuing a Country Procurement Assessment Report (CPAR) in coordination with the World Bank. The main steps of the reform are: i) the completion of new draft public procurement regulation, ii) consultation with stakeholders, and iii) the legal revision for final approval.

According to the draft, the new regulations' goals are mainly to simplify procedures, including remedies, and the encouragement of SMEs to participate in competitive tendering procedures.

In the 1990s, Jordan entered into free trade agreements with several countries in the region, including

Egypt, Syria, Morocco, Tunisia, Algeria, Lebanon and the Palestinian Authority.

2.4.2. Bodies dealing with Public Procurement and Awarding Entities

Three public bodies deal mainly with public procurement; their competence corresponds to the scope of the laws mentioned above.

The GTD deals with the procurement of works exceeding JD 500,000 and of engineering services exceeding JD 30,000. The GSD deals with supplies of goods and other services for amounts exceeding 20,000 JD. The JPD deals with the procurement of medicine and medical supplies of any amount.

The authority that monitors public procurement is the Audit Bureau. This government body monitors public expenditure.

Jordan is adopting a centralized system based on the three purchasing bodies mentioned above (GTD, GSD and JTD), so other governmental entities may act autonomously only below the set thresholds.

The laws stipulate that public works contracts have to be awarded through committees operating at different institutional levels, with decreasing thresholds from central to local administrations³⁷. The same system is used for supplies and services contracts³⁸.

2.4.3. Value of the public contract to be awarded and awarding procedures

Public procurement regulation applies in general to all public contracts granted by entities which meet the requirements under the definition of "body governed by public law".

Public procurement regulations distinguish the value of the contracts to be awarded by the committees. Formal procurement procedures apply to contracts exceeding the thresholds of € 6,000 for works and engineering services, and € 1,200 for supplies and other services. When the value of the contract exceeds these thresholds, an information notice is mandatory.

The awarding procedures for public works and engineering services tenders are regulated by the Government Works Regulation of 1986, as subsequently amended, and by the instructions issued pursuant to this Regulation. The competent committee selects the best offer, according to the selection criteria established by the tender notice, and awards the contract; its decision is subsequently ratified by the contracting authority.

The selected bidder is then notified of the award. This decision cannot be modified or amended, except by a subsequent decision issued by the same committee that shall be subject to ratification by the contracting authority, and only in exceptional circumstances. For transparency reasons, the results of tender procedures are always published.

In order to simplify the submission of offers, standard forms are made available by the awarding entities, together with explanatory text and guidelines. The use of the English language is allowed for international tenders, while for local tenders the use of the national language is mandatory. However, in this last case, the specifications and technical documents can be provided in English.

Foreign companies wishing to submit a tender bid must register with Ministry of Trade and Industry. Foreign companies will have to register with the Jordan Engineers' Association or the Jordan Contractors' Association for engineering services and works contracts but this is necessary only after the awarding of the contract.

Following the conclusion of a public contract, foreign companies must establish regional offices in Jordan.

The law also stipulates a principle of domestic preference for a certain percentage of the supply contracts³⁹.

2.4.4. Electronic Procurement

Jordan is improving its e-administration, although there are several obstacles to this development, i.e. the high price of Internet connection and the weakness of IT infrastructure. The Ministry of Information and Communications Technology (MOICT) is the government body which deals with eGovernment issues.

Most procurement notices for works and documents for services and supplies are available on the Internet and may be downloaded by interested companies. Reforms and pilot projects are ongoing in the area of e-tendering, e-signature and e-certification.

2.4.5. Controls, Remedies and Contract Execution

The authority that monitors public procurement is the Audit Bureau⁴⁰. As mentioned above, this authority only monitors public expenditure. The awarding entities have internal monitoring units, responsible for administrative controls.

Remedies might be brought before the competent judicial authorities by interested persons/companies. These remedies are subject to strict time limits, because the relevant laws⁴¹ stipulate that the plaintiff has from 2 to 4 working days to lodge his complaint.

The settlement of disputes is regulated by special clauses in the standard contracts drafted by the contracting authorities.

2.4.6. Public Procurement and SMEs

Currently Jordan does not have specific regulations governing the participation of SME in competitive tender procedures. However, one of the goals of draft public procurement regulations currently being prepared, is to stimulate and facilitate SMEs when participating in calls for tender.

2.4.7. Intra-regional Co-operation

As mentioned above, Jordan has signed several free trade agreements with Arab countries in the region⁴².

In the public procurement sector, these agreements require further implementation to achieve the following goals: i) encouraging the unrestricted provision of services; ii) eliminating discrimination and increasing transparency; iii) strengthening technical cooperation; and iv) meeting the requirements of international legislation, such as the UNICTRAL models.

2.5. Lebanon

Public purchases, as a percentage of GDP⁴³ in Lebanon, ranges from 11% to 17%, according to unofficial figures.

2.5.1. General Framework and Regulation

For a general regulation governing public procurement⁴⁴, reference should be made to the Public Accountability Law n. 14/969 and to several decrees that provide details for its implementation and the regulation of the constitution of the Central Inspection Board (which encompasses the Tender Board).

As this framework is now outdated, a draft procurement law and a draft procurement management law (2007) are now being reviewed by the relevant authorities before their adoption⁴⁵. The General Conditions of Contract (GCC), dating back to 1943, are also currently under review.

The draft law provides an alternative way for dispute settlement in addition to litigation. At the same time, there are initiatives to introduce new legislation concerning digital certification, e-signature and e-procurement, that is - e-transactions.

All types of public entities must apply procurement regulations, but the organizational mandate of some autonomous entities, such as Council of Development and Reconstruction-CDR, or Electricity Du Lebanon-EDL, may allow for exemptions. As for municipalities, they apply the public procurement framework with certain exceptions⁴⁶.

In relation to Lebanese participation in international organizations or agreements, it acquired the observer status at the World Trade Organisation (WTO) and a Working Group was established on 14 April 1999.

Lebanon is not party to the Government Procurement Agreement (GPA), even if it will seek observer status at the time of its accession to the WTO with a view to initiating negotiations for membership thereafter.

2.5.2. Bodies dealing with public procurement and awarding entities

The Tender Board is the Authority charged with monitoring public procurement⁴⁷. It is entrusted with all centralized procurement processes for public entities, excluding autonomous agencies. In the new draft Public Procurement Management Law (PPML), a new authority is established to monitor and regulate public procurement⁴⁸.

The employees and staff of the Tender Board are civil servants appointed pursuant to applicable laws and regulations. The Civil Service Board is entrusted with managing the recruitment process⁴⁹. All public entities are subject to the control of the Court of Audit.

Procurement is decentralized for purchases below a certain threshold, so all public entities have a certain jurisdiction for awarding contracts. However, on the basis of the new draft procurement law, public procurement will be fully decentralized.

There is no central purchasing body in Lebanon entrusted with all purchases. The Tender Board handles purchases above a € 45,000 threshold; however, according to the new draft procurement law, a new authority may handle purchases in the future in a centralized way.

2.5.3. Value of the Public Contract to be awarded and Awarding Procedures

The new draft Public Procurement Law has not been adopted yet, but once done, decrees will be issued setting the new thresholds⁵⁰. As to current law, all purchases above LBP 100.000.000 (about € 45,000) need to be processed through the Tender Board making use of public announcements.

Other purchases with a value between € 45.000 and € 1.400 can be handled by the contracting authority either through a public announcement or through restricted tendering (through direct invitations). Lower value purchases may be made through a negotiated informal procedure.

Formal rules concerning the awarding procedure apply above € 1.400. In this case notices and information are also mandatory.

Standard forms, standard technical specifications or standard contracts are made available to the awarding entities. Explanatory texts are not made available to awarding entities, but central agencies such as Central Inspection, Court of Accounts, and OMSAR, provide the necessary advice to awarding entities upon demand.

In order to be accepted as a bidder, a company needs to have an established office in Lebanon. To the specific extent of the contract award, a domestic preference applies⁵¹: the new law has not determined yet the percentage of this preference⁵². The awarding procedures must be conducted in the national language, but technical specifications can be drafted in a foreign language.

According to the regulation now in force, it is not mandatory to publish the results at the end of the procedure, but the draft law includes the publication as a mandatory requirement. At the end of the awarding procedure, tender bids must be opened in front of the bidders.

2.5.4. Electronic Procurement

The Lebanese e-government project has been divided into four sections: legal; technical; services; and capacity building.

OMSAR is spearheading this initiative and is managing the advancement of e-government applications⁵³. At the end of 2007, Lebanon adopted an “e-government strategy” based on four pillars: e-Reform; e-Citizen; e-Business; and e-Community.

One of the main concerns of the new e-government strategy is interoperability⁵⁴. Moreover, reforms are in progress in the sectors of electronic transactions and e-signature.

Also e-procurement is currently under study. The new procurement law envisages the use of electronic means in procurement. The same principle will be implemented when issuing the decrees that will follow the endorsement of the law⁵⁵.

It is important to note that IT tools and broadband connections are sufficiently widespread in Lebanon and the private sector is very well equipped and connected. Most public institutions have broadband connections or can be easily connected when needed.

2.5.5. Controls, Remedies And Contract Execution

There are two types of control: *ex-ante* and *ex-post*. Financial controllers review bidding documents and award recommendations before endorsement. Certain projects above the threshold are reviewed by the Court of Accounts. The local authority provides opinions on complaints concerning contract awards upon receipt of such complaints.

The new draft of the Public Procurement Management Law (PPML) aims at ensuring higher efficiency of the

controls⁵⁶. In relation to the contract execution phase, it is possible for a bidder or a candidate in a public contract to lodge a complaint before a judicial authority. Currently, disputes are managed by relevant courts, but the draft law and GCC also envisage some alternative dispute resolutions.

2.5.6. Public Procurement and SMEs

There is no law or regulation that sets a certain quota for SMEs in competitive tendering procedures or aims at stimulating SME participation and success in the context of public contracts.

The EU funded Integrated SME Support Programme (ISSP) has worked with the Ministry of Economy and Trade (MoET) to strengthen the SME institutional framework and to develop policy recommendations for enhancing the business support environment.

2.5.7. Intra-regional Co-operation

Lebanon has various experience of intra-regional cooperation in the sector of public procurement. In 2000/2001, the World Bank funded a study to review public procurement laws.

Subsequently, OMSAR participated in various workshops and seminars on this subject within the European Neighbourhood and Partnership Instrument (ENPI) as well as the EuroMed Market Instrument. In addition, OMSAR is holding discussions with the OECD to co-operate on an initiative on this subject.

The Government of Italy (through the Development Gateway Foundation) has extended cooperation with Lebanon on procurement and e-procurement capacity building, which is currently being advanced through a grant for a pilot project.

2.6. Morocco

In Morocco public contracts account for approximately 15% of GDP⁵⁷.

2.6.1. General Framework and Regulation

The main legislative act governing the public procurement sector is a decree from February 5, 2007, laying down the conditions and the forms for awarding State contracts and certain rules related to their management and to their control. This also governs the awarding of contracts on behalf of the State, as a basic text⁵⁸.

As regards local authorities, the law stipulates that their contracts are subject to the same forms and conditions adopted for the contracts of the State and are subject to the same control and management provisions⁵⁹.

However, these entities apply the decree applicable to State procurements with some changes, pertaining to the composition of committees for tenders and to modalities of approval of contracts.

As to the other public institutions and bodies, such organisations have their own regulations for the awarding of contracts, which are in general drawn up on the basis of the decree concerning the awarding of State contracts, subject to certain amendments, specific to these entities, but respecting the basic principles of the above mentioned decree.

It must be noted that the legislation in the sector of public procurement involves, in the reform process, a number of different authorities. Representatives from professional organisations are also consulted.

The Kingdom of Morocco is a member of the WTO and entered into an Association Agreement with the

European Union on 26/02/1996 for a free trade area, as well as into several bilateral agreements⁶⁰.

2.6.2. Bodies dealing with Public Procurement and Awarding Entities

Several public bodies deal with the supervision of public procurement, with different competencies and powers. The Ministry of Finance and the Court of Auditors control accounts and public expenditure in general. There are also control bodies which operate within each department and State auditors for public institutions.

There are three categories of contracting authorities: i) the authorising officers at the level of public administrations; ii) the authorising officers at the level of local authorities; and iii) the board of directors at the level of public bodies⁶¹.

The law compels the public-sector companies to have their own regulation fixing rules and methods for the awarding of contracts, which is in general drawn up based on the decree regulating the award of the State contracts, subject to certain amendments specific to these entities.

2.6.3. Value of the public contract to be awarded and awarding procedures

The public procurement regulation applies in general to all procedures.

Formal rules apply to all public contracts above 200,000 *dirhams*, i.e. 17,400 euro, and require the publication of a notice and the subsequent publication of the procedure results. Below this value, the acquisition of supplies, works or services can be carried out by purchase orders.

The methods for awarding the contracts are as follows: i) call for tender; ii) tender; iii) negotiated procedure. However, for certain contracts the rules governing publicity and the tender procedures always apply.

The call for tender can be open or restricted. It is understood as “open” when any candidate can obtain the tender documents and submit an offer. It is understood as “restricted” when only the candidates that the contracting authority decided to consult can submit offers.

The pre-selection call for tender implies a prior choice carried out by an admittance committee, which selects candidates that meet particular requirements, such as technical or financial ones.

The tenders put potential candidates for projects into competition, to be evaluated by a committee, which estimates the performances which will be requested on the basis of the contract.

The negotiated procedure enables the contracting authority to freely negotiate the conditions of the contract with one or more candidates. As it is restrictive, it is allowed only in specific cases.

Contracts whose value is lower than or equal to 1,000,000 *dirhams*, i.e. 87,000 euro, which can be executed only by a limited number of operators, given their nature or their complexity, are awarded by means of a restricted procedure, which must be carried out by consulting at least three candidates able to meet the requirements for awarding entities.

The law does not require bidders to be registered in Morocco. The legislation formally provides for a national preference clause in public procurement. However, it must be noted that this rule, which came into force in 1998, has never been put in practice.

2.6.4. Electronic Procurement

The last reform of public procurement, which led to the adoption of the decree from February 5, 2007, launched the adoption of electronic procedures, envisaging the creation of a web portal for public contracts and allowing on-line exchange of information between contracting authorities and economic operators.

The portal for State public procurement, under construction since October 2007, will soon contain the publication of contract notices and allow for the download of contract documents, as well as the list of excluded bidders.

A project for electronic tenders is also underway. Further legislation came into force in 2007 in the area of e-signature and the electronic exchange of legal data⁶².

2.6.5. Controls, Remedies and Contract Execution

Under Moroccan law, administrative controls on public procurement are limited to rules on the awarding of contracts and on budgets. This control is generally an a priori one, carried out before the formal initiation of the procurement procedure.

The judicial review is carried out by administrative courts, subject to a time limit of 60 days after notification of the decision of the public body. The judgement of the administrative court may be challenged before the *Cour d'appel* and the *Cour de cassation*.

With some exceptions for a few cases, such as increases or reductions in the amount of works or the execution of additional works, the contract cannot be amended after the awarding decision has been reached.

2.6.6. Public Procurement and SMEs

Currently Morocco has no specific legislation on the participation of SMEs in public procurement. However, some laws and regulations have been adopted to encourage, for example through tax benefits, the creation and development of SMEs.

However, laws now into force do not make any discrimination between large, medium or small enterprises. The participation in the competitive tendering procedure is open to any operator, only on the basis of their professional, technical or financial capacity.

2.6.7. Intra-regional Co-operation

As mentioned above, Morocco is party to several international agreements⁶³.

2.7. Palestinian Authority

According to the information provided by the Palestinian Delegation, the annual GDP of the Palestinian Authority in 2007 was of \$ 1,129 *per capita*.

2.7.1. General Framework and Regulation

There are three main acts governing the public procurement sector: a General one (Basic or Civil Law), a Public Supplies Law⁶⁴ and a Public Works Procurement Law⁶⁵. The public procurement regulation is represented by several texts, each of them governing a specific aspect. They are available in the Arabic language and also in English, but the translation is not an official one⁶⁶.

In the Palestinian Authority only central authorities can adopt a regulation concerning public procurement, in particular the Palestinian Legislative Council and the Council of Ministers. There is no regional variation of procurement law. It is important to note that there is reform underway that will have an impact on public procurement.

The Palestinian Authority is neither a member of the World Trade Organization nor, as a consequence, a party of the Government Procurement Agreement⁶⁷. However, it has entered into many free trade agreements with Turkey, the EU, the USA, and the EFTA. The Palestinian Authority is a member of the Arab Free Trade Area Agreement.

2.7.2. Bodies dealing with public procurement and awarding entities

The Authority charged with monitoring public procurement is the State Audit & Administrative Control Bureau. It is not in charge of training procurement officials. The General Employees Bureau appoints the board of the

Authority. In relation to awarding entities, Central Tendering Committees are formed by the Minister of Public Works & Housing according to laws n. 6/1999 and n. 9/1998. There are five central awarding entities and one local entity in each institution.

There is a central purchasing body - the Central Supplies Committee, which is a department of the Ministry of Finance.

2.7.3. Value of the Public Contract to be awarded and Awarding Procedures

Public procurement regulations distinguish between the different values of contracts to be awarded. At central levels, thresholds are as follows: \$ 150,000 for works; \$ 7,000 for services; and \$ 15,000 for Supplies. Below these thresholds, public contracts are autonomously awarded by local entities.

Formal rules concerning awarding procedures apply to supplies with value of over Euro 1,000. As to services and works, all calls for tenders must comply with procurement rules. Notices and information are mandatory for supplies whose value is above Euro 1,000. As to services and works, in general all tenders shall be advertised, but there are some exceptions in special and urgent cases.

Standard forms, standard technical specifications, standard contracts, and explanatory texts are available to the awarding entities. There is an obligation for tender bids to be opened in front of the bidders. It is mandatory to publish the result of a call for tender.

All tender documents must be drafted in the local language, but contract documents and specifications can be in English.

Foreign contractors may participate in competitive tendering procedures when this is allowed. Nevertheless all contractors must be officially registered in the Palestinian Authority.

A domestic preference applies to the award of contracts only for government projects that meet some specific conditions.

2.7.4. Electronic procurement

The Palestinian Authority has no experience in the field of eGovernment, and no eSignature regulation is provided.

Nevertheless IT tools and broadband connections are sufficiently widespread in both the public and private sectors.

2.7.5. Controls, remedies and contract execution

In the Palestinian Authority there is no specific body charged with administrative control prior to the awarding of contracts.

In relation to the remedies, there is the possibility for a bidder or in general for a candidate for a public contract to lodge a complaint before a judicial authority.

Disputes related to the contract execution may be resolved using Arbitration Law.

2.7.6. Public Procurement and SMEs

In the Palestinian Authority, most companies are considered to be SMEs. The participation and success of SMEs in the context of public contracts is promoted by law⁶⁸.

2.7.7. Intra-regional Co-Operation

The Palestinian Authority has participated in many seminars in the field of public procurement and eProcurement with Mediterranean partner countries.

2.8. Syria

Annual GDP in Syria in 2006 was 1,708,745 million Syrian pounds (SP) (about € 24,441 million).

2.8.1. General Framework and Regulation

The main legislation now in force in the field of Public Procurement is Law n. 51 from 2004, adopted on December 9, 2004, as integrated in a book on general conditions for a uniform contract system issued by Decree n. 450 of 2005. A further regulation (executive instruction for the implement of the uniform system of contracts) should be taken into account⁶⁹.

All these texts are part of a general code.

2.8.2. Bodies dealing with Public Procurement and Awarding Entities

There are two bodies charged with monitoring public procurement, the Central Body for Financial Control and the Central Commission for Surveillance and Inspection. These two bodies act after the execution of the contract, checking the expenditure and the accounting methods which have been used.

The Ministry of Finance can be consulted on the subject, being the legally responsible authority. The bodies mentioned above provide consultancy upon request, running training courses and seminars. These bodies are the responsibility of the Prime Ministry.

Specific training is mandatory for officials who deal with public contracts. Most of the training courses are organised at regional or local levels. It is interesting to note that results and reports about training courses must be presented and submitted for evaluation to the competent authorities.

In relation to the awarding of contracts, Syria adopts a decentralized model: there is no central purchasing body. Public purchases by different entities are sometimes coordinated.

2.8.3. Value of the Public Contract to be awarded and Awarding Procedures

Public procurement regulations distinguish between the value of contracts to be awarded: any contract exceeding set thresholds shall be awarded under Law n° 51 from 2004.

The threshold for the application of formal rules concerning the awarding procedure is SP 100,000 (about € 1,500). Subject to ministerial approval, this threshold can be moved to SP 300,000 (about € 4,500). The Prime Minister can adjust this last threshold.

The awarding procedure is composed of several steps that can be summarised as follows: drawing up of terms and specifications; publication of the notice; setting up of a committee in charge of evaluating bids; submission of bids and guarantees; opening and evaluation of bids; approval of results and confirmation of the award by the committee or by the Board; notification of awarding decision to the selected bidder; submission of final guarantees; signing of the contract; ratification by competent authorities; and finally execution of the contract. There is no obligation to publish the result of a call for tender.

A standard contract is made available to the awarding entities. Executive instructions help with the implementation of a uniform contract system⁷⁰. There is no obligation for tenders to be opened in front of the bidders. There is only an option for bidders to request this.

There is an obligation that awarding procedures are conducted in the national official language. It is not

mandatory for a company to be established in the country in order to be accepted as a bidder, but a foreign entity must appoint its own agent in the Country. Domestic preference: there is a percentage of 10% added to any foreign economic offer, when comparing domestic and foreign bids.

If any, amendments are added according to contract provisions. Mostly, this happens at the moment of ratification by the competent authority. In this case, an annex is included in the contract.

2.8.4. Electronic Procurement

The Prime Minister is the competent authority supervising the eGovernment project. Its main goal is to create a network among public entities.

A specialised committee has been established. Its members are experts and practitioners from ministries and administrations, who pursue the goal of establishing a proper legal framework, and implementing the relevant procedures.

The Ministry of Communications is the authority that is in charge of developing eServices and is the provider and supervisor of means of eCommunications.

Furthermore, in the general eGovernment framework, banks, insurance companies and customs are using electronic procedures such as ePayment. A type of eShopping, operated by banks is already available using credit cards.

A draft of an eSignature law is under discussion by the Prime Minister.

Syria is developing eProcurement phase by phase. The first step, now under implementation, is the publication of contract notices and documents on line, either on

a central web-site, created for that purpose, or on the web-site of the awarding entity, when available.

Moreover, the Ministry of Finance publishes all laws, regulations and amendments to public procurement on its web-site.

Companies which usually operate in the field of public procurement will, in the near future, be involved in the development of eProcurement. Once they have been provided with the necessary IT knowledge and equipment, they will be ready to participate in the next phase of eProcurement. However, private and public companies operating in procurement are already equipped with the necessary IT solutions.

The main obstacles hindering the development of a well functioning eProcurement system are the creation of suitable software and the training of staff.

Furthermore, Syria foresees the use of electronic certificates, but at present there is no certification authority duly empowered. Electronic auctions are not used.

2.8.5. Controls, Remedies and Contract Execution

There is no specific body charged with administrative control prior to the awarding of a contract, but there is a so called Internal Control that is carried out within each public entity and results in administrative monitoring.

There is the possibility for a bidder or in general for a candidate for a public contract to lodge a complaint before a judicial authority. Disputes arising from the awarding of a contract may be amicably settled before reaching an administrative tribunal. If an agreement has not been reached, the administrative tribunal shall rule on the dispute.

In relation to the execution phases of the contract, they can be summarised as follows: on-time delivery of supplies under the contract; setting up and completion of checking-tests; and confirmation of conformity with specification. If any disputes arise during this stage, there are amicable and judiciary means of resolving them.

2.8.6. Public Procurement and SMEs

At the present there is no specific law, regulation or public initiative that aims to stimulate SME participation and success in public contracts.

2.8.7. Intra-regional Co-operation

Syria has remarkable experience of co-operation on public procurement with other Mediterranean partners and this is thanks to its participation in several seminars and workshops, which have been especially held within the framework of the EuroMed Market Programme.

2.9. Tunisia

Annual GDP in Tunisia is € 23,329 million. Public procurement amounts to about 13% of GDP, or a total of € 3.050 million, of which services and supplies account for approximately a third, and work contracts - two thirds.

2.9.1. General Framework and Regulation

The regulation of public procurement is covered by a law on public accounting, in conjunction with a decree and a circular on application, all of which form part of a code⁷¹. Regulations in this area have been adopted following an evaluation of their impact with consultations including all contracting authorities.

Only the central authorities, namely the Prime Minister, can adopt a regulation concerning public procurement. A project for the legal framework governing the Public-Private-Partnerships (PPPs) is now in the pipeline.

Tunisia is a member of the WTO, while it is not a member of the Government Procurement Agreement⁷². It is signatory to about fifteen free trade agreements (FTAs), the most important of which are with the EU and with the AMU (*Arab Maghreb Union*) countries.

2.9.2. Bodies dealing with Public Procurement and Awarding Entities

In Tunisia there are two authorities responsible for supervising public procurement: the National Observatory for public procurement and the Follow-up and Monitoring Committee for public procurement, which ensure supervision, regulation, statistics, training missions and assistance. The Prime Minister chooses the members of the Administrative Board of the National Observatory.

Specific training for officials who are charged with purchasing on public market is not mandatory. The entity responsible for checking that the officials' training is sufficient and updated is the National Observatory for public procurement.

There are four categories of contracting authorities: the State, local authorities, administrative and non administrative public institutions and public companies (according to the definition given in European directives). All those must respect public procurement regulations.

There is no central purchasing body in Tunisia. Nevertheless the purchase of computers, vehicles, fuels and lubricants by various public entities is coordinated.

2.9.3. Value of the Public Contract to be awarded and Awarding Procedures

The law regulates that formal rules concerning the awarding procedures apply above the following thresholds: for works - € 28.000, goods and services - € 17.000, studies - € 9.000, and IT - € 23.000.

Above these thresholds, information notices are mandatory. In Tunisia there are also different awarding procedures based on the value of the contract⁷³.

Standards forms, standard technical specifications or standard contracts are available online⁷⁴. Some explanatory documents are available following a Government decision⁷⁵.

Bids must be opened in front of the bidders. There is an obligation to publish the tender results. It is not mandatory for the awarding procedures to be conducted in the national official language.

For a company it is not mandatory to be registered in Tunisia in order to be accepted as bidder.

There is a national preference in applying for the award of public contracts: in the evaluation of the offers, the domestic economic bids are reduced by a certain percentage.

With regard to amendments to public contracts, these are not frequent following an award, but when they do occur everything is regulated by the general regulation governing public procurement.

2.9.4. Electronic Procurement

Three years ago a project was set up for on-line administrative services and the publication of administrative documents, with the obligation for each administration to have a web-site open to the public.

In Tunisia there is an eSignature regulation included in the law on electronic commerce. Interoperability is ensured by supporting applicative cooperation in order to take account of differences between computerised systems. However, there was no specific eProcurement project until now.

Electronic tools and broadband Internet access are widespread in Tunisia in sufficient measure to allow the development of an eProcurement system. The main obstacles which make the development of an effective eProcurement system more difficult are of both a regulatory and technical nature.

In relation to electronic certification, in Tunisia the responsible Authority is the National Agency of Public Law. EAuctions are not used.

2.9.5. Controls, Remedies and Contract Execution

The body charged with administrative control prior to the awarding of contracts are the Commissions for

public procurement established within each contracting authority. They monitor a procedure's compliance with regulations. If some irregularities are noticed, this check could result in the suspension of the tender.

It is possible for a bidder for a public contract (or for a candidate) to lodge a complaint before a judicial authority, on the basis of a law on the Administrative Court and the *Conseil d'Etat* - State Council (in particular it allows for annulment due to abuse of power or for compensation).

As far as the execution stage is concerned, it is important to underline that competitive tender procedures are carried out in accordance with the signed contract and legal standards. In the event of disputes, these are regulated either amicably or by recourse to the Committees of public procurement, to the Regulation Committee, or to the Prime Minister's office's Follow-up and Monitoring Committee.. Some have the right to lodge appeals to an administrative judge, namely to the *Conseil d'Etat*.

2.9.6. Public Procurement and SMEs

The percentage of public contracts awarded to *SMEs* is about 90% of the total. There is a specific legislation (a decree) aiming at stimulating the participation and the success of *SMEs* within the framework of the public market.

2.9.7. Intra-regional Co-operation

Tunisia has cooperation experience in public procurement within the EuroMed *Market* programme.

2.10. Turkey

In Turkey Public procurement amounts to 10% of total GDP, which amounted to \$ 489.4 billion⁷⁶ in 2007. Procurement breaks down as follows: 34% supplies; 37% services; and 27% works.

2.10.1. General Framework and Regulation

The main framework legislation consists of two main acts: a Public Procurement Law (*PPL*) and a Public Procurement Contract Law (*PPCL*)⁷⁷. Both Laws (which are both framework laws) were adopted following consultations⁷⁸. There is also secondary legislation governing the review of complaints.

Only the central authority can apply the relevant regulation, and there is no regional variation of procurement law. As Turkey negotiates with the EU for full membership, there are some on-going reforms to align the existing legislation with EU *acquis*⁷⁹.

2.10.2. Bodies dealing with Public Procurement and Awarding Entities

The Public Procurement Authority (hereinafter *PPA*) is charged with monitoring public procurement and of providing training on procurement legislation for officials of the awarding entities⁸⁰. However, the *PPA* does not provide assistance during the procurement process. The deciding body of the Authority is the Public Procurement Board⁸¹.

In cases where it is established that domestic bidders are prevented from participating in tender proceedings taking place in foreign countries, the *PPA* should also take the necessary measures to ensure that in turn bidders from those countries are prevented from participating in tenders held under the remit of the *PPL*

and *PPCL*, and to make proposals to the Council of Ministers in order to ensure that the necessary arrangements are made.

In relation to the awarding entities, there are 52.000 (approx.) awarding entities in Turkey. Their procurement of goods, services and works is executed in accordance with the provisions of the *PPL* and *PPCL*. The notion of “body governed by public law” (as defined by European directives) has not been introduced yet into the Turkish public procurement system.

2.10.3. Value of the Public Contract to be awarded and Awarding Procedures

Taking into consideration the estimated value of the contracts to be awarded, the *PPL* has set thresholds for its application⁸². Time limit rules, after publication of the call, give all bidders sufficient time to prepare their tenders.

The *PPL* foresees two articles concerning the value of a contract. The first one is in a section explaining “Negotiated Procedure”⁸³. The other is related to provisions on “Direct Procurement”⁸⁴.

According to the *PPL*⁸⁵ all legislation concerning the *PPL* and *PPCL* as well as all standard tender documents and contracts must be prepared and developed by the Public Procurement Authority. Accordingly, the *PPA* has prepared all relevant documents and they are now all available online.

It is important to underline that explanatory texts (e.g. guidelines) are made available to the awarding entities. It is mandatory to publish the result of a call for tender, and a notification to bidders of the tender’s result is also foreseen by the law⁸⁶.

The language of public procurement procedures is the official language of the Turkish Republic, but the contract can be prepared in other languages⁸⁷. The contracting entities may include some provisions in the tender documents with regard to domestic bidders⁸⁸.

In general, only domestic bidders can participate in tenders whose estimated value is below set thresholds. In other cases, a domestic preference can commonly apply⁸⁹.

As to “Eligibility for Price Difference”, the Council of Ministers has the authority to establish principles and procedures governing payment of price difference for several contract categories. Any principle or procedure identified in a contract concerning payment of price differences shall not be amended after the contract has been signed.

As to the “Assignment of Contract”, a contract may be assigned to third parties when it is absolutely necessary and with written permission from the contracting officer. However, it shall be mandatory, for such third parties taking over the contract, to possess the qualifications as originally specified in the tender process.

Any contracts assigned without due permission shall be terminated and provisions of Art. 20, 22 and 26 of *PPL* shall apply to assignors and assignees.

2.10.4. Electronic Procurement

EGovernment applies in many sectors⁹⁰. Some e-government projects in Turkey have already been successfully implemented.

The general coordination of eGovernment is mainly the responsibility of the State Planning Organization and eTransformation Turkey Executive Board, with the participation of other bodies⁹¹. An Advisory Council has also been established.

The eSignature Law⁹² regulates the same area in Turkey as the Directive 1999/93/EC does in the EU. However, some amendments in the *PPL* and in the secondary legislation are necessary. It has been foreseen, in “Turkey’s Program for Harmonizing with the EU *acquis*”, that these amendments will be prepared by the *PPA* and enter into force by 2009. All necessary draft legislation has already been prepared by the *PPA*.

Turkey has no eProcurement provision in its Public procurement Law yet⁹³. On the other hand, there is a fully electronic tender notice announcement system. In the short term, the *PPA* is planning to facilitate the exchange of all tender documents in the electronic environment as the next step of e-procurement.

IT tools and broadband connection are sufficiently widespread in Turkey in the private and public sector. The main obstacles for further development are the absence of coordination and a lack of determination and leadership in the contracting entities.

There is a certification authority duly empowered, that is the Scientific and Technological Council of Turkey (*TÜB TAK*). It has been appointed by the Turkish government as the electronic certification authority for signatures.

As far as interoperability is concerned, the State Planning Organization has the responsibility for the interoperability of eGovernment implementation in Turkey. As regards electronic auctions, these are used in the private sector, but not yet for the award of public contracts.

2.10.5. Controls, Remedies and Contract Execution

Internal (financial) control bodies⁹⁴ are responsible for budgetary control.

Under the procurement system, bidders can use a complaint review mechanism which has three specific phases⁹⁵.

When a dispute arises, it is mandatory to seek its solution in the contracts according to law⁹⁶. The main principle is that all disputes will be resolved in Turkish courts⁹⁷.

For public works, the High Technical Board is responsible for examining disputes arising from any study, project, control, construction, or installation works that are awarded by the Ministry.

The main characteristic of contract execution is that this phase is governed by private law⁹⁸.

2.10.6. Public Procurement and SMEs

Most public contracts are awarded to SMEs in Turkey but there is no precise figure. However, there is no specific law, regulation or public initiative aimed at stimulating their participation and success in public contracts.

2.10.7. Intra-regional Co-operation

Turkey has carried out a Twinning Project with Italian counterparts in 2005 and 2006.

Section 3

Comparative Analysis

3.1 Introduction 3.2. Statistics 3.3. Regulation
3.4. Procedures 3.5. ICTs 3.6. Controls 3.7.
SMEs 3.8. Cooperation 3.9. Conclusion

3.1. Introduction

The following paragraphs group the data collected through the official questionnaires in order to highlight the main characteristics of legal frameworks in MEDA countries. In that respect, apart from a brief recall of economic figures, this section will focus on regulatory aspects, taking into account provisions and rules connected to public procurement.

Answers and results were evaluated on the basis of themes already mentioned as key-issues on the subject-matter. These topics can be briefly synthesised as competition in the public market, non-discrimination against foreign operators, transparency of public procedures, control of complete legal compliance and protection of aggrieved parties.

As a consequence, each regulation has been catalogued in accordance with its adherence to or discrepancy from the fundamental values of public procurement. For that purpose, a system of five degrees of compliance, either formal or actual, has been utilized, trying to simplify the overall framework without losing the relevant particulars.

3.2. Statistics

Why this section of the study? The answer is simple; the goal which was pursued has been to assess the importance of public purchase in the framework of total

GDP. Available figures do not always refer to the same year, nevertheless they allow for some analysis and comparison.

Public procurement ranges, in the framework of MEDA countries' national GDP, from a maximum of about 35% and 30% (Israel and Algeria), to a minimum of about 2.5% and 8.5%, (Egypt and Jordan). In Lebanon, Morocco, Tunisia and Turkey public purchase represents between 10% and 15% of national GDP.

With respect to the kind of contract, the share of works, supplies and services is respectively about 22%, 40% and 38% for Egypt, about 15%, 30% and 55% for Israel, about 33%, 33% and 34% for Tunisia, and about 28%, 34% and 38 for Turkey. Available figures are insufficient for assessment for Algeria, Jordan, Lebanon, Morocco and Syria and for the Palestinian National Authority.

3.3. Regulation

It is possible to cluster information on regulation into three groups, as far as they concern legal framework, law sources, institutional structure and international agreements. As to legal framework, specific provisions on public contracts are in force in all the countries, although the level of legislation is sometimes different.

In all MEDA countries only central authorities have the power to issue public procurement regulation. In Israel and Lebanon regional authorities may adopt their own system but this of course can only happen once compliance with national law is assured.

The majority of the States have established an authority that is in charge of monitoring public procurement: this authority is also charged with training officials in charge of carrying out competitive tendering procedures, although specific training is not provided in most cases.

When such an authority exists, its members are appointed by the Prime Minister or by the Minister in charge of public works. This is the case for eight MEDA countries out of ten.

Only in the cases of Israel, Lebanon, Syria and Tunisia it is stated that officials' training is continually upgraded.

When adopting a public procurement legislative framework, most of the countries have carried out consultations with stakeholders' (public and private sector). A reform process is underway in Egypt, Jordan, Lebanon, Morocco, Tunisia and Turkey.

As regards the international framework, six MEDA countries are today member of the WTO, i.e. Egypt, Israel, Jordan, Morocco, Tunisia and Turkey, plus Lebanon is an observer, while only one is by now party to the GPA, i.e. Israel, although Jordan, who has been observer for some years, is expected to become soon a member⁹⁹.

However, all MEDA countries have signed bilateral or multilateral free trade agreements. In particular, the *Agadir* Agreement has been signed by Egypt, Jordan, Morocco and Tunisia, while the Pan Arab Free Trade Agreement has been signed by the Palestinian Authority, Syria and Egypt.

3.4. Procedures

It is useful to collect records on procedures in three groups, related to awarding entities, threshold values and the procurement process. As to awarding entities, Syria did not present any information about domestic features and the Palestinian Authority did not offer any data on bodies governed by public law.

Six countries have at least some kind of central purchasing body and another three have at least a sort of coordination for the conclusion of public contracts.

Provisions on awarding procedures and publicity rules tend to be quite aligned between the different MEDA countries. Threshold values vary very much from one country to another.

All countries, except Syria, provide for an obligation to open offers in front of bidders, whereas most legislative frameworks foresee that the results of the procedure must be published. Amendments following award of the contract are prohibited or strictly regulated.

As regards standard forms for contracts and specifications - these are generally available. Concerning explanatory texts, some guidance is provided to the awarding entities in all the MEDA countries.

Domestic preferences are quite widespread in all the MEDA countries: this preference generally takes two different forms.

On one hand some of the countries apply a price preference to the advantage of national bidders. As a consequence any foreign economic bid is increased by a percentage which varies from 10% to 15% with a direct advantage for local bidders.

On the other hand there is also an indirect way of giving a preference to domestic suppliers: in particular reference is made to all the requirements which must be fulfilled by foreign companies when submitting an offer.

For instance, one of these requirements is the incorporation of a branch in the country where the competitive tendering procedure is taking place.

3.5. ICTs: New Tools for Public Procurement

Use of ICT tools is more widespread for eGovernment services than for specific Procurement procedures.

As regards eGovernment, some services are already available in Israel, Jordan, Tunisia, Egypt and Lebanon. The framework is in particular encouraging in Morocco and Turkey. In all these States eSignature is regulated.

As far as eProcurement is concerned, it s to be noted that the role of eProcurement is limited in most of the MEDA countries. Israel has the most advanced system of eProcurement, and there eAuctions are commonly used.

Nevertheless, ICT tools and features, in particular Internet connections and functions, are already quite widespread in the MEDA countries. Common problems concern ICT infrastructures, technical legislation and human resources, but also policy coordination.

3.6. Controls and Remedies

Under this paragraph information about administrative controls, judicial review and contract execution monitoring are grouped.

With respect to the first topic, administrative controls are quite widespread in all the MEDA countries. The controls may take place at central or local level and can be *a priori* but also *a posteriori*.

Most countries lay down formal provisions on checks and balances, the information from the Palestinian Authority and Syria is insufficient to assess the status quo.

Judicial review is regulated in more detail: the right to challenge decisions on the awarding of public contracts before a court is assured in all MEDA countries.

As to execution of contracts, most States regulate functioning and monitoring. The use of arbitration to resolve disputes during the execution of the contract is widespread.

3.7. SMEs

With regard to SME participation in competitive tendering procedures, some of the MEDA countries (5) do not provide any specific measure to protect or promote this group.

Another 5 countries have established and developed specific rules, from simple guidelines, as in Israel, to formal provisions, as in Egypt, in the Palestinian Authority and in Tunisia.

Jordan is planning to introduce similar regulations once reforms, currently being developed, have been implemented.

3.8. Cooperation

All the MEDA countries have strong relations with the EU. The neighbourhood policy and different action plans are boosting collaboration in the field of public procurement also.

Most MEDA countries are also experiencing intense public procurement collaboration at an international level. In particular the EuroMed Market Programme represents an initiative whose value is acknowledged by all the MEDA countries.

South-south cooperation needs to be boosted further. On a bilateral basis, Turkey and Lebanon have developed cooperation projects with Italy.

3.9. Conclusion

As a general comment, it should be noted that all the MEDA countries are currently implementing or planning huge reforms which will need to be assessed in the medium term.

For this reason it seems that this is the right moment to boost south-south collaboration in order to allow MEDA countries to share a common development model.

On the other hand most of the deficiencies which can be detected seem to be due more to a lack of financing than to a lack of political will.

In this context for instance, reference is to be made to training for officials charged with dealing with procurement procedures: continuous training is something which is quite difficult to afford for most of the MEDA countries.

EProcurement is another field where a common interest is clear but real implementation is hindered by a lack of financial resources.

The situation in relation to the WTO (and GPA) membership, is due to the fact that most MEDA economies are still weak and therefore they tend to protect local companies, for instance allowing them to enjoy domestic preferences in the public procurement procedures.

Section 4

Comparative Evaluation

4.1 Introduction 4.2. Similarities and Differences
4.3. Best Practises 4.4. Overview

4.1. Introduction

It is opportune to underline common features and characteristics of procurement systems. In this section similarities and differences between countries are taken into account with the purpose of identifying best practises that could be further developed and commonly adopted.

4.2. Similarities and Differences

As to regulation, most States provide different provisions on works, supplies and services. However, some countries present a special regulation for real estate, as in Algeria, or for medical supplies, as in Jordan.

Commonly, the power to issue regulations in this area is the remit, in seven cases out of ten, of Government in general, or the Ministry of Finance.

In parallel, the monitoring authority, when such an authority exists, depends, in most cases, on Government in general, or on the Ministry of Finance.

As regards procedures, most MEDA countries establish similar characteristics. Direct awards or negotiated procedures are foreseen in cases of emergency or below the thresholds.

With regard to ICT tools, Egypt, Israel and Morocco have set up a website for eGovernment services, while in Jordan, Lebanon, Syria and Turkey there is also a

dedicated body in charge of promoting on-line performances.

Furthermore, Egypt, Jordan, Morocco, Syria, Tunisia, Israel and Turkey already have special portals for eProcurement activities.

In particular, in all these countries, ICT tools and means allow operators to see procurement notices on the Internet and to download contract documents from the portal.

As a general comment, it should be noted that no MEDA country has set up an ePurchasing system and only some of them have implemented or are implementing a system where public purchase procedures are carried out making use of electronic tools. Israel is the only country which carries out electronic auctions.

As to controls, as a general rule, administrative check is limited to procedure and budget requirements, without extension to other issues, such as environmental or social aspects.

About SMEs: they represent a priority for MEDA countries, being of major importance for economic development. Some countries have already adopted specific regulations in order to make it easier to award public contracts to SMEs.

The domestic preferences foreseen in all the MEDA countries confirms how important it is for them to boost the development of these companies, by allowing them to enjoy protection from international competition.

4.3. Best Practices

A short overview of best practices of individual countries is useful in order to identify interesting solutions that could be emulated and to stress gaps that should be filled.

Concerning regulation, the legal framework in Turkey is very well shaped. Procurement law is divided in two acts, one regulating awarding procedures and one regulating contract management, while a special authority is in charge of monitoring public purchases and improving provisions. All in all, rules and procedures are detailed and efficient.

Regarding purchase procedure, centralisation and co-ordination are already working in Israel, where a special governmental unit acts as a central purchasing body and coordinates public purchases.

In this case, it is to be underlined that a high level of coordination of public contracts is not particularly desired by the MEDA countries and this is due to concerns for the impact on local economies (and in particular on SMEs).

As regards eProcurement, Israel, as highlighted above, makes use of the most sophisticated system. In particular e-auctions are a common practice for repetitive and off the shelf purchases.

Egypt also has a very ambitious reform program to carry out. EGovernment services have been partially functioning since 2001 and central bodies will be completely computerised by 2012. In particular, Egypt intends to develop a fully electronic system of eTendering, from on-line submission of offers to electronic evaluation of bids.

With regard to controls, Tunisia monitors compliance with the rules in a competitive tendering procedure, with temporary suspension of the award in the event of violations.

Morocco has provided since the 90s an exhaustive regulation on reviews that focuses on administrative appeal against decisions, specifying competent courts,

procedural stages, means for hearing complaints, and time limits.

Regarding SMEs, specific rules are provided again by Egypt, which not only gives an explicit definition of small and medium enterprises, but also provides for a compulsory percentage on government procurements and reduction on procedural expenses.

Finally, as to cooperation, Lebanon stands out for the quantity and quality of its initiatives and projects.

4.4. Overview

An evaluation of the MEDA area as a whole implies a simplification of the data as collected, since the different degrees of compliance with principles of public procurement, which has been used in order to evaluate the answers to official questionnaire, have to be accordingly transferred by a single aspect to an overall perspective.

Referring to regulatory aspects, all the MEDA countries have adopted a complete set of rules which in most cases present similarities.

Concerning ICT tools and features and also eProcurement, good results have been achieved by Israel but also by Jordan, Tunisia, Turkey, Morocco and, once that the reforms now in course will be completely implemented, by Egypt and Lebanon.

As to controls, the Palestinian Authority shows some deficiencies.

Notes

- 1 Massimo Baldinato contributed to the drafting of this study until May 15, 2008. After this date the study was prepared by Mrs Caterina Dereatti, Mr Fabio Balducci and Mr Stefano Ferrando.
- 2 The 2007 annual GDP in Algeria was \$ 136 billion.
- 3 The public purchasing involves practically all sectors (habitat, public works, various infrastructures, hydraulics, energy), including construction of electric power stations and modernisation of financial system.
- 4 Please consult the regulatory texts on the Internet site: www.mf.gov.dz.
- 5 Contracts awarded under national and/or international open or restricted procedure (see in Article 23, 24 and 25); contracts awarded under a selective consultation with a call for pre-selection (see in Article 26 and 32); contracts awarded under competitive procedures (see in Art. 28); contracts awarded via private negotiation (see in Art. 37); contracts awarded via private negotiation after consultation (see in Art. 38).
- 6 The first kind of control is carried out within each contracting authority, by the Procurement Committee that is responsible for *a priori* control of contracts whose value is below the threshold set by law; the aim of the second kind of control is to ensure the conformity of the awarding procedures carried out by external bodies; the third kind of control is carried out by the authority "*de tutelle*" and aims to check the conformity of the awarded contracts.
- 7 The Committee has the following mission: to note the legitimacy of the admittance of tenders on an ad hoc register; to draw up a list of the bidders in chronological order; to draw up immediately the minutes approved by all of the members. This Committee meets on the last day corresponding to the deadline for the submission of the tenders. The meeting is public and in the presence of any bidders who wish to attend.
- 8 Algeria has ratified the New-York convention on international arbitration of 10 June 1958.
- 9 See legislative decree n. 93-09 from 25/04/1993.
- 10 Egypt's annual GDP is 665,000 million Egyptian pounds (about 80,4175 million Euro).
- 11 This law includes all texts and executive regulations related to this particular field. It is divided into four parts: purchase of commodities, construction services and professional services; purchase and rental of real estate; sale and rental of real estate, commodities, concessions for the exploitation of real estate; and general provisions.
- 12 See the websites www.mof.gov.eg/Arabic/ and www.mof.gov.eg/English/ministry_sites.aspx.
- 13 Including ministries, general public authorities, local governorates, and bodies with special budgets.
- 14 See the website www.egypt.gov.eg.
- 15 See the website <http://etenders.gov.eg>.
- 16 See Pan Arab Free Trade Agreement (PAFTA); Turkish Egyptian Free Trade Agreement; EU-Egypt Association Agreement (EEAA); Agadir Agreement; EFTA-Egypt Free Trade Agreement; Common Market for Eastern and South Africa (COMESA).
- 17 From GAGS procurement department staff.
- 18 GAGS was established by presidential decree in 1971. It operates under the aegis of the Ministry of Finance, and its board and administrative staff come from the Ministry of Finance. GAGS has the following aims: government procurement; government sales (auctions); government inventory management (including inventory research) and audit departments; government services (monitoring of fleet utilization, registration of administration buildings, and management of confiscated properties); training.
- 19 Competent authority means the minister and whoever has his/her authority, such as a governor, a chairman of public authorities, and so on, within their authorized limits.
- 20 In the same period GAGS has introduced additional items to be procured under the centralized procurement approach and also helped governors to adopt the same procurement concept.
- 21 For heads of authority/unit/body: up to LE 50,000 (€ 6,046.43) for the supply of commodities, services, consulting, technical work, transportation services and LE 100,000 (€ 12,092.9) for construction services. For Ministers, Governors and so on: up to LE 100,000 (€ 12,092.9) for the supply of commodities, services, consulting, technical work, transportation services and LE 300,000 (€ 36,278.6) for construction services. The Prime Minister has to authorize and approve direct procurement transactions for contracts whose value is above these thresholds.
- 22 See art. 7 of the executive regulations.
- 23 In 2001 an Egyptian gateway was implemented to have information about more than 700 services provided by Government entities as well as on-line services. Please see the web-site www.egypt.gov.eg.
- 24 The conditions for this usage are: linkage of the electronic signature exclusively with the signatory; exclusive control by the signatory of the electronic medium; possibility of uncovering any modification or replacement in the data of the electronic document or signature.
- 25 See the link: <http://etenders.gov.eg>.
- 26 Phase (I) of the portal was launched in August 2007, including publication of tender notices and sending of notification e-mail messages to registered suppliers on the basis of registered business fields. Phase (II) of the portal will be published around the first half of 2008 and will include on-line submission of technical and economic bids, electronic evaluation of proposal and offers, and electronic award of tenders. The next anticipated phase is the implementation of standard and Dutch eAuctions.
- 27 See art. 4 Prime Minister's Decree No. 3549/1998 organizing the functions of the monitoring office for government contracting.
- 28 See Law No. 89, section III – Contracts Execution: Chapter 1 - General Conditions - article No. 74, 75, 76, 77, and 78; Chapter 2 - Construction Contracts Terms – article No. 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89; Chapter 3 - Supply of Commodities Terms - article No. 90, 91, 92, 93, 94, 95; Chapter 4 - Receiving and Acceptance Terms - article No. 96, 97, 98, 99, 100, 101, 102, 103, and 104.
- 29 The law on SME's defines SME's as follows: "*a small enterprise shall be understood as every company or sole proprietorship practicing an economic activity, whether productive, service-rendering or commercial in which the paid-in capital shall not be less than fifty thousand pounds and shall not exceed one million pounds and in which the number of employees shall not be more than fifty employees*".
- 30 On the basis of 61 public tenders, 109 limited tenders, 131 local tenders, 7 reverse public auctions, 49 reverse limited auctions,

and 854 direct orders

- 31 When buying tender documents, SMEs are exempted from paying the 10% administrative fee that is 10% of the actual cost of preparing the tender document, which is usually charged to other bidders. In case of local tendering or direct purchase, SMEs are always invited by the governmental body/unit/authority to submit their offers. There are no restrictions on SMEs' participation in all procurement opportunities.
- 32 The above-mentioned sub-committee includes seven countries: Congo, Egypt, Ethiopia, Kenya, Mauritius, Rwanda and Zambia.
- 33 National GDP is \$ 100 billion.
- 34 Above this thresholds information notices are mandatory.
- 35 Below € 60,000 procedures require a call up to 3 suppliers; between € 7,000 and € 60,000 a close tender for several suppliers; above € 60,000 public tendering and call to everybody.
- 36 See the following websites: www.gtd.gov.jo for the works regulation No. 71; www.gsd.gov.jo for the supplies act No. 32; and www.jpd.gov.jo for the Joint Procurement Regulation of 2002. The laws are available in English.
- 37 See art. 7 of the Government Works Regulation No. 71 of 1986, as amended.
- 38 See art. 17 of the Government Supplies Act No. 32 of 1993, as amended, and the instructions issued pursuant to this Regulation.
- 39 Currently, the Cabinet Council has fixed this domestic preference at 10%.
- 40 See Audit Bureau Law No. 28 of 1952.
- 41 See above, par. 1.
- 42 See above, par. 1.
- 43 GDP data obtained from the Ministry of Economy and Trade (MoET).
- 44 Procurement texts are collected in laws and decrees; it is possible to see the texts on several internet sites, e.g. <http://www.cib.gov.lb/lot/14969.htm> and <http://www.cib.gov.lb/lot/safakat.htm>
- 45 The draft Public Procurement Legislation will consolidate and modernize the previous legislation into specific sets of laws and decrees. The new law will apply to all types of public entities and will divide the procurement process into various types, based on thresholds to be decided later. The draft law sets the general framework for the various procurement and contract management phases and processes. The Procurement Management Law sets up the authority entrusted with regulating public procurement, capacity building, advice, and technical assistance. The on-going initiative for procurement reform has undertaken some indirect stakeholder consultations through the establishment of an inter-ministerial committee, including a number of civil servants and experts to draft new laws in coordination with donors and international organizations, in order to ensure adoption of best practices
- 46 See Municipalities Law of 25/4/1999.
- 47 The Tender Board acts under the auspices of the Central Inspection Board, which reports to the Presidency of the Council of Ministers.
- 48 Under the new draft law, public procurement will be decentralized and the new authority pursuant to the PPML will handle, within its mandate, purchases on demand by the beneficiary entities. Notably, the Public Procurement Management authority will be entrusted with managing the preparation of procurement-related decrees and standard bidding documents, planning and delivering training programs and technical assistance, managing purchases on behalf of public entities on demand, assimilating procurement-related data and statistics, classifying contractors, suppliers and service providers, and providing procurement advice on various matters upon request.
- 49 This is monitored by the Court of Accounts, with control ex-post and ex ante. The Civil Service Board, the *Ecole Nationale d'Administration*, OMSAR and the Institute of Finance are among the key public bodies entrusted with training civil servants on various legal, managerial, technical and administrative matters. The Civil Service Board and *The Ecole Nationale d'Administration* are the official bodies assigned to the management of training and development.
- 50 The new law will apply the following awarding procedures: open tender procedure, featured by direct tender procedure, two-stage tender procedure and tender procedure after pre-qualification; restricted tender procedure; negotiated procedure after solicitation/request for quotations; negotiated Procedure with direct award; and single Tender procedure.
- 51 Preferences apply today to locally manufactured products with percentages to be decided on the basis of the types of such products. The current law includes an allowance for domestic preference of 10%.
- 52 It will be decided in decrees regulating implementation.
- 53 There are tangible accomplishments on all four frameworks. Accomplishments under the legal e-Government framework concern: policies and procedures; ICT laws and regulations; ICT policy and standards. Accomplishments under the technical e-Government framework regard: telecommunications; computer networks. Accomplishments under the services e-Government framework involve: system applications. Accomplishments under the capacity building e-Government framework affect: human resources; capacity building plans; e-Society.
- 54 Some of the initiatives to ensure interoperability during the implementation of the eGovernment projects are: Progress Monitoring Modality, CIO's and Councils, Single Window Government, PPP, Partnerships with Multinationals, and Partnerships with other Governments.
- 55 OMSAR is working on a donor-funded eProcurement project. A pilot project in this regards is under initialization and is funded by the Development Gateway and the World Bank. This project aims at establishing a pilot eProcurement system after the endorsement of the new laws and at enacting it through decrees, standard documents, guidelines, manuals, and so on. The pilot project will offer assistance during this phase and the subsequent setting up of functional requirements of a pilot eProcurement system in compliance with the relevant decrees to be issued.
- 56 The review covers management, legal, budgetary and other issues.
- 57 In 2007 Moroccan GDP was 600 billion *dirhams*, or approximately 52 billion euro.
- 58 See decree n° 2-06-388 of the 16 *moharrem* on 1428 (5 February 2007). See also: royal decree n° 330-66 of the 10 *moharrem* on 1387 (21 April 1967), on general regulation of public accounting, as modified and supplemented; decree 2-99-1087 of the 29 *moharrem* on 1421 (4 May 2000), approving the book of the general administrative clauses applicable to the contracts of works carried out on behalf of the State; decree n° 2332-01-2 OF the 22 *rabii i* on 1423 (6 June 2002), approving the book of the general administrative clauses applicable to the contracts of

services covering the studies and of control of works and passed on behalf of the State. All these texts are available in the website portal of State procurement: www.marchespublics.gov.ma.

59 See art. 48 of the decree n° 2-76-576 of the 5 *chaoual* on 1396 (30 September 1976), on regulation of the accountancy of local authorities and their associations.

60 In particular: the Morocco-United States Free Trade Agreement signed on 15/06/04 by the Minister for Foreign Affairs; the Agreement with the European Free Trade Association (EFTA) including Iceland, Liechtenstein, Norway and Switzerland; the EU-Morocco Agreement; the bilateral agreement with Turkey; the multilateral agreement of Agadir signed on 25/04/2004 with Egypt, Tunisia and Jordan.

61 There are 3300 contracting authorities distributed as follows: 1052 at the level of public services; 1575 at the level of local authorities; 673 at the level of public institutions.

62 See *Dahir* n°1-07-129, adopted on 30 November 2007, bringing promulgation of law n°53-05.

63 See above par. 2.6.1.

64 See Law n. 9/1998.

65 See Law n. 6/1999.

66 They may be found on the web-site <http://muqtafi.birzeit.edu/en/index.asp>.

67 No negotiation ongoing.

68 See Investment Promotion Law (n. 4/1999)

69 For more details, visit the web-site www.syrianfinance.org

70 See General Notice n. 1/9 B.A. of 2004.

71 The texts are available on the Internet at the web-site www.marchespublics.gov.tn

72 There are no negotiations ongoing.

73 For works: 0-28,000 euro, specific procedures; over 28,000 euro, call for competition. For goods and services: 0-17,000 euro, specific procedures; over 17,000 euro, call for competition. For studies: 0-9,000 euro, specific procedures; over 9,000, call for competition. For informatics: 0-23,000 euro, specific procedures; over 23,000 euro, call for competition.

74 See the link www.marchespublics.gov.tn

75 See *Circulaire de Premier ministre* n. 28 of 20 June 2007.

76 This means that government spent approximately 66 billion New Turkish Liras in 2007 on public procurements.

77 See Public Procurement Law – PPL, Law n. 4734 – and Public Procurement Contract Law PPCL, Law n. 4735, approved by the Parliament on 4 January 2002, which came into force on 1 January 2003. The previous State Bidding Law n. 2886 has just been replaced by Public Procurement Law (Law n. 4734), and as a consequence a new Public Procurement Contracts Law (Law n. 4735) has been introduced.

78 Notably interested stakeholders, professional organizations, trade chambers, main investing ministries, and local authorities representatives.

79 Accession negotiations between Turkey and the EU were launched on 3 October 2005, with the adoption of the Negotiation Framework by the Council of the European Union. There is a specific chapter for Public Procurements. Work under this chapter is ongoing and that gives Turkey an obligation to align

its legislation with the EU *acquis* and also to build the necessary capacity to implement it. An amendment in the existing PPL aims to introduce eProcurement, in particular a dynamic purchasing system and framework agreements.

80 See art. 53.

81 It consists of ten members, including a chairperson and a secondary chairperson. The members of the Board are appointed by the Council of Ministers, the Administrative staff is selected by Public Procurement Board. Specific training is not mandatory for officials.

82 Namely five hundred Billion old Turkish Liras (560,858 new Turkish liras) for procurement of goods and services by the contracting entities operating under the general or the annexed budget (€ 938,328); five hundred billion of old Turkish Liras (882,352 new Turkish liras) for procurement of goods and services by other contracting entities within the scope of the PPL (€ 1,563,881); eleven trillion Turkish Liras (19,411,000 new Turkish liras) for work contracts by any contracting entity covered by this law (€ 33,676,329).

83 Namely, art. 21, lett. f) states that negotiated procedure may be applied, for "product, good, material and service procurements by contracting entities with estimated costs of up to 101.986 Turkish Liras."

84 Notably, Art. 22 lett. d) states that the method of direct procurement may be applied for "procurements not exceeding 30.595 Turkish Liras for needs of contracting entities within the boundaries of metropolitan municipalities and procurements not exceeding 10.195 New Turkish Liras for needs of other contracting entities, and purchases with regard to accommodation, trip and victuals within the scope of representation expenses".

85 See art. 53, lett. b), ind. 2.

86 Namely, the tender results of tenders whose contract value exceeds one trillion of Turkish Liras (1,925,451 New Turkish liras, as updated) for procurement of goods or services and two trillion of Turkish Liras (3,850,903 New Turkish Liras, as updated) for works, shall be published in the Official Gazette within maximum fifteen days following the date on which the registration of the contract by Court of Accounts is notified to the contracting entity and in cases where such a registration is not necessary, the date of contract signing by the parties.

87 In such a case, it will be specified in writing that the contract was prepared in Turkish and the other language, but the main language remains Turkish.

88 A "Domestic Tenderer" is defined in the PPL as a real person who is a citizen of the Republic of Turkey or a legal entity established in accordance with the Laws of the Republic of Turkey.

89 In procurement of services and works, a price advantage would apply to all domestic bidders, up to 15% of the economic proposal in comparison with the offer of foreigner bidder, whereas in procurement of goods, a price advantage up to 15%, would apply to domestic bidders who offer products which are accepted as domestic products by the Authority, on the basis of the opinion of Ministry of Industry and Trade and of other relevant organizations and institutions. The domestic bidders that participate in procurement through the establishment of a joint-venture with foreign bidders may not take advantage of this such price advantage.

90 Some of them are justice, education, industry and trade, culture and tourism, and so on.

91 That is State Minister and Deputy Prime Minister, Ministry of Transport, Ministry of Industry and Trade, Ministry of Finance,

Ministry of Education, Ministry of Interior, top-level bureaucrats and non-governmental organizations (NGOs).

92 See Law n. 5070 adopted by Turkish Parliament in 2004.

93 At present, there is a draft law that covers provisions on eProcurement in order to facilitate eCommunications and usage of some electronic purchase methods such as eAuction and dynamic purchasing systems.

94 See the Financial management and Control Law (n. 5018).

95 These phases are the following: complaining to the contracting authority; applying to the Public Procurement Authority; and taking the case to the Administrative Courts. The first two phases are administrative by nature and the last phase is judicial..

96 See *PPCL* (Law n. 4735).

97 Arbitration procedure is also possible for international tenders.

98 See Art. 4 and 36 *PPCL*.

99 See the web-site www.wto.org/english/tratop_e/gproc_e/memobs_e.htm.

Customs co-operation and fight against counterfeiting and piracy in the Euro-Mediterranean Partnership

by

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1. General Overview

1.1. Customs combating counterfeit and piracy; EU policy¹

The health and safety of EU citizens, their jobs, Community competitiveness, trade and investment in research and innovation are all under increasing threat from the industrialised production of fakes.

The growth of the traffic is evidenced by the 1000% increase in counterfeit seizures made by EU customs between 1998 and 2004. These seizures amount to over 100 million articles annually but still represent only the tip of the fake iceberg. In addition to the impact of jobs, health, safety and competitiveness, much of this traffic is sold on the black market which means major losses in tax revenues. The fake industry also leads to unlawful employment and is reported to have links to illegal immigration and to trans-national organised crime.

One of the most alarming dimensions of this phenomenon is the increased risk faced by EU citizens as a result of the growth in dangerous fake goods such as medicines, car parts and foodstuffs.

In order to substantially reduce global trade in pirated and counterfeited goods, and combat the trans-national networks involved in this trade, counter-measures are required at the national, community and international levels.

In the Customs area, the most relevant instruments are the Council Regulation (EC) No 1383/2003 of July 2003 concerning customs action against goods suspected of infringing intellectual property rights and the measures to be taken against goods found to have infringed such rights and its implementing regulation, Commission Regulation (EC) No 1891/2004 of 21 Oc-

tober 2004. These regulations can be found on the programme's website (www.euromedmarket.org) as well as on the EU's website (www.europa.eu) and have been handed over to the participants in the Working Group Meeting.

In the Internal market domain there are Directive 2004/48/EC² of the European Parliament and Council of 29 April 2004 on the enforcement of intellectual property rights and recently adopted Commission proposals aimed at the strengthening criminal measures to combat counterfeiting. The Commission also adopted in November 2004 an Intellectual Property Rights (IPR) Enforcement Strategy towards third countries.

Reinforcing international co-operation

In addition to stepping up EU controls against imported counterfeits, which will only ever be a means of stopping consignments or tackling individual criminal sectors, it is necessary to act at the source of the problem by, stopping the export of counterfeit goods and, where possible, by shutting down the production. This requires international co-operation.

Whilst the TRIPS³ minimum standards for IPR protection provides for controls on imports by Customs, EU Customs experience shows that more needs to be done. (TRIPS, Art 51)

- 1° One of the best means of stopping goods before they leave producing countries, is to introduce widespread export and transshipment controls.
- 2° It is necessary to ensure that Customs Co-operation Agreements, which enable close co-operation with partner administrations and provide suitable legal coverage for bilateral actions, are fully exploited and expanded to cover regions where production is significant.

1.2. Bilateral agreements

The Euro-Mediterranean Association Agreements governing bilateral relations vary from one Mediterranean Partner to the other, as time goes on more areas of cooperation have been included. However IPR is not yet included in all agreements.

Agreements with each country, IPR action plan, key legislation and progress:

1.2.1 ALGERIA

Euro-Mediterranean Association Agreement, signed on 22.04.2002, ratified in September 2005.

IPR Action plan accepted according to Agreement:

1. Before the end of the fourth year from the entry into force of this Agreement, Algeria and the European Communities and/or their Member States shall, to the extent they have not yet done so, accede to, and ensure an adequate and effective implementation of the obligations arising from the following multilateral conventions:

- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961), known as the 'Rome Convention';
- Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, amended 1980), known as the 'Budapest Treaty';
- Agreement on Trade-Related Aspects of Intellectual Property Rights (Marrakech, 15 April 1994), taking into consideration the transitional period provided for developing countries in Article 65 of that Agreement;

- Protocol relating to the Madrid Agreement concerning the International Registration of Marks (1989), known as 'The Protocol relating to the Madrid Agreement';
- Trademark Law Treaty (Geneva 1994);
- WIPO Copyright Treaty (Geneva, 1996);
- WIPO Performances and Phonograms Treaty (Geneva, 1996).

2. Both Parties shall continue to ensure an adequate and effective implementation of the obligations arising from the following multilateral conventions:

- Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva 1977), known as the 'Nice Agreement'
- Patent Cooperation Treaty (1970, amended in 1979 and modified in 1984);
- Paris Convention for the Protection of Industrial Property in the 1967 Act of Stockholm (Paris Union), hereafter referred to as the 'Paris Convention';
- Berne Convention for the Protection of Literary and Artistic Works in the Act of Paris of 24 July 1971, known as the 'Berne Convention';
- Madrid Agreement concerning the International Registration of Marks in the 1969 Act of Stockholm (Madrid Union), known as 'Madrid Agreement';

And meanwhile, the Contacting Parties express their attachment to observing the obligations flowing from the above multilateral conventions. The Association Committee may decide that this paragraph shall apply to other multilateral conventions in this field.

3. By the end of the fifth year after the entry into force of this Agreement, Algeria and the European Community and/or its Member States shall, to the extent they have not yet done so, accede to, and ensure an adequate and effective implementation of the obligations arising from the International Convention for the

Protection of New Varieties of Plants (Geneva Act, 1991), known as 'UPOV'.

Accession to this Convention may be replaced by the implementation of an adequate and effective sui generis system of protection of plant varieties if both parties agree.

Key legislation in the area of Intellectual and Industrial Property: Customs Law is applicable in the Algerian Customs territory, however in case of goods infringing an IPR the Regulation of July 15, 2002 is applicable

Progress

Since September 2005 the Association Agreement (AA) has governed bilateral relations between the European Union and Algeria.

It provides for a free trade area (FTA) between the two parties after 12 years.

The agreement constitutes the framework for EU-Algeria political, economic, social, scientific and cultural cooperation.

The Agreement also contains provisions for covering political issues (international, domestic, human rights and democracy) and migration issues.

The agreement falls within the framework of the 1995 Barcelona Process, which is based on developing co-operation in the areas of political dialogue, economic partnership and social/cultural cooperation. The Algerian Government has made considerable efforts to be able to ratify the AA. In addition, the Government's reform programme accords the Association Agreement an important role in the liberalisation of the economy.

1.2.2. EGYPT

Euro-Mediterranean Association Agreement, signed on 25.06.2001, in force since 01.06.2004

IPR Action plan accepted according to Agreement:

- Accede to the conventions within the timeframe stipulated in the Association Agreement and apply the standards of protection stated in such conventions or other conventions and agreements to which Egypt is party. Strengthen enforcements of IPR legislation within TRIPS requirements.
- Reinforce the fight against piracy and counterfeiting and promote co-operation between the authorities involved, police, judiciary and customs. Significantly reduce circulation and trafficking of counterfeit/pirated goods.
- Increase awareness at both public and private level and encourage the establishment and effective functioning of associations of rights holders and consumers
- Explore the possibility of enhanced interaction with other Euromed partners
- Initiate a policy dialogue covering all aspects of IPR, including further legal/administrative improvements and possible membership of additional relevant conventions etc.

Key Legislation: In 2002 Egypt enacted a New Comprehensive IPR-Law, which meets certain key TRIPS requirements, but falls short of addressing those concerning patents and enforcement.

In 2004, 2 years after the Law was promulgated, the Executive Regulations for copyrights and neighbouring rights have not been approved.

Progress

- The Executive Regulations for Book 3 of the IP Law covering copyrights and related rights were issued in 2005.
- Concerning the enforcement problem : the conflict of competencies among various agencies was resolved. The Regulations elaborated on all provisions of Book 3. However, the most significant enforcement deficiency in Book 3 was the absence of border measures. This was later tackled by the Executive Regulations for the Importation-Exportation law (no 118 of 1975).
- The dialogue between Customs, judicial authorities and Trade Agreement Sector to improve IPR legislation has improved through the Ministerial decree issued on 5 September 2007 regulating the Customs-TAS, by establishing a permanent committee. Other relevant authorities are invited to the periodic meetings of this committee according to need and discussed subject.
- Concerning the risks of counterfeited goods, awareness programs are frequently held at the Ministry of Trade & Industry level.

1.2.3. ISRAEL

Euro-Mediterranean Association Agreement, signed on 20.11.1995, in force since 01.06.2000

IPR Action plan accepted according to Agreement:

- Enhance dialogue on the promotion of IP issues, including, for example, data protection, enhancement of enforcement through a dialogue with prosecutors and other relevant entities.

Key Legislation: Intellectual and industrial property is covered by three main pieces of legislation: the 1967

Patent Act, the 1972 Trademark Act and the Copyright Law.

Data exclusivity is a sensitive problem, particularly in the pharmaceutical sector.

Israel's efforts to ensure conformity with the TRIPS Agreement include enforcement measures such as the establishment of a specialized police unit, judicial training and improvements to inter-ministerial coordination.

Progress

- No new initiatives are taken to enhance the dialogue on IP issues like the data protection, because Israel has internal laws dealing with data protection
- The computerised system is constantly updated and improved
- A data-base on IPR will be developed, and all field units, investigations intelligence divisions and the Headquarters will have access.

1.2.4. JORDAN

Euro-Mediterranean Association Agreement, signed on 24.11.1997, in force since 01.05.2002

IPR Action plan accepted according to Agreement:

- Strengthen the Trade's Industrial Property Protection Directorate in the Ministry of Trade and Industry
- Reduce circulation and trafficking of counterfeit/pirated goods in specifically targeted sectors

Key Legislation in the area of intellectual and industrial property in the 1992 Copyright Protection Law, which was amended in 1998 and 1999 to reflect international IPR standards, including TRIPS Agreement.

The Directorate of Industrial Property Rights within the Ministry of Industry and Trade is responsible for registering trademarks, patents, industrial designs and models.

Progress

- The administrative capacity to enforce intellectual property rights has been improved, notably through EC-funded twinning operations with the Ministry of Industry and Trade and Customs.
- In order to make an amendment on patent and trademark Laws, the European Patent Office contributed on training on patent case laws for specialists of the pharmaceutical industry.

1.2.5. LEBANON

Euro-Mediterranean Association Agreement, signed on 17.06.2002, in force since 01.04.2006

IPR Action plan accepted according to Agreement:

- Ensure a level of protection of Intellectual and Industrial property rights similar to that of the EU and strengthen enforcement of legislation in accordance with Art 38 of the Association Agreement
- Adhere, within the agreed timeframe, to the international agreements and conventions stipulated in the Association Agreement
- Introduce new legislation, notably on trademarks and geographical indications, to ensure conformity with TRIPS requirements.
- Strengthen the administrative capacity for enforcement of legislation and implementation of sanctions
- Reinforce the fight against counterfeiting and piracy in selected areas, notably through an increase of seizures and improve cooperation among relevant

authorities involved, including the police, customs and judiciary.

- Increase awareness at both public and private level. Extend cooperation with third Countries authorities, industry associations and organisations of right holders and users of Intellectual Property

Key Legislation: The main legal instrument for the protection of Industrial Property right is the Law and System of Commercial and Industrial Property of 1924 which covers patents, industrial designs, trademarks, copyrights and unfair competition.

The government has undertaken a broad reform program to comply with TRIPS and extend protection to newer kinds of intellectual property, such as semi-conductors and plant varieties.

Specific Laws have been enacted that replace the relevant provisions of the 1924 Law. The new legislation is expected to be adopted by the Council of Ministers in the near future.

A well designed national awareness-raising campaign was launched.

Progress

- the Lebanese Government, through the Ministry of Economy and Trade, has committed itself to revise all national legislation related to Intellectual property Rights to bring them into full conformity with international Agreements. :

Legislative Reform :

- Adherence to WIPO-administered Treaties (new adherence and adherence to latest acts for some treaties)
- Drafting new legislation (geographical Indications), and revising the existing legislation to comply with

international obligations (Trademarks Draft Law, Industrial Design Draft Law, amendments of the Copyright Law (No 75/99)

- New Lebanese Intellectual Legislation :

- Amendments to laws : The amendment to the Copyright Law (Law no 75/99) was approved by the Council of Ministers on October 27, 2007 and sent to parliament in November 2007
- New draft laws :
 - The Geographical law was approved by the Council of Ministers on May, 21 2007 and sent to Parliament in July 2007
 - The new Trade mark law was approved by the Council of ministers on October 27, 2007 (old 1924) and sent to the parliament in November 2007
 - The new Industrial Designs law was approved by the Council of Ministers on October 27, 2007 (old 1924) and sent to parliament in November 2007

- Recently signed/ratified treaties related to IPR

- Intellectual Property Protection treaties
 - Paris Convention for the protection of industrial property (Stockholm Act- approved by the Council of Ministers (CoM) on May 21, 2007 and sent to parliament in July 2007) (adherence to latest Act)
 - Madrid Agreement “ false or deceptive indications of source on goods approved by the CoM on April 20, 2007 and sent to parliament in July 2007 (adherence to latest Act)
 - Berne Convention for the protection of literary and artistic works (approved by CoM on July 2007 and sent to parliament in July 2007 (adherence to latest Act)

- Trademark Law Treaty (Singapore Treaty – approved by CoM on April 20, 2007 sent to Parliament on 31, May 2007 (new adherence)

• Classification Treaties

- Nice Agreement concerning the International Classification of goods and services for the purpose of the registration of marks (Geneva Act 1977 – approved by the CoM on March 21, 2007 and sent to parliament in July 2007.

• Global Protection System Treaties

- Patent co-operation Treaty (Washington – approved by the CoM on February 20, 2007 and sent to Parliament in March 2007, (new adherence)
- Madrid Protocol relating to the Madrid Agreement concerning the International registration of Marks 1989 (approved by the Council of Ministers on October 27, 2007 and sent to the parliament in November 2007 (new adherence)

Enforcing intellectual property is treated as a high priority at the government's level. A political decision for Enforcing IPR has been declared in the Ministerial Policy Statement

Since 2002, the IPPO and customs have been co-operating together on combating copyright piracy by taking action ex-officio, in particular prohibiting and seizing pirate products entering the country and confiscating infringed goods where-ever they are found on border or in the country.

IPR enforcement does not only go by their legislative recognition but also and especially by the possibility of exploiting these rights in justice in case of misappropriation. The Ministry of Justice, the Customs Department, the police, are all concerned in the fight against infringement.

To establish these goals, seminars and workshops, individual and collective training programs raising awareness of the Lebanese Judges on the importance of IPR protection have been started with WIPO, USPTO

1.2.6. MOROCCO

Euro-Mediterranean Association Agreement, signed on. 26.02.1996, in force since 01.03.2000

IPR Action plan accepted according to Agreement:

- Reinforce administrative cooperation between relevant Moroccan and third country authorities.
- Improve monitoring (administrative and judicial) structures for registration and granting of rights as well as rights management, including an opposition system for trademarks and preliminary examination for patents.
- Explore enhanced links with the European Patent Office.
- Increase resources dedicated to enforcement, in particular for the customs authorities and the judicial system.
- Accede to the main international agreements - including the conventions specified in Article 39 of the Association Agreement - and apply the highest international standards (Article 39).

Key Legislation: Morocco has made changes in its legislation in order to meet the agreement on Trade related aspects of IPR (TRIPS).

2 new laws entered into force since 2000 on the protection of industrial property rights and authors and related rights.

A new law on trademarks was adopted in 2006, introducing the concept of geographical indications and a system of trademark opposition.

A new law on copyright and related rights was adopted in 2006.

Progress

In order to improve the dialogue with judiciary the following steps were made :

- At seminars organized by customs or by representatives of IPR holders judiciary officials were invited. The last one was organized in July 2007 in co-operation with French customs
- A national campaign organized in May 2007 by "US-AID" in cooperation with customs, with OMPIC (Office Marocain de la Propriété industrielle) and the French Embassy in Morocco was focused exclusively on the training on IPR for judges in trade court.
- In 2007 a few tripartite meetings took place (Customs, Ministry of Justice and OMPIC) in order to examine the possibilities for a better application of the measures for protecting the industrial property and especially the border measures and to improve the implementation of legislation the following steps have been made
- some tripartite meetings (Customs, Ministry of Justice, and OMPIC) were organized in 2007 in order to examine the possibilities for a better application of new measures in the field of IPR protection, and in particular border measures.

The border measures are relatively recent.

The modified laws 31-05 (industrial property) and 34-05 (copyright and neighbouring rights) were only initialled in the beginning of 2006. The improvements on legislation which might be proposed based on the occurred problems, will not be taken in before the next revision of the laws, on initiative of the two competent authorities on IP in Morocco (the OMPIC and the BMDA).

1.2.7 PALESTINIAN AUTHORITY

Interim Association Agreement, signed on 24.02.1997, in force since: 1.07.1997

IPR Action plan accepted according to Agreement : not applicable

Key Legislation: The Civil Claim Law of 1993 in Gaza and the Commercial Law of 1953 and Patent Law of 1953 in the West Bank currently govern intellectual property.

Registration is done at the Ministry of Economy and Trade. In the area of public procurement, the General Procurement Law was adopted in 1998 and has since been modified by the PLC in May 2003.

1.2.8. SYRIA

Euro-Mediterranean Association Agreement, negotiations concluded, Initialled: 19.10.2004

Council to decide on signature.

IPR Action plan accepted according to Agreement: not available

Key legislation in the area of intellectual and industrial property: Customs Law and IPR Protection Law.

Customs, the Ministry of Economy & Trade and the Industrial & commercial Protection Directorate is authorized in IPR-cases.

1.2.9. TUNISIA

Euro-Mediterranean Association Agreement, signed on: 17/07/95, entry into force: 1/03/98

IPR Action plan accepted according to Agreement:

- accede to the main international agreements- including the conventions specified in Article 39 of the Association Agreement- and apply the highest international Standards
- ensure enforcement of the rules, particularly as regards fines, to ensure effective protection for right-holders
- improve administrative cooperation between relevant Tunisian authorities and with third country authorities
- build capacity in the supervisory structure dealing with the registration, granting and management of rights
- step up action on counterfeit/pirated goods in specifically targeted sectors
- step up measures for : creating a climate conducive to the development of industrial property in Tunisia; strengthening the Industrial Property Department of the National Institute of Standardisation and Industrial Property; promoting patents and inventiveness

Key legislation in the area of intellectual and industrial property : The main law protecting innovative discoveries and inventions dates back to 2000 (Invention Patents Acts).

Since 2001 trademarks and service marks have been covered by separate legislation.

Copyright is also protected in Tunisia

The responsible bodies are: INNORPI (*Institut National de la Normalisation et de la Propriété Industrielle*) and the Tunisian Copyright Protection Organization.

Tunisia signed up to most of the main international agreements and treaties concerning industrial and intellectual property.

Progress

In 2007 improvements on the legislation on Trademarks and Service Marks were made.⁴

1.2.10 TURKEY

Agreement on establishing the definite phase of the customs union between EU and Turkey

Signed on: 6.03.95, in force since: 31.12.95

IPR Action plan accepted according to Agreement

1. The Parties confirm the importance they attach to ensuring adequate and effective protection and enforcement of intellectual, industrial and commercial property rights.
2. The Parties recognize that the Customs Union can function properly only if equivalent levels of effective protection of intellectual property rights are provided in both constituent parts of the Customs Union. Accordingly, they undertake to meet the obligations set out in Annex 8.

ANNEX 8 on protection of intellectual, industrial and commercial property

Article 1

1. The Parties confirm the importance they attach to the obligations arising from the Agreement on Trade-related aspects of intellectual property rights concluded in the Uruguay Round of Multilateral Trade Negotiations.

In that respect, Turkey undertakes to implement the TRIPS Agreement no later than three years after the entry into force of this Decision.

2. As regards the scope, level of protection and the enforcement of intellectual, industrial and commercial property rights between the two Parties, the provisions of the TRIPS Agreement will apply after its entry into force for both Parties to the extent to which there are no rules laid down in this Decision.

Article 2

Turkey shall continue to improve the effective protection of intellectual, industrial and commercial property rights in order to secure a level of protection equivalent to that existing in the European Community and shall take appropriate measures to ensure that these rights are respected. To this end the following Articles shall apply.

Article 3

Before the entry into force of this decision, Turkey shall accede to the following multilateral Conventions on intellectual, industrial and commercial property rights:

- Paris Act (1971) of the Berne Convention for the protection of literary and artistic works,
- Rome Convention (1961) for the protection of performers, producers of phonograms and broadcasting organizations,
- Stockholm Act (1967) of the Paris Convention for the protection of industrial property (as amended in 1979),
- Nice Agreement concerning the international classification of goods and services for the purposes of the registration of marks (Geneva Act, 1977, as amended in 1979), and

- Patent Cooperation Treaty (PCT, 1970, as amended in 1979 and modified in 1984).

Article 4

Before the entry into force of this Decision, Turkey shall adopt domestic legislation in the following areas which is equivalent to the legislation adopted in the Community or its Member States:

1. Copyright and neighbouring rights legislation which provides for:

- the terms of protection in line with Council Directive 93/98/EEC (OJ No L 290 of 24 November 1993),
- protection of neighbouring rights in line with Council Directive 92/100/EEC (OJ No L 346 of 27 November 1992),
- rental and lending rights in line with Council Directive 92/100/EEC (OJ No L 346 of 27 November 1992),
- the protection of computer programmes as literary works in line with Council Directive 91/250/EEC (OJ No L 122 of 17 May 1991).

2. Patent legislation which notably provides for:

- rules on compulsory licensing meeting at least the TRIPS standards,
- patentability of all inventions, other than pharmaceutical products and processes for human and animal health but including agrochemical products and processes (1),
- a patent term of 20 years from the filing date.

3. Trade and service marks legislation in line with Council Directive 89/104/EEC (OJ No L 40 of 11 February 1989).

4. Industrial designs legislations, notably including the protection of designs in textile products (2).

5. Protection of geographical indications, including appellations of origin in line with EC legislation (3).

6. Legislation on border enforcement against IPR infringements (including at least trademarks, copyrights and neighbouring rights and design rights) in line with Council Regulation (EEC) No 3842/86 (OJ No L 357 of 18 December 1986) (4).

Article 5

Notwithstanding Article 1 (1) second indent, for the effective administration and enforcement of intellectual property rights, Turkey undertakes before the entry into force of this decision to take all necessary measures for the fulfillment of its obligations under Part III of the TRIPS Agreement.

Notwithstanding Article 1 (1) second indent, Turkey also undertakes before the entry into force of this decision to take all necessary measures for the fulfillment of its obligations under Part II, Section 4 (Articles 25 and 26) of the TRIPS Agreement.

Article 6

No later than two years after the entry into force of this Decision, Turkey will adopt a legislation, or revise the existing one, in order to secure before 1 January 1999 the patentability of pharmaceutical products and processes.

Article 7

Not later than three years after the entry into force of this Decision Turkey shall:

1. accede to the following conventions on intellectual, industrial and commercial property, provided that the EC or all its Member States are Parties to them:

- Protocol to the Madrid Agreement concerning the international registration of marks (1989),
- Budapest Treaty on the international recognition of the deposit of micro-organisms for the purposes of patent procedure (1977, and amended in 1980), and
- International Convention for the protection of new varieties of plants (UPOV, Geneva 1991 Act);

2. adopt domestic legislation in the following areas, in order to reach alignment with legislation in the EC:

- In the copyright and neighbouring rights area:
- legislation on copyright and neighbouring rights applicable to works transmitted by cable or satellite in line with Council Directive 93/83/EEC (OJ No L 248 of 6 October 1993),
- protection of databases (5),
- In the industrial property area:
- protection of topographies of semiconductors in line with Council Directive 87/54/EEC (OJ No L 24 of 27 January 1987),
- protection of know-how information and trade secrets legislation in line with Member States' legislation,
- protection of plant variety rights (6).

Article 8

The Association Council may decide that Articles 3 to 7 may also apply to other multilateral conventions or areas of IPR legislation.

Article 9

The Joint Customs Union Committee shall monitor the implementation and application of the IPR provisions

of this Decision and perform other tasks which the Association Council may assign to it. The Committee shall make recommendations to the Association Council which may include the establishment of a subcommittee on IPR.

Article 10

1. The Parties agree that for the purpose of this Decision, intellectual, industrial and commercial property includes in particular copyright, including the copyright in computer programmes, and neighbouring rights, patents, industrial designs, geographical indications including appellations of origin, trade marks and service marks, topographies of integrated circuits as well as protection against unfair competition as referred to in Article 10a of the Paris Convention for the protection of industrial property and protection of undisclosed information on know-how.

2. This decision does not imply exhaustion of intellectual, industrial and commercial property rights applied in the trade relations between the two Parties under this Decision.

- (1) For the record also: proposal for a Council Directive on the protection of biotechnological inventions (OJ No C 44, 16. 2. 1993).
- (2) For the record: proposal for a Council Directive on the Community design.
- (3) The list of Regulations in question will be transmitted by the Commission.
- (4) For the record: proposal for Regulation amending the abovementioned Regulation (OJ No C 238, 29. 9. 1993).
- (5) See proposal for a Council Directive on the legal protection of databases (OJ No C 156, 23. 6. 1992).
- (6) See amended proposal for a Council Regulation (EEC) on Community plant variety rights (OJ No C 113, 23. 4. 1993).

Key legislation in the area of intellectual and industrial property: IPR offences are subject to Civil Law if the goods are not related to smuggling. Customs Law no. 4458 also refers IPR offences, in the implementing provisions of Customs Law, section II, art. 105-111 the regulation approaches the Council Regulation (EC) Directive 1383/2003.

In the regulation of the Turkish Patent Institute and Ministry of Culture and Tourism IPR offences are detailed.

Progress

Turkish Customs Administration has a Smuggling Database System which enables to save all smuggling seizures. This system does not have a distinct entrance especially for IPR-cases.

Nevertheless Turkish Customs supplies data to CEN System on IPR-cases routinely.

Turkish Customs Administration is establishing a central unit for the protection of intellectual property rights and setting up a computer database enabling access by the customs administration, aiming to centralize the applications concerning intellectual property rights.

In this respect, applications will be made to a central unit instead of customs administrations.

The unit will also be responsible for evaluating such applications. This database will include all the information gathered through applications (application information, information on the conferred goods, statistical information, address of the Right holder etc.)

AA: Association Agreement

Algeria, Egypt, Israel, Jordan, Lebanon, Morocco and Tunisia signed a Euro-Mediterranean Association Agreement. All Agreements include a specific IPR- action plan.

The Palestinian Authority signed an Interim Association Agreement. (No specific agreements were made on the IPR issue.)

Turkey signed the Agreement on establishing the definite phase of the customs union between EU and Turkey.

The negotiations with Syria were concluded in 2004.

1.2.11 OVERVIEW OF THE ASSOCIATION AGREEMENTS

AA	DZ	EG	IL	JO	LB	MA	PA	SY	TN	TR
IN FORCE	2005	2004	2000	2002	2006	2000	1997		1998	1995

2. Legal framework

Customs actions should prevent and combat counterfeiting and piracy to protect legitimate business from unfair competition, citizen's health and safety, knowledge theft and to counter the risk of jobs, investment, research and innovation.

Border or inland measures shall be applied for the enforcement of IPR (*Intellectual Property Rights*) in such a manner not to hinder legitimate trade and to provide safeguards against their abuse.

Therefore:

- 1). The legal enforcement of IPR should be in accordance with international agreements; TRIPS agreement and EC Regulation should be the minimum.
- 2). National Customs legislation should provide simplified procedures, reduced business costs, recycling issue and provide for destruction of counterfeited and pirated goods with minimum bureaucracy.
- 3). Penalties applied to the infringer found in violation of IPR regulations must be effective, proportionate and dissuasive.

2.1. TRIPS

The **WTO** (World Trade Organization) is the only international body dealing with the rules of trade between nations. At its heart are the WTO agreements, the legal ground-rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.

In order to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, new rules and disciplines concerning IPR were established in the TRIPS Agreement.

In the combat against IPR violations the TRIPS agreement is the basic tool on border and inland measures.

The following table gives an overview of which countries already signed the Agreement

DZ	EG	IL	JO	LB	MA	PA	SY	TN	TR
OBS	+	+	+	OBS	+			+	+

OBS: observer

+: signed

Remark: Although Algeria and Lebanon are "observers", they have already taken a lot of measures to comply with TRIPS.

2.2. CUSTOMS AUTHORITY

The EC Regulation 1383/2003 implies that Customs have the authority to act when goods are suspected of infringing an intellectual property right in the following situations:

- when they are entered for release for free circulation, export or re-export in accordance with Article 61 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (3);
- when they are found during checks on goods entering or leaving the Community customs territory in accordance with Articles 37 and 183 of Regulation (EEC) No 2913/92,
- placed under a suspension procedure within the meaning of Article 84(1)(a) of that Regulation, in the process of being re-exported subject to notification under Article 182(2) of that Regulation or
- placed in a free zone or free warehouse within the meaning of Article 166 of that Regulation.

Provisions for the implementation of Council Regulation (EC) No 1383/2003 are laid down in the Commission Regulation (EC) No 1891/2004 of 21 October 2004.

The next table gives an overview of the Customs authority in the Mediterranean partners in accordance to their national laws.

	IMPORT	EXPORT	TRANSSHIP	PERSONAL
ALGERIA	+	+	+	+
EGYPT	+			
ISRAEL	+	+ *		+
JORDAN	+			
LEBANON	+	+	+	+
MOROCCO	+	+		+
PALESTINIAN AUTHORITY**				
SYRIA	+	+	+	+
TUNISIA	+			
TURKEY	+	+	+	+

Personal: personal luggage

+: Customs has the authority

+*: Customs has the authority if goods were imported first

**Not applicable for the Palestine Territory due to their specific situation

Algeria has a zero tolerance concerning IPR infringing goods found in personal luggage. In any case IPR infringing goods are considered as forbidden goods.

Egypt is working on a new legislation to control and take measures on goods in process of being exported or re-exported. The current legislation on border measures authorizes customs only to enforce measures on import goods. Free zones are exempted from border measures unless goods are for the domestic market.

Israel: If the amount of goods found in personal luggage indicates a commercial purpose, the goods are seized and the owner of the goods may be prosecuted or offered to pay an administrative fine instead.

Jordan airports and seaport are free zones.

Customs law states that: “the goods which break the (IPR) laws ... are prohibited from being brought into the free zones.”

Small quantities of goods of un-commercial nature and personal items and gifts contained in travellers personal luggage or sent in small consignments, as well as goods in transit and goods which are placed in the markets of the exporting country by the right holder or upon permission thereof, are excluded from the provisions for IPR protection.

In **Lebanon** customs have the authority to stop IPR infringing goods in case they are for import, export, transshipment and also in personal luggage as soon there is any indication that they are not for personal use.

Morocco: customs are competent to take measures against IPR infringing goods in case they are imported or exported. They can not take measures in case of transshipments.

Due to the fact that Israel controls the borders, the **Palestinian** customs only check consignments inside the country.

In **Syria** IPR infringing goods are considered as prohibited goods so Customs can take action when those goods are in process of being imported, exported, re-exported, leaving the country or in transit. If the

amount of goods indicates a commercial amount, the regulation also applies for infringing goods found in the personal luggage.

In **Tunisia** customs – although they are competent at the borders and within the country- are only authorized to take measures on import.

In **Turkey** customs are authorized to stop infringing goods in personal luggage if the value of the goods exceeds the official limit or if the goods are for commercial purpose.

Customs do have authority on imported as well as on (re-)exported goods and transshipments.

In case of smuggled goods, customs also have authority in the country.

Other competent authorities

In some countries not only customs are competent for taking measures against infringing goods. In most of the cases there is a difference in who is competent for taking border measures and who is competent for inland measures.

The next paragraph will give a short overview of competent authorities in all the MP's.

	CUSTOMS		OTHER	
	BORDER	INLAND	BORDER	INLAND
DZ	+	+	- MINISTRY OF TRADE	- MINISTRY OF TRADE
EG	+		- MINISTRY OF FOREIGN TRADE AND INDUSTRY	- MINISTRY OF FOREIGN TRADE AND INDUSTRY - MINISTRY OF INTERIOR - MINISTRY OF CULTURE
IL	+	IF NECESSARY		- POLICE
JO	+	IF SMUGGLING IS INVOLVED		- MINISTRY OF INDUSTRY AND TRADE - JORDAN INSTITUTION FOR STANDARDS AND METROLOGY (JISM) - THE GENERAL ORGANIZATION FOR FOOD AND MEDICINE - THE NATIONAL LIBRARY - JUDICIAL BODY.
LB	+	+	- MINISTRY OF ECONOMY AND TRADE (BUREAU OF PROTECTING THE IPR) (MOET)	- MINISTRY OF ECONOMY AND TRADE (BUREAU OF PROTECTING THE IPR) - INTERNAL SECURITY FORCES (BUREAU OF FINANCIAL CRIMES).
MA	+			- JUSTICE - POLICE - GENDARMERIE
PA		+		- MINISTRY OF NATIONAL ECONOMY
SY	+	+		- MINISTRY OF ECONOMY & TRADE - INDUSTRIAL & COMMERCIAL PROTECTION DIRECTORATE
TN	+	+		- MINISTRY OF TRADE
TR	+	IF SMUGGLING IS INVOLVED		- MINISTRY OF JUSTICE - MINISTRY OF INTERIOR (POLICE)

Border: border measures

Inland: competent inside the country

Algeria:

The General Directorate of Customs is the only entity to receive and process the application for action.

INAPI (National Institute of Intellectual Property) and ONDA (National office of copyrights and neighbouring rights) can be contacted permanently to get relevant information and for risk-analysis on suspected consignments.

Egypt:

All complaints concerning IPR have to be filed at the Trade Agreement Sector (TAS), Ministry of Foreign Trade and Industry. A co-operation between TAS and Customs is established at governmental level in a permanent committee, in which both bodies participate. Other relevant authorities are invited to the periodic meetings of this committee according to the needs and discussed subject.

Israel:

A central IPR co-ordination unit receives and processes the application for action. This unit also provides sufficient and regularly updated information to customs or other legal authorities. Profiles on IPR are not created but IPR alerts can be sent electronically.

Jordan:

No cooperation with other competent national authorities on the distribution and convert of information on IPR alerts. A special IPR section at Customs Headquarters receives and processes the application for action.

Lebanon:

There is a co-operation or co-ordination between Customs, the Ministry of Economy and Trade (Bureau of

protecting the IPR) and the Internal Security Forces (Bureau of Financial Crimes) at government level. All authorities follow the same procedures according to the IPR Law. The General Directorate of Customs receives and processes the applications for action. But the final decision whether the application is acceptable is taken by the Ministry of Economy and Trade (MOET)

Morocco:

In Morocco a cooperation and coordination at government and regional level exists between Customs, Police, Gendarmerie and Justice.

In case customs have an IPR case which is linked to the inland, they are obliged to inform the other authorities.

Applications for action are received and processed at the Customs Central Administration.

IPR are subject to two laws and two different entities:

Industrial property to "l'Office Marocain de la Propriété Industrielle et Commerciale (OMPIC)" under the Ministry of Trade and Industry, and copyrights and neighbouring rights under the Ministry of Communication. The legal decisions are made by the latter two, but in case of legal procedures, court takes the final decision.

Palestinian Authority:

A cooperation between Customs and the Ministry of National Economy is established at governmental level by means of a permanent committee which takes the final decisions in case of IPR infringing goods.

A written petition must be submitted to the IPR enforcement department at the Ministry of National Economy or to the Customs Department.

Syria:

A cooperation and coordination at national level exists between Customs, the Ministry of Economy & Trade and the Industrial & commercial Protection Directorate. All follow the same procedures.

The Industrial & Commercial Protection Directorate receives and processes the applications for action.

In order for customs to take action, the applicant should present an application to customs authority which proves that he is already registered in the Industrial & Commercial Protection Directorate as the owner of the right of the goods in question.

Customs are authorised to take action, both at the border and inside the country.

Tunisia:

In Tunisia customs are authorised to take action at both, the border and inside the country, but only on infringing goods which are in the process of being imported.

The Ministry of Commerce is also competent in IPR cases but there is no coordination with customs.

Requests for Applications for Action should be processed to the Directorate General of Customs.

Turkey:

With the other competent authorities on IPR there is no coordination except for coordination on governmental

level for training, organised by the Undersecretariat of Customs.

Experts from the Ministry of Justice, the Ministry of Culture (copyrights) and the Turkish Patent Institute attend the training and inform customs inspectors about the relevant subject.

Customs have by law supervision and authority on IPR related offences in the customs territory. Police is active inside the country.

The court (Ministry of Justice) takes the final decision whether goods shall be destroyed or returned to the owner.

2.3. PRACTICE

The next part is an overview of some elements of the current practice in the Mediterranean partners.

- : no
+: yes

- 1: security: Does the right holder have to pay a security for Customs to take action?
- 2: form: Does a standard document for the application for action exist?
- 3: computer: Can information be provided to front-line customs via a computerised system?
- 4: Who takes the final decision whether the goods are infringing an IPR or not?
- 5: Does national regulation foresee a penalty in case of IPR infringement?

	DZ	EG	IL	JO	LB	MA	PA	SY	TN	TR
SECURITY	+	+	+	-	-	-	-	+	-	+
FORM	-	-	-	+	+	+	-	-	+	+
COMPUTER	-	-	+	+	+	+	-	-	-	-
COURT	+	+	+	+	+	+	+	-	+	+
PENALTIES	+	+	-	+	+	+	+	+	+	+

1. Security

In 5 countries a security has to be paid for customs to take action; Algeria, Egypt, Israel, Syria and Turkey.

In Algeria the right holder has to make a deposit which can cover all subsequent costs, in case the goods are infringing, the importer-owner of the goods will be held responsible for all costs and the deposit shall be released.

In Egypt, the complainant has to pay a security or has to post a bank guarantee of ¼ of the value of the consignment. However if the defendant has not filed an appeal within 3 days- from his receipt of the notice of suspension of the final release of the goods or if a juridical order on the suspension of the consignment has been issued, customs release the security or the posted guarantee.

In Israel the right holder must post a bank guarantee with customs in case customs act *ex officio*.

In Jordan the right holder does not have to make a security for customs to take action, but when filing a complaint at the competent court, he has to make a monetary or bank guarantee.

In Syria the right holder has to pay a security for customs to take action.

Tunisian customs do not require a security in order to take action.

Turkey; during the period that the goods are kept under customs control the right-holder or his representative has to deposit to the Customs cashier the amount corresponding to the administrative costs and fees for analysis, expertise and overtime work arisen regarding the application.

Customs authority may request from the applicant a guarantee corresponding to the CIF value of goods in order to secure the rights of the importer or public where they deem appropriate for the case.

2. Form

In Jordan, Lebanon, Morocco, Tunisia and Turkey a standard form is used to make an application for action.

Egypt is still working on a standard form.

Although no standard form is available, in most countries the information which should be provided by the right holder is more or less the same. The following information is required in almost all of the applications:

- A detailed technical description of the goods,
- Any specific information the right-holder may have concerning the type or pattern of fraud,
- The name and address of the contact person appointed by the right-holder,
- The proof that the applicant holds the right for the goods in question,
- A declaration by the applicant accepting liability towards the persons involved in a situation where the goods in question are subsequently found not to infringe an intellectual property right.

The standard form used in the European Union is included in the EC Regulation 1891/2004 of 21 October 2004.

3. Computer

In some countries, Israel, Jordan, Lebanon, and Morocco, a computerised system is already available to send all information concerning applications for action,

data-bases and other information to customs officers in the front-line.

Jordan is at this point a pioneer; they have an automated system to recognise more than 10 000 commercial trademarks registered in the Directorate of Industrial Property Rights in the Ministry of Industry and Trade (MIT). Because of this automated system there is no longer a need to register trademarks at the Customs Department since the system provides access to MIT's data base immediately.

4. Court

Out of the study can be concluded that in 9 of the 10 participating countries, court is the final body to decide whether goods are infringing an IPR or not. In the EU, following EC Regulation 1383/2003 it is also court who decides whether the goods are infringing or not, although recently some member states extended the Regulation to a National Law, which in some cases also gave Customs the competence to decide whether the goods are infringing or not.

In Syria the General Directorate of Customs is the competent authority to decide if goods are infringing an IPR or not and which measures to take.

5. Penalties

Except for Israel in every country penalties are foreseen in the national law in case of infringing an IPR.

The next table gives an overview of the penalties:

	PENALTY : TYPE
DZ	ACCORDING TO CUSTOMS LAW
EG	CRIMINAL PENALTIES
IL	-
JO	CRIMINAL AND CIVIL PENALTIES
LB	ACCORDING TO CUSTOMS LAW.
MA	CRIMINAL AND CIVIL PENALTIES
PA	ACCORDING TO CUSTOMS LAW, CIVIL LAW OR CRIMINAL LAW
SY	ACCORDING TO CUSTOMS LAW AND IPR PROTECTION LAW
TN	CUSTOMS LAW AND IPR LAWS
TR	CIVIL LAW/ CUSTOMS LAW IF SMUGGLE

2.4. LEGAL TERMS

After customs suspend the release of goods which are suspected to infringe an IPR, the right holder and the other parties involved will be notified of the suspension; from that moment on they have a limited time to take legal action.

Although in the EU co-operation between customs and industry is developing satisfactorily, the Commission considers the further strengthening of cooperation a priority. 80% of customs interventions are based on an application for action; for the other 20% where customs had a suspicion of an IPR infringement, no application for action had been made by the right holder.

In such cases customs have to locate the right holder and an application submitted within 3 working days in order for customs to be able to detain or suspend the release of the goods. Given the increase in applications

each year, it can be assumed that once a right holder has been approached after an ex-officio action, the application is often maintained.

However, as long as not all right holders have submitted applications for action to customs, some customs actions will continue to be carried out on an ex-officio basis.

In the EU, either the right holder has a permanent request for customs to take action or he has none. The “permanent request” implies that the right holder has an application for action by customs, which is valid for maximum 1 year and can be extended upon simple written request to the competent customs authority and if all applicable conditions are still fulfilled.

In case of a “permanent” application for action, he has 10 working days, after receiving the notification of the suspension of the goods to file a complaint at the competent court. This can be extended by customs with another 10 working days upon his request.

In case the right holder has not yet an application for customs to take action, customs only suspend the release of the infringing goods for 3 working days (ex officio).

Within the 3 working days the right holder has to make a request for customs to take action at the competent customs authority. Once this request is granted and notified to him, he has 10 working days to file a complaint at the competent court. This can be extended by customs with another 10 working days upon his request.

In the Euro-Mediterranean Partners the next procedures are followed:

Algeria

The right-holder has to submit the request for an application to the General Directorate of Customs and provide all other useful information.

The Algerian Legislation foresees an act ex-officio in case it is obvious to customs that the goods are infringing an IPR. In this case customs can suspend the release of the suspected goods or retain them for 3 working days in order to give the right-holder the possibility to submit an application for action.

The right-holder has 10 working days starting from the day of the notification to file a lawsuit. The period can be extended with 10 working days maximum.

Egypt

The right holder has to file a complaint with the competent customs to suspend the release of imported goods.

Customs will notify both the complainant and the defendant legally by registered letter of receipt notice of the proceedings related to the suspension of release. The Trade Agreements Sector at the Ministry of Foreign Trade and Industry shall also be notified of the action.

IPR holders have to file their complaint with the Trade Agreements Sector at the Ministry of Foreign Trade and Industry, provided that this complaint is supported with adequate information.

The importer can file an appeal with the Trade Agreements Sector contesting the suspension no later than 3 working days from the date of receipt of notice. Within 3 working days the Trade Agreements Sector has to take a decision whether the appeal of the importer is admissible or not.

If the appeal has been rejected by the Trade Agreements Sector, the competent customs shall be served notice of the continued suspension of infringing goods subject of appeal and any security or equivalent guarantees posted by the complainant released, as long as a juridical order has not been issued in this connection. If not customs will have to release the goods.

The duration of suspension of final release shall be 10 working days, and may be extended by another 10 days upon the approval of the Minister in charge of Foreign Trade in response to a request by the Trade Agreements Sector.

Israel

The right holder must file a civil action in court within 10 working days after the suspension of the release of the goods. Customs may extend this period for another 10 days.

By filing suit, the right holder has determined that there is an infringement.

In case customs act ex officio, the right holder has 3 working days to produce a detailed opinion on whether the goods are infringing or not. Customs may extend this period for another 3 days.

The right holder has to post a bank guarantee at customs and has 10 days to file a complaint at a civil court. The bank guarantee can be released after the court has granted the appeal.

Jordan

Customs has the authority to stop suspected goods in copyright and trademark fields for 8 days, giving the legal agent of the trademark owner to check whether

the suspected goods are genuine or counterfeit, and give him the opportunity to take the case to the competent court within this period.

The right-holder shall submit an application to the competent court within these 8 days, accompanied with a monetary or bank guarantee to stop the procedures of clearance and release of such goods, and submit to the court sufficient evidence to prove the infringement and a detailed description of the infringing goods.

The term of 8 days can not be extended.

Lebanon

The General Directorate of Customs receives and processes the applications for action, but the Ministry of Economy and Trade (MOET) takes the decision whether to grant the application for action or not.

The application for action includes 14 working days.

An extension of this period is possible by the order of the General Prosecutor.

Morocco

Concerning the acceptance of the application for customs to take action, the Moroccan system meets the EC Regulation 1383/2003. The period for which a request for customs to take action is valid is one year and it can be extended in case of an official written request. Requests for customs to take action are received, processed and granted at the Central Administration of Customs.

In case of goods infringing an IPR, the consignment can be stopped for 10 working days, in which the right

holder has to take legal action; extension of this period is not possible.

Palestinian Authority

When the right holder submits a written petition and all the necessary information and documents are available, the application for action will be granted and first-line customs can immediately suspend the release of the goods or detain them. Then it is up to the court to decide whether they are infringing national law or not.

Syria

In order to accept the application by customs authorities, the applicant should present at the General Directorate of Customs an application which proves that he is already registered in the Industrial & Commercial Protection Directorate as the owner of the right of the goods in question. The General directorate of Customs immediately notifies the customs in the front-line about the acceptance of the application for action.

The application for action includes 10 working days.

If no application has yet been lodged or approved, customs can still suspend the release of the goods or detain the goods for ten days when they are suspected of infringing the intellectual property right covered. Customs inform the public prosecution, the applicant and the owner of the goods.

Tunisia

The right holder has to submit his request for an application for action to the General Directorate of Customs. The request will be sent to the competent authority,

which will process the request and verifies the attached documents and conditions for the admissibility.

A request for customs to take action is granted on an annual basis. It can be extended if the conditions are still valid.

Customs can stop the import of goods suspected of infringing an IPR for 10 working days. This period can be extended once with 10 days.

Customs can stop the import of infringing goods ex officio as well.

Turkey

The right-holder must specify the length of the period during which the customs authorities are requested to take action in relation to goods not readily presented to customs.

However the limit is 30 days (*not working days*), but the duration might be extended upon request of the right-holder.

In case of a notification that suspected goods are stopped, the right-holder has to appear at the customs office within 3 days of the retention of the infringing goods, or the goods will be released.

After verifying the goods the right-holder has 10 days to file a lawsuit against the owner.

He has to present all documents related to the lawsuit at the customs office.

Overview

The next table gives an overview of how many days the right holder has after notification of the detention or suspended release of infringing goods to take legal action.

DZ	EG	IL	JO	LB	MA	PA	SY	TN	TR
10+	10+	10+	8	14+	10	-	10	10+	10

“+” means that the period can be extended with the same amount of days

So for example, if national law foresees a period of 10 working days, it can be extended with another 10 working days.

3. Strategic Objectives

3.1 Aim:

- 1). In each Mediterranean partner there has to be commitment at Government level and co-ordination/co-operation with other law enforcement agencies to work together in the combat against counterfeit/piracy.

Customs management must create a central IPR co-ordination and risk analysis/intelligence unit, IT network, customs IPR specialists and risk analysis guidelines.

- 2). National legislation should adapt to EC Regulation 1383/2003 as a minimum standard

Active participation in developments in international, regional or national law and policy for protection of intellectual property rights giving customs powers to take action against counterfeited and pirated goods to ensure adjustments of thorough customs response to the latest trends in counterfeiting and piracy.

- 3). Action by Customs authorities is to be taken on goods suspected of infringing an intellectual property right in the following situations: when goods are entered for release in free circulation, placed under Customs control, import, export or re-export, transit, placed in a free zone or free warehouse and transshipment. Then measures are to be taken by the competent authorities when the suspected goods are found to infringe intellectual property rights.
- 4). Actions are to be taken in improving Customs-business partnership, relations with IPR Right holders and reinforcing and amending (inter)national co-operation. The partnership between Customs Authorities and the Right holders of the trademarks etc,

is a paramount achievement to consolidate their common actions in protecting the consumer from counterfeit products. Legislators and the business community need to work together to ensure that legislation continues to meet present and future requirements and can be adapted quickly where problems arise. They should be working on an environmental solution for recycling/destruction of counterfeited goods.

- 5) Active participation in international programs of exchange of customs officers on IPR issues.

3.2 Evaluation of the current state of play

In **Algeria** all entities authorized on IPR work in mixed intervention brigades and are competent to apply the regulation on IPR. These mixed brigades have authority at the borders and inland as well.

A central IPR coordination exists under authority of the "Anti-fraud Directorate".

The "National Institute for Intellectual Property (INAPI) and the Office of Copyrights and Neighbouring Rights (ONDA)" provides a 24/7 information and helpdesk on IPR.

Algerian legislation gives customs the authority to act in case infringing goods are in process of being imported, exported, re-exported, transshipment and in personal luggage.

In **Egypt**, a committee of representatives of both customs and Ministry of Industry and Foreign Trade is established, which meets on a regular basis. Action by customs is only authorized in case of import.

Egypt participates in international working groups on IPR.

Israel; Cooperation with Israeli Police is on national level. Customs report its seizures to the Police. Israeli Customs and the Police can co-ordinate action where necessary. The Police do not follow the same procedures as customs.

The central IPR co-ordination unit provides sufficient and regularly updated information to customs or other legal authorities in the front line whenever this is applicable.

This unit keeps the applications for action.

There is no database on IPR –cases, there is no specific IPR risk assessment other than the general intelligence risk assessment. The intelligence unit does not create profiles on IPR.

Legal expertise, when necessary, is given by the legal department on the national level.

There are seminars on IPR for customs officials in the field.

New information or IPR-alerts is sent electronically

Jordan has a central risk-analysis and intelligence unit which provides operational and legal expertise to customs in the front line. The unit creates profiles on IPR.

There is no exchange of information on IPR neither with other regions nor with other countries.

Jordan has no international agreements on IPR but on the other hand the Nairobi Agreement includes the exchange of information.

Lebanon

There is a co-operation and co-ordination between customs, the Ministry of Economy and Trade (Bureau of protecting the IPR) and the Internal Security Forces (Bureau of Financial Crimes) at government level. All authorities follow the same procedures according to the IPR Law. Customs IPR specialists are available on a 24/7 basis; a data base on IPR-cases is still under construction

Lebanon meets with EU standards where customs authorities can take action in case of infringing goods being imported, exported, in transshipment, free zone, and personal luggage.

Exchange of information exists via their NCP (National Contact point) with Middle East RILO's.

Lebanon organised a TV awareness campaign on IPR infringement in order to attract the attention of both business and citizens.

Morocco

There is cooperation between all authorities competent to take measures on IPR infringing cases. An exchange of information is established at national and regional level.

A central unit at the Directorate of Prevention and Disputes, under the Central Administration of Customs and Indirect Taxes coordinates the information on IPR. The unit receives and processes the applications and has also a data-base on IPR infringements.

Measures can be taken by Customs Authorities in case of infringing goods being imported, exported or re-exported and if found in personal luggage. In case

of transshipment Customs are not authorized to take measures.

In Morocco an interactive coordination with right holders exists.

An international exchange of information exists with some countries. Moroccan customs took part in international seminars on IPR with French, Italian and American customs.

Palestinian Authority

Cooperation between Customs and the Ministry of National Economy is established at national level by means of a permanent committee.

Due to the current situation in the Palestinian Authority, Customs can only control inside the country.

Syria

Co-operation on national level is established between customs and the other law enforcement agencies competent in IPR -cases. All follow the same procedures as customs.

Customs have supervision and authority on IPR matters in the whole country, and can take action in case infringing goods are in process of being imported, exported, re-exported or in transshipment.

IPR offences are subject to customs law and IPR protection law, but no customs IPR specialists are available.

The final decisions are usually taken by the Industrial & Commercial Protection Directorate, which also receives and processes the application.

A central IPR co-ordination does not exist but the Industrial & Commercial Protection Directorate co-ordinates information on IPR at regional level.

The Syrian Patent Office provides information to both, right holders and customs officers.

No national/international operational seminars together with right-holders were organised within the country.

Tunisia

In Tunisia Customs are authorised to take action, both at the border and inside the country, but only on infringing goods in the process of being imported.

The Ministry of Commerce is also competent in IPR cases but there is no coordination with customs.

A central coordination exists at national level but for customs only. The coordination unit gives an annual update on IPR alerts. The applications for action are processed by the same unit. Customs in the front line have no access to a computerised information system on IPR.

Turkey

In Turkey a coordination for customs on IPR at national or regional level does not exist.

Coordination on national level is for training only, it is organised by the Under Secretariat of Customs and is attended by other law enforcement officers on IPR.

All customs officers and inspectors working in customs offices can receive and process the application for action. A data-base on IPR cases does not exist.

An interactive co-ordination with right-holders exists at regional level; companies may organise their seminars to the relevant Regional Directorate (14 regions) or customs office without any governmental supervision.

Turkish legislation gives customs the authority to take measures on import, transshipment, export and re-exportation as well as in personal luggage.

Remark:

Concerning recycling; in almost every Mediterranean Partner infringing goods which have been seized are destroyed, some countries like Egypt and Turkey re-export the goods to the country of origin. This might be a good option if agreements with the country of origin are made to check whether the goods are recycled in the factory of production or elsewhere but that environmental conditions are strictly followed.

In some cases, Egypt allows re-exportation after the infringing labels or characteristics have been removed.

4. Key indicators

4.1 Organization

4.1.1 AIM

- 1). A centre of operational expertise which is in direct communication (24/7 basis) with front line customs officers, customs IPR specialist and other specialized Customs units (Top management, Central Intelligence unit, Risk analysis unit, container monitoring unit, pre arrival unit, etc.) should be established.
- 2). The unit as a centre of operational and legal expertise, will be responsible for:
 - the departmental strategic plan,
 - co-operation with competent National agencies,
 - dissemination and receiving information regarding IPR alerts infringement,
 - upgrading of recognition details, international co-operation,
 - creating profiles,
 - receiving and processing applications for action by the IPR right holders,
 - interactive co-operation with Right holders,
 - archiving IPR cases and statistical recording.

4.1.2. CURRENT SITUATION

Algeria

A central IPR coordination exists under authority of the “Anti-fraud Directorate”.

The “National Institute for Intellectual Property (INAPI) and the Office of Copyrights and Neighbouring Rights (ONDA)” provides a 24/7 information and helpdesk on IPR.

Egypt

Border measures are carried out jointly between Customs (Ministry of Finance) and the Trade Agreements Sector (Ministry of Foreign Trade & Industry.)

A central risk-analysis/intelligence unit is available every day except for Fridays, but it is not specialised on IPR-issues.

Israel

There is no specific IPR risk assessment other than the general intelligence risk assessment. The intelligence unit does not create profiles on IPR. There is no database on IPR –cases.

Legal expertise, when necessary, is given by the legal department at national level.

A central IPR co-ordination unit provides sufficient and regularly updated information to customs or other legal authorities in the front line whenever this is applicable.

This unit keeps the applications for action.

Jordan

Jordan has a central risk-analysis and intelligence unit.

The IPR Section at HQ receives and processes the applications for action and also has a database on IPR-cases. Customs IPR specialists are available on a 24/7 basis. The specialists are following training courses on a regular basis and recognition details are upgraded.

The Risk-analysis/intelligence unit provides operational and legal expertise to customs in the front line. The unit creates profiles on IPR.

On a regular basis seminars on IPR are organised for customs in the front line.

There is co-operation with other competent national authorities on the distribution and the convert of information on IPR alerts.

A computerised system sends electronically new information or IPR-alerts

An interactive co-ordination with right-holders exists.

Lebanon

Customs IPR specialists are available on a 24/7 basis, whenever needed recognition details are upgraded.

The risk-analysis/intelligence unit provides operational and legal expertise to customs in the front line.

Seminars on IPR are organised for customs in the front line.

There is a co-operation with the other competent national authorities on the distribution and convert of information on IPR alerts.

Morocco

A central unit coordinates all information on IPR cases, front-line customs have access to the IPR data-base.

Palestinian Authority

Information exchange between Customs and the Ministry of National Economy is established via the committee in which both entities take part.

Syria

No customs IPR specialists are available. A data-base on IPR-cases does not exist.

A central IPR co-ordination does not exist but the Industrial & Commercial Protection Directorate co-ordinates information on IPR at regional level.

Tunisia

A central coordination exists at national level but for customs only. The coordination unit gives an annual update on IPR alerts. A central risk analysis/database on IPR does not exist.

Customs in the front line have no access to a computerised information system on IPR.

Turkey

In Turkey a coordination for customs on IPR at national level does not exist.

All customs officers and inspectors working in customs offices can receive and process the application for action. A data-base on IPR cases does not exist.

A central risk-analysis/intelligence unit exists but is not only specialised in IPR but in all customs procedures.

4.2 Training

4.2.1. AIM

- 1). In-house systematical training, national/international seminars organized in conjunction with IPR Right holders and national law agencies to enhance the awareness of IPR protection. An IT database functioning on trends, legislation, prescription and technical features of the counterfeiting trade. The E-learning program on IPR, established by WCO (World Customs Organization) should be available to all customs officers.
- 2). Operational Customs/Business seminars to enhance the co-operation between different national authorities and different actors.
- 3). Exchange of Customs IPR specialists between countries, to share experience, best practices and knowledge.

4.2.2. CURRENT SITUATION

Algeria

Operational seminars and trainings together with right holders are regularly organised at national and international level.

Egypt

Training is a continuous process for all officials responsible for border enforcement whether from customs or from the Trade Agreements Sector. The customs trainees are usually from the frontline. Donors of the training programs include aid projects from the U.S. and the E.C. More interestingly, involvement of the private sector in the training process is increasing.

National/international operational seminars together with right-holders organised within the country or participation in seminars outside of the country.

There are not only seminars, but also international training programs.

Israel

A systematical training for the front-line customs officers is organised.

On the national level operational seminars together with right-holders are organised.

There are no international seminars held with neighbouring countries concerning IPR, neither is there an exchange of customs on IPR.

Jordan

There is a systematical training for customs officers on the front-line, bearing in mind that each region, port/airport/border can need a specific training.

Jordan Customs held a regional intellectual forum in Amman with the participation of representatives from Arab Countries Customs and the Arab League.

There is no exchange of customs on IPR.

Palestinian Authority

No training for customs officers in the first line is available.

There are no national/international operational seminars together with right holders organised within the country

nor have customs been taking part in one outside of the country.

An exchange of customs on IPR has been organised with Jordan and Egypt.

Lebanon

Customs IPR specialists are following training courses when available.

Whenever needed recognition details are upgraded.

The risk-analysis/intelligence unit provides operational and legal expertise to customs in the front line.

Seminars on IPR are organised for customs in the front line.

An exchange of information with Middle East RILO's is made through NCP (National Contact Point) office of RILO's, however no legal agreements made with neighbouring or other countries on IPR issues.

A database on IPR-cases is under construction.

Morocco

Training on IPR is organised at a regular basis for front-line customs.

National and international seminars together with right holders are organised or attended, in specific seminars with French, Italian and American Customs.

With neighbouring countries no specific training or seminars on IPR were attended.

Syria

There are no national/international operational seminars together with right-holders organised within the country.

There is an exchange of customs on IPR, for example with the United Arab Emirates.

Tunisia

Seminars on IPR for front-line customs are only occasionally organised.

Turkey

Training programs are regularly delivered to customs inspectors by the Department of Training and have been redesigned to include the legislation of protecting intellectual property rights. Experts from the Ministry of Justice, the Ministry of Culture (copyrights) and the Turkish Patent Institute (trademarks and patents) attend these trainings and inform the customs inspectors about their relevant subject matter.

The seminar on "Raising Trademark Awareness" hosted by YASED (Foreign Investment Association) in cooperation with the Undersecretary was attended by various right holders.

International Seminars on IPR were organized and were attended by customs officers, IPR related international organizations and right holders.

Additionally, under the Twinning Project, signed between Turkish and German Customs, the EU acquis on "Counterfeit and Pirated Goods/Intellectual Property Rights" was compared to the corresponding Turkish legislation with the aid of German experts. A seminar

of “Training of Trainers” on Intellectual Property Rights was held in 2006.

With EU countries there are exchange programs on IPR.

4.3. Risk Analysis

4.3.1 AIM

- 1). When Customs IPR specialists act in all situations (*ex-officio* or on an application for action lodged at the Customs administration) it is necessary for the risk management to use intelligence-based controls and for Customs front-line officers to select shipments posing a high risk of containing infringing goods for examination.
- 2). A good risk analysis system needs:
 - Commitment at management level
 - Central co-ordination risk analysis/ intelligence unit
 - Local specialists
 - Risk guidelines
 - Co-operation with other law enforcement agencies
 - Operational Global/regional network
 - Good equipment
- 3). Customs administrations should recognize that risks or threats differ from region to region and from country to country and are constantly changing. Therefore it is important to regularly conduct risk assessments in order to make information available to Customs frontline officers regarding shipments that present a high risk for counterfeiting and piracy on the borders.

4.3.2 CURRENT SITUATION

Algeria

All entities that are competent on IPR issues work together in mixed brigades and use the same procedures.

A central IPR coordination exists under authority of the “Anti-fraud Directorate”.

The “National Institute for Intellectual Property (INAPI) and the Office of Copyrights and Neighbouring Rights (ONDA)” provides a 24/7 information and helpdesk on IPR.

Egypt

A central risk-analysis/intelligence unit is available every day except for Fridays, but it is not specialised on IPR-issues

Israel

Customs and the Police can co-ordinate action where necessary.

There is no database on IPR –cases.

There is no specific IPR risk assessment other than the general intelligence risk assessment

Jordan

They have a central risk-analysis and intelligence unit.

Customs IPR specialists are available on a 24/7 basis.

The specialists are following training courses on a regular basis and recognition details are upgraded.

Lebanon

Within the General Directorate of Customs there is a central risk-analysis/intelligence unit.

The risk-analysis/intelligence unit provides operational and legal expertise to customs in the front-line and recognition details are updated when necessary.

A database on IPR-cases is under construction.

There is a co-operation with the other competent national authorities on the distribution and convert of information on IPR alerts.

Morocco

A central unit coordinates all information on IPR and creates a data-base on IPR, which can be consulted by all front-line officers.

Cooperation with other competent authorities exists at government and regional level.

Palestinian Authority

No information is available

Syria

A co-operation with other law enforcements agencies exists. The Industrial & Commercial Protection Directorate coordinates IPR information at regional level.

Tunisia

A central risk-analysis/intelligence unit does not exist.

IPR information is coordinated at national level, for customs authority only.

Turkey

In Turkey a coordination for customs on IPR at national level does not exist.

A central risk-analysis/intelligence unit exists but is not only specialised in IPR but in all customs procedures.

Cooperation and coordination with other law enforcement agencies at national level is only for training.

4.4. Information Technology

4.4.1. AIM

1). An IPR combined/linked database should be established. It should offer the possibility to Customs to exchange risk information on counterfeiting and to access listings of companies, key products etc., and contacts via the intranet/internet.

This would enable real time risk information to be exchanged between experts via risk management systems.

4.4.2. CURRENT STATE OF PLAY

A computerized system to exchange information or system linked to an IPR data-base available to all customs does not exist in Algeria, Egypt, the Palestinian Authority, Syria, Tunisia and Turkey.

In Syria however the Syrian Patent Office has a website which can be consulted by both customs and right holders via the internet.

In Israel a computerised system is available to all customs officers, but a database on IPR is not available.

As already stated earlier in chapter 2, section 3 "*practice*", Jordan has an automated system which enables the officers in charge of IPR, to recognise more than (10000) commercial trademarks registered in the Directorate of Industrial Property Rights in the Ministry of Industry and Trade (MIT). Via the automated system customs have direct access to MIT's data base.

In Lebanon front-line officers have access to the electronic information.

In Morocco a computerised system to exchange information and to consult the IPR data-base is available to all first-line customs officers.

4.5. Equipment

4.5.1 AIM

1). Customs IPR specialists should be provided with and trained to technological equipment (computers, digital cameras, scanning device, UV lights, microscopes etc.).

4.5.2. CURRENT STATE OF PLAY

In Algeria, Israel, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey all necessary basic tools are not available to front-line officers yet.

In Egypt some of the ordinary tools are already available to the customs; however, the perfection of infringement

requires advanced technological devices that are too expensive and so tailored to dealing with specific goods.

Necessary basic tools are available to front-line officers in Lebanon and in Jordan X- ray light is also available to front-line officers.

4.6 International co-operation

4.6.1. AIM

- 1). Practical tools such as risk management guide, statistics (data), trends analysis etc., developed by Customs authorities should be shared at international level, based on (bi)multilateral agreements and in collaboration with the trading partners in order to tackle counterfeiting in key problem areas.
- 2). Customs Co-operation Agreements, Partnership and Co-operation Agreements with a Mutual assistance component provide a legal basis to co-operate and exchange officials and information (including training or sharing expertise).
- 3). Close, active co-operation with the most involved international enforcement bodies such as the WCO, Europol and Interpol etc., could be used to address international trends and help to spread the global practical approach of customs action.
- 4). The level of counterfeiting and the need to stop production at source makes it necessary to station Customs anti-counterfeiting specialists in key regions. A direct Customs-to-Customs, based on common experience and understanding would increase the results.

4.6.2. CURRENT STATE OF PLAY

WCO IPR SECURE PROGRAM

In order to better co-ordinate Customs worldwide efforts to prohibit and disrupt the illicit trade in IPR-infringing goods, the World Customs Organization (WCO) has developed provisional standards to be employed by Customs for uniform rights enforcement (SECURE), to promote improved border enforcement of intellectual property rights. The WCO is offering provisional standards, procedures and best practices that will prove effective in a coordinated global effort to suppress the illicit trade in goods that violate intellectual property rights. As counterfeiting and piracy are a growing and ever-evolving problem, SECURE will be a living document that will change and evolve to meet the counterfeiting and piracy challenges of the future. In the fight against counterfeiting and piracy, the WCO and its Member Customs administrations will make use of and improve existing WCO tools that address IPR issues, such as the WCO Model IPR Legislation, WCO Risk Management Guidelines, the IPR Diagnostic Survey and the WCO IPR e-learning module. The border control provisions of the WCO's Revised Kyoto Convention on Customs procedures, the border control standards of the WCO SAFE Framework and the WCO Integrated Border Management Guidelines will be used to strengthen our anti-counterfeiting efforts. The Customs Enforcement Network (**CEN**) and its communication tools will be used for the timely transmission of information to fight the illicit trade in counterfeit goods.

All Mediterranean Partners - except for the Palestinian Authority- are members of the WCO.

Israel, Jordan, Lebanon and Morocco signed in on the SECURE program (state on 25/04/08).

In June 2008 Morocco, Tunisia and Egypt took active part in an operation under the SECURE program.

4.7 Trade & Public Relations

4.7.1. AIM

- 1). Raising awareness to the citizens and the business community about Customs actions results in improving combating counterfeiting, protecting the public against the threat to health and safety, employment, environment and society as a whole.

Raising awareness can be done via campaigns at major border points (particularly international airports), media (news/internet), the use of road-shows, exhibitions in Customs museums, or the dissemination of information to consumers, etc.

- 2). A Customs/business working group as a result of memoranda of understanding (MOU) with major actors should be established to develop a framework for a customs protection system.
- 3). Signing MOU with major trade representatives, airlines, shipping companies, express carriers etc. would encourage co-operation and improve controls through better information exchange and a broader awareness of the risks posed by the traffic in counterfeited goods.
- 4). Encourage business and right holders to lodge applications for action with Customs, in particular SME's (Small and Medium Enterprises). This approach should be encouraged via regular Customs/Business exchanges used to examine new problem areas. Customs applications for action are to be 'user-friendly' with minimal cost for the right holder.
- 5). A system should be created which enables business to provide information on cases of immediate significance. This is a particular problem for SME's. A possibility of a central electronic mailbox monitored by an anti-counterfeiting specialist would enable

these requests to be checked and, where justified, transmitted via the Risk Management System to anti-counterfeiting specialists in major ports/airports/land frontiers.

- 6). Enhancing information about the protection of IPR or contacting a specific Right holder. Customs IPR specialists should have access to the WCO (www.wcoipr.org) or the EU Taxud (http://ec.europa.eu/taxation_customs/taxation/index_en.htm) website which is linked to several databases.

4.7.2. CURRENT STATE OF PLAY

As stated earlier in the paragraph on international co-operation, all Mediterranean Partners (except for the Palestinian Authority) are members of the WCO and they have access to the Customs Enforcement Network (**CEN**) and its communication tools which can be used for the timely transmission of information to fight the illicit trade in counterfeit goods.

Lebanon already organised a TV campaign in order to arise awareness of both, public and business.

5. Regional Meeting – Bucharest 14-17 April 2008

In order to discuss the issue of customs combating counterfeit a regional meeting was held in Romania in April 2008 in the framework of the 5th phase of the EuroMed Market Programme. The main goal was to discuss how far the national legislation of the participating members resembles the EC Legislation on IPR, which are the main differences and what has been done to improve national legislation. The participating members also gave there view concerning the adaptation of their national legislation on IPR to the EU legislation.

5.1. Remarks

All participating Mediterranean partners agreed that training the trainer is the most important issue to improve the fight against counterfeiting. The training should be organised by the EU and the training should be given by European IPR experts in the field of risk analysis and best practices, preferable by customs officers who work in the field.

It would also be advisable for the Mediterranean Partners to use a standardised form based on the EU document “Application for action” in order to harmonise interaction between the competent authorities and the right-holders.

6. Conclusion

In the EU a right holder can ask customs from one Member State up to all 27, to take action in cases where there is a suspicion that their products are being counterfeited. The aim is that in the future within the Euro-Mediterranean Free Trade Area the same can be done, so the same application can be made not only for 27 but for 37 countries. In order to establish this, the EURO-MED partners shall have to adapt their procedures and legislation to the EU regulation.

By improving the procedures for the right-holder to make an application and to take legal action a better co-operation between customs and business can be established.

To reach this final aim it is necessary to continue to work together and strengthen the mutual contacts. An exchange of information is essential to obtain the best results.

Training should be given by EU experts not only on practice, but also on awareness; what is counterfeit and what are the consequences.

A solution should be found to recycle counterfeited goods in an effective way, taking all environmental precautions.

Egypt, Jordan, Lebanon, Morocco and Turkey introduced a lot of improvements in their national legislation on IPR. The most important issue however remains the customs authority.

In Algeria, Lebanon, Syria and Turkey customs already have the authority to take measures not only on import but also on export, re-export, on transshipment and in free zones.

Algeria, although still in the status of observer on the TRIPS agreement, it meets EU standards at a lot of points. National legislation gives customs the authority to take measures not only on IPR infringing goods in process of being imported, but also on export, re-exportation, and transshipment and in personal luggage.

A good cooperation exists with all other competent authorities on IPR. A central IPR coordination exists and specialists on IPR are available 24/7.

However a lot of improvements can be made by establishing a database on IPR which can be consulted by all front-line officers via a computerised system. It would also facilitate the distribution of IPR alerts.

Egypt has an effective coordination between IPR competent authorities. Although customs are only competent to take measures on imported goods, a new legislation is under construction to meet export measures as well.

Although not specialised on IPR issues, a central risk-analysis/intelligence unit is available.

A computerised system available to all customs officers and a database on IPR are still under construction. Training is organised on national level together with right holders and international seminars are attended as well.

Israel; a computerised system -which provides regularly updated information on IPR alerts- is available to all customs officers. Profiles on IPR are not created and a database on IPR is not available either. Israel customs has a good cooperation with police, the other entity competent in IPR cases.

An intelligence unit/risk assessment exists but is not specialised on IPR.

Jordan meets in almost all of the requirements on risk analysis/databases. They have an up to date data-base on IPR, 24/7 IPR specialists available to front-line officers. A coordination with other competent authorities exists and also interaction with right holders. They provide regularly training to the front line.

They don't have interregional or international exchange of IPR information; on the other hand the Nairobi Agreement which they signed, provides a general international exchange of information. Jordan is also a member of the WCO, which means that they have access to the CEN.

They meet with international border measures by signing "TRIPS", but they do not meet with the EC Regulation 1383/2003 which is the European minimum standard on IPR because legislation does not give the authority to customs to stop IPR infringing goods in case of export, re-export, transshipment and personal luggage.

Signing the SECURE program of WCO might be the start to change national law and giving customs the full authority on all types of movements.

Lebanon meets EU standards as customs authorities can take action in case of infringing goods being imported, exported, in transshipment, free zone, and personal luggage.

Exchange of information exists via their NCP (National Contact point) with Middle East RILO's.

Lebanon organised a TV awareness campaign on IPR infringement in order to attract the attention of both business and citizens.

Customs IPR specialists are available on a 24/7 basis. A data-base on IPR-cases is under construction.

Morocco meets the requirements of EC Regulation 1383/2003 very closely. Unfortunately customs can not take measures in case of transshipments. Morocco should also try to find a legal way to give the right holder the possibility to extend the period in which he can take legal action with another 10 days. Coordination and cooperation with other authorities competent on IPR exist on regional and national level. A computerised data-base on IPR is available for all customs officers. Morocco has already an agreement to exchange information with European countries.

Palestinian Authority has cooperation between the 2 entities competent on IPR via a committee in which they both participate. Due to their specific situation, customs only take measures inside the country. A computerised system does not exist; no national operational seminars together with right holder are held nor are trainings held for front-line customs officers. An exchange of customs was organised with Jordan and Egypt.

Syria meets the EC Regulation 1383/2003 on the point of customs authority, they are authorised to stop infringing goods in process of being imported, exported, re-exported as well as in transshipment. A lot has to be done however on risk analysis/databases. A computerised system should be established which can be consulted by all customs officers and provides information on IPR alerts. As a member of the WCO they have access to the CEN.

National or international seminars together with right holders should be established to train customs officers on IPR in order to improve awareness and improve the fight against counterfeiting.

Tunisia coordinates its IPR cases at national level, but unfortunately there is no coordination with the Ministry of Trade which is also competent on IPR infringements.

Tunisia has a specific regulation for perishable goods.

A database on IPR which can be consulted via a computerised system by all front-line customs should be established. The system should also be used to send IPR alerts and updates to customs in the front-line.

National training together with right holders should be organised on a regular basis.

As a member of the WCO they have access to the CEN.

Turkey is working on the establishment of a central unit for the protection of IPR and working on a computer data-base applicable by all customs in order to centralize the IPR applications. Until now every region is responsible for its own IPR cases, which implies that the right holders have to make an application for action in each region in case they want to cover the complete country.

Concerning regulation, Turkish customs already are close to EC Regulation 1383/2003.

Notes

- 1 COM(2005) 479 final
- 2 OJ L195 of 2.6.2004
- 3 Trade-Related Aspects of Intellectual Property Rights
- 4 Source : internet

Intellectual Property Rights in the Euro-Mediterranean Partnership

A. Copyrights and related rights

by

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B. Protection of Industrial Property

by

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A. Copyrights and related rights

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Introduction

The aim of this chapter is to present a detailed analysis of the nine Mediterranean partner countries. First of all, we set out an individual analysis of intellectual property and the legislations currently in force in each of these countries. We then provide a comparative analysis of the nine countries regarding the legal guarantees given to the author, in both the continental rights system and the Anglo-Saxon copyright system.

We have attempted to look beyond the strictest possible interpretation in order to define the foundations and the meaning of the regulations on intellectual property as they exist today in this part of the world, by shifting our emphasis progressively from a theoretical view to a systematic analysis of the legal and technical rationality used by the national legislators, both in terms of the substance and of the form, which implies different types of national regulations. The study has been carried out against the background of Community intellectual property law.

1. Algeria

1.1. National legislation

- Order no. 03-05 of 19 Jamadi ul-awwal 1424 (19 July 2003) on protection of copyright and related rights.

1.2. National regulations

- Executive Decree no. 05-316 of 6 Sha'aban 1426 (10 September 2005) defining the composition, organisation and operation of the conciliation body responsible for ruling on disputes relating to the use of protection works and performances, managed by the National Copyright and Related Rights Office. (*Office national des droits d'auteur et des droits voisins* – O.N.D.A..)
- Executive Decree no. 05-356 of 17 Sha'aban 1426 (21 September 2005) defining the statutes, organisation and operation of the *Office National des Droits d'Auteur et des Droits Voisins* (O.N.D.A.) [National Copyright and Related Rights Office].
- Executive Decree no. 05-357 of 17 Sha'aban 1426 (21 September 2005) specifying the details of the declaration and inspection system for private copying fees.
- Executive Decree no. 05-358 of 17 Sha'aban 1426 (21 September 2005) specifying the details of resale rights for creators of a plastic work of art.
- Executive decree no. 05-400 of 13 Ramadan 1426 (16 October 2005) on notification of income from the broadcasting of audiovisual works of art and calculation of fees.
- By-law of 5 Shawal 1424 (29 November 2003) specifying the basis for calculating fees and the level of fees payable to performing artists and phonograms producers.
- By-law of 22 Rabi-ul-awwal 1428 (10 April 2007) specifying the proportionate and flat-rate fees for private copying.

1.3. International instruments

Algeria joined the following organisations on the dates stated:

- the Berne Convention and the Paris Act of 1971: 19 April 1998;
- the WIPO Convention: 16 April 1975;
- the Rome Convention: 22 April 2007.

1.4. The object of copyright protection

Article 3 of the Algerian law on copyright and related rights lays down the conditions under which the work is protected; these are in line with the Continental copyright system which is based on the principle of the originality of the work in respect of what the doctrine refers to as the objective and subjective aspects of the work. Accordingly, a work which is created by the author deserves protection irrespective of its form, its mode of expression, its merit or intended use, and irrespective of whether it is attached to a tangible support medium.

This concept excludes protection conferred by copyright to ideas, concepts, principles, systems, procedures, operating methods related to the creation of works of the mind which are not protected as such but in the way in which they are incorporated, structured or manipulated in the protected work and in the autonomous formal expression of their description, interpretation or illustration. (Article 7).

1.5. Particular categories of works

Algerian law contains a non-exhaustive list of the various types of literary and artistic works in various areas of artistic endeavour. Article 4 describes the following elements:

- a) written literary works such as literary essays, scientific and technical research, novels, stories and poems, computer programs and works of verbal expression such as talks, speeches, sermons and other works of the same type;
- b) all theatrical, dramatic and musical drama works, choreography and pantomime;
- c) musical works with and without words;
- d) Cinematographic works and other audiovisual works with or without sound accompaniment;
- e) works of plastic art and applied art such as painting, drawing, sculpture, engraving, lithography and tapestry;
- f) designs, sketches, plans and models of architectural and technical works;
- g) graphs, maps and drawings related to topography, geography or science;
- h) photographic works and works expressed by a process similar to photography;
- i) clothing, fashion and jewellery creations.”

The title of a work enjoys the same protection as the work itself provided that it is original (article 6).

In addition to this first list of works, Algerian law contains a second list of works of traditional cultural heritage. This distinction does not mean that the latter type of work enjoys greater or lesser protection, but confers special protection aimed at enhancing elements of the national cultural identity:

- “works of traditional classical music;
- musical works and popular songs;
- popular expressions which are produced, developed and maintained within the national community and are typical of the country’s traditional culture;
- folk tales, poetry, dance and entertainment;
- folk art such as drawing, painting, chasing, sculpture, ceramic pottery and mosaics;
- metalwork, woodwork, jewellery-making, wickerwork, needlework, carpet-making and weaving.”

1.5.1. Derivative or transformed works

Algerian law does not contain a legal definition of the concept of a derivative work, but simply lists examples of transformations of an original work; article 5 stipulates that the following works are also protected: “Translations, adaptations, musical arrangements, editorial revisions and other original adaptations of literary or artistic works”;

“collections and anthologies of works, collections of works in the traditional cultural heritage and databases whether they are reproduced on a machine-readable medium or in any other form, which, by the selection or arrangement of the material, constitute original creations.”

1.5.2. Composed works

Article 14 of the Algerian law gives a legal definition of the concept of a composed work as being a work which, by insertion, juxtaposition or intellectual adaptation, incorporates all or part of original works without the participation of the author of the original work or parts of work that are so incorporated.

1.5.3. Official or State works

Algerian law provides for another category of works which enjoy legal protection: works that are produced and published by the various bodies of national and local government and administrative public institutions (article 9). However, decisions and administrative actions taken by national and local government bodies, court decisions, or official translations of these texts are not regarded as works within the meaning of the Act.

State works that are legally made available to the public may be freely used for non-commercial purposes pro-

vided that the integrity of the work is respected and that the source is mentioned.

Furthermore, works which are given to the state by donation or legacy remain subject to the legal protection system which governed them prior to the said act of donation or legacy.

1.5.4. Works in the public domain

Works enter the public domain fifty years after the death of the author. Such works may be publicly and freely reproduced, communicated and distributed.

However, the National Copyright and Related Rights Office (O.N.D.A.) is responsible for protecting works in the public domain and works of traditional cultural heritage and for charging fees when they are used for commercial purposes (articles 139 and 140). Users must obtain consent from the O.N.D.A. and pay a fee. These fees are intended to fund the collection and preservation of the said works.

1.6. Copyright owners

1.6.1. The author as creator of the original work

The law regards the natural person who created the original work as its author. However, legal persons can also be regarded as authors in the cases specifically covered by legislation.

There is a simple presumption that copyright to the work belongs to the natural or legal person whose name appears on a work that has been legally published or that has been declared in his/her/its name to the O.N.D.A. If the author's name does not appear on the work, the publisher is presumed to hold the rights *juris tantum*. If the author is anonymous, the O.N.D.A.

is responsible for ensuring that the rights to the work are exercised until such time as the owner of the rights is identified.

1.6.1.1. Works in collaboration/Joint works

Algerian law defines works created in “collaboration” as works in the performance and creation of which multiple authors took part. No co-author may, without a good reason, oppose the exploitation of the work in the agreed form. Co-authors may exploit each contribution separately provided that this does not detract from the normal exploitation of the work as a whole. The rights to the collaborative work belong to all its co-authors. They exercise these rights in accordance with the contractually agreed rules, and if no such rules are in place, according to the rules of undivided possession.

The co-authors of an audiovisual work are the natural persons who directly contributed to the intellectual creation of the work. In particular, the following are considered to be co-authors of an audio-visual work:

- The author of the screenplay;
- The author of the adaptation;
- The director;
- The author of the dialogue;
- The author of the original work if the audiovisual work is based on a pre-existing work;
- The author of the music, with or without words;
- The principal cartoonist(s) in the case of cartoons.

1.6.1.2. Collective works

“Collective” works are works created by multiple authors on the initiative and under the direction of a natural or legal person who publishes the work in his/her/its name. (Simple presumption of ownership of the rights relating to collective works)

1.6.1.3. Works created within the framework of an employment relationship or a business contract

Where a work is created in the context of an employment relationship or a business contract, the employer or the person ordering the work is, unless otherwise stated, the owner of the copyright to the exploitation of the work for the purpose for which it was created.

1.7. Content of copyright

1.7.1. Moral rights

The author, in his/her/its capacity as author, enjoys inalienable and imprescriptible moral rights which cannot be waived (article 21). The author enjoys the following moral rights:

- 1) Disclosure: under his/her/its name or under a pseudonym. On the death of the author, the right of disclosure is passed to his or her heirs unless otherwise specified in the author's will. Should the heirs disagree, the competent court will rule on disclosure of the work. If the heirs refuse to disclose a work which is in the national interest, the Minister responsible for cultural affairs or his or her representative may, on his or her own initiative or at the request of third parties, ask the competent court to rule on disclosure of the work.
- 2) Authorship/Parenting: the right to require his or her patronymic name or pseudonym to appear. This passes to the author's beneficiaries on his or her death.
- 3) The right to express a change of opinion or to withdraw a work that has already been published: when the work no longer reflects the author's views, in

return for fair compensation to the parties exploiting the work.

- 4) The integrity of the work: the right to oppose any amendment, deformation or alteration of the work that would undermine the author's reputation, honour, or legitimate interests. This passes to the author's beneficiaries on his or her death.

In the case of audiovisual works, moral rights can only be exercised with regard to the finished version of the work (article 77). The decision will be taken by the producer and the director, and any change in the finished version must first obtain their approval.

1.7.2. Economic rights

Economic rights are exercised by the author, his/her/its representative or any other rights holder (article 21). Article 27 of the Act confers on the author the exclusive right to perform or have performed the following actions:

- 1) reproduction of the work by any means;
- 2) translation, adaptation, arrangement and other transformations (transformation);
- 3) communication of the work to the public:
 - a) live or via loudspeakers;
 - b) by sound or audiovisual broadcasting;
 - c) by any data processing system;
 - d) by wireless transmission by an organism other than the original broadcaster;
 - e) by wire, optic fibre, cable broadcasting or any other means by which sounds and/or images are transmitted.

- 4) distribution: sale, rental / loan or other elements of evidence of the translation.

1.7.3. The right to equitable remuneration

This is the right which the performing artist, producer or their beneficiaries have in respect of secondary use of their performance recorded on a commercial phonogram.

N.B.: The phrase "equitable remuneration" used in articles 29.30.31.32.39 is used in the generic sense of the expression "fair remuneration" .

- Remuneration for private copying (articles 124ff.). Manufacturers and importers of blank recording media and recording devices are required to pay remuneration calculated as a proportion of the retail price of blank recording media and a flat-rate sum for recording devices. The fee is paid by the party liable to the O.N.D.A. on the following basis:

- 30% to the author and composer
- 20% to the performer
- 20% to the phonogram or videogram producer
- 30% for use in promoting the creation of works of the mind and for preserving traditional cultural heritage.

1.8. Exceptions and limits to rights

Limits: Exploitation of works does not require the author's consent and is not subject to payment of remuneration in the specific cases listed below:

- a) works intended for educational use;
- b) for personal and family use;
- c) use of parodies and caricatures;
- d) use of quotations and loans;

- e) an illustration in a publication or a programme intended for use in teaching or vocational training;
- f) reproduction or notification to the public of news items;
- g) for libraries and conservation archives;
- h) use in administrative or judicial proceedings;
- i) works of architecture or fine arts, applied arts or photography where they are permanently located in a public place, with the exception of art galleries, museums and classified cultural and natural sites;
- j) temporary recording by a broadcasting organisation (up to six months); and
- k) adaptation of a computer program by the legitimate owner when a copy of this program has been legally acquired.

1.9. Duration of protection of rights

Article 54 of the Algerian law sets the duration of protection of economic rights at fifty years starting from the beginning of the calendar year following the author's death. In the case of works in collaboration, the period starts from the end of the calendar year in which the last surviving collaborator dies. Special provisions have been adopted for the duration of certain categories of works, but this period is the same for photographic, audiovisual and posthumous works.

For collective works this period is 50 years starting from the end of the calendar year in which the work was legally published for the first time or, by default, from the end of the calendar year in which it was made accessible to the public. The period of 50 years starts at the end of the calendar year in which the work was completed. In the case of anonymous or pseudonymous works, the duration of protection is 50 years starting from the end of the calendar year in which they were first published. If the author's identity is no longer in doubt, the duration of protection is 50 years

starting from the end of the calendar year following the author's death.

The duration of protection for related rights is 50 years from the end of the calendar year in which the performance was recorded, or from the end of the calendar year in which the performance took place if it was not recorded.

Article 21 specifies that moral rights are imprescriptible and therefore not subject to any limit in the duration of protection; this is in line with other intellectual property legislation.

1.10. Assignment of copyright

1.10.1. General scheme

Authors can assign their economic rights *inter vivos*, either against payment or free of charge, and can make testamentary dispositions regarding them. In order to be legally valid all assignments must be recorded in writing, as this is an *ab substantiam* or *solemnitatem* requirement. Rights may be assigned in full or in part and on an exclusive or non-exclusive basis. Authors cannot assign all their economic rights to future works.

In order to be valid, assignment contracts must contain the following elements (except paragraph e):

- a) the nature of the rights being assigned
- b) the financial terms
- c) the form or mode of exploitation of the work
- d) the period for which the rights are assigned
- e) the territorial area in which the work can be exploited (if this is not specified, the assignment is regarded as applying only to the territory of the country in which the assignee is based).

Authors or their heirs can introduce an action in lesion within fifteen years from the date of the assignment.

Exclusive assignees are required to communicate the work to the public within the time agreed on pain of losing exclusive rights; the same applies to assignees who cease to exploit the work in the usual way under the conditions laid down in the contract and who fail to respond to a warning to this effect for three months.

If the assignee does not exploit the rights assigned one year after the work was passed over, the assignment contract can be cancelled at the assignor's request.

Assignees of economic rights assigned by the author may only transfer them to a third party with the express authorisation of the author or his/her/its representatives. Assignment applies only to the modes of exploitation covered by the contract and may not be extended by analogy to other modes or to modes of exploitation of the works that were unknown when the contract was concluded.

The owner of the original medium on which the work was created or *mechanicum corpus* may, without consent, display the work in public on a not-for-gain basis (right of public display) unless the author expressly prohibited this option when the original medium was sold.

Algerian legislation also covers works of plastic art.

Unless otherwise specified, contracts for the production of audiovisual works assign exclusive rights of reproduction, public communication, subtitling and dubbing to the producer. Algerian legislation also contains provisions governing publishing contracts.

1.10.2. Special scheme

- Compulsory licences

Any work intended for education use in universities or schools may require a licence issued by the National Copyright and Related Rights Office (O.N.D.A.) relating to:

- non-exclusive translation for publication purposes in Algeria: this licence is issued nine months after submission of a request for the holder's consent if it has proved impossible to contact the rights holder.
- non-exclusive reproduction for publication purposes of works not published in Algeria: this licence is issued six months after submission of a request for the holder's consent in the case of scientific works and three months in the case of other works if it has proved impossible to contact the rights holder or obtain his/her consent.

In order to issue the compulsory licence, the O.N.D.A. must simultaneously:

Notify the copyright holder or his/her/its representative of the request for consent; and inform any international or regional centre affected, referred to as such in a notification filed with the international institutions managing international conventions relating to copyright and of which Algeria is a member.

The compulsory licence is granted exclusively within Algerian territory and cannot be assigned by the recipient. Recipients of compulsory licences must pay the rights holder fair remuneration which is collected by the O.N.D.A. which passes it on to the rights holder. Recipients of licences must also exploit the work in accordance with the author's moral rights. Compulsory consent to have a work translated or reproduced is regarded as void if the holder of the rights to the work publishes or has the work published under the same

conditions, offers, content or price as that of the publication undertaken by the recipient of the compulsory consent.

1.11. Legal regime of the Society of Authors

The National Copyright and Related Rights Office (O.N.D.A.) is a public body under the authority of the Algerian Ministry of Culture. It is the main public body and differs from the Spanish model in respect of its essentially private-sector collective management body, although its statutes specify that it comes under the supervision of the Ministry of Culture and the Board.

The duties of the Office can be summarised as follows:

1. To receive declarations of works and literary or artistic performances in order to allow the exercise of the moral and economic rights of the authors and holders of national related rights and their beneficiaries at the point of public exploitation of their works and/or performances in Algeria and abroad, and to allow these rights to be protected in accordance with current legislation and regulations.
2. To protect the rights of authors and holders of foreign related rights attached to works and performances that are exploited within Algeria in the context of international commitments of Algeria, in particular via the conclusion of reciprocal representation agreements with counterparts in other countries.
3. To set and regularly update the scale of fees for rights in respect of the various forms of exploitation of works and performances.
4. To issue statutory consent and apply the system of compulsory licences in respect of the various forms of exploitation of works throughout the country and to collect the fees due.
5. To create and keep up to date files identifying the status of works and performances by the various authors, holders of related rights and their beneficiaries that it manages.
6. To distribute fees collected to beneficiaries at regular intervals, and at least once a year, after deducting its management costs.
7. To seek and identify parties with rights to works and other performances falling into the broad category of cultural heritage, and national works that have entered the public domain, and to ensure that they are protected against illegal appropriation, damaging deformation and illicit economic exploitation.
8. To collect the fees due in return for economic exploitation of the aforementioned works and performances.
9. To undertake action aimed at publicising and promoting works and performances falling into the broad category of cultural heritage, and works in the public domain.
10. To encourage the creation of literary and artistic works by any appropriate means.
11. To promote social action in support of the creators of literary or artistic works and holders of related rights, in particular by creating and managing a social fund for the benefit of authors and the creation of a separate fund for the benefit of holders of related rights.
12. To work with the competent authorities to seek adequate solutions to the problems associated with

the creation of works by authors and with performance by holders of related rights.

13. To undertake all other legal action aimed at achieving its task of protection the legitimate rights of authors, holders of related rights and preservation of works of traditional cultural heritage and in the public domain.
14. To join international umbrella organisations of bodies representing similar beneficiaries in the context of current legislation (WIPO, CISAC).
15. To take part in the activities of international governmental and non-governmental bodies specialising in copyright and related rights.

2. Egypt

2.1. National Legislation

The regulations in force in Egypt are enshrined in the Act Number 82 of June 3, 2002.

2.2. International Instruments

Egypt has ratified the following international conventions and treaties relating to copyright:

- Berne Convention, September 9, 1886, for the Protection of Literary and Artistic Works ratified by Egypt on June 7, 1977.
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of October 29, 1971, ratified on April 23, 1978.
- Agreement on Trade-Related Aspects of Intellectual Property Rights TRIPS Uruguay Round of April 15, 1994.

2.3. The object of copyright protection

The Egyptian Law in its third book, article 140, on copyright clearly establishes the legal protection of authors of literary and artistic works.

Article 141 is clear in stating that protection will not be granted to mere ideas, procedures, systems, operational methods, concepts, principles, discoveries and data, even when expressed, described and illustrated in a book.

What is described above illustrates that a work to be protected by copyright does not need to be original.

2.4. Special category of works

Article 140 of the Egyptian law on the protection of intellectual property rights states that protection is conferred to authors of literary and artistic works, including the following works:

1. Books, booklets, articles, bulletins and other written works;
2. Computer programs;
3. Databases, whether readable by computer or by any other means;
4. The lectures, speeches, sermons and any other oral works which have been recorded;
5. Dramatic and dramatico-musical works, and pantomimes;
6. Musical works with or without words;
7. Audiovisual works;
8. Works of architecture;
9. Works of drawings with lines or colours, sculpture, lithography, printing on textile and any other similar works of fine arts;
10. Photographic and similar works;
11. Works of applied and plastic arts;
12. Illustrations, maps, sketches and three-dimensional works related to geography, topography or architectural designs;
13. Derivative works, without prejudice to the protection prescribed for the works from which they were obtained. Protection shall cover also the title of the work if it is inventive.

2.4.1. Composed or derivative works

Article 138 no. 6 states that a derivative work is that which is derived from an existing one, such as translations, musical arrangements, compilations of works, including readable databases, from the computer or otherwise, and collections of expressions of folklore,

which, by reason of the agreement and the selection of their contents, are considered as created works.

As to folklore according to article 138 Number 7, it should be understood as any expression that consists of distinctive elements that reflect the traditional popular heritage, which originated or developed in Egypt, including in particular:

(a) Oral expressions such as folk tales, poetry and charades, and other folklore;

(b) Musical expressions, such as popular songs accompanied by music;

(c) Motion expressions, such as folk dances, plays, artistic forms and rituals;

(d) Tangible expressions such as: * Products of popular art, including drawings with lines and colours, engravings, sculpture, ceramics, pottery, woodwork and any inlaid designs, mosaics, metal or jewelry, hand-woven bags, needlework, textiles, carpets and clothes,

* musical instruments;

* architectural forms.

Article 140 (13) of the Egyptian Copyright Act, explicitly confers protection to derivative works, without prejudice to the protection prescribed for the works from which they have been derived. Protection shall cover also the title of the work if it is an original.

The last paragraph of Article 141 of the Egyptian law grants legal protection to the collections, the list of works not protected by Article 141, as long as the selection of these collections is creative in gathering and representing an individual effort deserving protection.

2.4.2. Official or State works

The Egyptian Law on the Protection of Intellectual Property Rights states in the third book, article 141 Number 1, that official documents whatever their source or target language, such as laws, regulations, decisions and resolutions, international conventions, court decisions and decisions of administrative committees having judicial competence will have no protection under the purview of this Act.

2.4.3. Works in the public domain

The works move into the public domain, within 50 years LDC s. These works may be reproduced, distributed freely and publicly reported since then.

In accordance with Article 142, works of folklore are considered part of the public domain of the people. The Ministry of Culture has the moral and economic rights on these works and protects and promotes such folklore.

2.5. Works which are not subject to protection

The Egyptian law in Article 141 exempts from protection works as follows:

1. Official documents, whatever their source or target language, such as laws, regulations, decisions and resolutions, international conventions, court decisions, award of arbitrators and decisions of administrative committees having judicial competence.
2. News on current events which are mere press information.

However, collections of the works listed above enjoy protection if the selection of such collection is creative by virtue of its arrangement or any other personal effort deserving protection.

2.6. Copyright owners

2.6.1. The author as a creator of the original work

The owner of copyright on a work, according to paragraph 3 of Article 138, is the person who creates the work. In case of doubt, the publisher or producer of the work shall be the representative of the author in the exercise of his rights until the identity of the latter is disclosed.

2.6.1.1. Joint Authorship

Article 138 number 4, stipulates that a collective work is a work made by a group of authors under the instruction of a natural person who, or a legal entity which, undertakes to publish the work under his or its name and direction, provided that the contributions of the participants in such work are integrated in the general objective set by that person or legal entity, in such a manner that it is impossible to distinguish the individual contribution of each.

Article 175 of the Act informs us that whoever has the copyright regarding the collective work is the natural person or legal entity under whose direction the joint work was created.

2.6.1.2. Collective Works

Article 174 of the Act, which is responsible for reporting on this type of work, provides that in the event that more than one person has participated in the produc-

tion of a work in such a manner that it is impossible to distinguish the contribution of each in the joint work, all participants will be considered jointly and equally as authors of the work, unless otherwise agreed in writing.

In such a case, a co-author may not separately exercise the author's rights, without the written consent of all co-authors. However, if the contribution of each belongs to a different category of art, each co-author is entitled to exploit independently his party, without prejudice to the exploitation of the work of joint authorship, unless otherwise agreed in writing.

Any of the co-authors will have the right to initiate legal proceedings in case of infringement of copyright.

2.6.1.3. Works within the framework of an employment relationship

The Egyptian law makes no explicit mention of the work within the framework of an employment relationship, implying that when it comes to analyse whether the rights belong to the employee or whether the employer made available to the author experience, data, tools, equipment, etc., connected with the previous activities of the company who owns the rights. According to this, there are several scenarios such as: Who is the author? Will that be the employer for having created the work within his premises with his equipment and expertise? Is it necessary to have an agreement before any employment relationship? The questions are many and the need for regulation is prevailing.

It is very important that the next amendment or new Intellectual Property Act expressly regulates the work within the framework of an employment relationship.

2.7. The content of copyright law

2.7.1. Moral Rights

Article 143 stipulates that “The author and his universal successor will enjoy over the work perpetual inalienable moral rights. Such rights will include the following:

1. The right to make the work available to the public for the first time;
2. The right to claim authorship
3. The right to prevent any modification considered by the author as distortion or mutilation of the work. Modification in the course of translation shall not be regarded as an infringement unless the translator fails to indicate deletion or changes or if he causes prejudice to the reputation and status of the author.”

In accordance with Article 144, where serious reasons arise, the author alone is entitled to request the Court of First Instance to prevent putting the work in circulation, withdraw the work from circulation or allow making substantial modification to the work. In this case, the author shall, within a deadline set by the Court, pay in advance a fair compensation to the person authorized to exercise the economic rights of exploitation.

Article 146 stipulates that in the absence of any heir or successor, the Ministry of Culture exercises the moral rights provided for in Articles 143 and 144, after the expiration of the term of protection of the economic rights prescribed in this Act.

2.7.2. The economic rights

Article 147

“The author and his universal successor shall have the exclusive right to authorize or prevent any form of exploitation of his work, especially through reproduction, broadcasting, re-broadcasting, public performance, public communication, translation, adaptation, rental, lending or making the work available to the public in any manner, including through computers, Internet, information networks, communication networks and other means...”

The exclusive right for computer program rentals only applies to the main rental enterprise; it shall not apply to renting audiovisual works inasmuch as the circulation of such copies does not cause material prejudice to the owner of the exclusive right in question.

The author has the right to prevent third parties from importing, using, selling or distributing his protected work. Such right will lapse where the copyright owner undertakes to exploit or market his work in any state or authorize a third party to do so.

Article 149

“The author shall have the right to transfer to a third party all or some of his economic rights stated in this Law.

Such a transfer shall be certified in writing and contain an explicit and detailed indication of each right to be transferred with the extent and purpose of transfer and the duration and place of exploitation.

The author shall be the owner of all economic rights other than what he has explicitly assigned. Authorization by the author to exploit any of the economic rights

relating to a work shall not mean authorization to exploit other economic rights relating to the same work.

Without prejudice to the moral rights of the author provided for in this Law, the author shall refrain from any act that would hamper the exploitation of the rights disposed of”.

Nothing in those two Articles or in any other provision of the Law could suggest an exemption of the employment relationship from the need of the author's consent to publish his works. It could though be considered that the employment contract may include items that fall under the second paragraph of Article 149.

2.7.3 Right to payment

Article 159:

“Provisions under this Law on the assignment by the author of his economic rights will apply to holders of related rights.

Without prejudice to the exclusive rights of performers and broadcasting organisations provided for in this Law, they will only have the right to a single equitable remuneration for the direct or indirect use of programs published for commercial purposes of broadcasting or communication to the public, unless otherwise agreed “.

2.8. Limits or exceptions to copyright

Notwithstanding the author's moral rights, the author may not, after the publication of the work, prevent third parties from carrying out any of the following acts in accordance with the provisions stated in Article 171 of the Act:

1. Perform the work in family context or student gathering within an educational institution, to the extent that no direct or indirect financial remuneration is obtained.
2. Make a single copy of the work for one's exclusive personal use, provided that such copy does not hamper the normal exploitation of the work nor causes undue prejudice to the legitimate interests of the author or copyright holders. However, the author or his successor may, after the publication of the work, prevent third parties from carrying out any of the following acts without his authorization:
 - Reproduction or copying works of fine, applied or plastic arts, unless they were displayed in a public place, or works of architecture;
 - Reproduction or copying of all or a substantial part of the notes of a musical work;
 - Reproduction or copying of all or a substantial part of a database or computer program;
3. Make, with the consent of the legitimate owner of the program, a single copy or an adaptation of a computer program, even if exceeding the extent necessary for the use the program inasmuch as it remains within the limits of the purpose for which consent was initially granted, for archiving purposes or to replace a lost, destroyed or invalid original copy. In either case, the original or adapted copy will be destroyed upon expiration of the property title. The Regulations will set the terms and conditions of adaptation from the program.
4. Make an analysis of the work, or excerpts or quotations therefrom, for the purpose of criticism, discussion or information.
5. Reproduction from protected works for use in legal or administrative proceedings, insofar as may be re-

quired by such proceedings, provided that the source and the author's name are mentioned.

6. Reproduction of brief excerpts from a work for educational purposes, by way of illustration and explanation, in writing or through an audio, visual or audio-visual recording, provided that such reproduction is within reasonable limits and does not go beyond the desired purpose, and provided that the author's name and title of the work are mentioned on each copy whenever possible and practical.

7. Reproduction, if necessary for teaching purposes in educational institutes, of an article, a short work or extracts therefrom, provided that:

- reproduction is made once or at different separate occasions;
- the author's name and title of the work are mentioned on each copy.

8. Making a single copy of the work, through a documentation and archiving centre or through a bookshop not aiming at making any direct or indirect profit, and provided that:

- where the reproduced work is a published article, a brief work or an excerpt from a book, the purpose of reproduction is to satisfy the needs of a natural person, the copy will be used only for study or research purposes.
- where the reproduction is made with the aim of preserving the original copy or, when necessary, replacing a lost or destroyed copy or a copy that has become invalid, and it was impossible to obtain such a substitute copy under reasonable conditions.

9. Ephemeral reproduction of a work where such reproduction is made in relay, during a digital transmission of the work or in the course of a process of reception

of a digitally stored work, within the normal operation of the device used by an authorized person.

Article 172 informs us that the author or his successor may not prevent newspapers, periodicals or broadcasting organisations, inasmuch as justified by their aims, from doing the following:

1. Publishing excerpts from his works which were legally made available to the public, and his published articles on topical issues of concern to the public opinion, unless the author has prohibited such publication when publishing the work, and provided that the source, the author's name and the title of the work were mentioned.

2. Publishing speeches, lectures, opinions or statements delivered in public sessions of the parliament, legislative or administrative bodies or scientific, literary, artistic, political, social or religious meetings, including statements delivered during public court proceedings. However, the author alone or his successor will be entitled to make collections of such works, for which he is entitled to claim authorship.

3. Publishing excerpts of an audio, visual or audio-visual work made available to the public in the course of covering current events.

2.9. Duration of protection of rights

Article 160 of the Egyptian law on Intellectual property establishes that the author's economic rights will be protected at all times throughout the life time of the author and for 50 years from the date of his death.

Article 161 stipulates that the economic rights relating to works of joint authorship will be protected throughout the lives of all co-authors and for 50 years from the death of the last survivor.

Article 162 goes on stating that where the copyright owner is a legal entity, the economic rights relating to authors of collective works, other than authors of works of applied art, will be protected for 50 years from the date on which that work was published or made available to the public for the first time, whichever comes first. If the copyright holder is a natural person, the protection period is calculated in accordance with the rule stipulated in Articles 160 and 161.

The economic rights relating to a work published for the first time after the death of the author will expire after 50 years from the date on which the work was published or made available to the public for the first time, whichever comes first.

According to Article 163, the economic rights relating to a work published anonymously or under pseudonym must be protected for a period of 50 years from the date on which the work was published or made available to the public for the first time, whichever comes first, unless the author's identity is known and established or revealed by the author, in which case the term of protection is calculated according to the rule stipulated in Article 160.

The economic rights of the author of a work of applied art expire after a period of 25 years from the date on which the work was published or made available to the public for the first time, whichever comes first. (article 164)

According to Article 165, in cases where the term of protection is calculated from the date on which the work was published or made available to the public for the first time, the term is calculated taking into account the date that comes first, regardless of any re-publication or making available to the public, unless substantial changes were made by the author in the work so that it may be considered as a new work. In those cases in which the work would consist of several parts or vol-

umes published separately and at intervals, each part or volume will be considered as an independent work for purpose of calculating the term of protection

2.10. Transmission of copyright

The author has the right, according to the provisions of Article 149 of the Egyptian law, to transfer to a third party all or some of his economic rights stated in this Law.

Such a transfer must be certified in writing and contain an explicit and detailed indication of each right to be transferred with the extent and purpose of transfer and the duration and place of exploitation.

The author is the owner of all economic rights other than what he has explicitly assigned. Authorization by the author to exploit any of the economic rights relating to a work does not mean authorization to exploit other economic rights relating to the same work.

Without prejudice to the moral rights of the author provided for in this Law, the author shall refrain from any act that would hamper the exploitation of the rights disposed of.

2.11. Legal regime of Societies of Authors.

The Egyptian Law on Protection of Intellectual Property Rights does not provide for the collective management of copyright or related rights in general, including performances of audiovisual works. However, in accordance with the existing legal system, it is not prohibited to use such a mechanism through partnerships, provided prior authorization is obtained.

Partnerships for the management of copyright and related rights existing in Egypt are:

1. Society of Authors, Composers and Publishers of Egypt;
2. The Association of Egyptian Writers,
3. The Association of Egyptian Actors; and
4. The Association of Egyptian Musicians.

3. Israel

3.1. National Legislation

The new Israeli Copyright Act passed by the Israeli Parliament (the Knesset) on the 19th of November 2007 came into force on the 25th of May, 2008, repealing the Copyright Act 1911 and the Copyright Ordinance, except for sections 3b to 3e thereof, both of which acts were issued during the time of the British mandate and amended several times subsequent to the establishment of the State of Israel.

3.2. International Instruments

Israel has signed most International treaties and conventions on copyright, namely:

- Berne Convention, September 9, 1886, for the Protection of Literary and Artistic Works, ratified by Israel on March 24, 1950. The minutes of peer review of July 24, 1971 was ratified on January 1, 2004.
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of October 29, 1971, ratified on March 1, 1978.
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of October 26, 1961, ratified on December 30, 2002.
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Uruguay Round, April 15, 1994).
- Universal Copyright Convention, September 6, 1952 (Geneva Text).

Note: It is important to bear in mind that in Israel, International agreements do not apply automatically and will only be effective in domestic law subsequent to enactment of implementing legislation.

3.3. The object of copyright protection

Israeli law protects literary, dramatic, musical and artistic works in a broad sense and it does not have as a requirement for their protection registration in any copyright registration.

Copyright protection extends to expressions and not to ideas, procedures, operating methods, mathematical concepts, facts, dates and news of the day under the Copyright Act.

Copyright shall subsist in original works which are literary works, artistic works dramatic works or musical works, fixed in any form, provided that the aforesaid work has a requisite point of attachment with Israel as set forth in sections 8 and 9 of the Act. In addition, copyright will subsist in sound recordings, regardless of originality, so long as the sound recording has the requisite point of attachment with Israel. A “recording” with respect to sounds means the preservation of sounds on media from which such sounds may be played back or copied, and includes sounds created from any source, such as by a human or those occurring in nature.

“Originality” is not defined as such in the Act, however case law from Israel’s Supreme Court generally applies this term as meaning that the work has originated with its author and not copied from another source, and may also require a degree of creativity. The parameters and notion of “creativity” has not yet been fully defined by the Supreme Court, however it appears that at least in certain circumstances it may be a factor in determining the subsistence of copyright. See *Interlego A/S v. Exin-Lines Bros.*, Case 513/89, 48 Supreme Court Reports (4) 133.

3.4. Special Works

Chapter 2, Section 4 sets forth the categories of works in which copyright may subsist which are:

1. Original works which are Literary works, artistic works, dramatic works or musical works, fixed in any form;
2. Sound recordings;
3. Originality of a compilation means the originality in the selection and arrangement of the works or of the data embodied therein.

3.4.1. Derivative works and Compilations

The Israeli Law in its Chapter C, Section 16, regulates derivative work and defines it as being substantially based upon another work, such as a translation or adaptation.

Paragraph b of Section 4 states that a compilation of all kinds of works has originality because of the originality in its selection and arrangement will be protected by this Law.

3.4.2. Official or Government works

Official or Government works are covered by chapter 2, section 6 of the Act, which stipulates that copyright shall not subsist in statutes, regulations, Knesset Protocols and judicial decisions of the courts or of any other government entities having judicial authority according to law.

Copyright will subsist in protected works acquired by the State of Israel from third parties and in works, other

than those listed above, which are created by an employee as a consequent of service.

3.4.3. Works in the public domain

A work will enter the public domain upon expiration of the period of protection prescribed in Chapter 6 of the Act for that category of work. For example, literary works shall be protected during the life of the author and for 70 years after his death. Moral Rights run concurrent with economic rights. Once the period of protection has expired, anyone may use works that are in the public domain.

Those works anonymously published will enter the public domain 70 years after the date on which they were first published, however where the author's identity becomes publicly known during the period of protection, then the regular period of protection shall apply.

3.5. Copyright owners

3.5.1. The author as a creator of the original work

In accordance with Chapter 5, Section 33 of the new Israeli Copyright Act the author of a work is the first owner of copyright in the work and in the case of a sound recording the producer is the first owner of copyright.

3.5.1.1. Joint Authorship

Israeli law does not have a special section dedicated to works in collaboration, but such works are defined in its Chapter 1, Section 1, which states that a joint work *"is a work created jointly by several authors, wherein it is not possible to discern each author's contribution to the work."*

3.5.1.2. Collective works

The Copyright Act does not define collective works, nor does it have a section devoted to such works.

3.5.1.3. Work within the framework of an employment relationship

The works that arise because of an employment relationship in accordance with section 34 of the Israeli Copyright Act will be the property of the employer.

“34 - Works created by employees. The employer is the first owner of copyright in a work made by an employee in the course of his service and during the period of his service, unless otherwise agreed.”

The Israeli State shall be the first owner of a work made by, or commissioned for, the State or by an employee of the State in consequence of his service and during the period of his service. In accordance with section 36 of the Copyright Act 2007, State employees include soldiers, policemen and any other person who holds a position according to a statute in a State entity or institution.

3.6. Content of copyright

3.6.1. The moral right

Section 46 of the Copyright Act 2007 provides that authors enjoy the following Moral Rights:

1. Demanding recognition of their status as author of the work;
2. Demanding respect for the integrity of the work and prevent any distortion, modification, mutilation or any

other derogatory act in relation to the work that would be prejudicial to his honour or reputation.

Section 45 (b) states that moral right is personal and not transferable.

3.6.2. The economic rights

Economic rights are set forth in Section 11 of the Copyright Act 2007 and provide that the copyright holder shall have the exclusive right to authorize or not authorize the exploitation of his work or a substantial portion thereof.

Property Rights conferred by the Act:

1. Reproduction (with respect to all categories of works);
2. Publication: if a work has not yet been published;
3. Public performance (in respect of literary, dramatic and musical works and sound recordings);
4. Broadcasting (with respect to all categories of works);
5. Making the work available to the public (with respect to all categories of works);
6. Transformation/Derivative work (with respect to literary, artistic, dramatic and musical works);
7. Rental (in respect of a sound recording, cinematographic work and computer program).

3.7. Limits and exceptions to rights

Section 19 of the Copyright Act 2007 provides conditions for, and an open ended list of uses that will be deemed “fair use”, exceptions to infringement, including the use of a work for purposes such as: private study, research, criticism, review, journalistic reporting, quotation, or instruction and examination by an educational institution.

To determine if the use made of the work is fair, one must analyze the following:

1. The purpose and character of the use;
2. The character of the work used;
3. The scope of the use, quantitatively and qualitatively, in relation to the work as a whole;
4. The impact of the use on the value of the work and its potential market.

The Minister of Justice may make regulations prescribing conditions under which a use shall be deemed a fair use.

A closed list of “Permitted Uses” are set forth in Chapter Four, and include the following:

1. Use of a work in juridical and administrative procedures, including reporting of such proceedings, is permitted to the extent that is justified taking into consideration the purpose of the aforesaid use.
2. Reproduction of a work deposited for public inspection. The copying of a work that is accessible to the public by law is permitted if consistent with the purposes for which the work was made accessible, and to a justifiable extent taking into consideration the purpose of the said use.

3. Incidental use of a work: The incidental use of a work by way of including it in a photographic work, in a cinematographic work or in a sound recording, as well as the use of such work in which the work was thus incidentally contained, is permitted. In this matter, the deliberate inclusion of a musical work, including its accompanying lyrics, or of a sound recording embodying such musical work, in another work, shall not be deemed to be an incidental use.

4. Broadcasting or copying of work in public place: Broadcasting, or copying by way of photography, drawing, sketch or similar visual description, of an architectural work, a work of sculpture or work of applied art, are permitted where the aforesaid work is permanently situated in a public place.

5. Computer programs –in the following circumstances:

- a) Copying of a computer program for purposes of back up is permitted;
- b) Copying of a computer program for purposes of maintenance of an authorized copy of the program or of a computer system, or for the purpose of providing service to a person in possession of an authorized licensed copy of the computer program, is permitted provided that it is necessary for using the program;
- c) Copying of a computer program, for the following purposes and to the extent necessary to achieve said purposes:

1. Use of the computer program for purposes for which it was intended, including correction of errors in the computer program or making it interoperable with a computer system or with another computer program;

2. Examination of the data security in the program, correction of security breaches and protection from such breaches.
3. Obtaining information which is needed to adapt a different and independently developed computer system or program, in such a way that it will be interoperable with the computer program.
6. Recording for purposes of broadcast: recording of a work by a person permitted to broadcast it is permitted if the copy is made solely for use in his broadcasts.
7. Temporary copies: The transient copy, including incidental copying, of a work, is permitted if such is an integral part of a technological process whose only purpose is to enable the transmission of a work as between two parties, through a communications network, by an intermediary entity, or to enable any other lawful use of the work.
8. Additional artistic work made by the author: Making a new artistic work which comprises a partial copying of an earlier work, or a derivative work from an earlier work, as well as any use of the said new work, are permitted to the author of the said earlier artistic work even where said author is not the owner of the copyright in the earlier artistic work, provided the new work does not repeat the essence of the earlier work or constitute an imitation thereof.
9. Renovation and reconstruction of buildings: Use of models, drawings and plans is permitted for the purpose of renovation or reconstruction of a building or other structure.
10. Public performance in an educational institution: A public performance of a work is permitted in the course of the educational activity of educational institutions of the type prescribed by the Minister of

Justice, where such performance is made by the employees of these institutions or by students studying therein.

The screening of a cinematographic work is permitted if done solely for purposes of teaching and examination by an educational institution.

11. Permitted uses in Libraries and Archives: Copying of a work, a copy of which is already in the permanent collection of a library or archive is permitted for the following purposes:

1. To make a reserve copy, in any format, of a work provided that the said reserve copy is not used as an additional copy to the copies in the library;
2. To replace a copy of the work held by the aforesaid library or the archive, which has been lost, destroyed or become unusable.

3.8. Duration of protection of rights

The duration of protection of copyright is regulated in the sixth chapter of the Copyright Act 2007 and section 38, which stipulates that copyright in a work shall subsist during the life of its author and for 70 years after his death.

The protection of the rights of the works in collaboration (joint work) is for the duration of the life of its longest surviving joint author and for 70 years after his death.

Regarding copyright in works published anonymously, the Israeli law stipulates that in case that a person's name does not appear on a work or that appears on such work a pseudonym of a person who is not commonly known to the public, then copyright in such a work shall subsist for a period of 70 years from the date such work was first published.

The copyright in a work in which the Israeli State is the first owner, shall last for a period of 50 years from the date of its making.

In Israel as well as in Spain, the same parameters apply with respect to commencement and termination of the period of protection. The period of copyright protection shall commence upon creation of the work and shall expire on the 31st of December of the year in which such copyright is set to expire.

3.9. Assignment of copyright

Section 37 of the Copyright Act is titled "Assignment and Licence of copyright" and provides as follows:

"Copyright may be assigned by contract or by operation of law and the owner of a copyright may grant an exclusive license or a non-exclusive license with respect to the copyright.

Assignment of the copyright or the grant of a license, may refer to the copyright in whole or in part, and it can be limited to a certain territory, period of time, or to specific acts with respect to the work. "

A contract for the assignment of a copyright or the grant of an exclusive license therein shall require a written document.

An exclusive license may include, all or part, of the exclusive rights set forth in section 11 of the Act, however the license will only have effect with respect to those exclusive rights that are specifically set forth in the license, and restricts the owner of the copyright from doing those acts or from permitting others to perform those acts.

3.10. Legal regime of the Society of Authors

The Copyright Act 2007 does not regulate collective societies. Nevertheless, in recent years several collective rights management companies have come under the regulation of the Competition Commissioner following findings that such entities are monopolies under the Law of Restrictive Trade Practices.

The largest collective rights society in Israel is ACUM and it represents the authors and composers of literary and musical works.

Directors and screenwriters for television and film, have their own Management Copyright Company in Israel called TAL.

Sound recording rights and rights of performers are largely managed collectively by one of several separate collective rights management companies.

4. Jordan

4.1. National Legislation

Current legislation on copyright is the Copyright Law Number 22 of 1992, which was amended for the last time by Law 9 of 2005.

4.2. International Instruments

Jordan has signed the following international conventions and treaties relating to copyright:

- Berne Convention, September 9, 1886, for the Protection of Literary and Artistic Works ratified by Jordan on July 28, 1999.
- Treaty of the WIPO Copyright Treaty (WCT) on December 20, 1996, ratified on April 27, 2004.
- WIPO Treaty on performances and Phonograms Treaty (WPPT), the December 20, 1996, ratified on May 24, 2004.
- Agreement on Trade-Related Aspects of Intellectual Property Rights TRIPS Uruguay Round of April 15, 1994.

4.3. The object of copyright protection

The Jordanian copyright law through its Article 3 clearly establishes the legal protection to any kind of original work in literature, art and science, regardless of the value or purpose of the work.

Following the outline of mainland copyright, the right of protection arises only if there is a work and this work meets the following requirements:

1. The work has been created by either a human being or a legal person and;
2. The work is original.

4.4. Category of Special Works

Article 3 of the Law, in its enumeration (b), provides an open list and by way of example of the various works that enjoy protection by copyright; the list highlights the most important categories, without which these groupings by paragraphs necessarily respond to the existence of uniform characteristics, nor consequently a single legal regime for the works covered in each of those paragraphs, what is normal in any exemplification. This Article was drafted to leave the door open for inclusion of new types of works that will arise due to technological developments.

Article 3 of the Jordanian copyright Law reads: *“Protection shall include works expressed through writing, sound, drawing, photography or movement and in particular the following:*

1. Books, booklets and other written materials.
2. Oral works delivered orally such as lectures, speeches and sermons.
3. Theatrical works, lyrical and musical plays and pantomime acting.
4. Musical works, whether expressed in notes or not and whether accompanied with words or not.
5. Cinematographic and audio and visual broadcasting works.
6. Painting, photography, sculpture, architecture, applied arts and lithographical works.

7. Illustrations, maps, designs, blueprints and three-dimensional works related to geography and topography.

8. Computer programs, whether in the source language or machine language. “

4.4.1. Composed or Derivative works

The Jordanian Copyright Law Number 22 of the year 1992 and its amendments, does not provide in its articles a definition of derivative works, nor gives a list of these works, thus limiting this type of work to those arising from other works which are very common such as, in the case of musical arrangements, translations and, in particular, any transformation of a literary, artistic or scientific work.

Article 3.d also regulate collections. It states that “Collections of literary or artistic works such as encyclopaedias, anthologies and compiled data, whether in an automatically read form or in any other form, which constitutes unique intellectual works in respect of their selection or arrangement, shall also enjoy protection. It also protects collections containing selected excerpts of poetry, prose, music or others, provided that the sources and authors of same are mentioned, without prejudice to the rights of the authors in respect to each work forming part of the collections.

In case you want to translate a foreign work into Arabic language, the applicant must apply for a licence to the Minister of Culture to do so. The compulsory license will be granted provided that the applicant presents a proof on his/ her efforts to find the author or his representatives in the case that he/ she failed to find the author, the work had been three years published and no translation has been conducted in Arabic language by the owner of the Copyright, the translation is intended for educational and research purposes, and

providing the copyright owner with a just compensation compatible with the standards of the monetary rights that are prevalent in voluntary license contracts.

4.4.2. Official or Government Works

The Jordanian Copyright Law states that official works such as laws, regulations, judicial decisions, administrative committees' decisions, international agreements and other official documents and translations of these works do not enjoy protection under copyright.

4.4.3. Works in the public domain

In accordance with Article 34 of Jordanian Copyright Law, after the lapse of the protection period for any work, or when there are no heirs or successors to the author are found before the lapse of the protection period, the work shall revert to the public domain so that any person may print, publish or translate it if the work was printed, published, or translated before that.

If the work that reverts to public domain was not printed, published or translated before reverting to the public domain, this may not be printed, published or translated without a license from the Minister of Culture. This license shall be valid for 15 years, and shall be considered cancelled if the holder of the right did not exercise it within one year or if he started then stopped for a whole year.

4.5. Works not subject to protection

The Jordanian Law does not confer protection to the following works:

- Laws, regulations, judicial decisions, administrative committees' decisions, international agreements and

other official documents and translations of these works or any part thereof.

- News published, broadcast or delivered publicly.
- Works that have become public property. National folklore shall be considered public property provided that the Minister shall exercise the copyrights of such works to counter distortion, alteration or damage to cultural interests.

4.6. Copyright owners

4.6.1. The author as a creator of the original work

The author is considered to be the copyright owner in the Jordanian Law. According to Article 4, a person who publishes a work that is attributed to him, whether by mentioning his name on the work, or by any other means, is considered an author unless proven otherwise. This provision shall apply to pseudonyms, provided that there is no doubt concerning the true identity of the author.

4.6.1.1. Joint Authorship

Article 35 in its paragraphs a) and b) develop the work in collaboration (joint work) and sets out the following parameters:

- a) If more than one person participated in the creation of one work in a manner that makes it impossible to separate the share of them in the creation, then they all shall be considered the owners of the work with each having an equal share unless they agree otherwise. Each of them is entitled to file a case upon any violation of the copyright of the work.

- b) However, if it is possible to separate the share of all the contributors to the creation of the work from the shares of the remaining partners, then each can exploit the copyright of the part he contributed in its creation provided that same does not harm the exploitation of the work itself or prejudice the rights of the remaining partners in the work unless agreed otherwise.

4.6.1.2. Collective works

Article 35. c) of the Law develops the collective work and reads as follows:

"If a group participated in the creation of a work under the direction of a natural or corporate person (called a collective work) and if that person committed himself to publishing same under his name and management in a manner where the work of the participants is merged into the general objective pursued by this person or idea which he innovated for same in a manner that the work of each of the participants in creating the work cannot be separated and distinguished apart, then the person who directed and organized the work is considered the author and shall have the exclusive right to exercise copyright."

4.6.1.3. Works within the framework of an employment relationship

Article 6 of the Jordanian Copyright Law, informs us that if a person creates a work commissioned by another, the copyright belongs to the author of the work unless otherwise agreed in writing.

Notwithstanding the above, if an employee creates during his employment a work related to the activities of the company or uses in the course of arriving at this invention employer's knowledge, data, tools, equipment or materials that are available to him, then copyrights

belong to the employer taking into consideration the intellectual effort of the employee, unless agreed otherwise in writing.

Intellectual property rights belong to the employee if the work created by him is not related to the business of the employer and if he did not use the employer's experience, data, tools or raw material to reach this invention unless otherwise agreed in writing.

4.7. Content of copyright

4.7.1. The moral rights

The moral rights of authorship are enshrined in Article 8 of the Law. The author shall have the exclusive right to:

- a) Have his work attributed to him and his name cited on all reproductions whenever the work is made available to the public, unless the work is cited incidentally during the news broadcast of current events.
- b) Decide the publication of his work and determine the manner and date thereof.
- c) Prevent any alteration of his work, whether by modification, editing, omission or addition.
- d) Challenge any infringement upon his work and prevent any distortion or alteration or any other modification thereof, or any other transgression that may harm his reputation and honour. Nonetheless, shall any omission, alteration, addition or any other modification occur to the translation of the work, then the author will not have the right to prevent it unless the translator fails to note the places of such modification, or should the translation prejudice the author's reputation and cultural or artistic standing or distorts the content of the work.

- e) Withdraw his work from circulation should there be serious and legitimate reasons to do so. In such a case, the author shall be liable to justly compensate the person to whom the economic rights have passed.

4.7.2. The economic rights

Article 9 of the Act establishes this right, which attributes the author the right to financially exploit his work and prohibit the exercise of this right by third parties, unless authorized by him, or his heirs and such authorization shall include:

- a) The right to reproduce his work in any form including the photographic or cinematographic representation or recording.
- b) The right to translate his work into another language, adapt, musically transform it, or carry out any alteration thereof.
- c) Commercial rental of the original copy of the work or a copy thereof to the public
- d) the right to distribute the work or reproduce it through sale or any other transferring disposal
- e) the right to import copies of the work in commercial quantities even if these copies were prepared with the approval of the holder of the copyright.
- f) The right to convey his work to the public by reciting, announcing, exhibiting, or performing the work or by radio, television, cinematographic broadcasting, or any other means.

4.7.3. Remuneration rights

The Jordanian law stipulates in article 29 that the author of original plastic arts and original musical and literary manuscripts, or his heirs, shall have the right to share in the proceeds of each auction of these works following the first assignment thereof by the author. A regulation shall determine the conditions for exercising this right and the percentage of sharing in the proceeds of the sale and the method of collecting it.

The Act stipulates that any agreement or arrangement made in a manner contrary to the provisions of the preceding paragraph shall be considered null and void.

4.8. Limitations or exceptions to the rights.

The limits to the Jordanian copyright law are contained in articles 17, 18, 19, 20 and are as follows:

1. Published works may be used without the author's permission subject to the following conditions and in the following cases:
 - a) If the published work is used in an environment such as a private family reunion, or in an educational, cultural or social institute by way of illustration for educational purposes. The State musical bands may play musical works provided that no financial gain is achieved and that the source and the author's name are mentioned.
 - b) Using the work for private personal use through making one reproduction thereof by photocopying, recording, photographing, provided that this does not conflict with the normal exploitation of the work and that does not cause undue harm to the legitimate interests of the owner of the rights.
 - c) Relying on the work for illustration in education through publications, audio and visual programs for educational, cultural, religious and vocational training purposes, within the parameters necessary to achieve these purposes, provided that this does not conflict with the regular exploitation of the work, the aim of making use of the work is not to gain financial benefit and that the name of the work and author are mentioned.
 - d) Quoting paragraphs from the work in another work for the purpose of illustration, discussion, criticism, culture or review within the limits that would justify this purpose, provided that the name of the work and the author are mentioned.
2. Newspapers and periodicals are prohibited from publishing serial novels and short stories and other works published in newspapers and other periodicals, without the author's permission.
3. Newspapers and other media may publish without the prior consent of the author sermons, lectures and other similar works that are publicly delivered or addressed to the public. In all cases, the work and its author must be mentioned. The author of any of these works may publish them in one publication or by any other method or form he chooses.
4. Public libraries, non-commercial documentation centres, educational academies and scientific and cultural institutions may copy any work by photography or by other means, without the consent of the author provided that the photocopying and the number of copies are limited by the need of these institutions and that they do not harm the copyright of the author and do not conflict with the normal exploitation of the work.

4.9. Duration of the protection of rights.

Article 30 of the Act provides that the protection period of the author's financial copyright remains in force for the duration of the author's lifetime and for fifty years following his death, or after the death of the last person of those who participated in the creation of the work if there was more than one author. For the purposes of calculating the protection period, the date of death shall be considered to have occurred on the first of January of the calendar year following the actual death of the author.

4.9.1. Protection of other works

The Jordanian law in its articles 31 and 32, establishes a special term of 50 years for a particular type of works and a 25-year protection for others.

4.9.1.1. Works included in the 50-year protection

The protection period for the following works shall apply for fifty years starting on the 1st of January of the calendar year following the actual publication thereof:

- a) Cinematographic and television production works.
- b) Any work whose author or right holder is a corporate person.
- c) The work published for the first time after the death of its author.
- d) The work which does not carry the name of its author or carries a pseudonym. However, if the author reveals his identity within the protection period, then this period shall start as of the death of the author.

4.9.1.2 Works included in the 25-year protection

The protection period of the Applied art works shall remain in effect for 25 years commencing as of the date of completion of the works:

4.10. Assignment of copyright.

The Jordanian law does not include a regulated assignment of moral copyright, but in accordance with Article 13, the author may dispose the monetary rights of his work, provided that this disposal is in writing and determines explicitly and in detail each right subject to disposal and the extent and purpose and the duration and place of the exploitation.

4.11. Legal regime of Societies of Authors.

The Jordanian Law on Copyright does not enshrine the legal regime of management companies and currently there is no Collective Management Society to protect the interests of Authors in Jordan.

5. Lebanon

5.1. National Legislation

- Law on the protection of literary and artistic property
No. 75 of April 3, 1999

5.2. International Instruments

- Berne Convention since 30/10/1947
- WIPO Convention since 01/12/1986
- Rome Convention since 12/08/1997
- Paris Convention since 01/10/1924

5.3. The object of copyright protection

According to Article 2 of the Lebanese law on copyright, the protection of the work, according to the Mediterranean scheme of copyright, is the principle of originality of the work, the work comes from the author for his own creation and deserves protection regardless of its value, importance or purpose and the mode or form of its expression.

This concept excludes the protection afforded by copyright to the simple ideas, concepts, principles, systems, processes, operational procedures, computer programs and databases. (Article 3).

The Lebanese law reproduces the scaffolding or skeleton under the legislative provision as follows: it incorporates a list of definitions in Article 1, the beginning of the law, such as performance, collective work in collaboration, adaptation, related rights, computer program, reproduction, etc. That represents a conceptual division and a novelty compared to other intellectual property laws.

5.4. Special category of works.

The Lebanese legislation lists the various types of artistic works according to the sector to which they belong: categorized as two sectors: works in general (Article 2) and derivative works (Article 3), are as follows:

Article 2:

- “- Books, archives, pamphlets, publications, printed material and other literary, or scientific and artistic writings;*
- Lectures, addresses and other oral works;*
- Audiovisual works and photographs;*
- Musical compositions with or without words;*
- Dramatic or dramatico-musical works;*
- Choreographic works and pantomime;*
- Drawings, sculptures, engraving, ornamentation, weaving and lithography;*
- Illustrations and drawings related to architecture;*
- Computer programs whatever their language and including preliminary work;*
- Maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;*
- Any kind of plastic art work whether intended for industry or not. “*

Article 3:

- “-Translations, adaptations, transformations and arrangements of music;*
- Collections of literary or artistic works and compilations of data, whether in machine-readable or other form, provided that they are authorised by the copyright holder or his public or private successors and that by reason of the selection and arrangement of their contents they constitute intellectual creations.”*

5.4.1. Derivative or Transformed Works

The Lebanese law does not legally define the concept of derivative work; however, this does not preclude listing through a series of examples of transformations of an original work that is useful without being especially systematic. These examples are contained in the above-mentioned article 3.

5.4.2. Joint Works

The Lebanese law does not provide a legal definition of “work”. However, this scarcity in substance should be replaced by an amendment or legal reform to include this concept in the initial definitions.

5.4.3. Works in the public domain

The works fall into the public domain within 50 years LDC s. These works may be reproduced, distributed freely and publicly reported after those 50 years.

5.5. Copyright owners

The legislation considers an author to be “the individual who creates any work”.

There is a *iuris tantum* presumption of ownership of copyright on the copy of the work by that person whose name is shown on a literary or artistic work in the commonly known way (Article 11).

In the case of anonymous and pseudonymous works, the natural person who, or legal entity which, published the work shall be considered as the author (Article 10).

5.5.1. Joint Works

The Lebanese law explicitly defines the work in collaboration through a negative concept: work in collaboration is the one that is done by several people but does not constitute a collective work.

When it is not possible to identify or separate the contribution of each co-author, the works are owned by all of them together. Whenever it is possible to distinguish the contribution of each author from the others, each of the joint authors is considered the author of his own contribution. Rights over this type of works can only be exercised if there is a general agreement (Article 6).

The audiovisual work is not explicitly defined as a work in collaboration. There is only a definition of this type of work. An audiovisual work means every work consisting of a set of consecutive images related to each other, whether accompanied by sound or not, and that gives the impression of motion if displayed, broadcast or transmitted through special devices.

5.5.2. Collective works

The Lebanese law refers specifically to a collective work as being the work created by various individuals under the initiative and supervision of a natural person who, or legal entity which, publishes it under his/its own name. Presumably, the natural person who, or legal entity which, took the initiative to create the work and supervise its execution, is considered the copyright holder (Article 7).

5.5.3. Work within the framework of an employment relationship

When there is a work contract or the work is performed under an employment relationship, and the work is cre-

ated by natural persons in the course of performing their duties or professional obligations, the copyright holder is presumed *iuris tantum*, to be the employer or legal entity -unless otherwise specified. (Article 8).

5.6. Content of copyright

5.6.1. The moral rights

The author has moral rights of his own, inalienable and imprescriptible (Articles 21 and 22). The author possesses the following moral rights:

1. **Disclosure:** The author has the right to decide the shape, the way and method of such disclosure or not to disclose at all – *unpublished law*.
2. **Parenting or authorship:** Right to claim authorship of the work and to have his name mentioned on every copy of the work each time the work is used in public, and also the right to use a pseudonym or to remain anonymous.
3. **Integrity of the work:** the right to object to any distortion, mutilation or modification of the work which is non-consensual or which would be prejudicial to his honour or reputation.
4. **Withdrawal or repentance:** the right to rescind contracts for the assignment of economic rights even after their publication and after the signing of contracts for sale, if rescission is necessary to safeguard his person or reputation or is due to a change in his beliefs or in the circumstances, provided that third parties are compensated for damage resulting from such rescission.

5.6.2. The economic rights

The rights will be exercised by the author or another copyright holder (article 15). These rights grant the author with an exclusive *ius prohibendi* to authorize or not authorize the exploitation of his work. The rights regulated by law (article 15) are as follows:

1. **Reproduction:** includes reprographic reproduction, or photography, cinematography, sound or visual recordings of any kind or any other form.
2. **Adaptation / translation, rearrangement and other similar transformations (Transformation)**
3. **Communication to the public (performance and representation):**
 - a) by wire or wireless means (hertzian waves)
 - b) through coded or uncoded satellites
 - c) public broadcasting by any means
4. **Distribution: sale, rental**
5. **Right to import copies.**

5.6.3. The rights of simple remuneration

The rights of single or simple remuneration in which the author or his heirs have only a right of credit and not the ability to authorize or prohibit the use or exploitation of the work are not regulated by the Lebanese law. It would be advisable to introduce such type of rights.

5.7. Exceptions or limits to the rights

The limits mean possible uses of the works, reproductive rights and communication to the public of the work for special or specific cases in which there is no need for the express permission of the author and which in some cases will lead to a payment. The Lebanese law in its article 23 “Exceptions” provides a *numerus clausus* list beyond which the permission of the authors will be required.

1. Teaching purposes in educational institutions, universities and public libraries for a limited number of computer programs, free of charge and governed by decrees issued by the Ministry of Education, the Ministry of Culture and Higher Education and the Ministry of Vocational Education determining the copying mechanisms, the categories of computer programs that may be copied and the number of copies allowed.
2. Software for private purposes: 1 single copy
3. Citation for the purposes of illustration, criticism, argumentation or for educational purpose always limited to the purpose and provided that the source and name of the author are indicated.
4. Excerpts of a work or articles published in newspapers and magazines for educational purposes, provided that the source and the name of the author of the work as well as the name of the publisher are indicated.
5. Works used by the media for informational purposes or current news.
6. Copy, reproduce or record audiovisual works in order to keep it in the Ministry's archives when the author unfairly refuses the making of the said copy.
7. Works for use in judicial or administrative proceedings.
8. For non-profit-making public libraries for conservation purposes or deposit.
9. The media are permitted to publish pictures of architectural works, photographic works or works of applied arts located in places open to the public.

10. Exhibition or public performance of works in official ceremonies
11. Display of artistic works in museums provided that the museums own the tangible material that contains the work and that such display is not prejudicial to the legal interests of the author.
12. Artistic work for the purpose of publishing it in catalogues intended to facilitate the sale of the work provided that it is not prejudicial to the legal interests of the author.

Certain works are excluded from the protection provided by the Law (Article 4):

1. Artistic folkloric works of all kinds. However, works inspired by folklore enjoy protection.
2. Laws, legislative decrees, decrees and decisions issued by all public authorities and official translations thereof.
3. Daily News.
4. Speeches delivered in public assemblies and meetings.

5.8. Duration of the Protection of Rights

The Lebanese law, in its Article 49 and SS, regulates the term of protection of the economic rights of the author; protection is granted during the life of the author and 50 years after his death, to be computed from the end of the year in which the death has occurred (article 49). For works in collaboration, the criterion will be the life of the joint authors and 50 years after the death of the last joint author. Should one of the authors die without leaving heirs, his share is transferred to the co-authors or to their heirs.

For collective and audiovisual works, the term of protection is 50 years to be computed from the end of the year in which the work has been made available to the public or, failing such event, 50 years from the making of such work, to be computed from the end of the year in which the work has been completed (Article 51). In the case of anonymous or pseudonymous works, the term of protection will expire 50 years after the work has been lawfully made available to the public. However, if the pseudonym adopted by the author leaves no doubt as to his identity, or if the identity of the author of the anonymous or pseudonymous work is disclosed before the expiration of the 50-year period starting from the end of the year in which the work was lawfully made available to the public, the provisions of Article 49 will apply (Article 52).

In the case of posthumous works or works published in the name of a legal person, the term of protection of 50 years shall be computed from the end of the year in which the work was published (article 52).

The moral rights can be transmitted through *mortis causa*, by testamentary disposition or inheritance laws (Article 22) and are not limited in time (Article 53).

5.9. Transmission of copyright

5.9.1. General scheme: Articles 16 and 55.

Economic rights are transmissible *inter vivos* against payment or free of charge or *mortis causae*. Any assignment to a third party must be authorised by the author, and the transfer may be total or partial. The assignment may be exclusive or non-exclusive. They are considered economic rights.

Any assignment of economic rights is to be drawn up in writing otherwise it will entail nullity of the contract,

because of it being a requirement or *ab substantiam solemnitatem*.

The assignment in whole of future works of the author is considered as void.

The contracts of sale shall contain the following elements:

1. Rights, object and purpose of the contract
2. Time and place
3. Remuneration

If such a contract does not set a time limit, its duration may not exceed 10 years from the date of signature of the contract.

5.10. Legal regime of the Society of Authors.

Company Management Associations and Companies: Articles 58 and s.s.

The Lebanese law allows the authors to give full or partial mandate to private companies for the management of rights.

Any corporation or company willing to undertake the collective management of rights must, before carrying out any activity, deposit with the Ministry of Culture and Higher Education, a legal declaration certifying the constitution of the association according to the Law of Associations, or a certificate of registration of the company with the competent registrar, in addition to the following documents:

1. A copy of the Articles of Association;

2. The name and address of the director;
3. The number of authors and holders of related rights that have assigned the management of their rights and the collection of their royalties to the association or company;
4. A copy of the proxies granted to the association or company by the authors, the holders of related rights or their universal or particular successors;
5. The term of the proxies;
6. The mode of distribution of the royalties collected;
7. The annual budget of the association or company.

The associations or companies for the collective management of these rights are subject to the authority and control of the Ministry of Culture and Higher Education and they have to provide the ministry with all necessary records and account books for ministerial control.

Each association or company must hold at least one general assembly a year to vote on the report of the president, the financial reports, the balance sheet of the previous year and the budget the following year.

Pursuant to the legislation regulating the legal profession, each association or company must appoint a lawyer from the Bar as its legal consultant.

The associations or companies for collective management of rights have the following responsibilities:

1. To arrange contracts with third parties using the work and to determine the royalties to be collected.
2. To distribute the royalties collected among the eligible parties;

3. To take all administrative, judicial, arbitral and amicable measures to protect the legitimate rights of their clients and to collect royalties due;
4. To obtain from the users of the work all necessary information for the computation, collection and distribution of royalties.

Companies and associations have no right to refuse to administer the rights of an author or collect the royalties owed to him without a legitimate reason.

The user of the work is obliged to submit to the association or company a list of exploitations that he has undertaken such as the copying, sale, rental or television or radio broadcasting of the work and he has to indicate the number of copies, the number of public displays of the work or the number of television or radio broadcasts.

Collected amounts shall, at least once a year, be distributed among right holders in proportion to the actual use of their works.

The power of attorney may be cancelled by the author, the holder of related rights or the association or company provided that there is a legitimate reason for such cancellation and that the other party is served notice three months before the end of the year. The cancellation shall take effect as of the end of the year in which the other party has been served notice of the intention to cancel.

6. Morocco

6.1. National legislation

- Act no. 2-00 on copyright and related rights, as amended and completed by Act no. 34-05 in 2006 and amended by Act no. 1-05-192.
- Decree no. 2.64.406 of 5 Q'ada 1384 (8 March 1965) setting up the Moroccan Copyright Office.
- Act no. 20-99 on the organisation of the cinema industry.

6.2. International instruments

- Paris Convention since 30/07/1917
- Berne Convention since 16/06/1917
- Brussels Convention since 30/06/1983
- TRIPS agreement since 01/01/1995
- WIPO Treaty since 1971

6.3. The object of copyright protection

Article 1.2 of the Moroccan legislation governing intellectual property on copyright contains a list of definitions and is similar to the legislative approach taken in other copyright laws. Article 1.2 defines a work as "any literary or artistic creation", in the same way as the French intellectual property code.

It therefore follows the Continental copyright law model in respect of the principle of the originality of the work, both in terms of what is referred to in the doctrine as the objective and subjective aspects of the work. Accordingly, the work is produced by the author - as a

person - for his or her own personal creation and is deserving of protection "without having to be fixed in a material form".

This approach rules out copyright protection for ideas, concepts, principles, systems, processes, operating methods, discoveries, simple data, related to the creation of works of the mind which are not protected as such. (Article 8.c) Protection is independent of the mode or the form of expression, the quality and the purpose of the work.

In addition, Moroccan legislation regulates only intellectual property in the strictest sense: it governs copyright and related rights.

6.4. Special categories of works

The Moroccan law contains a fixed list of various types of works of art according to the sector to which they belong. Article 3 describes the following elements:

- a) works expressed in writing;
- b) computer programs;
- c) talks, speeches, sermons and other works comprising words or expressed verbally;
- d) musical works irrespective of whether or not they are accompanied by words;
- e) works of drama and musical drama;
- f) choreographed works and pantomimes;
- g) audiovisual works, including films and videos;

h) works of fine art, including drawings, paintings, engravings, lithographies, tooled leather and all other works of fine art;

i) works of architecture;

j) photographic works;

k) works of applied art;

l) illustrations, geographical charts, maps, sketches and three-dimensional works relating to geography, topography, architecture or science;

m) expressions of folklore and works inspired by folklore;

n) clothing designs.

The law contains a list of titles of works enjoying independent protection when they are of an original nature (article 4).

The Moroccan law contains a second list in addition to the first list. This second list details works of traditional cultural heritage; this distinction does not arise from a greater or lesser degree of protection, but is the result of non-sectoral specialisation (article 1.10 defines what constitutes a work of folklore):

a) folk tales, poetry and riddles;

b) folk songs and music;

c) folk dances and entertainment;

d) folk craft products, such as drawings, paintings, sculpture, terracotta, pottery, mosaics, woodwork, metalwork, jewellery, textiles and costumes.

One particular feature of Moroccan legislation is the clear reference to the independence and protection of ancient manuscripts. Article 6 deals with this issue, specifying that these manuscripts must be preserved in public libraries or public or private archives.

6.4.1. Derivative works

Article 1.5 of the Moroccan law contains the following legal definition of a derivative work:

“Derivative work: any new creation which has been conceived and produced from one or more pre-existing works”.

Article 5 a) illustrates what is understood by a derivative work:

“Translations, adaptations, musical arrangements and other transformations of works and expressions of folklore.”

In any event, the protection given to a derivative work must not undermine the protection of pre-existing works used to produce these new works.

6.4.2. Official or State works

Moroccan legislation introduces a new category of works which do not have legal protection: official legislative, administrative or judicial texts, or their official translations, and news items.

6.4.3. Works in the public domain

Works enter the public domain 70 years after the author's death.

6.4.4. Composite work

Article 1.6 defines a composite work as a new work into which a pre-existing work has been incorporated without the involvement of the author of that work.

A composite work is the property of the author who created it, subject to copyright on the pre-existing work (article 34).

6.5. Copyright owners

6.5.1. The author as creator of the original work

According to the law, the author is the natural person who created the work. However, any reference in this law to the economic rights of the authors, where the original owner of these rights is a natural or legal person other than the author, must be understood as referring to the rights of the original owner of the rights (article 1.1).

There is a refutable presumption of ownership of copyright to the work: unless any proof to the contrary exists, the natural or legal person whose name is usually given as being the author, performer, phonogram producer or editor is regarded as the owner of the right. In the case of anonymous or pseudonymous works, the editor is regarded as the author's representative and, as such, is entitled to protect the copyright and ensure that it is enforced (Article 38).

6.5.1.1. Work in collaboration

Article 1.4 of the Moroccan law defines works in collaboration as those in the creation of which two or more authors were involved. Co-authors may exploit their own contribution separately provided that the work

can be divided into independent parts as described in article 32.

Article 36 does not specifically state that cinematographic productions are audiovisual collaborative works, but uses the word “co-authors” in respect of these works; it can therefore be deduced that the law regards them as collaborative works. In the case of audiovisual works, the primary owners of the moral and economic rights are the co-authors of the work (such as the director, screenplay author, music composer). The authors of pre-existing works which have been adapted or used for the audiovisual works are regarded as having been assimilated with these co-authors.

There is a refutable presumption that the authors and performers have ceded their economic rights to the producer if this is specified in a production contract.

6.5.1.2. Collective/Joint work

Article 1.3 defines a collective work as a work created by several authors on the initiative of a natural or legal person who publishes it under his/her/its responsibility and in his/her/its name, and in which the personal contributions of the authors who took part in the creation of the work are amalgamated into the work as a whole in such a way that it is not possible to identify the individual contributions and their authors. (Refutable presumption of ownership of rights to collective works, covered by article 33).

Though the law does not specify, it would appear that the collections of works, such as encyclopaedias, anthologies and databases, belong to this category of works. (Article 5.b).

6.5.1.3. Works created in the context of a contract of employment

Where a work has been created by an author for an employer in the context of a contract of employment, the author is the primary owner of the moral and economic rights unless otherwise specified in the contract. This being said, the remainder of this article seems to qualify this statement and stipulates that the economic rights to the work are regarded as having been transferred to the employer to the extent that this is justified by the employer's normal activities at the time of the work's creation (Article 35). The law should be clearer on this latter point as it seems to weaken the original presumption.

6.6. Content of copyright

6.6.1. Moral rights

The author enjoys certain rights that are inalienable, imprescriptible and can be assigned to his or her heirs (article 25). On this point we must not forget that moral rights lapse on the author's death with regard to the Continental category of authors, apart from the rights of disclosure and access. It is striking to note how Moroccan law deals with the assignment of these rights, treating this as the norm rather than the exception as is the case in most Continental legislation. Under article 9 of the Moroccan law, the author has the following moral rights:

1. Authorship: the author has the right to be recognised as the author of the work, in particular to have his or her name appear on copies of his or her work and, where this is possible and in the usual way, whenever his or her work is used in a public forum; the author also has the right to remain anonymous or to use a pseudonym.

2. The right to the integrity of the work: the right to oppose any deformation, mutilation or other alteration of the work, or any other attack on the same work, that would undermine the author's honour or reputation.

6.6.2. Economic rights

Economic rights are exercised by the author, his/her/ its representative or any other beneficiary (article 10). As property rights, the author's rights are recognised together with an exclusive *ius prohibendi* to authorise or prohibit the exploitation of the work. The rights regulated by the law (article 10) are as follows:

1. The republication and reproduction of the work: 10.a).
2. The translation or adaptation (transformation) of the work: 10.b and c.
3. The right to distribute or authorise distribution to the public by means of sale, rental, public loan or any other transfer of title or possession of the original or copies of the work following authorisation of such distribution by the author: 10.e).
4. The representation and performance of the work in public: 10 f).
5. The import of copies of the work: 10 g).
6. The broadcasting of the work: 10 h).
7. The communication of the work to the public by cable or any other means: 10 i).

6.6.3. Rights to fair remuneration

The rights to fair remuneration in which the author or his/her heirs have only a financial interest and not the ability to authorise or prohibit the use or exploitation of the work are as follows:

- The communication to the public or the rental of the audiovisual work in favour of the authors for assignment to the producers.
- Reproductions which are of exceptional documentary importance and a copy of recordings which have a cultural value may be stored in the official archives set up for this purpose by the governmental authority responsible for cultural affairs.

6.7. Limits and exceptions to economic rights

The limits relate to the uses which are made of works. As a general rule, rights of reproduction and communication to the public of works in special or specific cases where it is not necessary to have the author's express consent and which can attract remuneration in some cases or which are free of charge. Articles 12 to 24 of the Moroccan Act deal with "limits on economic rights". These articles contain a fixed list; in all other cases, the author's consent is required.

1. Free reproduction for private use

Works which are lawfully published may be reproduced for the user's exclusive private use without the author's consent and without payment of a fee.

The provisions of the preceding clause do not apply to:

- the reproduction of architectural works showing the form of buildings or similar constructions;
- the reprographic reproduction of an entire book or a musical work in graphic form (score);
- the reproduction of all or part of databases in digital form;
- the reproduction of computer programs.

2. Temporary reproduction.

Temporary reproduction of a work is permitted provided that this reproduction takes place during digital transmission of the work or a procedure intended to display a work stored in digital form;

whether it is carried out by a natural or legal person authorised by the owner of the right;

or occurs automatically as a result of the transmission.

3. Free reproduction in the form of a quotation

Works may be quoted without the author's permission and without payment of a fee provided that the source and the author's name are given and that the quotation is in accordance with appropriate use and that the length of the quotation is not excessively long in the light of the aim that the user wishes to achieve.

4. Free use for educational purposes

With no direct or indirect commercial purpose; the name and the source must be given.

5. Use of a lawfully published work as an illustration in publications, television or radio programmes, etc.

6. Free reproduction by libraries and archive services whose activities are not directly or indirectly for commercial gain, or where the act of making a copy is intended to preserve the work and, if necessary (if it should be lost, destroyed or rendered unusable) to replace it, and where the work being reproduced is an article or a short work, or short extracts of a text in a collection of works or in an edition of a newspaper or magazine, or where the work is being reproduced in response to a request made by a natural person.

7. Deposit of reproduced works in official archives, without prejudice to the author's right to receive fair remuneration.

8. Free use for judicial and administrative purposes.

9. Free use for information purposes

The following activities are permitted without the author's permission and without payment of a fee, but provided that the source and the author's name are given: reproduction in the press, broadcasting or communication to the public of an article on a financial, political or religious topic that has been published in newspapers or magazines covering such topics, unless the right of reproduction, broadcasting or communication to the public has been expressly reserved.

10. Free use of images of works permanently sited in public places, unless the image of the work is the main subject of the reproduction, broadcast or communication to the public and if it is used for commercial purposes.

11. Free reproduction and adaptation of computer programs provided that this activity is necessary so that the computer program can be used, or for the purpose of archiving and to replace a copy that is lawfully held if that copy is lost, destroyed or has become unusable.

12. Temporary recording by broadcasting organisations. The broadcasting organisation must destroy the recording within six months of it having been made.

13. Free representation or public performance (official or religious ceremonies).

14. Import of a copy of the work for personal use.

6.8. Duration of protection of rights

Articles 25 ff. of the Moroccan law set the duration of protection of economic rights (until 70 years after the author's death). In the case of collaborative works, this period starts on the death of the last author.

In the case of works published anonymously or under a pseudonym, audiovisual works and works of applied art, the duration of protection is 70 years from the end of the calendar year in which the work was lawfully published for the first time. However, if 50 years have passed since the creation of the work without it having been lawfully published, the period will be 70 years from the end of the calendar year in which the work was made accessible to the public, or, if this did not occur in the 50 years after the creation of the work, 70 years from the end of the calendar year in which the work was created. In the case of anonymous works or those published under a pseudonym, if the author's identity is revealed and established beyond all doubt, the 70-year period of protection runs from the year of the author's death (articles 27, 28 and 29).

Moral rights are unlimited in time; they are imprescriptible, inalienable and assignable because of death to the beneficiaries (article 25).

6.9. Assignment of copyright

6.9.1. General system: articles 39 ff.

Economic rights may be assigned by transfer *inter vivos* against payment or free of charge and because of death. Moral rights are transmissible only on death. Licences may be exclusive or non-exclusive. Unless otherwise specified, contracts in which economic rights are assigned or licences granted are made in writing (article 41).

The exclusive, total or partial assignment of copyright to a work inspired by folklore is valid only if it has been approved by the Moroccan Copyright Office (BMDA).

Global assignment relating to future works is void (article 39).

If the territorial area covered by the contract is not specified, the assignment will be limited to the country in which the assignment or the licence is granted. If the extent or means of exploitation in respect of which economic rights are assigned or the licence is granted are not specified, it is deemed that they will be limited to the extent and means necessary for the purposes envisaged when the rights or licence were granted. However, this article does not lay down a time limit if no time limit is mentioned in the assignment contract (article 42).

Authors who sell the original work or a copy of the work are not deemed to have given up any of their economic rights or to have granted a licence. Purchasers enjoy the right of presentation of the said original or copy directly to the public (article 43).

6.10. The legal regime of the Society of Authors: the Moroccan Copyright Office (*Bureau Marocain du Droit d'Auteur-BMDA*)

The Moroccan Copyright Office, which is part of the Ministry of Communication, is responsible for protecting and exploiting copyright and related rights.

The Moroccan Copyright Office, a body which has a collective management structure, was created by Decree no. 2.64.406 of 5 Q'ada 1384 (8 March 1965) "has sole authority to collect and distribute copyright fees in all current and future forms".

The Moroccan Copyright Office is a multidisciplinary body with a legal monopoly of representation, and is responsible for all professional categories of authors. It grants permission for the use of protected works, collects copyright fees for such use, and distributes them to authors.

The activities of the Moroccan Copyright Office in respect of collection of fees are carried out not only in large establishments, such as theatres, cinemas, hotels, cabarets, night clubs, casinos, concerts, and balls of all kinds, but also in bars, cafés, restaurants, shops, film clubs, musical societies, local or neighbourhood parties, sporting events, exhibitions, amateur clubs, charitable societies, dance schools and companies playing music to their employees, etc.

Copyright fee collection is divided into three main categories: broadcasting rights, general rights, and mechanical reproduction rights.

Copyright fees collected by the BMDA are in effect a postponed salary, rewarding the author for the exploitation of his or her work by potential users.

The administrative make-up of the BMDA is as follows:

- General management: General Director, Secretary-General, Membership, Records and Communication Division, Fee Collection and Distribution Division, Legal Affairs Division, Cultural Affairs Division, Accounts Division, IT Division. Other divisions are currently being set up, including the International Relations Division and the Counterfeiting and Piracy Control Division.
- Regional offices: there are nine of these, based in Agadir, Beni Mellal, Casablanca, Fez, Marrakesh, Oujda, Rabat, Safi, and Tangier.

Tasks

The BMDA is active in the following areas:

1. collective management of copyright and related rights,
2. representing Morocco in international bodies operating in the field of literary and artistic property,
3. entering into conventions or agreements with foreign societies of authors in order to protect the rights of Moroccan authors abroad,
4. managing the interests of various foreign societies of authors in the context of conventions or agreements entered into with them,
5. organisation of publicity campaigns to increase awareness of the role of protecting intellectual property rights,
6. registering statements allowing works and right holders to be identified,

7. monitoring the exploitation and use of literary and artistic works,
8. issuing prior written permission for any exploitation and use of protected works,
9. issuing permission for the use of folklore expressions where they have a commercial purpose or are to be used outside the traditional or customary context,
10. collecting fees for creators' rights in any current or future form,
11. distributing fees for rights among the various parties entitled to receive them,
12. taking legal action to defend the moral and economic interests of creators of works of the mind,
13. swearing in agents to provide them with the authority to note violations of the law,
14. seizing phonograms or videograms and any other usable recording medium,
15. and any equipment used to make unlawful reproductions,
16. working in conjunction with the Customs and Indirect Taxation Authority to suspend the circulation of goods suspected of being counterfeited or pirated that are being imported, exported or are in transit,
17. working in conjunction with Internet service providers to identify the parties responsible for an alleged violation of copyright or related rights.

7. Syria

7.1 National legislation

Current legislation on copyright is Law No. 12/2001 of February 27, 2001.

7.2 International instruments

Syria is not part of the 164 countries that to date have signed the Berne Convention, September 9, 1886, for the Protection of Literary and Artistic Works, which was last revised on July 24, 1971 in Paris.

Nor has Syria subscribed to the WIPO treaties on performance and Phonograms Treaty (WPPT - 1996) and the Copyright Treaty (WCT - 1996).

But Syria signed the May 13, 2006 Rome Convention for protection of artists, performers, phonogram producers and broadcasters.

7.3 The object of copyright protection

The Syrian Law on Copyright in its first article, entitled “Definitions”, clearly establishes the legal protection for any original work in the literary, artistic or scientific production, no matter the degree of creativity and the role that these works have, nor the means of expression that are used or the reason for their classification.

7.4 Special category of works

Chapter II, Article 3, establishes an open list of works which enjoy protection by copyright. As is customary in the laws protecting these rights, these lists framed

the most important categories and should be taken as a reference, but never as a *numerus clausus* list.

Article 3;

“All works are protected under the stipulations of law in this document and that protection covers the following:

- a) Written works “books, booklets, brochures, pamphlets, manuscripts, lectures and similar written material.”
- b) Artistic works (theatrical and musical “whether in a digital encoded form or not” and whether accompanied by words or not in addition to cinematography, broadcast, televised, lyrical, eurhythmic, pantomime and music composing works).
- c) Works of plastic and applied arts and photography.
- d) Works of drawings, geographic maps and designs related to topography, architecture or science.
- e) Works of computer software to include design documents and data thereof.

The protection will include the title of the work unless such title is a common term indicating the subject matter of the work. “

7.4.1 Derivative works

The Law on Copyright and Related Rights in Syria does not provide in its articles any reference to derivative works, what limits this type of work arising from other works of creation and which are permanent and frequent today, as is the case of musical arrangements, translations and in particular any transformation of a literary, artistic or scientific works.

It is necessary that the Syrian Law, in its upcoming amendments, defines and protects classified derivative works because of their cultural significance and heritage.

7.4.2 Official or Government Works

Article 4, paragraph (a) provides that official documents such as laws, decrees, regulations, international agreements, judicial judgments, decisions of the administrative authorities and all other official documents and the official translation thereof do not enjoy the protection enshrined in Article 3 of the Syrian Law on copyright.

7.4.3 Works in the public domain

The works will fall in the public domain, in accordance with Article 26 of the Law on Copyright and Related Rights Syria, 50 years after the author's death in case this or any heirs have ceded their rights to a third party. Otherwise once declared the death of the author, these may be used, reproduced, translated... etc..., by any third party subject to the moral rights of authorship and integrity.

7.5 Works which are not subject to protection

The works which are not subject to copyright protection are outlined in Article 4 of the Law and are the following:

a) official documents such as laws, decrees, regulations, international agreements, judicial judgments, decisions by administrative authorities and all other official documents and the official translation thereof.

b) Daily news whether published, broadcast or publicly announced.

7.6 Copyright owners

7.6.1 The author as a creator of the original work

It is considered that the right-holder of copyright in accordance with Article 1 of the Syrian law, the person who publishes a book in which his name appears, or by any other means is considered the author unless it is proved otherwise, as the case may be of pseudonyms, provided that there is no doubt about the true identity of the author.

It is important to mention that this law considers co-author of cinematographic, theatrical, broadcast or televised work and the scenarist when the scenario is novel, as well as stated in Article 34 Paragraph a.

Most of the laws on copyright, as happens with the LPI Spanish, do not consider co-author of the audiovisual work the Director of art, which is inappropriate, as well as the director of photography have a vital creative participation, without which the audiovisual work would not have that degree of creative originality necessary for this type of work.

7.6.1.1 Works of Joint authorship

Chapter V, Article 29 regulates joint works (works in collaboration) and sets out the following:

"If more than one person jointly create the work, so that it is impossible to separate the contribution of each of them, then all those who contributed in the development will be considered owners on equal footing, unless otherwise agreed in writing.

In the event of a dispute leading to the non-publication of the work, the Ministry (of Culture) may apply the provisions of Article 21 of this law, if the Ministry considers that such publication is in the public interest, provided that the Ministry fairly compensates the owners of such jointly created work.”

Article 30 stipulates that if the contribution of several persons in the creation of joint work is due to a different scope of the subject of the work, each person shall be entitled individually to exploit his part of the work provided that such exploitation does not harm the exploitation of the joint work as a whole, unless otherwise agreed in writing.

7.6.1.2 Collective works

The collective works are stipulated in Article 31 of Law on Copyright Syria, which gives the following definition:

A collective work is the work created by one or more persons under the instructions or guidance of a natural person or legal entity, and the performance of the participants in such work is merged in the general idea in a manner that denies the separation and identification of the performance of the individual participants of such work, then the natural or legal person who gave the instructions or guided the creativity of this work will be considered author of such works and shall solely be entitled to the protection of the copyright.

7.6.1.3 Works within the framework of an employment relationship

The work that is created in the framework of an employment relationship is not regulated by the Law on Copyright and Related Rights of Syria, what can bring serious drawbacks when it comes to determining who

is the author of a work that has been created under these circumstances.

It is recommended to have a precise regulation on this subject, which clearly establishes the copyright employee, the employer, how to transfer these rights to the employer, the purposes for which the work was created and its restrictions on ownership of rights on a computer program created by an employee in the performance of his duties, etc...

7.7 Content of copyright

7.7.1 The moral rights

The moral rights of authorship are outlined in Chapter III, Articles 5, 6, 7.8 and 12 of the Syrian Copyright Law where they are defined as follows:

Article 5 stipulates the moral right that can be disclosed under these conditions: “The author of the protected work alone is entitled to publish such work and to select the means of publishing. The author alone, and whoever he assigns in writing, may economically exploit the work by any means or in any form; no third parties are entitled to do the same without the written permission of the author or his successors.”

Article 6 provides the moral right of the author to introduce whatever amendment or change to his work: “The author alone is entitled to introduce whatever amendment or change to his work”

Article 7 establishes the moral right of paternity as follows: “The work shall be related to its author, by mentioning the name of the author on any works stipulated in Articles 5 and 6 of this document, except in cases where the work is introduced in broadcast or televised current events.”

Article 8 establishes the moral right of integrity as follows: "The author or his representative may refute any violation to his work and to prevent any distortion, misrepresentation, alteration or any damage that may cause harm to the author morally or materially. The author may claim compensation when it happens and such right shall also be entitled to the heirs ".

Article 12 sets out the moral right to withdraw the work in the following terms: "The author of a scientific or literary work is entitled to draw back his work from circulation or ban such distribution provided that the author compensates appropriately the damaged parties".

7.7.2 Economic rights

Although under the Law 12/2001 of copyright of Syria, there is no article intended to refer to economic rights, it is possible to identify a number of Articles of the Law as is the case of Articles 5, 6, 13, 14, 15

The only economic right which is defined in the Act is the distribution, which is enshrined in Article 1, entitled "Definitions".

7.7.3 Remuneration right

The remuneration right is not outlined in the Syrian Copyright Act.

7.8 Limitations or exceptions to these rights.

The limits to copyright law in Syria are set forth in Chapter VI which is entitled "Free use of protected works."

The following exploitation of the protected work in its source language or its translation are deemed legitimate without need of the author's or creator's approval:

First: Legitimately published works.

- a) Translation of the work, its excerpts, its (musical) composing or its adaptation in any form or reproduction of such work with the intention of making only one copy for personal use.
- b) Quotation of excerpts of the work provided that such quotation complies with the prevailing customs and is justified. Mention of the work title and the creator or author of such in conjunction with the quotation is mandatory, to include mention even on texts transcribed from press articles and periodicals in the form of press excerpts.
- c) Use of works for educational purposes in the form of publications, broadcast or televised programmes, audiovisual recordings or for pedagogical or vocational training purposes, provided that such use complies with customary practice that the title of the work and its creator are mentioned in all the means of utilization mentioned in this document.

Second: The reproduction of an article, which is broadcast or published in newspapers or circulars to the public, provided that the source is mentioned. Such reproduction will be deemed unlawful if it was explicitly mentioned in such article.

Third: The reproduction of a work that can be seen or heard on the occasion of presenting current incidents, through photography, cinematography or other means of the media, or making such work available to the public within the framework of the desired information goal.

Fourth: The reproduction of artistic, architectural or plastic work to show such to the public through cinema or television, if such works are permanently displayed to the public or if their role in the program is secondary or extrinsic compared to the main topic.

Fifth: The reproduction of a literary, artistic or scientific work through photography or similar means, if such work was previously legitimately available to the public, provided that such reproduction was achieved by a public library, a non commercial documentary centre, a scientific organization or an educational institute and provided that such reproduced copies are in compliance with the activities of the reproducers and also provided that such reproduction shall not adversely affect the financial exploitation of the work or prejudice the legitimate interests of the creator or author.

Sixth: The reproduction made by newspapers or other media to the public of any political speech, speech in a court hearing, lecture or religious or not religious occasion or any similar occasion in public, provided that the reason for such use is to communicate news from the current incidents.

Article 38

The General Corporation for Broadcast and Television is entitled to broadcast or display works that are presented in theatrical stages or on any other means of public performance, the managers of such locations should allow the previously mentioned Corporation to utilize all technical means required for such broadcast or display. The aforementioned Corporation must fairly compensate the creator or author or his heirs and show the title of the work and the name of its author. Such broadcast or display will not be considered legitimate before passing of five years from the date of recording by the General Corporation or otherwise agreed.

7.9 Duration of protection of rights.

Article 22 of the Act provides that the author is entitled to his copyrights during his lifetime and for fifty years after his death. If the work is the result of joint work of more than one author, then the copyright will be protected during the lifetime and for fifty years after the death of the last author party of the work.

7.9.1 Works protection of 50 years

In accordance with Article 24 of Law 12/2001, audio-visual works, televised or cinematographic works have a protection of 50 years, which run from the date of production of the play.

7.9.2 Works with 10 years of protection

In accordance with Article 25 of Law Syria of Copyright, photographic works, fine arts or plastic arts will have a ten-year protection, from the date of producing them.

7.10 Transmission of copyright.

The Law 12/2001 on copyright stipulates in Article 14 that the author may assign to third parties the rights of exploitation provided that this assignment is in writing, with specific definition of each right separately.

Article 15 says that if property of an original is assigned to other parties, such assignment shall not include copyright.

The author's rights are allocated as a whole to the heirs of the author after his death. This empowers the assignee to publish works that have not been published by the author. If the author dies without leaving any heirs, the rights will be allocated to the Ministry of Cul-

ture. The Ministry will obtain the rights of the deceased co-author who has no heirs, a work in cooperation by enforcing the authorship of the work and allowing the rest of the authors to continue their rights.

7.11 The legal regime of Societies of Authors

The Law on Copyright and Related Rights of Syria does not outline a legal regime on management companies and currently there is no Collective Management Society to care for the interests of Syrian authors.

8. Tunisia

8.1. National legislation

- Law n ° 94-36 of 24 February 1994 on literary and artistic property
- Decree n ° 96-2230 of 11 November 1996 establishing the administrative and financial organisation of the Tunisian Agency for the Protection of Copyright and its operating modalities.

8.2. International instruments

- Berne Convention since 05/12/1887
- WIPO Treaty since 01/12/1975
- Paris Convention since 07/07/1884
- TRIPS Agreement since January 1995

8.3. The object of copyright protection

Article 1 of the Tunisian law on copyright sets out the conditions for the protection of a work, in accordance with the continental copyright system; this is the principle of the originality of the work, both for what the doctrine calls the objective aspect, as well as the subjective aspect of the work. Thus, the work comes from the author and his/her own personal creation and is deemed to merit protection, regardless of the mode or form of expression, the value and the purpose. This is very different from Anglo-Saxon law on copyright.

This concept excludes protection conferred by copyright to its simple value, purpose, principles, modes and forms of expression.

The copyright is exercised over the work in its original form, as well as over the derived form of the original and the title of the work shall be object of a specific form of protection.

8.4. Special categories of works

The Tunisian law sets out, in a closed list, the different types of works of art according to the area to which they belong, through a single list that includes both original works and derivative works. These works are as follows:

Article 1:

“Written or printed works such as books, brochures and other written or printed works;

- works created for the stage or for broadcast (sound or vision), whether they are dramatic and dramatic-musical work, choreographed work and pantomimes;
- musical compositions with or without lyrics;
- photographic works to which are assimilated, for the purposes of this law, works expressed through a process that is similar to that of photography;
- cinematographic works to which are assimilated, for the purposes of this law, works that are expressed by a process producing visual effects that are similar to those produced by cinematography;
- works carried out by the means of paint, drawings, lithographs, nitric acid engravings or wood engravings and other works of a similar type;
- all forms of sculptures;
- architectural works, including drawings and models, as well as the methods of construction;
- tapestries and objects created by the craft and applied arts, including the rough lay-outs or the models as well as the work itself;

- maps, as well as drawings and graphical and plastic reproductions of a scientific and or artistic nature;
- formal presentations and speeches;
- works inspired by folklore;
- software;
- translation and arrangements or adaptations of the abovementioned works.”

Folklore which is part of the national heritage is subject to a special form of regulation. Each transcription of folklore with a view to its usage for a profit requires authorisation from the Ministry for cultural affairs through the payment of a fee into the social fund of the Agency responsible for the protection of copyright that has been created under the terms of this law. The ministry’s authorisation is also required for the production of works inspired by folklore, as well as in the case of a partial or total assignment of copyright on a work inspired by folklore.

The Tunisian law also defines what should be understood by the term folklore: it is considered to be any form of heritage left behind by previous generations and which is related to the customs and to the traditions and to all aspects of popular creation such as folk tales, letters, music and dance and so on. (Article 7.3).

8.4.1. Composed or derivative works

Tunisian law does not legally define the notion of derivative works, rather it refers to *translations or arrangements or adaptations*. It would be appropriate to introduce the notion of derivative work and a list of works belonging to this category into the law.

8.4.2. Composite works

Article 5 of the Tunisian law refers to composite work, which is a new work into which a pre-existing work is incorporated without the collaboration of the author.

In this case, the copyright is held by the person who has put together the composite work, taking into account the rights of the owner of the original work that has been incorporated into the composite work.

8.4.3. Works in the public domain

Works fall into the public domain 50 years after the year in which the author has died. From that moment onwards, these works may be freely reproduced and distributed and public reference may be made to them.

8.5. Copyright owners

8.5.1. The author as creator of the original work

There exists the simple presumption of ownership of the copyright of the work by the author under whose name the work is released. (Article 4)

Tunisian law does not specify if the author is anonymous or if the work appears under a pseudonym. It would be appropriate to envisage this possibility and the interests at stake in these cases.

8.5.1.1. Joint works / Works in collaboration

Tunisian law specifically defines joint authorship works: these are considered to be works that have been created through the contributions of several physical persons whose contributions are impossible to separate from one another (Article 5).

A more detailed regulation is required for cases in which it is possible to separate the contributions and a majority is required to exploit the rights by the authors. The law is not particularly specific on this point.

8.5.1.2. Collective works

Tunisian law contains a specific reference to collective work and defines it as being a work created at the initiative of a natural or corporate person who publishes the work under his name and management and in which the personal contribution of the various authors who have participated in its elaboration is merged within the overall objective for which it has been conceived, without it being possible to grant separate rights to each of the authors over the collective work.

It would therefore appear that the author is the natural or corporate person who has directed the undertaking or publication of the collective work, unless the contrary is foreseen in a written contract (article 5).

8.5.1.3. Works within the framework of an employment relationship

In cases in which a contract of employment has been stipulated or when the work is undertaken in the framework of an employment relationship, the agents of a corporate person may become the copyright holders, unless the contrary is stipulated in the contract (Article 5). This is the case for creators of software (article 43).

In the case of cinematographic and audiovisual works, the producer is the owner of the copyright (audiovisual production contract), since article 38 states that “... the copyright belongs to the producer.”

But outside this particular case in which the producer is the holder of the copyright on the audiovisual work, article 39 contains the simple presumption of the assignment of the exploitation rights of the “collaborators” who have contributed to the work, to the producer, in cases in which an audiovisual production contract exists, with the exception of those concluded with the authors of musical compositions, with or without lyrics. Each partner may exploit the rights related to his contribution, although this does not always represent an obstacle to the overall audiovisual work.

8.6. Content of copyright

8.6.1. The moral rights

The author, in his capacity as the author, enjoys certain moral rights that belong exclusively to him and which are inalienable and imprescriptible (articles 21 and 22). The author enjoys the following moral rights:

1. Disclosure of information: the author has the right to decide on the mode of disclosure or the means or the process. The law speaks about the right to present his work to the public.
2. Economic right in the work or right of authorship: the right to demand that the work appears under his name, under a pseudonym or anonymously. The author's name must be indicated appropriately in a format that is in keeping with the terms of good usage, on each copy that reproduces the work and each time that the work is made available to the public (article 8).
3. The integrity of the work: the right to challenge any alteration or distortion or any modification of his work without his consent or to challenge any modification that is prejudicial to his honour or reputation.

4. The right to withdraw: the right to withdraw or take his work from circulation. Tunisian law does not provide for any form of compensation to be made to those who usually exploit the rights over the author's works.
5. The right to challenge any modification to the work: the work must not be modified in any way without the written consent of its author (article 8).

8.6.2. Economic rights

These rights are exercised by the author or by another right holder. As property rights, these rights are recognised to the author with the provision of an exclusive *ius prohibendi* to authorise, or forbid, the exploitation of his work. The law provides for the following rights (article 2):

1. The reproduction of the work in any form whatsoever, including the phonogram, audiovisual and other forms of representation;
2. Adaptation / translation;
3. Communication to the public (public performance of the work) :
 - a) Public performances such as performances in hotels, restaurants, means of transport by land, sea and air, as well as at festivals and in entertainment facilities, etc.
 - b) Radio broadcasting,
 - c) Broadcasting by cable, loudspeaker or by other similar means.
4. The right to authorise the production of copies through recording on tape (phonogram) or audio-

visual recording or reproduction for commercial purposes (article 32).

What is noteworthy here is the absence of the right to the distribution, sale or loan of the work, or of any modalities to govern the loan or the rental of the work, which are not mentioned in the exploitation rights.

8.6.3. Rights to a fair remuneration

There are three rights, which are governed by Tunisian legislation, to a simple remuneration for which the author or his heirs are entitled to receive a fee and do not have the capacity to authorise or to forbid the use or the exploitation of the work, and they are as follows:

- for private copies: importers and the manufacturers of blank cassettes must pay 2% of their sales price to the Tunisian Agency for the Protection of Copyright.
- For the reproduction of works in libraries, documentation centres and scientific institutions.
- Resale right (*droit de suite*) of 5% of the proceeds of the sale of the product must be paid to the author (article 25).

8.7. Limitations or exceptions to the rights

The limitations refer to the usages made of the work. As a general rule, the rights related to the reproduction and the public performance of the work or, for specific cases in which it is not necessary to have the explicit authorisation of the author and, in certain cases, this is subject to the payment of a fee. The law provides a closed list in this area, outside of which the author's authorisation is required.

1. Strictly personal and personal usage free of charge (back up copies of software, article 46).
2. For educational, school or cultural usage.
3. Quotations and excerpts taken from a work that has been made lawfully available to the public, on the condition that they conform with good usage and to the extent that their usage may be justified for scientific, educational or information purposes and that mention is made of the source and of the name of the author.
4. Quotations and excerpts from articles in the form of press reviews, on the condition that mention is made of the source and of the name of the author.
5. The Ministry for Culture may authorise, where necessary, public libraries, documentation centres, scientific institutions and educational institutions to produce copies of literary works in a number that is necessary and limited to the needs of their activities (including the copying of software).
6. Topical political, social or economic articles may be reproduced in the press or may be broadcast by radio, unless the source specifically mentions that the right to reproduce the work is reserved. However, the source must always be indicated.
7. Representative or architectural works of art permanently exhibited in a public place may be used for cinematographic or television purposes, on the condition that their inclusion may be considered to be of an incidental or secondary nature in the context of the main subject of the film or of the programme in which they are to be used.
8. The works created by radio or television production companies through their own means and for their own programmes. Their exploitation is subject to the

authorisation of the Tunisian Agency for the Protection of Copyright.

8.8. Duration of the protection of the rights

Article 18 of the Tunisian law states that the duration of the protection of the economic right in the work is 50 years starting from January 1 of the year following the death of the author. In the case of collective works, the criterion used is the date of the death of the last surviving author. If the co-author does not have an heir, then his/her share of the rights is considered to be assigned to the other authors.

For anonymous works or works that bear a pseudonym, the duration of the copyright runs for 50 years from the date on which the work has been made lawfully available to the public. In the event that the pseudonym does not hide the identity of the author, the duration of the protection remains the same as the aforementioned duration.

For photographic works (article 19) and software (article 47), the duration of the protection is 25 years using the Gregorian calendar, starting from the year during which the work was produced.

8.9. Assignment of the copyright

8.9.1. General scheme: article 22 and following articles

The economic rights may be assigned between natural persons (*inter vivos*) against payment or free of charge, or in the case of death. The assignment may be total or partial, exclusive or non-exclusive.

All assignments of rights must be carried out on the basis of a written contract, otherwise they are not valid, since this is an *ab substantiam solemnitatem* requirement. (Article 3)

The global assignment of rights on works that have yet to be produced is not valid, unless it has been consented to by the Tunisian Agency for the Protection of Copyright.

The written assignment contract must contain details of the following elements (article 3):

1. the person responsible for the exploitation of the rights;
2. the mode of exploitation (the form, the language, the place);
3. the duration of the exploitation;
4. the amount of the payment due to the owner of the work.

In the event that the copyright is assigned, through succession, to the benefit of the State, the copyright is considered to have been assigned to the Tunisian Agency for the Protection of Copyright, which is then responsible for its exploitation. (Article 24)

The assignment must take the form of a written contract that authorises the dissemination of the works. As for advertisement works, they must be the subject of a specific contract between the author and the radio and television companies. (Article 26).

8.10. The legal regime of the Society of Authors

Managing body: Tunisian Agency for the Protection of Copyright (*Organisme Tunisien de Protection des Droits d'auteur* - OTPDA) - articles 48 and 49 -

The Tunisian Agency for the Protection of Copyright is a multi-disciplinary collective management body. It is a non-administrative, public body, under the control of the Ministry for Culture.

It has a monopoly on the representation, collection and distribution of the rights of the interests of the different societies of foreign authors across the whole of the national territory of Tunisia.

The administrative and financial organisation of the Agency is governed by the decree n° 96-2230 of 11 November 1996, which came into force in 1997.

The OTPDA is responsible for issuing, on behalf of its members, the authorisations for the exploitation of protected literary and artistic works. It is also responsible for the collection and distribution of rights that are due to its Tunisian members or to the members of foreign societies that are responsible for copyrights and are linked to the OTPDA through a reciprocal representation contract.

The missions of the Tunisian Agency for the Protection of Copy are:

- a) to uphold authors' copyrights and to defend their moral and material interests;
- b) to represent its members or the foreign societies of authors and their members, with which the OTPDA has concluded a reciprocal representation agreement, in all matters involving people who are exploiting works;

c) to set the copyright fees for each type of work.

Members of the OTPDA benefit from certain rights, including:

1. the defence of their moral and material interests against any abusive exploitation of their works;
2. legal assistance and advice when they conclude contracts with parties who are going to exploit the rights;
3. the collection, for their benefit, of the copyright fees due for the exploitation of the declared works;
4. the benefits related to the services of the social and cultural fund.

On the other hand, the members must fulfil a series of obligations with regard to the OTPDA, the most notable of which are as follows:

1. to sign the membership agreement that grants the OTPDA, in all countries and for the duration of the membership, the right to authorise or to forbid the public performance or exploitation, or the copying, as well as the translation or the adaptation of their current or future works that are literary, theatrical, musical, cinematographic, audiovisual, artistic or of any other genre likely to require protection;
2. to declare any newly created work before its public exploitation;
3. to refrain from any form of conduct that is liable to harm the interests of the OTPDA and not to take the place of this Agency in the issuing of authorisation for the exploitations of their works;

4. to inform the OTPDA before the conclusion of any contracts with parties who wish to exploit their works;

5. to pay a membership fee of 10 dinars and an annual fee of 3 dinars.

9. Turkey

9.1. National Legislation

Primary Legislation:

- Law on Intellectual and Artistic Works Date: 05/12/1951 No. 5846 (The Law has been amended eight times since its adoption in 1983 through Law No.2936, in 1995 through Law No. 4110, in 2001 through Law No. 4630, in 2004 through Law No.5101, in 2004 through Law No. 5217, in 2007 through Law No. 5571, in 2007 through Law No. 5718, in 2008 through Law No. 5728)
- Law on Evaluation, Classification and Subsidization of Cinematographic Works (Motion Pictures) Date: 21/07/2004 No: 5224

Basic Secondary Legislation:

By-Law on the Collective Societies and Federations of Authors and Related Right Holders Date: 01.04.1999 No: 23653

Regulation on the Registration of the Intellectual and Artistic Works Date: 17.05.2006 No: 26171

Regulation on the Procedures and Principles Regarding the Certification of the Enterprises Disseminating or Performing the Record, Copying and Sale of the Materials on Which Intellectual and Artistic Works Are Fixed Date: 18.04.2005 No: 25790

Regulation on Procedures and Principles Regarding the Use of Deductions Made From the Costs of Carrying Materials that Include Intellectual and Artistic Works and Technical Devices Used to Copy These Works Date: 13.04.2006 No: 26138

Regulation on the Principles and Procedures of the Usage and/or Transmission of the Works, Performances, Productions and Broadcasts Date: 08.06.2004 No: 25486

Regulation on the Principles and Procedures of the Implementation of Bandroles Date: 08.11.2001 No: 24577

Regulation on the Certificate of Authority to be Issued by Authors of Intellectual And Artistic Works Date: 04.09.1986 No: 19211

Decision on Giving Share from the Sale Prices of Hand-written Originals of Works Fine Arts, Scientific, Literary and Musical Works Date: 27.09.2006 No: 26302

Decision of The Council of Ministers no: 2008/14193 on Determining the Amount to be Deducted from the Production or Importation Costs Date: 21.10.2008 No: 27031

9.2. International Instruments

- TRIPS Agreement since 25/02/1995
- Berne Convention since 12/07/1995
- Rome Convention since 12/07/1995
- WIPO Copyright Treaty (WCT) since 28/11/2008
- WIPO Performances and Phonograms Treaty (WPPT) since 28/11/2008

9.3. The object of Copyright Protection

The Turkish Copyright Law contains the conditions for protection of the work, according to the scheme

of copyright mainland (in Article 1/b). Here too, the principle of originality of work prevails. Thus, the work comes from the author for his own creation-person-and deserves protection regardless of its form of expression, merit, purpose, determination, etc. This is a tangible difference compared to the regulation of the Anglo-Saxon Copyright.

This concept excludes the protection afforded by copyright to ideas and principles constituting a basis for any element of a computer program, including the ideas and principles constituting a basis for its interface (Article 2).

The Turkish law with its latest substantial changes restructuring provisions and reordering the presentation to the effects of legislative technique incorporates a list of definitions at the beginning of the law: such as a work, an adaptation, related rights, computer programmes, interface, etc. This implies a conceptual division and a novelty compared to other intellectual property laws.

9.4. Special Types of Works

Types of Works in Copyright Law have been designated according to the principle of “*Numerus Clausus*”, however the works listed in special types are not included in the principle of “*Numerus Clausus*”. There are four types of works in the Turkish Copyright Law.

Scientific and Literary Works : (Article 2)

- “1. all verbal works, whatever their form of expression, and all computer programmes in whatever form, including preliminary designs;*
- 2. all kinds of dances, written choreography works, pantomimes and plays or similar unworded stage works;*
- 3. all kinds of technical and scientific photographic works that do not have rhetorical character, all kinds*

of maps plans, projects, sketches, pictures, geographical and topographical models and alike, all kinds of architectural and civil designs and projects, architectural models, industrial, environmental and stage designs and projects. “

Musical Works: (Article 3)

Musical works are all types of musical compositions, with or without lyrics.

Works of Fine Art: (Article 4)

- “1. oil and watercolour paintings; all kinds of pictures, designs, pastels, engravings, manuscripts and gilding, works drawn or fixed with mineral, stone, wood or other substances by scratching, engraving, tapping or similar methods, calligraphy, screen printing;*
- 2. Statutes, reliefs and carvings;*
- 3. Works of architecture;*
- 4. Handicraft and minor works of art, miniatures and products of decorative art, and textile and fashion designs;*
- 5. Photographic works and slides;*
- 6. Graphic works;*
- 7. Cartoon works;*
- 8. All kinds of typing, with esthetical value.”*

Works of Cinema: (Article 5)

- 1. Movies;*
- 2. Films carrying didactic and technical characteristics or reflecting daily events;*
- 3. All kinds of scientific, technical or rhetorical projection dia-positives.*

The above mentioned works take place in the group of cinema works if they are displayed through projection, even if they are fixed on material other than film and glass.

9.4.1. Derivative Work or Processing

The Turkish Copyright Law legally defines the concept of derivative work and enumerates a list of examples through transformations of an original work that is useful and systematic in this respect.

Article 6 of the said law reads as follows:

- "1. Translations;*
2. Converting a work like novel, story, poem or play, to another type of such works;
3. Making films from musical works, literary and scientific works or works of fine arts, or converting them into a form which is suitable for filming or broadcasting by radio and television;
4. Musical arrangements and compositions;
5. Transforming works of fine arts from one form to another;
6. Making a collection of all or the same type of works of one author;
7. Making a collection of selected works according to a specific purpose and in accordance with a specific plan;
8. Making an unpublished work ready for publication as a result of scientific research and study (ordinary transcriptions and facsimiles that are not the result of scientific research and study are excluded);
9. Annotating, commenting or abridging the work of another person;
10. Adaptation, editing or any modification of a computer program;
11. Databases obtained by the selection and compilation of data and materials according to a specific purpose and a specific plan, which are in a form that can be read by a device or in any other form (This protection can not be extended to the data and materials contained in the database.)"

9.4.2. Composed Works

The Turkish Copyright Law legally defines the concept of composed work in the opening section of the law under "Definitions": Compilation means a work which is a result of a creative thought and the content of which is formed by selections and arrangements, such as anthologies or encyclopaedias, provided that the rights on the original work are reserved.

9.4.3. Works in the Public Domain

The works fall into the public domain, within 70 years LDCs. These works may be reproduced, distributed freely and publicly reported since then.

9.5. Copyright Owners

9.5.1. The Author as a Creator of the Original Work

The standard author is considered to be "the one who has created".

There is a rebuttable presumption of ownership of copyright on the copy of the work for that person under whose name or pseudonym the work was published (Article 11/1).

Also, the person who is regularly presented as the owner of the work at conferences or performances made in public premises or broadcast by radio and television is considered as the owner of the said work (Article 11/2).

In cases where the author is anonymous, the rights are exercised by the publisher of the work, or in cases the latter is also not known, the person making the reproduction may exercise the rights and authorities of the author in his own name (Article 12/1).

9.5.1.1. Joint Works

The Turkish Law refers specifically to the joint works as “If a work created by the participation of more than one person constitutes an indivisible whole, the author of the work is co owners of the copyright in the work” (Article 10/1).

In case one of the owners does not permit a collective action without any justified reason, the required permission may be granted by the court. Each person can act independently if the rights of the community are violated (Article 10/2).

If a work created by the participation of more than one person constitutes an indivisible whole, the rights on the joint work shall be exercised by the natural or legal person who has assembled the authors, provided that nothing to the contrary is stipulated in a contract or in the terms of service or in any law that was in force at the time of creation of the work (Article 10/3).

The film as an audiovisual work is not defined in Turkish Copyright Law as a joint work and collective work in an explicit manner. However, the Law mentions its authors as co-authors and therefore we can assume that it will be composed of the following co-authors: physical persons: *numerus clausus* (Article 8):

- The scriptwriter
- Director
- The dialogue writer
- The composer of original music
- Cartoonists in case of a technical animation

9.5.1.2. Collective Works

The Turkish Law does not explicitly define or name collective works, but indirectly refers to this saying that when a work is created by several persons and can be divided into separate parts, each person is considered author of its own contribution (Article 9).

9.5.1.3. Work within the Framework of an Employment Relationship

When there is an employment contract or under an employment relationship or government status, the economic rights of works which are created by employees during the execution of their duties shall be exercised by employer unless the contrary may not be deduced from a special contract between employee and employees or from the nature of the employment (Article 18/1). (The author is the employee creating the work.)

9.6. Content of Copyright

9.6.1. The Moral Rights

Turkish Copyright Law provide for the following prerogatives of moral rights:

1. Divulgence Right:

The author exclusively determines the presentation or non-presentation and the time and way of promulgation of a work (Article 14/1).

You can oppose the author if the mode of publication, public communication and adapting the work, if an attack on his honour or reputation, even while having given permission in advance. Waiving such power of prohibition by contract shall be null and void (Article 14/3).

2. Paternity Right:

The author has the right on the one hand that his name is clearly stated in the decided or customized manner and on the other hand to publish the work under a pseudonym or anonymously (Article 15).

3. Integrity Right:

Any kind of modification, deterioration, addition or abbreviation of the work is prohibited without the permission of the author. The provision of the power guarantees not only the reputation and honor of the author (which may be harmed by changes not representing his ideas or beliefs), but also the integrity and authenticity of the work itself (Article 16).

4. Right to Access to Original Copy of the Work:

Especially in the case of works of fine arts and handwritten works of writers and composers existing in only one original copy, the author possesses the right to access his work provided that the conditions for protection are fulfilled (Article 17/1).

If a copy of a work is unique and original, the author may request the work for use in retrospective works and exhibitions covering all of his working periods, subject to conditions of protection and to be returned ((Article 17/3).

9.6.2. The Economic Rights

The economic rights of the author permit the exploitation of his work. As property rights, those rights grant the author with an exclusive *ius prohibendi* to authorize or prohibit the exploitation of their work.

These rights are as follows:

1. Right of Adaptation:

Translation, arrangements and other similar transformations (Article 21).

2. Right of Reproduction:

The right to reproduce the original or copies of a work in any form or by any method, in whole or in part, directly or indirectly, temporarily or permanently (Article 22/1).

The right of reproduction covers the load, transmission, storage of a computer program where such acts require a temporary reproduction of it (Article 22/3).

3. Right of Distribution

Rent, lend, put up for sale or distribute in any other way (Article 23/1)

4. Exclusive Right to Prohibit the Importation of Copies

The author has the exclusive right to import copies of a work that have been reproduced abroad with his permission and to exploit such works by distribution. Copies that are reproduced abroad may not under any circumstances be imported without the permission of the author and/or the holder of the right of distribution who has the author's permission (Article 23/2)

5. Right of Representation:

Right of Public Recitation (Article 24)

Right of Performance (Article 24)

Right of Exhibition (Article 24)

6. Right of Making Available to the Public

Communication of the work to the public by providing access to it at a time and place chosen by natural persons (Article 25).

7. Broadcasting

By means of wire or wireless means such as radio and television, satellite or cable (Article 25),

By means of other devices permitting the transmission of signs, sounds and/or images including digital transmission (Article 25),

Retransmission of works (Article 25).

8. Resale Right (*droit de suite*)

The Copyright Law concerns the “*droit de suite*” or “resale right”, a specific mechanism. On the basis of the “resale right” or “*droit de suite*”, the author receives royalties each time his work is sold. The work must be an original work of art or a copy made in limited numbers by the artist himself or under his authority and one of the original manuscripts of the works of an author or composer (Article 45).

Rules and procedures of resale right are regulated with a decision of Council of Ministers on “Giving share from the sale prices of handwritten originals of works fine arts, scientific, literary and musical works.”

The sale must obey to some conditions: it has to involve a professional party or intermediary, such as salesrooms, art galleries and, in general, any dealers in works of art and there must be a substantial disparity between sale price and the previous sale price.

At each sale (*if there is a substantial disparity between such sale price and the previous sale price*) the natural or legal person who effects the sale is obliged to pay an appropriate royalties to the author, if the author is de-

ceased, to his legal heirs, if such persons do not exist, to the related collecting society. The rates of royalties to be paid are as follows:

a) 10 % of the difference in the event that the difference between two successive sales is between 50% and 100 %.

b) 9 % of the difference in the event that the difference between two successive sales is between 101% and 200 %.

c) 8 % of the difference in the event that the difference between two successive sales is 201 % and over.

Sales the prices of which do not exceed 5.000 TL (2,500 €) are exempted to give share.

9.6.3. The Rights of Single Remuneration

All kind of economic rights including public lending right of authors and related right holders are exclusive rights not the rights of single remuneration in Turkish Copyright Legislation.

9.7. Exceptions and Limitations to the Rights

Copyright grants to authors exclusive rights, which means that the only person who can authorize the use of a work is the author. However, in some specific cases provided by law, a person may use a work without the authorization of the author and in some cases lead to a payment exempt from the same.

Turkish Copyright Law (No.5846) provides a list of *numerus clausus* which we can qualify as *clausus*, since those outside of it will require the permission of the authors.

- Photographs by official authorities due to public security or for judicial reasons (Article 30).
- Laws, by-laws, regulations, notifications, circulars and court decisions that have been officially published (Article 31).
- Speeches and addresses made in the Grand National Assembly and at other official assemblies and congresses (Article 32).
- The use of excerpts of musical, literary, scientific works or works of fine arts, for demonstration in the classroom or in anthologies in schoolbooks for educational reasons (Article 33, 34).
- Scientific or literary reasons mainly allow the use quotations from works under the condition that the source is indicated (i.e. name of the work, name of the author). (Article 35).
- The contents of newspapers or news include mainly the daily news or current events (Article 36, 37).
- Private purposes always with respect for the rule of the three steps and non-profit (Article 38).
- Making a backup copy for the person having the right to use the computer program (Article 38/3).
- Observing the operation of the computer program for the purpose of determining the ideas and principles underlying any element of the computer program during the conduct of the acts of loading, imaging, operation, transmission or storage of the computer program (Article 38/4).
- Works of fine arts permanently placed on public streets, avenues or squares (Article 40)
- Using of works by handicapped persons for their personal needs. (Add. Article 11)

9.8. Duration of Protection of Rights

The Copyright Law regulates the lifetime of protection for economic rights that is 70 years PMA, dating from the year after the death of the author. For works in collaboration, the criterion will be the death of the last of the co-authors. Namely, the term of protection of cinematographic works shall expire 70 years after the death of the last of the co-authors. (Article 27/1).

The term of protection shall run for 70 years after the work is lawfully made available to the public in the case of anonymous works (Article 27/2).

Duration of the rights of performers is 70 years from the date of the first fixation of the performance, (Article 82/5).

Duration of the rights of producers of the first fixation of a film is 70 years from the date of first fixation (Article 82/6).

Duration of the rights of broadcasting organizations is 70 years from the date on which the program was first broadcast (Article 82/7).

The moral rights are executed by the author during his life time. But certain moral rights(not all moral rights, but some of) may be executed during 70 years after the death of the author by the executor, if no executor has been appointed, successively by the surviving spouse, children, testamentary heirs, parents, siblings (Article 19/2). If the author or his heirs do not exercise these moral rights or 70 years after the death of the author have expired – the Ministry of Culture and Tourism may exercise the moral rights in its own name, if

the work is deemed to be important for national culture (Article 19/5).

9.9. Transmission of Copyright

9.9.1. General Scheme

Economic rights are transmissible *inter vivos* against payment or free of charge or *mortis causa*. The permission may be total or partial. The assignment may be exclusive or non-exclusive (Article 48).

Any transfer of assignment to a third party who wants to reassign the right, must request permission from the author or his heirs (Article 49).

The transfer or assignment commitments of the economic rights shall be valid for future works (Article 50/1).

The transfer or assignment commitments on all future works may be annulled by the contracting parties (transferor, transferee) with 1 year of notice (Article 50/2).

The transfer or assignment commitments shall terminate automatically, if the author dies or if completion of work becomes impossible without any fault of his own (Article 50/3).

Contracts (Agreements) on transferring/assigning of economic rights shall be in writing and the economic rights shall be specified separately in contracts (Article 52).

The transferor is the guarantor of the rights that gave the assignee exist as such rights (Article 53/1).

The transferee receiving an economic right from a person who is not the rightful holder shall not get economic right even if he (transferee) acted in good faith, but he

may request the compensation of his damage caused by the annulment of the contract assignment (Article 54/1,2).

The right of termination of the contract of assignment belongs to the author (transferor) in the event that the transferee does not exercise his rights and authorities properly within the agreed period and thereby these facts cause harm to the author (Article 58/1). In these cases, the author (transferor) is obliged to grant an adequate period of time (notifying him by a notary public) to the transferee. This is final after one month from the notice (Article 58/3).

Economic rights are transmissible *mortis causa* to those appointed after the author (Article 63).

On the death of one of the joint authors of a work in collaboration, its unfinished part passes the other co-owners subject to adequate remuneration to as to the heirs of the deceased author (Article 64/1).

If a co-author has died after the publication of the work, the other co-authors are free to maintain or not the community (partnership) with the heirs of the deceased author. If they decide to maintain the partnership with his heirs, they may request to appoint a representative to facilitate this exercise. If not, the heirs are entitled to have adequate remuneration (Article 64/2, 3, 4).

9.10. Legal regime of the Society of Authors

National legislation related to the collective management of rights includes provisions in the Law on Intellectual and Artistic Works (Law No. 5846) and Regulation on the Collecting Societies and Federations for the Authors and Related Right Holders.

Authors and related rights holders and those who reproduce and distribute non-periodical publications, namely publishers may establish more than one collecting society in the same field.

The collecting societies are corporate bodies subject to civil law.

Some principles concerning the obligations and tasks of collecting societies have determined in Copyright Law No. 5846. In this context:

- The collecting societies shall ensure the management and exercise of their members' rights in an equitable manner.
- Collect the royalties for the exploitation of the works of the members and distributes the relevant royalties to them.
- Prepare the tariffs in time and announce them without delay.
- Take necessary precautions to prevent the unauthorized exploitation of the works on behalf of its members.
- Negotiate and sign agreements with users.
- Communicate with related government bodies, institutions and other parties in Turkey and abroad.

Collecting societies are subject to the administrative and financial supervision of the Ministry of Culture of Tourism. The Ministry may also request the societies to have private auditing companies undertake the said supervision.

In the framework of the reciprocal representation agreements signed with affiliated societies around the world, especially the collecting societies in the field of musical

works protect the rights of foreign authors and composers in Turkey.

There are twenty four (24) collecting societies in Turkey.

Literary Works

1. Literary Work Owners Society (BESAM)
2. Literary Work Owners Society (ILESAM)
3. Literary Work Owners Society (EDISAM)
4. Software Owners Society (BIYESAM)

Musical Works

5. Musical Work Owners Group Society (MSG)
6. Musical Work Owners Society (MESAM)

Works of Fine Arts

7. Artistic Work Owners Society of Turkey (GESAM)

Cinematographic Works

8. Cinematographic Work Owners Society of Turkey (SESAM)
9. BSB Cinematographic Work Owners Society (BSB)
10. Cinematographic and Television Work Owners Society (SETEM)
11. Cinematographic Work Owners Society (S NE-B R)

Translations

12. Book Translators Collecting Society (ÇEV B R)

Performers

13. Performers of Theatre Society (TOMEB)

14. Dubbing Artist Society (SES-B R)

15. Performers of Musical Works Society (MUYORB R)

Phonogram Producers

16. Phonogram Producers Collecting Society (MÜYAP)

17. Phonogram Producers Collecting Society (MÜYAB R)

18. Phonogram Producers Collecting Society (MÜZ KB R)

Film Producers

19. Television and Cinematographic Work Producers Society (TES YAP)

20. Film Producers Society (FIYAP)

21. Cinematographic Work Producers Society (SEYAP)

Radio and Television Institutions

22. Radio and Television Broadcasters Society (RATEM)

Publishers

23. Publishers Collecting Society (YAYBIR)

24. Publishers Collecting Society (BASYAYBIR)

MESAM, MSG, MÜYAP and MÜYORB R are the leading collecting societies in the field of musical sector in Turkey.

MESAM (Music Authors Collecting Society) is authors' society for musical performing and mechanical reproduction rights. It was founded by Turkish composers in 1986 in order to protect the rights of composers, lyricists and music publishers. As of today, 4.848 members are registered to MESAM. MESAM is a member of CISAC (International Confederation of Authors' Rights Societies) and BIEM (International Bureau of Mechanical Rights Society). In the framework of the reciprocal representation agreements signed with affiliated societies around the world, MESAM protects the rights of foreign authors and composers in Turkey.

MSG (Music Authors Collecting Society) is authors' society for musical performing and mechanical reproduction rights. It was founded by Turkish composers in 1999 in order to protect the rights of composers, lyricists and music publishers. As of today, 2.178 members are registered to MSG. MSG is a member of CISAC (International Confederation of Authors' Rights Societies) and BIEM (International Bureau of Mechanical Rights Society). In the framework of the reciprocal representation agreements signed with affiliated societies around the world, MSG protects the rights of foreign authors and composers in Turkey.

MÜYAP (Phonogram Producers Collecting Society) was established on 3 August 2000 with 36 founding members, is a non-profit organization for the neighbouring rights of phonogram producers. It also represents

Turkish phonogram producers at international level as the National Group of IFPI. Currently the society has 95 members and is representing nearly 80% of the music industry in Turkey. The objectives of MÜYAP are to follow up, collect and distribute the financial rights of the music producers that are born from the use of sound recordings at public venues (bars, restaurants, hotels), the use of sound recordings in the digital services and the use of sound recordings of radio-TV, webcasting, simulcasting etc., to prevent unauthorized reproduction of legal musical productions and to fight against piracy.

MÜYORB R (Music Performers Collecting Society) has been established in 09.04.1999. MÜYORB R has 746 members. MÜYORB R's main duty is to follow the legal proceedings, collecting and remunerating the revenues which are being collected against the usage of sound recordings by Broadcasters (TV-Radio), Online Internet Services, GSM Operators, Public Performances.

Conclusions

Comparative study on the following Mediterranean partner countries: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia and Turkey

As we can see in the regulations or legislation on intellectual property, the **Algerian** and **Turkish** legislators have broadly regulated aspects of copyright. In an initial approach, we refer here to the latest legislative modifications regarding copyright: in 1995 and 2001 in Turkey; in 2003 in Algeria, with the amendment of the law on copyright and in 2005 with the regulation on the functioning of the ONDA; in **Morocco**, where the relevant legislation was last modified in 2006; and in **Syria** in 2001. These developments are a clear indication of the increasing legislative interest in this question.

On the other hand, we can see that **Tunisia** and **Lebanon** do not have such a strong legislative tradition in this area. The **Jordanian** law n° 22 of 1992 on the protection of copyright, which was amended most recently in 2001 by law n° 52, as well the **Egyptian** law n° 82 of 3 June 2002 and the new copyright law in **Israel**, which came into force on 25 May 2008, all have in common the fact that they are rooted in the Berne Convention of 9 September 1886, which was last revised in Paris on 24 July 1971, which allows for a certain degree of legislative uniformity regarding the protection of copyright in the area. Jordan and Egypt ratified the Berne Convention fairly late on, with Jordan ratifying it on 28 July 1999 and Egypt on 1 January 2004. It should be mentioned at this point that Egypt also ratified the Convention for the protection of literary and artistic works on 7 June 1977. Finally, it is important to recognise the necessary and timely new Israeli law on copyright, which was approved by the Knesset (the Israeli parliament) on 19 November 2007 and came into force on 25 May 2008, regulating the areas overlooked by the old *Copyright Act* n° 1911 of 1924, which had been adopted at the time of the

British Mandate (1919-1948). It is true to say that the new law maintains a part of the Anglo-Saxon roots and clearly comes under the jurisdiction of the wide domain of copyright.

It is striking to observe that **Syria** is the only country that is not party to the International Convention on copyright, the Berne Convention. Furthermore, this country is also not a signatory of the 1996 WIPO Internet Treaties, although it is a member of the 1961 Rome Convention.

As we have already mentioned above, the laws in **Algeria, Lebanon, Syria, Turkey, Morocco** and **Egypt** include the regulation of all (and consequently do so in the most homogeneous way) neighbouring rights and they generally also contain a regulation that provides provisions to be applied in the event of the criminal infringement of copyright, as well for the defence in case of civil proceedings. On the other hand, these provisions do not appear in the **Jordanian** legislation and the **Israeli** law does not envisage the notion of related or neighbouring rights, but it does regulate the rights of producers and broadcasting companies.

Generally speaking, all of the regulations considered in this study include the *iuris tantum* presumption of ownership on the part of the author whose name appears on the work, with the exception of **Israel**, which does not establish this presumption and merely limits itself to stating that the author is the first holder of the copyright. Furthermore, the majority of these regulations often establish the notion of collaborative works (with the exception of **Turkey**, which does so in an indirect manner by making reference to the co-ownership of audiovisual works, and of **Jordan** and **Syria**, whose laws on copyright neither define nor include a list of derived works. It is therefore important that these countries include these types of works in their future legislation or in any amendment to the law, given the importance that these works have in the world of art and entertainment.

Indeed, they are regularly created in different cultural environments and their protection and delimitation are of capital importance, as is their differentiation from collective works (with the exception of Israel, which does not provide a definition of this type of works).

Furthermore, in all of the countries covered by this study, the laws contain a reference to the presumption of the assignment, to the employer, of the exploitation rights on a work created by the employee in the context of an employment contract or work relationship, with the exception of **Egypt** and of **Syria**, where the law in this area must be changed in order to afford greater protection to the author, who is currently in a vulnerable position. The most notable legislation in this area is to be found in **Algeria**, given the importance accorded to these notions in that country. On the other hand, only the laws in **Lebanon** and **Syria** fail to define a composite work and nor do they provide a legal definition of a derived work, even though they do include examples of this type of work. We can therefore say that there is a need to initiate efforts designed to bring about a legal reform in order to complete existing legislation and to fill in these gaps.

With regard to the legal ownership of audiovisual works, such as a collaborative work and the definition of its authors, both **Algeria** and **Tunisia** do address these issues, whilst **Lebanon** and **Tunisia** in particular distance themselves from this traditional notion of negotiating or entering into agreement on copyright, by assigning the copyright on the audiovisual work to the audiovisual producer, thereby assuming the characteristics associated with the other great tradition of intellectual property, namely the copyright system. One aspect that is particular to the **Syrian** legislation is worth highlighting at this stage, since it includes the screenwriter as a co-author of a work for the cinema, theatre or television in cases in which the screenplay is new, which is quite the opposite to the view taken on this matter in the majority of the other legislations.

Turning to the analysis of moral rights, which are a main and central part of continental copyright, all of the countries covered by this study are party to the Berne Convention, with the exception of **Syria**, as has already been previously mentioned, either because they have been members since the very beginning in 1887, such as **Tunisia**, or because they have joined more recently, as is in the case of **Algeria**, which joined in 1998. The fundamental rights of the authorship and integrity of the work – article 6 bis of the Berne Convention – therefore appear in all of the legislations, as well as the right of disclosure, except for the legislation in **Morocco** and **Israel**. All of the countries, with the exception of the aforementioned two countries and **Turkey**, provide for the right of withdrawal or repentance. Only Turkey regulates the right of access to a unique or rare copy of the original work. There are quite clearly major differences between the different countries concerned. Israel and Morocco should introduce a modification to their legislation in this area so as to at least include the author's disclosure rights. However, we can also conclude that the regulations regarding moral rights are sufficiently broad to ensure the necessary defence and the protection of the interests of the author, even though it is true that the country whose legislation is the closest to the six moral rights governed by the **Spanish** legislation is **Tunisia**, followed by **Syria**, which currently covers five rights and is also contemplating the inclusion of the author's right to modify his or her own work, closely followed by **Jordan**, which regulates four categories of rights.

Finally, it is worth pointing out that the Moroccan legislator defines moral rights only briefly and also makes them transmissible, which is completely contrary to the general rule regarding the non-transmissibility of a moral right on the grounds of its *intuitu personae* nature, with the exception of certain cases of transfer in the event of death, solely to the extent that such transfers are conducive to the exercising of economic rights for the rights holders or the author's heirs.

Provisions regarding economic rights are particularly well developed in **Algeria**, including a detailed list of rights to simple remuneration. Once again, the law in **Lebanon** is the most limited in this regard, since it does not regulate any rights in this latter category, not even the resale right (*droit de suite*), which is also the case in **Morocco**, although this latter country does provide for remuneration in the event of the rental or communication of the audiovisual work to the public. This is also the case in **Egypt**.

The right of participation, resale (*droit de suite*) or so called sequential right, which is a very generalised right in the continental copyright systems, may be found in the **Algerian** (which opts for a percentage on the re-sale), **Turkish** (which opts for an added value on the re-sale) and **Tunisian** (which opts for a percentage on the re-sale) legislations. The legislation in **Israel, Jordan, Tunisia** and **Morocco** sets out an exhaustive list of economic rights; this list is long enough to cover with guarantees all exploitation activities of the works. On the other hand, throughout the law in **Syria**, these rights are regulated in a fragmentary way, with the exception of the right of distribution. Hence, it would be advisable to group them in a single section. However, it should be noted that Syria does not regulate the right to simple remuneration.

The legal provisions regarding limitations or exceptions to the rights are similar in all of the legislations; however, the legislation in **Algeria** and **Turkey** places a particular emphasis on the limitation of the number of software back-up copies that may be made for private use, thereby reflecting particular concern for inter-operability issues that may arise in the context of the new technologies and of the information society. Generally speaking, the freedom of each legislator to decide, at its own discretion, upon the limitations to be imposed, has led, with the exception of one or two specific cases or nuances, to a legal, common correspondence that does not involve any major differences between the different legislations.

It is important to highlight the specific situation that is created by the inclusion of copyright in Israeli legislation – the notion of “fair use” – that we find in article 19 of the 2007 Israeli copyright Act, since the continental system does not envisage this type of provision in order to permit the usage of works protected by copyright, and which uses the following principles in order to determine whether or not fair use is being made of a work: 1. The purpose and character of the use; 2. The character of the work used; 3. The scope of the use, quantitatively and qualitatively, in relation to the work as a whole; 4. The impact of the use on the value of the work and its potential market.

The duration of the protection of the exploitation rights is 50 years following the death of the author in **Algeria, Lebanon, Syria** (there is an exception here, since photographic works, fine arts and plastic arts works are protected for 10 years), **Jordan** (25 years for photographic works), **Egypt** (50 years for photographic works) for the other categories of works and in **Tunisia** (25 years for software and photographic works), in accordance with the stipulations of article 7.1 of the Berne Convention.

Moreover, only in **Turkey**, following the 2001 amendment, **Israel** (70 years for photographic works), which has become more protectionist with the amendment of the law on copyright in 2007, article 38, and **Morocco**, have any efforts been made to harmonise their period of protection with the Community duration of 70 years following the death of the author. We can therefore see that there is a certain lack of cohesion with regard to the duration of the protection afforded to photographic works. The protection afforded to photographic works under Jordanian law is similar to that afforded to simple photographs under article 128, paragraph 2, of the **Spanish law**.

Moral rights are subject to an imprescriptible duration of protection in **Algeria, Syria, Lebanon, Morocco**

and **Egypt**. In **Tunisia**, **Jordan** and **Israel**, there is no reference to be found to this question, but since these countries are members of the Berne Convention, we can conclude that they have at least the same duration as economic rights – article 6 bis 2 of the Berne Convention. In **Turkey** these rights have a special status: moral rights may be considered to be limited in time, since the author benefits from them throughout his or her life and the owners of the rights continue to hold them for a further 70 years following the death of the author. The Turkish legislator has also established an identical regulation with regard to the duration of the author's exploitation rights, regardless of the domain to which they belong by their nature, whether they are moral or economic rights, in accordance with the main lines of the unity of copyright, in keeping with the **Germanic legislation**.

There can be no doubt that the regulation in **Algeria** on the *inter vivos* assignment of rights is very complete (both for audiovisual works, publishing contracts and for all specific or one-off assignments: in this way, it provides, for example, for a period of time beyond which the exclusivity of the rights may be lost in the event that the work is not exploited), and it is structured into a general system and a specific compulsory licensing system that is managed by ONDA for reproduction and translation rights, which in turn favours the forced exploitation of a work on the market and therefore the free circulation of such cultural works. It is in **Turkey** that the greatest concern is expressed for the *mortis causa* transmission of rights in the case of a collaborative work and the death of the author. A further noteworthy aspect is the interest shown in conserving the exclusivity of the author who, as a result of a provision that is similar to that of a withdrawal, is automatically given back his or her rights once the assignment period has terminated. The legislation in **Egypt**, **Morocco** and **Israel** would appear to be part of an intermediary or *de minimis* regulatory framework in terms of the level

of precision that characterises their regulations on the assignment of rights.

However, in **Lebanon**, **Syria** and **Tunisia**, the legislation is not sufficient to resolve the problems that may arise, since it limits itself to regulating the basic elements, in the absence of an agreement, with regard to the time, spatial or geographical frame, as well as the compulsory or mandatory elements that should feature in all contracts drawn up for the purposes of the assignment of economic rights. In the Lebanon and Tunisia, the legislation is silent on the transmission of rights following the author's death. The situation in **Jordan** gives greater cause for concern, since the assignment of rights is not referred to anywhere in the legislation. There is therefore a pressing need to fill this gap in the legislation, which could give rise to undesirable situations. The specific provision according to which all assignment contracts are null and void with regard to all future works is common to all legislations, as is the requirement that all contracts must be drawn up in writing as a condition of the *ab substantiam* validity of the contract.

Finally, it is interesting to note that **Tunisia** and **Algeria** are the only two countries that have chosen to establish a public body to supervise and to act as a guarantor for copyright: respectively the OTPDA and the ONDA, both of which are under the responsibility of the Ministry for Culture. This implies a balanced approach between the protection of the public interest in the exploitation of the work and the institutionalised supervision and management of the private rights of authors and in the distribution of the fees due. The official nature of these two bodies perhaps confers greater security to collective management of the rights.

In **Jordan**, **Egypt** and **Israel**, the regulations on the protection of copyright do not enshrine the legal status of collective rights management societies in the legislation. However, the current legal systems do not

prohibit the usage of this mechanism through collective management societies. In Egypt at the moment there is the Society of Authors, Composers and Publishers of Egypt, the Association of Egyptian Script-writers and the Association of Egyptian Musicians. In Israel, the main collective rights society is the ACUM, which represents authors and composers of literary and musical works, whilst screenwriters and directors for television and film are represented by the TALI society.

In **Jordan** and in **Syria**, not only does the copyright law fail to grant legal status to collective rights societies, but there are also no societies to represent the interests of the authors, which leads us to call upon these two countries to rectify this situation as soon as possible. There is also a need to establish a general authors' society.

In **Lebanon** and in **Turkey**, the law provides for an option that is quite the opposite to the establishment of a single state body, since the authors in these two countries may give a mandate to private societies or associations to manage their interests, which is the case of the MESAM in Turkey. The advantage of this option is the creation of a space of greater proximity, of closeness and knowledge of the private interests that are their own and consequently a more individualised or specialised management of the rights of the authors or the holders of neighbouring rights.

To conclude, our comparative legal study enables us to affirm that, in terms of the material substantiation of the regulations, the **Algerian** and **Turkish laws** on intellectual property are the most effective, and comparatively, asymmetrical, with regard to many regulatory aspects, compared to the **Lebanese** regulations and, above all, to the **Tunisian** or **Syrian** regulations. A further conclusion to be drawn from our study is that, as a result of its particular configuration, the **Israeli** legislation must be conceptualized in a logic that is different from that followed by the traditional approach

to copyright, whilst **Egypt, Jordan** and **Morocco** are at an intermediary level between the first and second group of regulations.

B. Protection of Industrial Property

by

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I. Introduction

1. General Framework

The following survey of industrial property rights in the Euro-Mediterranean Market has been conducted within the 5th phase of the EuroMed Market Programme launched on 21 January 2008 in Brussels within the context of the Euro-Mediterranean policy of the EU funded by the MEDA Programme.

This survey is a follow-up of the “points for the future” set forth in the Final Declaration of the participants of the seminar on “Intellectual Property Rights in the Euro-Mediterranean Partnership – 1st Part: Industrial Property Protection in the Euro-Mediterranean Partnership”, held in Brussels on 7-8 May 2007 in the framework of the 4th phase of the EuroMed Market Programme. The points raised were:

- Reinforcing both bilateral and intra-regional cooperation, which will enable authorities in charge of industrial property to enjoy a progressive institutional development. In this sense, they recognize their need to share the experience of the Euro-Mediterranean area and to strengthen the south-south dimension of their structural, technical and institutional relationships;
- Developing and ensuring intra-regional cooperation in the MEDA region until the actual establishment of the free trade area by 2010 in the field of industrial property in order to promote trade among MEDA Partners themselves.

Accordingly, the study is addressed to authorities in charge of industrial property rights, i.e. trademarks, patents, utility models and designs, to meet the general objective of developing and ensuring intra-regional cooperation in the field of industrial property.

2. Specific Objective

The survey is based on the answers to a Questionnaire which was sent out in February 2008 to the 10 Mediterranean Partners (MP) in order to gather information on how industrial property rights are dealt with in their respective countries. The Questionnaire was drafted according to the specific objective of carrying out a comparative analysis on the following aspects:

1. Legislative approximation, norms and procedures, and actions favouring South-South co-operation;
2. Institutional development in each MP;
3. Identify best practices in each MP;
4. Draw up a table with the comparative analysis.

The survey summarizes the detailed information provided by the MP regarding the first three aspects, i.e. the legislative approximation, the institutional developments and the identification of the best practices applied in the MP. The survey includes citations of the specific topic of the Questionnaire and identifications of the MP having replied to the questions. Various tables at the end allow a comparative analysis of the information provided by the MP.

II. Executive summary

The high return rate of duly completed questionnaires and the many details given for most of the questions confirm the **strong interest** among the MP in matters regarding industrial property rights. All 10 MP took active part in the survey.

Considerable efforts have been made throughout the MEDA region to protect industrial property adequately. In all 10 MP **specific laws** for trademark, patents and designs are in force. The individual acts in each of the participating countries are cited in the attached Table I.

As concerns the application of those individual acts, the **situation is still as heterogeneous** as it was found to be by the Workshop on Intellectual Property Rights held during the First Phase of the Programme in May 2003. In particular, the accumulation of rights for the same subject-matter, such as for instance a trademark and a design for a model allowed under the harmonized law of the European Community, is still excluded or severely restricted in most of the MP. Another essential element in European law, the protection of a design without the need for registration thereby allowing considerable saving of costs, is possible only in Turkey.

Considerable efforts are made to keep pace with **International developments**. Most of the MP joined the basic International treaties in the field of intellectual property. The common standards defined by these treaties, such as the classification of goods and services of trademarks, are crucial for the compatibility of the respective rights. Further progress in the near future is expected in particular from Jordan and Lebanon.

Unfortunately, the **co-operation** regarding industrial property protection in the region is not very developed. Israel, the Palestinian Authority and Jordan do not maintain any general co-operation in the region. Other MP have working relations with only a few individual coun-

tries or selected International authorities. This area is clearly in **need of further attention**.

As regards the situation of industrial property rights specifically addressed in the present survey, i.e. trademarks, patents, utility models and designs, the **TRIPS Agreement** seems to have reduced the divergence in the legislation and practice of the MP. For instance, the requirement and the duration of patent protection are very similar throughout the MEDA region and there is a common understanding of basic principles such as the exclusion of the medical treatment of a human body from patentability. Likewise, the concept of novelty is the same for all MP.

Remarkably, **design rights** which have received much attention in the European Union since the introduction of the Community Design Regulation, seem to enjoy a similar interest in the MEDA region. Elaborated answers were given in response to the related topics in the Questionnaire. In particular, the design protection for products having **technical functions** has been dealt with care. Lebanon, for instance, allows double protection of a product by a design and a patent provided certain conditions are met. The protection of a product by a design right is not only attractive because it is much cheaper than a patent but it also gives access to Intellectual property rights for a sector of industry which is less technological advanced but highly creative in lending an aesthetic appeal to a product.

Trademarks are protected in all MP in all their basic forms, either two or three dimensional, as an individual or collective mark for all kind of goods and services. As regards the protection of **sound trademarks**, generally accepted in the European Community, the views are still split: in Israel, Turkey, Tunisia and Morocco sounds may be registered as trademarks, whereas other MP do not go that far. In view of the relatively small importance of sound marks, this difference is not a major issue.

In contrast, the **requirement to use** a registered trademark is a fundamental aspect of trademark law since it could threaten the validity of the right even when all the other conditions for protection are fulfilled. The high degree of common understanding among the MP as regards this aspect is most necessary for industry operating across the MED region.

The last topic addressed by the survey concerns the **institutional development** of the MP taking into account the Association Agreements and the Action Plans of each MEDA country. Except for Lebanon, there are programmes for **continued education** (training) for officials of the IP Authority in place in all MP countries. The World Intellectual Property Academy, the European Patent Academy and the USPTO are apparently providing for most of the contents and framework of these programmes. For Turkey, further training is made available by the EU Twinning Programme.

In all MP, except in the Palestinian Authority, intellectual property rights are taught at **universities** with some of them offering post-graduate studies in this field. Access to information and training in the field of intellectual property is also given to staff from customs authorities.

Resources and means to the search for prior art and case law are available to all MP in the form of online **databases**, however, the databases used in the individual MP are different. A further harmonization as regards the resources used by the circles concerned may be helpful in the approximation of the practice of industrial property rights.

In brief, the study finds a **sound basis of common awareness and understanding** in the field of industrial property rights which had led to a considerable degree of approximation in the legislation and practice. An enhanced collaboration between the MP together

with the use of common resources could help to promote further progress.

Dr. Araceli Blanco Jiménez

III. Summary of results

1. LEVEL OF APPROXIMATION OF LEGISLATION

1.1 Legal Framework of Industrial Property Rights

1.1.1 National Law

1. Ruling of rights on Industrial property (IP)

The IP rights are ruled by specific Acts in **Turkey, Morocco, Israel**, the **Palestinian Authority**, **Jordan, Lebanon, Egypt, Algeria, Syria** and **Tunisia** (see Table I).

2. Listing of IP rights recognised in the MP with references to the legal texts

See Table I

3. Legislation for utility models

Legislation for utility models is given in **Turkey, Jordan**, and **Egypt** (under Law N° 82/2002 for the Protection of Intellectual Property Rights). In **Lebanon**, the law requires the utility models to be new at national level. Likewise, in **Egypt** and **Turkey** the novelty is required only at a national level, and the requirements for an inventive step are less strict than those for patents. The duration of the protection is 7 years in **Egypt** and 10 years in **Turkey**.

There is no specific legislation for utility models in **Morocco, Tunisia, Israel, Lebanon, Algeria**, and the **Palestinian Authority**. In **Syria** a new law is in preparation with the aim of introducing specific provisions for utility models which will grant the protection for a period of 7 years.

4. Accumulation of rights

In **Jordan** functional features may not be protected by either a trademark or a design right. In contrast, new aesthetic elements are protected by design law and can be protected also through a trademark provided it is distinctive and does not interfere with earlier rights.

In **Lebanon**, according to Article 51 from the Resolution H.C N° 2385 of 17 January, 1924, modified by Article 61 of the Patent Law N° 240/2000, a new model may be protected according to Chapters 1 and 2 of the Patent Law N° 240/2000 provided it is as a patentable invention. Where the new features of the model are distinct from the features of invention, the model may, on request of the inventor, obtain double protection by a patent and a registered design, provided the corresponding fees are paid.

Likewise, in **Tunisia** the accumulation of design and patent rights is possible where the features of the design which constitute its novelty can be separated from the features of the invention. Trademarks cannot be cumulated with designs and copyrights.

In **Israel** an overlap may exist between designs and trademarks and there is some case law about three-dimensional trademarks which indicates certain tendency to design protection. However, design rights and copyrights are mutually exclusive.

In **Egypt** and the **Palestinian Authority** the legislation does not permit the accumulation of rights.

In **Turkey, Syria** and **Morocco** it is not allowed to accumulate patents and design rights for the same subject, whereas such accumulation is possible for trademarks and designs.

In **Algeria** the accumulation of rights is allowed in respect to designs, patents and utility models according

to Article 1 of the Order n° 66 - 86 of 28 April 1966 concerning designs and models.

5. Protection for designs without registration

There is no protection for designs without registration in **Morocco, Tunisia, the Palestinian Authority, Jordan, Algeria, Lebanon and Syria** (Article 87A of the Law N° 8/2007).

Also in **Egypt** designs must be registered. Here, it must be done with the Commercial Registry Authority, Ministry of Trade & Industry (Articles 119-137 of the Law for the Protection of IP Rights).

Also in **Israel** there is no formal protection for a design without registration, however, recent case law has recognized such protection.

In **Turkey**, the Decree Law on Protection of Industrial Designs encompasses the principles, the rules and conditions for the protection of registered designs. For non-registered designs the general provisions prevail (with the specific requirement of proof of exhibition). Namely there is a protection for non-registered designs. However, there are no specific legal provisions in the national legislation concerning the term, conditions, rules and scope of protection for non-registered designs. General provisions apply to literary and artistic work and acts of unfair competition.

1.1.2 International Law

6. IP Treaties ratified by the MP

- Paris Convention (CUP) of 20 March 1883 (last amendment of 28 September 1979): **Jordan, Lebanon, Egypt, Algeria, Syria and Tunisia**
- WTO Agreements (Final Act of the 1986-1994 Uruguay Round): **Jordan, Israel and Lebanon**
- WIPO Convention of 14 July 1967: **Jordan, Lebanon, Alger, Egypt, Syria and Tunisia**
- Patent Cooperation Treaty (PCT) of 19 June 1970 (last amendment on 3 October 2001): **Egypt, Algeria, Israel, Syria, Lebanon and Tunisia**
- Patent Law Treaty (PLT) of 1 June 2000: **Jordan and Lebanon**
- Strasbourg Agreement concerning the International Patent Classification of 7 October 1975 (last amendment of 28 September 1979): **Egypt and Israel**
- European Patent Convention (EPC) of 5 October 1973: **Turkey**
- Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure of 28 April 1977 (last amendment on 26 September 1980): **Egypt, Israel and Tunisia**
- Nice Agreement for the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957 (last amendment on 28 September 1979): **Lebanon, Egypt, Algeria, Syria, Israel and Tunisia**
- Trademark Law Treaty of 1 August 1996: **Egypt and Turkey**
- Singapore Treaty on the Law of Trademarks of 27 March 2006: **Lebanon**
- Madrid Agreement Concerning the International Registration of Marks of 14 April 1891 (last amendment

on 28 September 1979): **Egypt, Syria, Lebanon and Algeria**

- Hague Agreement concerning the International Registration of Industrial Designs (Geneva Act) of 2 July 1999: **Egypt, Tunisia, Syria and Turkey**
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 31 October 1958 (last amended on 28 September 1979): **Tunisia and Algeria**
- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 14 April 1891 (last amended 31 October 1958): **Egypt, Algeria, Lebanon, Syria and Tunisia**
- Washington Treaty on Intellectual Property in respect of Integrated Circuits (not yet in force): **Egypt**
- Nairobi Treaty on the Protection of the Olympic Symbol of 26 September 1981: **Egypt, Algeria, Syria and Tunisia**

Jordan is in the process of accession to the following treaties: the Nice Treaty for Classification of Goods and Services for the Purposes of the Registration of Marks, the International Classification of the Figurative Elements of Marks under the Vienna Agreement, and the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure. The Cabinet has agreed to accede to the above mentioned agreements in November 2007. The Cabinet's approval was followed by a Royal Decree N° 5816 dated November, 2007 to accede to the abovementioned agreements. Furthermore, **Jordan** has amended both the Trademark Law and the Patents of Inventions law in order to accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and the Patent Cooperation Treaty.

The **Palestinian Authority** has not ratified at the moment any of these International treaties.

For **Morocco** and **Turkey** the attachment with the information has not been received.

During 2007 the Council of Ministers (Cabinet) of **Lebanon** has approved to ratify the latest revisions of the CUP, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods and the Nice Treaty for the International Classification of Goods and Services for the Purposes of the Registration of Marks, and has transferred the decrees to the Parliament.

7. Membership of WTO

Turkey, Morocco, Israel, Jordan, Egypt, Tunisia are members of the WTO, and **Lebanon** is member as an observer.

In contrast, **Algeria** and **Syria** are not members of the WTO, but the negotiations have been initiated.

The **Palestinian Authority** is not a member.

1.1.3 Co-operation on IP rights in the MEDA region

8. Specific co-operation regarding industrial property protection

In **Israel, the Palestinian Authority** and **Jordan** there is no general co-operation on IP in the MEDA region.

However, **Egypt** collaborates with **Syria** at the level of their respective National Offices, and with the EPO and WIPO.

In respect to trademark law, **Lebanon** also cooperates with **Syria** (Memorandum of Understanding -

MOU- from 8/12/2004), and with **Jordan** (Protocol from 31/10/2002).

Tunisia has ongoing co-operations with the EPO in Munich, the INPI in Paris, the OMPIC in Morocco, the INAPI in Alger and the National Office in Syria and Turkey. In this country and in **Syria**, these bilateral co-operations are related to the fields of experts training, information, experts exchange and electronic cooperation: for instance, all patent documents were scanned and exchanged with the EPO.

Also **Morocco** has ongoing co-operation with various countries, in particular Tunisia, Turkey, France and Spain. **Syria** has signed cooperation protocols with Tunisia, Egypt, Turkey, Austria and the EPO.

In **Turkey** the TPI is actively managing a project since 2006 for “Technical Cooperation among the Patent Offices of OIC Member States”. The action plan of the project involves a series of workshops and seminars in order to facilitate information exchange between the national experts. The project, however, does not propose establishing a specific “system” for co-operation. The Turkish Patent Institute established an online cooperation and information exchange platform called Ankara Network in 2004. The Network functions on a membership basis. Today, there are 24 member National Offices to the Network including EU Member States such as France and UK. In addition, there are future plans of electronic co-operation with Morocco.

9. Level of legal approximation with other countries in the region

The countries in the region are all aware of the TRIPS Agreement and have made efforts to adapt their laws accordingly. The MP countries strive to apply the TRIPS minimum standards. There is no specific legal approximation with other countries in the region in the **Pales-**

tinian Authority and **Egypt**. But in **Israel** the IP law is similar to British and other common law traditions.

Most of the IP legislations are in conformity with the TRIPS Agreement (for instance, the IP laws in **Tunisia, Syria** and **Morocco**) and, in particular, **Morocco** and **Syria** have a high degree of approximation with other countries of the region. Being a candidate state to EU, the **Turkish** Legislation on Intellectual Property rights is in line with the EU legislation.

1.2 Material Aspects

1.2.1 Patents

10. Duration of protection

In **Morocco, Jordan, Lebanon** (Article 5 of the Patent Law N° 240, 2000), **Tunisia, Egypt** and **Algeria** (Article 9 of the Order N° 03-07, 2003) the duration of the protection is 20 years.

In the **Palestinian Authority** it is currently 16 years, however, in the draft law 20 years are foreseen.

In **Turkey** patents with examination last 20 years, patents without examination 7 years, and utility models 10 years.

In **Syria** one of the major features included in the new draft law for patents and utility models is the extension of the previous 15-year patent term to 20 years from the date of filing the patent application.

In **Israel** the duration lasts 20 years with a possible extension of up to 5 years more for patents on drugs under the following circumstances (established by Article 64 of the Israeli Patent Law (last amendments of 1998 and 2006): the material, the process for its production or the medical equipment was claimed in the

basic patent and this patent remains in effect; the drug is registered in the Register of Medical Preparations (first registration that allows the material to be used in Israel); no extension for the basic patent or material was previously granted; and if the marketing permission was given to the material in the USA, an extension term will be granted only if it was also granted in the USA. The person entitled to obtain this extension is the patent owner or the licensee. The total term of the patent plus the extension should not exceed 14 years from the registration by the Israeli FDA.

11. Substantive conditions of patentability according to your national law

Novelty, inventive step and industrial application in **Morocco, Tunisia, the Palestinian Authority, Egypt, Syria, Jordan** (Article 3 of Patent Law), **Lebanon** (Article 2 of the Patent Law N° 240, 2000), and **Algeria** (Article 3 of the Order N° 03-07, 2003). In **Israel** it is novelty, industrial applicability and inventive step.

In **Turkey**, patentability requires novelty, inventive step and industrial application, but for utility models substantive conditions consists of novelty and industrial applicability.

12. Patentability of computer-related inventions

In **Israel, Lebanon, Syria and Egypt** only hardware can be protected by patents.

Also in **Algeria** computer-related inventions are not patentable (Article 7 of the Order N° 03-07, 2003).

The same is true for the **Palestinian Authority**.

In **Jordan**, according to the definition of an “invention” in Article 2 of the Patent Law, a computer programme that is included in the claims of the “computer implemented invention” can only be patented if it has

a further technical effect that can lend it a technical character. Technical effects include apparent physical effects (further than merely running the electrical current), control of an industrial process, processing data which represents physical entities, and manipulating the internal functioning of the computer (or any other related apparatus) under the influence of the programme. Examples for manipulating the internal functioning of the computer are as follows: improving the efficiency of a process, managing of the required computer resources, enhancing the rate of data transfers in a communication link, etc. As a requirement of Article 3 of the Patent Law, the involved claim can only be in the form of a method for operating a programmable apparatus; an apparatus set up to execute the method; or a description for the programme itself. Since the conditions of Article 3 require that all of the claims must be novel and inventive, sequence listing is not allowed as a part of the claims. In a computer programme novelty and inventiveness are assessed based on its functionality. A sequence listing is only an apparent way to express the computer program. Different sequence listings that execute the same function are neither novel nor inventive, and therefore they are not be mentioned in the claims.

In **Tunisia** computer programmes are protected by copyright.

In **Morocco** computer programmes are not considered patentable inventions, but the law does not exclude computer-related inventions where they related to new applications or a combination of means to achieve a new technical result.

Also, in **Turkey** computer programmes are not regarded as inventions. Thus, patents are not granted where protection is requested exclusively for the computer programmes.

13. Methods for the treatment of a human body

Methods for treatment of a human body are not patentable in **Turkey, Morocco, Tunisia, Jordan, Syria, Egypt, Algeria** (Article 7 of the Order N° 03-07, 2003) also not in **Lebanon** (Article 3 of the Patent Law N° 240, 2000), the **Palestinian Authority** and **Israel**.

14. Specific rules for biotechnological inventions

Biotechnological inventions are ruled in **Jordan** by Article 4 (e) of the Patent Law, and in **Egypt** by Article 13 of the Law for the Protection of IP rights.

In **Lebanon** there are several specific rules. According to Article 8.3 of the Patent Law N° 240, 2000, novel or discovered plant products can be protected provided that they comply with all of the following conditions: the product must be distinguished from all previously known varieties by a rarely changeable specific and important advantage or by several advantages that collectively form a Novel plant variety; homogeneity of advantages; stability i.e. by the end of each production cycle it remains identical to its first definition. If the invention is related to a microorganism or a plant product a sample must be delivered to the central laboratory of the Ministry of Public Health within fifteen days from the day of application which in turn provides the applicant with a numbered and dated evidence of receipt of such sample. The Intellectual Property Protection Authority is to be notified of such action.

In **Turkey**, two specific provisions exist in the national patent law. According to Article 6(3), patents are not granted for inventions in respect of the following subject matters: (a) inventions with subject matter contrary to the public order or to generally accepted moralities; and (b) plant and animal varieties or processes for breeding plant or animal varieties, based mainly on biological grounds. According to Article 46(2), where the invention relates to a microbiological process and

the related micro-organism is not accessible to those interested, the description shall only be deemed to fulfil the requirements specified under the Paragraph one of this present Article provided the following conditions are met: (a) the description contains the information regarding the characteristics of the micro-organism; and (b) the applicant has deposited, no later than the date of filing the application, a culture of the micro-organism with an authorized institution, established in accordance with international conventions.

In **Morocco, Tunisia**, the **Palestinian Authority, Algeria** and **Israel** there are no specific rules for biotechnological inventions.

In **Syria** the new draft law for patents and utility models now accept patents on new plant varieties and micro-organisms.

15. Novelty of an invention and limitations to the prior art

Patentability requires absolute novelty in the invention without a limitation on the prior art in **Algeria** (Article 4 of the Order N° 03-07, 2003), **Turkey, Syria, Tunisia** and **Egypt** (Article 3 of the Law for the Protection of IP Rights).

There are limitations on the prior art in **Jordan** (Article 3 (a) Patent Law), but not in **Lebanon**, where Article 2 of the Patent Law N° 240, 2000 says that inventions are eligible for protection if they are novel, creative and applicable. A patent shall be issued for each invention related to a new industrial product; a new method that leads to the production of a new industrial product or a known industrial result; every novel application of a known industrial method or means; or a new group of known methods or means.

The **Palestinian Authority** does not have a limitation on the prior art.

In **Israel** the principle of absolute novelty applies, but a grace period is given for certain disclosures.

Morocco requires absolute novelty.

16. Unity of invention and combinations of independent claims

Unity of invention is a requirement for patentability in the patent legislations of all the MP countries.

In detail, patentability requires unity of invention in **Jordan** (Article 9 of the Patent Law, and inventions that meet the unity requirement could combine several independent claims in one patent application).

In **Lebanon** Article 9(d) of the Patent Law N° 240, 2000 says that the application may not include more than one invention or a few interrelated inventions forming one general inventive concept otherwise the invention shall be considered a complex invention.

The same holds for **Egypt**.

In **Algeria** a patent shall relate to only one single invention or a plurality of inventions provided the plurality of inventions are inter-related by a single inventive concept (Article 22 of the Order N° 03-07, 2003).

In the **Palestinian Authority** it is not allowed to combine several claims.

Israel, Morocco, Syria, Turkey and **Tunisia** require unity of invention.

17. Grace period

The grace period, i.e. a period before the filing date during which any disclosure of the invention by the inventor or his/her successor in title is not taken into consideration when assessing the novelty of the inven-

tion, is allowed in **Jordan** (Article 3 of the Patent Law), in **Israel, Syria** and **Egypt** (Article 3 of the Law for the Protection of IP Rights), but not in **Tunisia**, the **Palestinian Authority, Lebanon** and **Algeria**.

Morocco and **Turkey** give a grace period of 12 months (6 months for exhibitions).

18. Right to the patent for inventions was made by an employee

In **Jordan** the right to the patent belongs to the employee or to the employer according to the cases established by law (Article 5 of the Patent Law).

In the same line, the Patent Law N° 240, 2000 establishes certain rules in **Lebanon** in Article 6 to determine the right to an invention made by an employee, provided that a more beneficial written agreement is not available: the inventions resulting from an employment agreement which dictates that the employee's job includes inventive functions, researches, studies or testing on behalf of the employer, shall be owned by the employer. All other inventions, shall be owned by the employee. Yet, if the invention took place while the employee was executing his job, or such invention is within the activities of the employer due to information provided by the employer or utilizing of means or technologies related to the employer, then the employer, within one year from publishing the patent in Lebanon, shall be entitled to inform the employee by a written notice of his wish to own the rights resulting from the invention or to partially or totally utilize such for a fair compensation either amicably agreed upon or through a Court of Law.

In **Egypt** the right to the patent belongs to the employer when the invention has been done within the contract or the duty of the employee, notwithstanding moral rights of the inventor.

The same concept applies in **Tunisia** and **Algeria**, where the invention belongs to the employer when it is the results of the execution of the employment contract, except where there is an agreement saying otherwise. However, if the employer renounces to the invention the right falls back to the inventor (Article 17-18 of the Order N° 03-07, 2003). The invention belongs also to the employer when it has been achieved using the means of the employer.

In the **Palestinian Authority** and **Syria** all depends on the agreement between inventor and employer.

In **Israel** the ownership belongs to the employer, who has also the right to be informed about the invention.

If there is no agreement in favour of the employee, in **Morocco** the right to the patent belongs to the employer if the invention results from the execution of a contract which has to include the aim of inventing within his/her effective function or research explicitly specified. All other inventions belong to the employee.

In **Turkey** it may either be the employee or the employer depending on whether the invention in question is a service invention or a free invention as defined in the patent law.

19. Specific rules for inventions made by an employee

There are specific rules in **Jordan** (Article 5 of the Patent Law), **Egypt** (Article 7 of the Law for the Protection of IP Rights), and also in **Lebanon** (Article 6 Patent Law N° 240, 2000) and **Algeria** (Articles 17 and 18 of the Order N° 03-07, 2003 concerning the moral right of the inventor to be mentioned).

In the **Palestinian Authority** there are no specific rules at present, but a newly drafted law will provide for it.

In **Israel** the statutory default rules that the ownership of service inventions vests with the employer unless agreed otherwise. In case of conflict, there are no arbitration proceedings but a hearing before the Commission of Patents.

In a similar way, **Egypt** has an Opposition Committee (three judges and two persons of the working place) for the resolution of disputes, but **Tunisia** has a special Labour Court.

In **Tunisia**, **Turkey** and **Morocco** an entire section of the patent law is dedicated to employee inventions.

In **Morocco**, Article 18 of the Law 17/97 establish several specific rules, such as the obligation of the employee to inform the employer immediately in writing with certified letter about any service invention done by him/her. A team of inventors has to submit a common declaration which can be done by all or by some of them. The employer has a time period of 6 months starting from receipt of the declaration to claim the invention in whole or in part by filing a patent application. Where the employer does not file such an application the invention falls back to the employee. All agreements between employer and employee regarding inventions have to be in writing, otherwise they are invalid.

In **Turkey**, there are three sections in the patent law dealing exclusively with employee's inventions.

1.2.2 Designs

20. Requirements for protection of designs

In **Jordan** the requirements for the protection of a design are the following: it has to be new, i.e. undisclosed to the public anywhere in the world, by any means, including use or publication in a tangible form thereof, irrespective of whether disclosure occurred prior to the

filing, or the priority date of the application for the registration, as the case may be, and in accordance with the provisions of this Law, and it must be independently created. Disclosure to the public of an industrial design or model is not taken into consideration where the disclosure occurred within twelve months preceding the date of filing for registration in the Kingdom, or the claimed priority date of the application, if such disclosure was a result of an act committed by the applicant, or of an unlawful act committed by a third party against the applicant. An industrial design or model that is contrary to public order or morality is excluded from registration.

The requirements for protection in **Lebanon** comprise novelty and creativity (Article 49 of the Law Governing Commercial and Industrial Property issued by Resolution No. 2385/LR of January 17, 1924).

In **Egypt** the requirements are novelty and industrial applicability, but in **Algeria** and **Tunisia** they are novelty and originality (Article 18 of the Order N° 03-07, 2003).

In **The Palestinian Authority** a design must have novelty and industrial applicability for being registered.

In **Israel** the design has to be either new or original as of the date of application, but it could be that the amendments to the law eliminate the requirement of the originality.

In **Morocco** the design has to be new.

Turkey requires that a design is new and has individual character. In addition, the design must be in compliance with the definition of “design” specified in the Decree-Law and must not be contrary to public policy and general accepted principles of morality. These conditions are the same as one requested in the harmonized EU legislation.

The requirements for the protection of a design in **Syria** are novelty and distinctiveness. According to Article 82 of the Law N° 8/2007, the combination of contours and colours appearing on a product in a new and distinct manner different from the designs known before which may give the product a style or a special form that distinguishes it from other similar products either handmade or made through using a computer or machine, including the designs of textiles and other materials, shall be considered as an industrial design. In addition, Article 82 requires for the protection of an industrial model that it is new and distinct from the models known before, and it gives a special shape that can be used for an industrial, professional or handmade product.

21. Designs with technical functions

In **Tunisia, Jordan, Morocco** and **Egypt**, industrial designs or models dictated by technical or functional considerations cannot be registered.

When the same object can be protected either as a design or as a patent, the legislation in **Morocco** gives priority to patent protection.

In **Jordan** the Registrar issues a decision with regard to the technical function on the basis of a recommendation of a technical committee which is formed for this purpose.

In **Lebanon** a design which could be also considered as patentable inventions must be protected by a patent. But when the elements of the novelty of the design are different from the patentable invention, it is possible to obtain double protection as patent and as design for the same object, according to Article 51 of the Law Governing Commercial and Industrial Property issued by Resolution No. 2385/LR of January 17, 1924, modified by Article 61 of the Patent Law N° 240, 2000.

The same principle applies in **Algeria** where double protection is also possible in certain cases.

In a similar way, the accumulation of design and patent rights is only excluded where the features of the design which constitute its novelty cannot be separated from the features of the invention in **Morocco**.

The **Palestinian Authority** does not protect designs with technical function.

In **Israel** a design which is partially functional may be eligible for protection; however the protection does not cover the technical elements.

In **Turkey**, the answer is in general affirmative, however, the technical function itself shall not be deemed to be included in the scope of protection. The scope of protection shall cover only features such as lines, colour, texture, shape, sound, elasticity, material or other characteristics perceived by the human senses of the appearance of the whole or part of a product. Furthermore, the features of appearance of a product which are solely dictated by its technical function are outside of the scope of protection.

22. Designs of component parts of a complex product

A designs of a component part of a complex product which is not visible during normal use of the complex product is not eligible for protection in **Morocco, Tunisia, Syria, the Palestinian Authority, Jordan, Lebanon, and Egypt**.

The situation is not specified in the legislations of **Algeria** and **Israel**.

In **Turkey**, component parts of complex products fall in the scope of protection provided that the requirements of novelty and individual character as set out in the Decree Law are fulfilled.

23. Specific provisions related to designs of spare parts

There are no specific provisions related to designs of spare parts in **Morocco, Tunisia, Israel, the Palestinian Authority, Syria, Algeria, Jordan and Lebanon**.

In contrast **Egypt** has a very detailed regulation in Article 127 of the Law for the Protection of IP rights.

In **Turkey**, there are no specific provisions neither. However, the use of component parts for the purpose of the repair of a complex product so as to restore its original appearance is not considered an infringement of a design right, provided that the public is not misled as to the origin of the product used for repair.

1.2.3 Trademarks

24. Types of trademarks

In **Jordan** the Trademark Law N° 34 for 1999 provides protection for trademarks, service marks, collective marks and notorious trademarks.

In **Israel** and **Egypt** there are trademarks, well-known trademarks, collective trademarks, service marks and certification marks.

Algeria allows protection for trademarks related to goods and services as well as collective trademarks.

The **Algerian** legislation also recognizes the well-known trademarks and the trademarks with notorious reputation.

In the **Palestinian Authority** all types of trademarks are eligible for protection except for sounds and smells.

Also in **Tunisia** protection is granted to trademarks for goods, trade, services as well as collective trademarks. The legislation recognizes certification trademarks, notorious and well-known trademarks, as well as sound trademarks.

In **Morocco** trademark for goods, trade and services are protected provided they are represented graphically. Furthermore, smell marks are allowed under the legislation of 2006 (however, there are no cases yet). The service marks and the well-known marks are recognized by Article 130 Law 17/97, and the collective trademarks are ruled by Article 166 Law 17/97.

Besides the ordinary trademarks, collective marks, guarantee marks, well-known marks are also subject to trademark protection in **Turkey** and **Syria**. In particular, the Law N° 8/2007 distinguishes between collective marks and collective control marks in **Syria**. According to Article 38 of this Law, a collective mark is a mark used to distinguish a product or service for a group of persons belonging to a particular entity with its own legal personality, even if the entity does not have an industrial or commercial establishment. And following Article 39 of the Law N° 8/2007, a collective control mark is a mark intended to be placed on products or services to indicate that an observation or examination process has taken place to those products with regard to their origin, nature, characteristics, method of production or any other characteristic, according to what is stipulated in the instructions to use this mark set by the owners of the registered mark who are engaged in the control and examination procedures.

In **Lebanon**, according to Articles 68 and 70 of the Law Governing Commercial and Industrial Property issued by Resolution No. 2385/LR of January 17, 1924, and Article 70 of the Trademark Law, protection is available for names written in a way which distinguishes them from others, titles, nomenclatures, symbols, stamps, letters. Protruding marks and drawings, small draw-

ings and figures, and, in general, any sign of any kind intended to bring benefit to the consumer, the factory owner and the dealer, by distinguishing between things and showing the identity, source, origin of goods, and the industrial, commercial or agricultural product, or the products of forests and metals shall be considered as trademarks for factories or trade. A trademark can be individual or collective. Professional, regional, agricultural or industrial groupings authorized by the government may acquire a collective mark to guarantee the good manufacture or the origin of their goods or products. Only the members of these groupings will be able to use this collective mark or label, independently of the individual mark that each one of them will be able to have. Note, that the above is a non exhaustive list which could include, for instance, three-dimensional trademarks and service trademarks.

25. Well-known trademarks and the high-reputation trademarks

In **Jordan** the legal system recognises the well-known trademarks and the high-reputation trademarks. The Jordanian Trademark Law No. (34) for 1999 prevents protection for any trademark that is identical or similar to, or constitutes a translation of, a well-known trademark for use on similar or identical goods to those for which that one is well-known for and whose use would cause confusion with the well-known mark, or for use of different goods in such a way as to prejudice the interests of the owner of the well-known mark and leads to believing that there is a connection between its owner and those goods. They are also recognized in **Turkey, Morocco, Tunisia, Israel, Algeria, Lebanon, Egypt** and **Syria** (Chapter VI of the Law N° 8/2007). In the present law of the **Palestinian Authority** they are not recognised, but in the draft law yes.

Well-known trademarks are those defined by the national Office in **Turkey**. There is no examination *ex officio* unless the trademark is registered as a well-

known trademark. In this case the trademark must fulfil certain requirements related to public survey, promotional budget of the enterprise, etc. Actually there are around 12000 well-known trademarks accepted by the Office.

Lebanon follows the WIPO recommendations for notorious trademark, and in certain cases the national Office is doing research in the corresponding industrial sector. The draft law dedicates some specific articles to rule notorious trademarks.

The applicant must prove the well-known trademarks in **Tunisia**, but it can only be opposed by the holder of the previous trademarks. Also there is some survey of the notorious trademarks by asking to the consumers.

The law only recognizes renowned trademarks in **Israel**, and there is no obligation to register it. But when a renowned trademark is registered, it is automatically registered for all classes and goods.

In **Morocco** there are some difficulties at the national Office and at the Courts to apply the conditions to establish when the trademark is well known because the jurisprudence contemplates different criteria based on certain indications like marketing and publicity, proof of selling at the market, etc.

26. Requirements for two-dimension and three-dimensional trademarks

The requirements for trademark protection apply in the same way for two-dimension and three-dimensional signs in **Turkey, Morocco, Tunisia, Israel, Algeria, Jordan, Syria, Lebanon, Syria and Egypt**, but not in the **Palestinian Authority**.

27. Protection of sounds as trademarks

Sounds are not eligible for protection as trademarks in **Jordan** (trademarks must be visually perceptible in order to be registered), the **Palestinian Authority, Syria, Algeria and Egypt**.

In **Lebanon** Article 2(c) of the new project of Trademark Law allows this possibility.

In **Israel** sounds may be registered as trademarks provided they can be represented graphically.

In **Turkey, Tunisia** (examples are given in the legislation) and **Morocco** (Article 133 of the Law 17/97) the sound is eligible for protection.

28. Influence of distinctive character on scope of protection

In **Jordan** and **Syria** distinctiveness is a basic requirement of registration, which grants the trademark a full legal protection.

The same is in **Lebanon** (Article 107 Trademark Law), where the signs have to be distinctive by their own nature. In case of imitation, the Courts shall consider the consumer point of view about the existing similarities between the signs, more than the differences.

The influence of the distinctive character of a trademark in its scope of protection is ruled in **Egypt** in Article 63 of the Law for the Protection of IP rights.

In the **Palestinian Authority** and **Algeria** it is not specified.

In **Israel** there is no such influence for the purpose of infringement.

In **Tunisia** it is specified only that non distinctive signs do not have a scope of protection.

In **Morocco** the scope of protection is stronger when the distinctive character is higher.

The Decree Law concerning the trademarks in **Turkey** states that a sign must have a distinctive character to be protected as a trademark. And it can be pleaded in favour of the trademark holder before the TPI during the examination processes that it is a highly distinctive trademark.

29. Influence of graphical representation on scope of protection

In **Jordan**, the Register takes into account the extent and geographical area of any promotion, registration and applications for registration of the mark when deciding that the mark is well known.

Lebanon follows Article 5 of the CUP, which indicates that when the distinctive character of a trademark is in its graphical representation, its reputation will determine the scope of protection.

In **Egypt** the graphical representation of a trademark influences its scope of protection when it misleads or confuses to mislead the public (Article 67.8 of the Law for the Protection of IP rights).

Similar terms are established in the legislations of the other MP countries.

In **Morocco** the notoriously known trademark enjoy stronger protection according to the CUP.

In **Turkey**, graphical representation of a trademark can influence the scope of trademark protection and the practice of well-known trademarks, such as Nike's "Swoosh", applies.

30. Proof of use for trademarks

There are no requirements for the proof of use of a trademark in the Trademark law in **Jordan** for the registration, but afterwards there is a period of three years for the genuine use of the trademark or otherwise it may be cancelled.

The same is true for **Morocco** under the Law of 17/97 and in **Lebanon**, but the period is five years. In addition, prior use rights are ruled in Article 74 and 75 of the Law Governing Commercial and Industrial Property issued by Resolution No. 2385/LR of January 17, 1924 in **Lebanon**. According to Article 74, if a trademark legally filed does not cause an acknowledged true objection within the five years period following the filing, it shall not be possible to object afterwards to the first depositor concerning the right of ownership of this trademark due to the precedence of its use, unless it is proved in written deeds that the depositor was not ignorant or unaware at the time of effecting the filing that the trademark belonged to the person who used it first. In addition, Article 75 indicates that any person who proves, after the lapsed of the five years period mentioned above, that he has freely and continuously used the trademark prior to the filing, may keep that right of use but for the period of fifteen years only, starting from the date of filing. This right of use may be transferred with the transfer of the commercial establishment. The owner of this right may, in order to maintain it, raise a legal claim for unfair competition.

The requirements for the proof of use of a trademark are ruled in **Egypt** in Article 65 of the Law for the Protection of IP rights.

In **Algeria**, there has to be a proof of use before renewal of the trademark.

In the **Palestinian Authority** the trademark has to be used for the goods and services for which it is registered.

In **Israel** trademarks must be used within three years in order to remain validly registered. The requirements are to be decided on a case by case basis.

In **Tunisia** the owner has to use a trademark within five years and the burden of proof lies on his/her side.

In **Turkey**, the requirements for the proof of use of a trademark can be documents such as invoices, official documents concerning the trademark, publications, in order to demonstrate the use of the sign as a trademark. It must be a genuine use of the sign in relation to the goods and services in at least one class for which the trademark is registered.

The same is true for **Syria** but in addition Article 7 B) of the Law N° 8/2007 indicates that the party registering a mark shall be considered the owner of this mark when the registration is accompanied by proof of use during the five years following registration unless it is proved that the priority of use was the right of another party. The party who used the mark earlier may, during the said five years, contest the validity of the registration of the mark in name of other party. However, contesting the validity of the registration of a mark without abiding by any period when the registration was made is considered bad faith.

1.3 Formal Aspects

31. Substantive examination of patents before grant

Patents are subject to substantial examination before grant in **Tunisia, Israel, the Palestinian Authority, Jordan, Egypt** and **Syria**, but not in **Morocco, Algeria** and **Lebanon**.

In **Turkey**, there are two types of patents: with and without substantive examination. For patents without substantive examination and upon a request before the expiry of the protection period (seven years from the filing date), a substantive examination may be carried out. Utility models are not subject to substantive examination.

32. Publication of patent applications before grant

Patent applications are published before the grant of the patent in **Tunisia, Israel** and the **Palestinian Authority** and also in **Egypt** where there are three types of publications regarding patent and utility model applications: publication of the patent application, publication of its acceptance and publication after grant of the patent together with the bibliographical data.

In **Turkey**, patent applications are published 18 months from the date of filing or the priority date. Upon a request for early publication, a patent or a utility model may be published even before the above-mentioned period.

Patent applications are not published before the grant of the patent in **Morocco, Algeria, Syria** and **Lebanon**.

In **Jordan** there is a preliminary acceptance of the patent application which is published before the grant of the patent.

33. Post- grant/ post-registration examination of patents and designs

In the **Palestinian Authority** and **Egypt** there is a post-registration/post-grant examination of patent and designs. In Egypt an opposition may be filed before a committee of three experts from the Egyptian Patent Office (in this case the time for opposition proceedings is shorter) or before the courts.

The same is true for **Israel** where a pre-grant opposition or invalidity procedure for patents may be filed before the Patents Authority or the courts (appellations before High Court). For designs only invalidity procedures are available.

In **Jordan**, opposition is allowed after the grant of the patent within a 3-month period.

With respect to patent opposition, the draft new Law for Patents and Utility Models in **Syria** will give a period of 90 days from the date of publishing the acceptance of the patent application in the Property Protection Journal, during which any third party may oppose the patent.

In **Morocco, Syria, Algeria** and **Lebanon** there is no post-registration/post-grant examination of patents or designs, but it is allowed to request invalidity before the courts.

In **Tunisia** there is a period of two months after publication of the patent application for filing an opposition. Furthermore, third parties may initiate cancellation actions before the courts. For designs only invalidity procedures are possible.

Regarding patents, in **Turkey** the opposition procedure takes place before the grant before the Turkish Patent Institute and invalidity proceedings may be instituted after the grant before national courts. Regarding designs, there is a post-registration opposition and invalidity procedure. Natural or legal persons or related professional organizations may file an opposition with the Institute claiming the cancellation of a registered design within 6 months after publication of the design. Alternatively, an action for invalidity may be brought to a Turkish court at any time during the lifetime of the registered design. The cancellation by the Institute and invalidation by a Court produce the same effects.

34. Fee reduction for small and medium-sized enterprises

There is a fee reduction for small and medium-sized enterprises in **Egypt** where the new Law N° 82/2002 for the Protection of IP Rights also establishes certain fee reductions for individual applicants and research centres.

But there is no general fee reduction for small and medium sized enterprises in **Turkey, Tunisia**, the **Palestinian Authority, Israel, Algeria, Syria** (only for students and individual applicants), **Jordan** and **Lebanon**.

In **Turkey** there are agreements between the Government and some public institutions for financing patent applications under certain conditions.

Also in **Morocco** there is no general reduction for small and medium sized enterprises, however, natural persons benefit from a 75% reduction of fees.

35. Foreign filing license

In **Egypt** the applicants need a foreign filing license, i.e. a specific permission before they are allowed to file a patent application in foreign countries.

In **Israel** and **Algeria** this specific permission is required only when the invention is connected with defence or strategic matters.

In **Morocco, Jordan, Tunisia**, the **Palestinian Authority, Syria** and **Lebanon**, applicants do not need specific permission before they are allowed to file a patent application in foreign countries.

In principle, **Turkey** does not foresee a foreign filing licence. However, where an invention is made in Turkey and it is subject to provisions regarding term and conditions for keeping under secrecy (secret patent),

no application for a patent can be filed, in any foreign country, for the said invention, without the permission of the Turkish Patent Institute and before the expiry of a time-period of two months from the date of filing of the application for patent before the Institute. Permission to file an application in any foreign country shall not be issued without the specific authorization of the Ministry of National Defence.

36. Substantive examination for trademarks

The Trademark Registration Section at the IPPD examines trademark applications in order to check absolute and relative grounds of refusal in **Jordan**.

Also in **Algeria** (Article 7 of the Order N° 03.06) and **Egypt** trademarks are examined in terms of their configuration, their ability to distinguish a good or a service by visual perception.

In **Lebanon** there is no substantial examination in the trademark registration because it is a deposit system (Article 49 of the Law Governing Commercial and Industrial Property issued by Resolution No. 2385/LR of January 17, 1924), but the Boycott Department checks whether the trademark applicant is included in a black list database. When this is the case, the application is rejected. If not, the procedure continues by certain examination of seniorities done by the Lebanese National Office. This examination is not established by law, but is done for simplifying the later work of the judges. First there is a formal examination and later follows a search for earlier rights, with the subsequent issue of a certificate of registration and the publication of the registration. Trademark applications are the major work of the National Office. An opposition system will be introduced by the new draft law in the future.

No substantive examination is foreseen in the **Palestinian Authority**.

In **Israel** marks are examined before registration on absolute and relative grounds.

In **Turkey** and **Tunisia** the trademarks are examined on absolute grounds before registration.

In **Morocco** there is no substantive examination at all.

In **Syria** the Directorate shall examine the application and accompanying documents to ensure the availability of legal requirements set forth in the Law N° 8/2007 and its Implementing Regulations. The procedural requirements may be completed during a period of 6 months from the date of the application, excluding payment of the fees where a delay fine shall be paid for each month. The application lapses in the event of failure to complete the required conditions before the expiry of the mentioned period (Article 22).

37. Substantive examination *ex officio* for designs before registration

In **Egypt** there is a substantive examination *ex officio* of a design before registration, but in **Syria** only upon request.

In **Israel** there is a substantive examination too, and also in **Jordan**, where the Industrial Designs & Models Registration Section at the IPPD examines design applications in order to check whether the designs are new and do not contain any technical feature.

In **Lebanon** there is no substantial examination for designs because it is a deposit system (Article 49 of the Law Governing Commercial and Industrial Property issued by Resolution No. 2385/LR of January 17, 1924).

In **Algeria, Morocco** and the **Palestinian Authority** there is no such substantive examination, only in relation of public order matters.

In the same way, the Office in **Tunisia** verifies that the design is not contrary to public policy and morality.

In **Turkey**, the only substantive examination carried out *ex officio* by the Institute before registration is the examination on the compliance of the designs subject to registration with the design definition specified in a Decree-Law.

Substantive examination procedures of designs in **Syria** are applied upon renewal or enforcement of the right. The Directorate decision to reject renewal may be appealed before the concerned court under the conditions established in article 95 b) of the Law N° 8/2007. In addition, according to Article 94 of the same Law, each person may request the Directorate in writing to review the registered designs, and may also obtain data or extracts thereof or of the entries and other effected commercial actions.

38. Durations of the registration procedures for designs and trademarks?

The average duration is 6 months in **Syria** and **Jordan** (3 more months in case of opposition procedures), and in **Egypt** between 9 months and 1 year.

In **Lebanon** the average duration for a design registration is 7 days, and for a trademark registration is maximum 15 days for delivery of the certificate of registration (Article 83 of the Law Governing Commercial and Industrial Property issued by Resolution No. 2385/LR of January 17, 1924). The administrative procedures have been shortened to 7 days.

In **Algeria** it is less than 1 year after filing.

In the **Palestinian Authority** it takes around 12 months for trademarks and 1 month for designs.

In **Israel** it lasts in average 9 to 18 months depending on whether there is a need for an office action.

In **Tunisia** it is around 1 month for designs and 14 months for trademarks (12 months for the publication of the trademark application, and 2 more months in case of opposition procedures).

In **Morocco** the design registration procedure lasts 48 hours, whereas the trademark registration takes 3 months (2 months for the publication of the trademark application, and between 1 and 6 months more in case of opposition procedures).

In **Turkey**, the average duration of the registration procedure for a design is one month provided that there are no deficiencies concerning the formal requirements. In case of existence of deficiencies that should be remedied within two months, the average duration of the registration procedure tends to extend to three months. Concerning the trademarks; the examination period is about 4 months for the applications and the registration period is about 8 months.

The duration of the protection of a registered trademark is 10 years plus renewal in **Jordan, Israel, Algeria, Tunisia, Egypt, Syria** and **Morocco**.

In Turkey the protection is for 5 years, plus 5 years of renewal, in The Palestinian Authority it is for 7 years plus periods of renewal of 14 years.

In **Lebanon** the applicant could select the duration of the trademark protection between 30, 45 and 60 years by paying the corresponding fees, or 15 years plus a renewal for 60 years.

2. INSTITUTIONAL DEVELOPMENT

38. Continued education for officials of the IP Authority

There is no continued education (training) programme for officials of the IP Authority in **Jordan**, but in **Lebanon** these programmes are carried out with the assistance of WIPO or the USPTO.

Also in **Egypt** there are programmes with the Egyptian Patent Office, Universities, EPO, USPTO and the WIPO, and there are plans for carrying out a workshop for researchers about the importance of IP rights.

In **Tunisia** and **Algeria**, the officers in charge are trained regularly by WIPO with the cooperation of the European Patent Office. Furthermore, there are national seminars about subjects of IP.

No such programmes exist in the **Palestinian Authority**, but **Israel** and **Morocco** do have these programmes. The national Office in Morocco has training courses on IP for the officers, programs with WIPO and EPO and participates in courses at the Universities.

In **Israel** these training courses are organized by the Ministry of Justice.

In **Turkey**, the TPI's policy is to provide continued education opportunities to its examiners. Two main partners in this respect are the World Intellectual Property Academy and the European Patent Academy. The programs are often in line with the curricula of these institutions. Meanwhile, any other opportunities, national or international likewise, are monitored although not according to a specific programme prepared for the purpose. This country also participates with the EU in a Twinning Programme related to training management systems.

39. Requirements for being a legal representative

In **Jordan** the requirements are established by the Patent Law and its implementing regulations (Article 31 Jordanian Patent Law and Articles 52-56 of the Jordanian Patent Regulations).

In **Lebanon** there are certain requirements in Article 8 of the Patent Law N°240/2000, and a non governmental association for the inventors.

The institution controlling the profession of patent practitioners (attorneys at law with a specific certificate) in **Egypt** is the Egyptian Patent Office at the Academy of Scientific Research and Technology in Cairo.

In **Algeria**, the legal representatives must have a University degree in Law or alternatively in a technical subject together with at least 5 years experience in IP matters.

In the **Palestinian Authority** there is no institution controlling the profession of patent practitioners, but they must have a University degree with a MBA.

In **Israel** only registered patent attorneys (they must be nationals with a degree in Science and they must pass certain examinations), and attorneys at law may represent in IP matters.

In **Tunisia** and **Morocco** there are presently no specific requirements, but they both prepare some regulations under the new draft laws.

In **Turkey**, the conditions are: being a citizen of the Republic of Turkey; residing in Turkey; having no criminal records; having an undergraduate degree; being successful in the Proficiency Examination carried out by the TPI; and having professional liability insurance for an amount specified by the TPI. There is an assurance system which covers patent attorneys.

In a similar way, in **Syria** a registration agent profession is permissible only to a person whose name is entered in the Commercial and Industrial Registration Agents Register. In addition the agent must: be a Syrian national having a University degree; not sentenced in any crime related to honesty or public ethics; practice his profession in qualified office; and pay the due fees (Article 144 Law N° 8/ 2007).

40. Teaching of IP rights at universities and other institutions

In **Jordan** the universities teach intellectual property as an elective course at the undergraduate bachelor's level, and a Master Course on intellectual property has been launched in 2002. Furthermore, Abu Ghazaleh Intellectual Property Institute in cooperation with German universities has also started an IP Master Course in the year 2006.

In **Lebanon** there is specific teaching on IP only at certain private Universities and post-graduation programs similar to LL.M. (Diploma on Higher Studies).

In **Egypt** there is teaching on IP at the Cairo University and Helwan University.

In **Algeria**, the law students take part in a module about IP in their 4th year. Related Masters, Doctoral Theses and specialized courses are made on a regular basis in the Faculty of Law for attorneys at law and also for technicians.

In the **Palestinian Authority** IP is not taught at the Universities, whereas in **Israel** it is.

Tunisia offers a special Master degree at the faculty of Law and Political Science of the University of Tunis. Furthermore, there are special courses dedicated to IP matters.

There is also teaching of IP matters at the Universities in **Syria** and **Morocco** in the framework of other studies or as a specific Master.

In **Turkey** there is a Master on IP rights at the University of Istanbul, and a Certification Programme similar to an LL.M. at the University of Ankara.

41. Competence for ruling on infringement actions

In **Tunisia**, **Israel**, the **Palestinian Authority**, **Algeria**, **Jordan** there are no specific courts available for ruling on infringement actions related to IP rights.

In **Lebanon** the infringement actions are filed at the Trade Courts.

In **Egypt** infringement actions must be filed at the Civil, Criminal and Administrative Courts.

In **Morocco** infringement proceedings are part of a civil action before the trade Courts or within the scope of penal proceedings.

Specialized intellectual property courts exist in **Turkey** and are competent on infringement actions related to intellectual property. However, in a region where the above-mentioned specialized courts do not exist, specific civil courts in that region are competent.

In **Syria** the Court of First Instance is competent to review all disputes and civil lawsuits pertaining to IP rights. The competent chamber of the Court of First Instance in Damascus shall review all appeals in verdicts issued by the Directorate and the competent Committee, excluding other administrative courts (Article 119 Law 8/2007).

42. Non-governmental organizations dealing with IP rights

In **Jordan** there is the Jordanian Intellectual Property Association (JIPA).

In **Morocco, Tunisia, the Palestinian Authority, Algeria** and **Egypt** there are no non-governmental organizations dealing with intellectual property rights.

In **Lebanon** there is the Lebanese Intellectual Property Association.

In **Israel** there are voluntary organizations, such as the Israel Patent Agents Association and a local chapter of AIPPI.

In **Turkey**, there is FISAUM as a non-governmental organization dealing with IP rights, and also the Center for Research & Implementation of IP rights of the University of Ankara.

There are two private associations in **Syria**.

43. International developments and case law in the field of IP

In **Jordan** it is the Industrial Property Protection Directorate at the Ministry of Industry & Trade, and the Ministry of Culture (National Library) which is in charge of the international developments and case law in the field of IP.

In **Lebanon** it is the Ministry of Economy & Trade and in **Egypt** there are three different Ministries and legal departments at each official office which work with IP.

The situation is not specified in **Algeria**.

In the **Palestinian Authority** it is the Ministry of National Economy and the Ministry of Culture.

In **Israel** the Ministry of Justice and the Patent Office are in charge.

In **Tunisia** INNORPI and the Patent Office are in charge.

In **Morocco** it is the Moroccan Office for the Industrial and Commercial Property (OMPIC) who is in charge.

With respect to industrial property issues, the **Turkish** Patent Institute is in charge of following international developments and case law. There is a Directorate in **Syria** for IP matters.

44. Access to information and training in IP for customs authorities

In **Israel, the Palestinian Authority, Algeria, Jordan, Lebanon** and **Egypt** the customs authorities have access to information and training in the field of intellectual property.

In **Tunisia** some 100 customs officers have been trained in 2006 in IP law and corresponding customs measures in order to increase their awareness and skills in fighting product piracy.

Access is also given in **Turkey** and **Morocco**, where the Law 17/97 for Intellectual Property establishes the possibilities of action for the customs authorities.

In **Lebanon** border measures are ruled in Article 57 to Article 66 of the Customs Law of 15 December 2001. In particular, Article 63 indicates that it is strictly forbidden to import, transit, transport, export or re-export all products bearing false trademarks or labels or commercial descriptions which benefit from legal protection in Lebanon according to the provisions of the CUP; all products bearing false marks of origin, or marked or labelled directly to indicate that they were produced or originated in one of the countries members of the Ma-

drid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891 (last amended October 31, 1958); and all products inconsistent with the conditions prescribed in agreements, laws and regulations pertaining to the Protection of the Intellectual Property. The violations or attempted violations of the provisions or Article 63 are judged by ordinary courts in charge of civil cases. However, the customs administration should be in charge of setting the action in motion by submitting the proceeding of seizure to the Intellectual Property Office charged with notifying the damaged party (Article 66 of the Customs Law)

45. Means and resources available to the search for prior art and case law

In **Jordan** free databases for the search for the prior art of patents are available.

Syria and **Lebanon** also provide for databases (public web pages) for the search of prior art, and the case law is available in the jurisprudence journals.

Egypt uses the databases from WIPO and Egyptian databases.

The situation is not specified in the **Palestinian Authority**.

Tunisia and **Israel** offer online and patent office databases.

In **Morocco**, the OMPIC has a website (www.ompic.ma) where all the information regarding IP titles and case-law in opposition matters is published.

The INAPI in **Algeria** offers a similar website (www.inapi.org).

In **Turkey**, with respect to prior art search, such means/resources are an Internal database including national patent/utility model applications, the EPOQUE patent query software, and free patent search tools and patent information, as well as non-patent literature, available on the internet. With respect to case law such means/resources are the decisions of the Re-examination and Evaluation Boards, and the decisions of the national courts.

46. Online access to the publications of patents, trademarks and designs

In **Jordan** there is only free online access to patent publications and to all registered trademarks, provided by the Ministry of Industry and Trade website.

In **Lebanon** there is free access on line to the Official Journal (www.pcm.gov.lb).

In **Egypt** there is access to WIPO database and Espinet.

In **Algeria**, trademarks may be searched in the web (www.inapi.org). However, granted patents can only be searched in the Official Bulletin.

No such access is available in the **Palestinian Authority**.

In **Israel** such access exists only for trademark registrations.

In **Tunisia** related preparatory work is still in progress.

In **Morocco** the publications are accessible at the website of the OMPIC (www.ompic.ma).

Such access is also available in **Turkey** and **Syria**.

3. NEEDS FOR CAPACITY BUILDING IN THE NATIONAL OFFICES

47. Name and address of National IP Offices Ministries

See Table II

48. Position of the National Office in the Ministry structure

See Table II

49. Financial autonomy of the National Offices

In **Jordan** (Industrial Property Protection Directorate) the National Office has no financial autonomy. The Ministry of Finance allocates sums to the Ministry of Industry & Trade, which shall be divided later among concerned directorates.

In **Egypt** the office is financed by the government budget.

Also in the **Palestinian Authority, Algeria, Lebanon** and **Syria** the national office has no financial autonomy. In **Syria** the Directorate shall establish a fund to deposit all funds and values prescribed in the Law N° 8/ 2007 and the implementing regulations in favour of this Directorate in exchange of covering expenses of publishing, printing and other such services to depositors. Shareholding is established to the fund, and thereto added to the Ministry of Economy and Trade internal system. The Director is thereto regarded as the fund cashier, whereby the funds are cashed to the Directorate and its staff.

However, in **Israel** the Patents Authority maintains its own budget and uses income generated from fees.

In **Tunisia** INNORPI is a non-administrative public institution which does not receive subventions from the State, so it is self-financed.

The National Office is also autonomous and self-financed in **Algeria**.

In **Morocco**, OMPIC is a self-financed institution, and its main source of income is supplied by the fees paid by the applicants.

Finally, the Office is autonomous in **Turkey** in terms of balancing the regular expenditures with its income. Investments, however, require the prior approval of the Ministry.

50. Electronic system for submitting IP applications

Such a system does not exist in **Tunisia, Algeria, Syria, Jordan**, and also not in **Lebanon** until the new Law for the e-commerce is launched. But all information and application documents are available for consultation at <http://www.economy.gov.lb>.

In **Egypt** the national office will provide soon an electronic system for national and PCT applications in co-operation with USAID (pre-e-filing system for attorneys). The **Palestinian Authority** provides a limited system. In **Morocco** and **Israel** trademarks may be filed electronically. In **Turkey**, applications may be filed electronically for patents, trademarks, and industrial designs by using electronic and mobile signature.

51. Electronic systems for submitting other requests in relation to IP rights

The Ministry's website provides status information, publication forms of Official Gazettes, and any other information needed for registration (i.e., assignments forms, payment of fees. etc.) in **Jordan**.

This electronic system for submitting other request via internet in relation to IP rights exists in **Egypt**, but not in **Tunisia**, the **Palestinian Authority**, **Syria**, **Algeria**, and **Lebanon**.

The Office in **Israel** is in the process of becoming “paperless”.

Morocco provides a number of online services (consultation of legal status, official publications and payment of fees).

In **Turkey**, the status of any applications being processed within the office can be monitored electronically. However, any other requests regarding amendments in the register (change in address, ownership, etc.) need to be made to the Office in written form.

52. Programme for exchange of officials

This programme does not yet exist in **Tunisia**, the **Palestinian Authority**, **Algeria**, **Syria**, **Jordan** and **Lebanon**.

A programme as such does not exist either for **Turkey**, however, a Twinning Project recently approved by the EU Commission incorporates exchange of experts for the purposes of providing trainings and internships.

The programme does exist in **Morocco** and **Egypt**, whereas in **Israel** it is on an ad hoc basis only.

53. Regular contacts with IP Authorities outside the EU

In **Jordan** the Industrial Property Directorate has regular contacts with USA and Japan, and in **Lebanon** with the WIPO and the USPTO, but in **Syria** only with WIPO.

Egypt has regular contacts with IP Authorities outside the EU.

Tunisia and **Algeria** have a programme of staff training in the USPTO.

Morocco also collaborates with the USPTO, but no such contacts exist in the **Palestinian Authority**.

Israel has regular contacts to the USA.

The TPI of **Turkey** follows an international policy to maintain close relations with all the patent offices around the world.

54. European or International meetings and conferences

These meetings are not attended by delegates on a regular basis from the **Palestinian Authority** and **Jordan**. However, **Algeria**, **Lebanon**, **Syria** and **Egypt** participate regularly in meetings and conferences from the WIPO and the EU. **Tunisia** and **Israel** also attend meetings of WIPO. Delegates from **Turkey** and **Morocco** participate in such meetings.

55. Influence of EU legislation

Officials at the Industrial Property Protection Directorate in **Jordan** exchange information with EU experts, and review the best practices at the European Commission in respect of the protection of IP rights.

In **Lebanon** the EU legislation has rather influence through the new Law for Geographical Indications, approved by the Council of Ministries on May 2007 and submitted to Parliament in August 2007; and through the project of Law for Trademarks, Designs and Industrial Models approved by the Council of Ministries on October 2007 and submitted to Parliament in November 2007.

The EU legislation has also influence in **Egypt** and **Syria**, who are trying to make their legislations compatible with it.

For **Algeria**, the EPO is doing the search report for international patent applications.

The **Palestinian Authority** specifies that there is no such influence.

In **Israel** EU law is taken into consideration when drafting new law.

Tunisia has made its legislation in accordance to the TRIPS Agreement. **Morocco** has an ongoing exchange of experience with the EU.

The **Turkish** legislation is being harmonized with the relevant EU legislation. In areas where the harmonization is completed, implementation and jurisdiction are supposed to be fully in line with the EU *acquis*.

56. Plans for associating with the European Patent Organization

For **Jordan** the Twinning Programme with the European Commission to support the implementation of the EU-Jordan Association Agreement Programme has provided training to the Jordanian Patent Office at the German Patent Office. Furthermore, the European Patent Office offers training programs under the international cooperation project for “Africa & Middle East” to the Jordanian Patent Office.

There are no perspectives in **Lebanon** to associate with the European Patent Organization.

Tunisia, **Israel** and the **Palestinian Authority** do not have any plans in this respect, but **Syria** is planning to associate with the European Patent Organization in

the future. Turkey is member of the European Patent Organization since 2000.

4. OTHERS

57. Other characteristics of the national IP systems of interest

In **Lebanon** the fight *ex officio* against IP rights infringement has certain characteristics because the IP laws insist in the role of the national office in the fight against infringement, giving a leading position to the authorities in this aspect: the persons who identify and take samples of the products can not operate without the permission of the National Office (Office for the Protection of the Intellectual Property) or the permission of a procurator (Article 22 of the Resolution 2385/1924, Article 92 of the Law 75/1999 and Article 52 of the Patent Law 240/2000). The officers are cited by the customs authorities or by the police as entitled persons to stop the infringing merchandise. The importance of the national office is double. For clarifying the important power given to the officers, the Law declares in addition that they have real “police powers” for the application of the IP rules. Once the seizure is done, a report is given to the owner of the seized goods. All this procedure cost about 100 000 LBP.

TABLE 1 - Legislation

JORDAN	<p>TRADEMARK LAW No. (33) OF 1952, AMENDED BY TRADEMARK LAW No. (34), 1999.</p> <p>PATENTS AND DESIGNS LAW No. (22), 1953, SUBSTITUTED BY THE PATENTS OF INVENTIONS LAW No. (32), 1999, AND ITS AMENDMENTS BY TEMPORARY LAW No. (71), 2001.</p> <p>INDUSTRIAL DESIGNS & MODELS LAW No. (14), 2000</p> <p>GEOGRAPHIC INDICATORS LAW No. (8), 2000</p> <p>UNFAIR COMPETITION & TRADE SECRETS LAW No. (15), 2000 (DRAFT OF A GENERAL UNFAIR COMPETITION LAW IN COORDINATION WITH TRIPS)</p> <p>LAW FOR THE PROTECTION OF INTEGRATED CIRCUITS DESIGNS LAW No. (10) 2000. PROTECTION OF NEW VARIETIES OF PLANTS LAW No. (24), 2000.</p>
LEBANON	<p>LAW GOVERNING COMMERCIAL AND INDUSTRIAL PROPERTY (EXCLUDING COPYRIGHT & PATENT PROVISIONS). ISSUED BY RESOLUTION No. 2385/LR OF JANUARY 17, 1924, AMENDED BY THE LAW ISSUED ON DECEMBER 31, 1946 (TRADEMARKS, DESIGNS AND INDUSTRIAL MODELS)</p> <p>PATENT LAW N° 240 /2000</p> <p>DRAFTED NEW LAWS: GEOGRAPHICAL INDICATIONS LAW, TRADEMARK LAW, INDUSTRIAL DESIGNS LAW</p> <p>IMPLEMENTING DECREE ON COLLECTIVE MANAGEMENT (MINISTRY OF CULTURE, DECREE N° 918 OF NOVEMBER 15, 2007)</p> <p>HTTP://WWW.ECONOMY.GOV.LB/MOET/ENGLISH/PANEL/IPR/LEGISLATION/</p>
EGYPT	<p>LAW N° 82/2002 FOR THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS (PATENT AND UTILITY MODELS, LAYOUT-DESIGNS FOR INTEGRATED CIRCUITS, AND UNDISCLOSED INFORMATION, MARKS, TRADENAMES, GEOGRAPHICAL INDICATIONS AND INDUSTRIAL DESIGNS, COPYRIGHT AND RELATED RIGHTS, PLANT VARIETIES).</p>

ALGERIA	<p>ORDER N° 66 - 86 OF 28 APRIL 1966 CONCERNING DESIGNS AND MODELS</p> <p>ORDER N° 03 - 06 OF 19 JOUMADA EL OULA 1424 (19 JULY 2003) CONCERNING TRADEMARKS</p> <p>ORDER N° 03-07 OF 19 JOUMADA EL OULA 1424 (19 JULY 2003) CONCERNING PATENTS</p> <p>ORDER N° 03-08 OF 19 JOUMADA EL OULA 1424 (19 JULY 2003) CONCERNING THE TOPOGRAPHY OF INTEGRATED CIRCUITS</p> <p>EXECUTIVE DECREE N° 05-275 OF 26 JOUMADA ETHANIA 1426 (2 AUGUST 2005) FIXING THE MODALITIES OF THE FILING AND SUBMISSION OF PATENTS.</p> <p>EXECUTIVE DECREE N° 05-276 OF 26 JOUMADA ETHANIA 1426 (2 AUGUST 2005) FIXING THE MODALITIES OF THE FILING AND REGISTRATION OF TOPOGRAPHIES OF INTEGRATED CIRCUITS.</p> <p>EXECUTIVE DECREE N° 05-277 OF 26 JOUMADA ETHANIA 1426 (2 AUGUST 2005) FIXING THE MODALITIES OF THE FILING AND REGISTRATION OF TRADEMARKS.</p> <p>EXECUTIVE DECREE N° 66-87 OF 28 APRIL 1966 REGARDING THE APPLICATION OF THE ORDER N° 66 - 86 OF 28 APRIL 1966 CONCERNING DESIGNS AND MODELS.</p> <p>DRAFT LAW ON MICRO-ORGANISMS.</p>
THE PALESTINIAN AUTHORITY	<p>TRADE MARKS LAW No 33 , 1952</p> <p>PATENT AND DESIGNS LAW No 22 , 1953</p>
ISRAEL	<p>PATENT LAWS OF 1967 (LAST AMENDMENTS OF 1998 AND 2006)</p> <p>TRADEMARK ORDER OF 1972.</p>
TUNISIA	<p>PATENTS: LAW N° 2000-84 OF 24 AUGUST 2000;</p> <p>INTEGRATED CIRCUITS: LAW N° 2001-20 OF 6 FEBRUARY 2001;</p> <p>DESIGNS: LAW N° 2001-21 OF 6 FEBRUARY 2001;</p> <p>TRADEMARKS: LAW N° 2001-36 OF 17 APRIL 2001, LAW N° 2007-50 OF 23 JULY 2007 PARTIALLY MODIFIED.</p>
MOROCCO	<p>LAW 17/97, MODIFIED BY THE LAW 31/05 FOR INTELLECTUAL PROPERTY</p>
TURKEY	<p>DECREE LAW No: 551 ON PROTECTION OF PATENT RIGHTS</p> <p>DECREE LAW No: 556 ON PROTECTION OF TRADEMARKS</p> <p>DECREE LAW No: 554 ON PROTECTION OF INDUSTRIAL DESIGNS</p> <p>LAW No: 5147 ON PROTECTION OF TOPOGRAPHIES OF INTEGRATED CIRCUITS</p>
SYRIA	<p>LAW N° 8/2007 AND ITS IMPLEMENTING REGULATIONS</p> <p>DRAFT LAW FOR PATENTS AND UTILITY MODELS</p>

TABLE 2 – National offices

JORDAN	DIRECTORATE OF THE MINISTRY OF INDUSTRY & TRADE INDUSTRIAL PROPERTY PROTECTION NAME: ENG. KHALED ARABEYYAT E-MAIL: KHALED.A@MIT.GOV.JO
LEBANON	DEPARTMENT OF THE MINISTRY OF ECONOMY & TRADE LAZARIEH BLDG.BLOC A1NEW-4 TH FLOOR DOWNTOWN, BEIRUT, LEBANON TEL. +961-1-982342 FAX +961-1-982369 HTTP://WWW.ECONOMY.GOV.LB
EGYPT	EGYPTIAN PATENT OFFICE UNDER THE ACADEMY OF SCIENTIFIC RESEARCH AND TECHNOLOGY, MINISTRY OF HIGHER EDUCATION AND SCIENTIFIC RESEARCH, CAIRO
ALGERIA	INAPI (INSTITUT NATIONAL ALGÉRIEN DE PROPRIÉTÉ INDUSTRIELLE), GENERAL DIRECTORATE, UNDER THE MINISTRY OF INDUSTRY AND PROMOTION OF INVESTMENTS MR. BELKACEMI DJABALLAH, HEAD OF DIVISION, QUALITY AND INDUSTRIAL SECURITY (MIPI) MINISTRY OF INDUSTRY AND PROMOTION OF INVESTMENTS TEL. : 0021321239118 / E-MAIL : DJ_BELKACEMI@YAHOO.FR MR. BOUKENNOUS MOHAMED, HEAD OF DEPARTMENT OF FILING AND REGISTRATION OF PATENTS, NATIONAL INSTITUTE FOR INDUSTRIAL PROPERTY OF ALGER TÉL:00213735774 / BOUKENNOUS@INAPI.ORG E-MAIL: BOUKENNOUSMED@YAHOO.FR
THE PALESTINIAN AUTHORITY	GENERAL ADMINISTRATION FOR IP RIGHTS IN THE MINISTRY OF NATIONAL ECONOMY
ISRAEL	ISRAEL MINISTRY OF JUSTICE. WITHIN THE MINISTRY OF JUSTICE THE DIVISION FOR LEGISLATION AND LEGAL COUNSEL IS RESPONSIBLE FOR SETTING ALL ASPECTS OF IP POLICY DEVELOPMENT AND REPRESENTATION OF THE STATE IN INTERNATIONAL FORUMS SUCH AS THE COUNCIL FOR TRIPS AND OTHER TRADE RELATED ASPECTS OF IP. THE PATENTS AUTHORITY, ALSO A DIVISION OF THE MINISTRY OF JUSTICE, HAS SOLE JURISDICTION OVER THE REGISTRATION OF PATENTS, TRADEMARKS, DESIGNS AND APPELLATIONS OF ORIGIN.
TUNISIA	INSTITUT NATIONAL DE LA NORMALISATION ET DE LA PROPRIÉTÉ INDUSTRIELLE (INNORPI), RUE 8451, N°8 PAR LA RUE ALAIN SAVARY CITÉ EL KHADRA TUNIS 1003, TUNISIE

MOROCCO	OFFICE MAROCAIN DE LA PROPRIÉTÉ INDUSTRIELLE ET COMMERCIALE (OMPIC), R.S. 114 KM 9,5 ROUTE DE NOUASSEUR - SIDI MAÀROUF CASABLANCA
TURKEY	TURKISH PATENT INSTITUTE, A SEPARATE INSTITUTION UNDER THE MINISTRY OF INDUSTRY AND TRADE
SYRIA	DIRECTORATE OF THE MINISTRY OF INDUSTRY & TRADE

Table I: National Law

	EGYPT	ALGERIA	LEBANON	TURKEY	JORDAN	ISRAEL	THE PALESTINIAN AUTHORITY	TUNISIA	MOROCCO	SYRIA
INTELLECTUAL PROPERTY RIGHTS RULED BY SPECIFIC ACTS (SEE TABLE 1)	X	X	X	X	X	X	X	X	X	X
LEGISLATION FOR UTILITY MODELS IN FORCE	X		X	X	X					X
ACCUMULATION OF IP RIGHTS ALLOWED			X	X	X	X			X	
DESIGN PROTECTION ONLY WITH REGISTRATION	X		X		X		X	X	X	X

Table II: International Law

	EGYPT	ALGERIA	LEBANON	TURKEY	JORDAN	ISRAEL	THE PALESTINIAN AUTHORITY	TUNISIA	MOROCCO	SYRIA
PARIS CONVENTION (CUP)		X	X		X			X		X
WTO	X		(X)	X	X	X		X	X	X
TRIPS						X				
WIPO	X	X	X		X			X		
PATENT COOPERATION TREATY (PCT)	X	X				X		X		
PATENT LAW TREATY (PLT)			X		X					
STRASBOURG AGREEMENT CONCERNING THE INTERNATIONAL PATENT CLASSIFICATION	X					X				X
EUROPEAN PATENT CONVENTION (EPC)				X						
BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE	X					X		X		X
NICE TREATY FOR THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES	X	X	X			X		X		X
TRADEMARK LAW TREATY (TLT)	X			X						
SINGAPORE TREATY ON THE LAW OF TRADEMARKS			X							

	SYRIA	MOROCCO	TUNISIA	THE PALESTINIAN AUTHORITY	ISRAEL	JORDAN	TURKEY	LEBANON	ALGERIA	EGYPT
MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS	X								X	X
HAGUE AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS	X		X				X			X
LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN			X						X	
MADRID AGREEMENT FOR THE REPRESSION OF FALSE OR DECEPTIVE INDICATIONS OF SOURCE ON GOODS	X		X					X	X	X
WASHINGTON TREATY ON INTELLECTUAL PROPERTY IN RESPECT OF INTEGRATED CIRCUITS	X									
NAIROBI TREATY ON THE PROTECTION OF THE OLYMPIC SYMBOL	X		X						X	X

Table III: Material Aspects – Patents & Designs

	EGYPT	ALGERIA	LEBANON	TURKEY	JORDAN	ISRAEL	THE PALESTINIAN AUTHORITY	TUNISIA	MOROCCO	SYRIA
DURATION OF PROTECTION (YEARS)	20	20	20	20 (7)	20	20	16	20	20	20
SUBSTANTIVE CONDITIONS N = NOVELTY IS = INVENTIVE STEP IA = INDUSTRIAL APPLICATION	N IS IA	N IS IA	N IS IA	N IS IA	N IS IA	N IS IA	N IS IA	N IS IA	N IS IA	N IS IA
PATENTS FOR COMPUTER-RELATED INVENTIONS			X		(X)	X			(X)	
PATENTS FOR TREATMENT OF HUMAN BODY										
SPECIFIC RULES FOR BIOTECHNOLOGICAL INVENTIONS	X		X	X	X					X
ABSOLUTE NOVELTY REQUIRED	X	X	X	X		X		X	X	X
UNITY OF INVENTION REQUIRED	X	X	X	X	X	X	X	X	X	X
GRACE PERIOD	X			X	X	X				X
TO WHOM BELONGS THE PATENT WHEN THE INVENTION WAS MADE BY AN EMPLOYEE EE = EMPLOYEE ER = EMPLOYER	ER	ER	EE / ER	EE / ER	EE / ER	ER	EE / ER	ER	ER	ER
SPECIFIC RULES FOR THE INVENTIONS MADE BY AN EMPLOYEE	X	X	X	X	X	X	X	X	X	X

	SYRIA	MOROCCO	TUNISIA	THE PALESTINIAN AUTHORITY	ISRAEL	JORDAN	TURKEY	LEBANON	ALGERIA	EGYPT
REQUIREMENTS FOR PROTECTION OF A DESIGN N = NEW O = ORIGINALITY IA = INDUSTRIAL APPLICATION	N IA	N	N O		N O	N O	N O	N O	N O	N IA
DESIGNS WITH TECHNICAL FUNCTION ALLOWED					X		X			
NON-VISIBLE DESIGN EXCLUDED FROM PROTECTION	X		X	X		X		X		X
SPECIFIC PROVISIONS FOR SPARE PARTS	X						X			

Table IV: Material Aspects – Trademarks

	EGYPT	ALGERIA	LEBANON	TURKEY	JORDAN	ISRAEL	THE PALESTINIAN AUTHORITY	TUNISIA	MOROCCO	SYRIA
TYPES OF PROTECTED TRADEMARKS										
TM = ORDINARY TRADEMARKS	TM	TM	TM	TM	TM	TM	TM	TM	TM	TM
SM = SERVICE TRADEMARKS	SM	SM	SM	SM	SM	SM	SM	SM	SM	SM
CM = COLLECTIVE TRADEMARKS	CM	CM	CM	CM	CM	CM	CM	CM	CM	CM
KM = WELL-KNOWN TRADEMARKS	KM	KM	KM	KM	KM	KM	KM	KM	KM	KM
SAME CONDITIONS FOR TWO- DIMENSIONAL AND THREE-DIMENSIONAL TRADEMARKS	X	X	X	X	X	X		X	X	X
SOUND MARKS PROTECTABLE BY TRADEMARK	X	X		X		X	X	X	X	
DISTINCTIVE CHARACTER OF TRADEMARK INFLUENCES ITS SCOPE OF PROTECTION	X	?	X	X	X			X	X	X
GRAPHICAL REPRESENTATION OF A TRADEMARK INFLUENCES ITS SCOPE OF PROTECTION	X	?	X	X	X			X	X	X
USE OF A TRADEMARK WITHIN HOW MANY YEARS AFTER REGISTRATION	?	?	5	5	3			5		5

Table V: Formal Aspects

	EGYPT	ALGERIA	LEBANON	TURKEY	JORDAN	ISRAEL	THE PALESTINIAN AUTHORITY	TUNISIA	MOROCCO	SYRIA
PATENTS SUBJECT TO A SUBSTANTIAL EXAMINATION BEFORE GRANT/ REGISTRATION	X			(X)	X	X	X	X		X
PATENT APPLICATIONS PUBLISHED BEFORE THE GRANT OF THE PATENT	X			X		X	X	X		X
POST-REGISTRATION/POST-GRANT EXAMINATION IN PATENTS OR DESIGNS	X			X	X	X	X	X		X
FEE REDUCTION FOR SMALL AND MEDIUM- SIZED ENTERPRISES	X						X			
FOREIGN FILING LICENSE NEEDED	X				X					
SUBSTANTIVE EXAMINATION SYSTEM TO REGISTER TRADEMARKS	X	X		X	X	X	X	X	X	X
SUBSTANTIVE EXAMINATION EX OFFICIO OF A DESIGN BEFORE REGISTRATION	X	?		X	X	X		X		X
AVERAGE DURATION OF THE REGISTRATION PROCEDURES FOR A DESIGN (MONTHS)	9-12	<12	<1	1	6	9-18	1	1	<1	9-12
AVERAGE DURATION OF THE REGISTRATION PROCEDURES FOR A TRADEMARK (MONTHS)	9-12	<12	<1	4	6	9-18	12	14	3	9-12

Table VI: Institutional Development

	EGYPT	ALGERIA	LEBANON	TURKEY	JORDAN	ISRAEL	THE PALESTINIAN AUTHORITY	TUNISIA	MOROCCO	SYRIA
PROGRAMME FOR CONTINUED EDUCATION (TRAINING) FOR OFFICIALS OF THE IP AUTHORITY BY WHOM	OFFICE, UNIVERSITIES, WIPO	WIPO EPO	WIPO USPTO	WIPO EPO	OFFICE	X		WIPO EPO	X	X
SPECIFIC REQUIREMENTS FOR BEING A LEGAL REPRESENTATIVE	X	X	X	X		X	X			X
INTELLECTUAL PROPERTY RIGHTS TAUGHT AT THE UNIVERSITIES	X	X	X	X	X	X		X	X	X
SPECIFIC COURTS FOR RULING ON INFRINGEMENT ACTIONS RELATED TO INTELLECTUAL PROPERTY RIGHTS	(X)		(X)	X					(X)	
NON- GOVERNMENTAL ORGANIZATIONS DEALING WITH INTELLECTUAL PROPERTY RIGHTS			X	X	X	X	X			

SYRIA	MOROCCO	TUNISIA	THE PALESTINIAN AUTHORITY	ISRAEL	JORDAN	TURKEY	LEBANON	ALGERIA	EGYPT	
X	X	X	X	X	X	X	X	X	X	CUSTOMS AUTHORITIES HAVE ACCESS TO INFORMATION AND TRAINING IN THE FIELD OF INTELLECTUAL PROPERTY
X	X	X	X	(X)	X	X	X	X	X	ONLINE ACCESS TO THE PUBLICATIONS OF PATENTS, TRADEMARK AND DESIGNS

List of abbreviations

CUP	=	Paris Convention for the Protection of the Industrial Property of March 20, 1883 (last amendment on September 28, 1979)
EPC	=	European Patent Convention of October 5, 1973
EPO	=	European Patent Office
EU	=	European Union
INAPI	=	Institut National Algérien de Propriété Industrielle
INNORPI	=	Institut National de la Normalisation et de la Propriété Industrielle
IP	=	Intellectual Property
JIPA	=	Jordanian Intellectual Property Association
MBA	=	Master on Business Administration
MP	=	Mediterranean Partner
OMPIC	=	Office Marocain de la Propriété Industrielle et Commerciale
PCT	=	Patent Cooperation Treaty of June 19, 1970, last amendment on October 3, 2001
PLT	=	Patent Law Treaty of June 1, 2000
TM	=	Trademark
TPI	=	Turkish Patent Institute
TRIPS	=	Trade Related Aspects of Intellectual Property Rights
USPTO	=	United States Patent and Trademark Office
WIPO	=	World Intellectual Property Organization
WTO	=	World Trade Organization

C. Geographical Indications

by

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Introduction

Reminder of the international context

The international legal framework relating to geographical indications has only recently been created. The concept was not enshrined in law until the signature of the World Trade Organisation (WTO) agreements, in particular the appendix relating to intellectual property (Agreement on Trade-related aspects of Intellectual Property Rights (TRIPS)) in 1994. Professor Audier describes this as the “legal crystallisation” phase.

The small number of articles devoted to these rights, require WTO members to make legal provision to allow the protection rules defined in the agreement to be implemented. The objectives which members are required to meet by the means they consider appropriate are given a simple definition.

The agreement defines geographical indications in the following terms, before going on to set out the protection rules:

“indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

This definition therefore rests on a number of principles:

- an identifier of a good's origin
- a connection between the quality, reputation or other characteristic of the good and its geographical origin.

The flexibility of this definition of geographical indication allows it to incorporate other concepts such as designations of origin enshrined in the Lisbon agreement of 30 October 1958, which was the first international agreement to define mechanisms for registering and protecting designations of origin.

The TRIPS agreement also defines the rules of protection which members must adopt as part of their regulations.

The regulations must accordingly take account of the provisions referred to in section III of the Agreement (articles 22 to 24), and may if necessary extend stronger protection to both domestic and foreign geographical indications. Article 1 of this agreement also specifies that States are free to grant more extensive protection to the various intellectual property rights in their legislation.

Two levels of protection are defined:

- protection against use which would mislead the public as to the true origin of the good or would constitute unfair competition under the terms of article 10b of the Convention of Paris;
- specific or reinforced unconditional protection for wines and spirits.

The provisions focused particularly on relations with trademarks: trademarks which undermine a geographical indication cannot be registered. This means that a geographical indication will be protected in the event of conflict with a trademark, and that the trademark will be rejected or invalidated, either automatically (*if trademark legislation allows*) or at the request of any interested party.

There are several exceptions to the principle of protection: use of prior trademarks under certain conditions,

the generic character of the good, conflict with the name of a grapevine variety.

Foreign geographical indications may enjoy this protection provided that they are protected in their country of origin.

The TRIPS agreement also requires regulations to contain measures accessible to citizens of other WTO Member States that are rapid, preventive and corrective so that they can take action against any infringement of a designation of origin or a geographical indication: seizure and/or destruction of goods incorrectly using the name of the designation of origin or the geographical indication, action at borders, etc. Furthermore, in accordance with the principle of national treatment, the measures envisaged must not discriminate between litigants according to their nationality.

Both the TRIPS agreement and the Lisbon agreement have had a marked influence on the legislation adopted by the various partners relating to geographical indications.

Reminder of the European Community context

The legal system of geographical indications was introduced in 1992, with France playing a major role in its development, in the form of Regulation No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

The main characteristics of this system, as set out in Regulation No. 510/2006 which is the latest legal text dealing with this area, are:

- the rules apply only to agricultural products and foodstuffs¹.
- two types of rights have been created: protected geographical indications (PGI) and protected designations of origin (PDO). The two levels differ in respect of the nature of the link to the product's origin. Furthermore, products enjoying PDO protection are subject to the requirement that all the production operations must take place within the geographical area.
- a registration procedure including a procedure for objections to be lodged by any interested party. In the case of European products, national authorities must submit applications presented by groups jointly representing operators involved in the production or processing of the product.
- the requirement to comply with a specification, a summary of which is published in the Official Journal of the European Union, in order to be permitted to use the registered name.
- definition of strict rules for inspections in order to monitor adherence to the specifications. These inspections are carried out either by the public authorities or by accredited certifying bodies.
- very comprehensive rules of protection against misuse and false or misleading indications. With regard to relations with trademark systems, the regulations prohibit registration of a trademark containing a GI. Where the trademark was in existence prior to the registration of the GI, the regulation allows the two rights to co-exist.
- a procedure is open to third-country products.

This regulation has also had a certain impact on the legislation adopted by some partner countries.

The situations of partner States vary considerably

Six of the ten partners are members of the WTO. They are therefore required to implement the provisions laid down in the TRIPS agreement for the protection of GIs. As this agreement came into force in each of these States, some changes had to be made to regulations governing intellectual property, including regulations on geographical indications and trademarks as they interact with GIs. However, it should be borne in mind that, while some States made changes with a view to introducing a GI policy aimed at making optimum commercial use of the assets of a country via goods that are eligible for protection under this policy, others have transposed the protection obligations arising from the TRIPS agreement.

This difference in approach can be attributed to whether or not the country in question had significant prior experience with designations of origin, as is the case for States which were party to the Lisbon agreement.

The situation in the partner countries

The information presented below has been drawn up on the basis of:

- questionnaires completed by the competent authorities;
- legislation submitted during the various seminars (see appendix 1, summary of the legal context). It should be pointed out here that working on provisional versions of translations can sometimes present problems;
- presentations made by intellectual property offices during seminars;
- additional data collected from the Internet, especially IP office websites.

The rules relating to geographical indications in the ten partner countries are presented in alphabetical order: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia and Turkey.

Algeria

1. Legal context

Algeria has been party to the Lisbon agreement since July 1972. In this capacity it has registered seven designations of origin, all in the wine sector. Protection is conferred by Decree No 76-65 of 16 July 1976 relating to Designations of origin.

The association agreement between the European Union and Algeria provides for protection of intellectual property rights, including geographical indications.

2. Definition

As Algeria is not subject to WTO obligations since it is not a member of that organisation, Algerian law recognises only one type of right: Designations of origin. They are defined as **the geographical name of a country, region, a part of a region, a locality or specific place which serves to designate a product originating therein, the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural factors and human factors.**

This definition is based on the definition in the Lisbon agreement.

The field of application is very broad since, under the terms of the decree of 16 July 1967, DO protection can be granted to any product, whether it is natural or artificial, agricultural, handicraft or industrial.

3. Competent body

The industrial property office (Institut National Algérien de Propriété Industrielle) is responsible for registering designations of origin.

Algeria decided to set up a public recognition system very similar to that operating in France. Access to DO protection requires definition in the form of a regulatory text which must specify the characteristics of the products, the geographical area in question and the list of persons authorised to use the Designation of origin. This regulatory recognition must be in place prior to registration.

4. Procedure

Applications may be submitted by:

- an institution legally constituted and authorised for this purpose,
- a natural or legal person working as a producer in the geographical area in question,
- a competent authority.

Applications for registration must include:

- the name and address of the party submitting the application and his/her/its activity,
- the Designation of origin in question, and the geographical area to be covered,
- the list of products intended to be covered by this designation,
- reference to the text relating to the Designation, including in particular:
 - the inherent characteristics of products covered by the Designation of origin,
 - the conditions under which the Designation of origin is to be used, particularly with regard to labelling, defined in a set of rules for use,
 - where appropriate, the list of authorised users.

Designations of origin cannot be obtained for:

- products which do not comply with the definitions laid down in the Decree,
- products which are not regulated,

- generic denominations of products: a denomination is held to be generic when it is consecrated by use and regarded as such by experts in the field and by the public,
- products which contravene decency, morality or public order.

The substantive examination of the application for registration is performed during approval of the regulatory text defining the specifications for the designation.

A request for cancellation can be submitted by any interested party or a competent authority. This starts a procedure before the competent jurisdiction, and registration is cancelled if the designation is found not to meet the criteria laid down by law or if it is established that the circumstances and conditions which were vital to registration of the designation no longer exist.

Protection of foreign GIs:

The only route for protection under specific DO regulations is that set up for the DOs of Member States of the Lisbon agreement. Foreign Designations of origin are registered with the Industrial Property Institute in accordance with the legislation and the Lisbon agreement.

The decree of 1976 only permits Algerian citizens to apply for registration. In any event, carrying out a governmental recognition procedure for foreign indications would be an extremely delicate undertaking.

A restriction of this kind would be incompatible with the requirements of the WTO which imposes most-favoured-nation treatment.

5. Protection

Designations of origin are valid for ten (10) years from the date on which the application was submitted. This period can be renewed indefinitely for equal lengths of time provided that the applicant continues to meet the requirements laid down by law. This feature of the Algerian regulations is unusual², as specific regulations do not normally confer protection for a limited period.

No party is entitled to use a registered designation of origin if it is not authorised to do so by the holder, even if the true origin of the product is indicated or if the designation has been translated or transliterated or is accompanied by words such as “kind”, “type”, “style”, “imitation” or the like.

As indicated above, there are no rules on geographical indications. Nevertheless, trademark legislation outlaws registration in the form of trademarks of signs that could mislead the public or commercial outlets as to the nature, quality, origin or other characteristics of goods or services. Furthermore, signs which consist solely or partially of an indication that could lead to confusion as to the geographical origin of the goods or services in question, or which, if they were registered as trademarks, would unduly undermine the use of the geographical indication by other parties entitled to make use of this indication, cannot be registered (article 7 of Decree No. 03-06 of 19 July 2003 relating to trademarks).

6. Conclusion

Algeria has an appropriate GI system, but it is little used. The government is currently considering a reform of this system to make it more effective in adding value to goods, taking the Lisbon agreement and the TRIPS agreement as a basis.

Egypt

1. Legal context

Egypt has been a member of the WTO since 30 June 1995. The protection of geographical indications is covered by the section of Act No. 82 of 30 June 2002 on intellectual property that also deals with trademarks.

2. Definition

Article 104 of the Act gives a slightly different definition of geographical indication:

«Where a geographical origin has become descriptive of the quality, reputation or other characteristics of a certain product so as to be largely instrumental in its marketing, such geographical indications shall be used to indicate the place of origin of such goods in a district or part in a country member in the World Trade Organization or a country according Egypt reciprocity.»

3. Competent body

The commercial registration authority, which is part of the Ministry of Trade and Industry, also has powers to deal with geographical indications under Act No. 82 of 2002.

4. Procedure

GI protection is handled in the context of trademark registration.

However, there are some particular additional provisions. The first of these has to do with the definition of criteria relating to the capacity of the applicant. The applicant must have been producing goods in the

geographical area in question for a prolonged period. Furthermore, generic names cannot be registered.

5. Protection

The law protects GIs against certain practices that could be regarded as unfair competition or misleading the consumer.

This means that an operator residing in a geographical area which enjoys a reputation for certain goods could not use a geographical indication in his/her/its company name or postal address in such a way that the consumer might think that the goods come from that location with a particularly high reputation.

In the same way, a producer cannot use the geographical indication for similar goods that do not originate from the place indicated by that indication.

Foreign GIs are protected in respect of trademark registration according to the terms imposed by the TRIPS agreement. A trademark can only incorporate a GI if it has been honestly acquired prior to the entry into force of Act 82/2002 or before the GI first enjoyed protection in its country of origin.

In the event of an infringement of a geographical indication, action is taken before the competent authorities to implement the protection rules, as in the case of trademarks. (Articles 112 ff. of the Act)

6. Conclusion

Egyptian law is based largely on trademark rights, though it does contain some provisions that are specific to GI protection. The Egyptian authorities expressed two major concerns during the various discussions.

The first related to the need to ensure that economic operators were made more aware of the existence of this particular intellectual property right and of the need to comply with it, since violation of these rights could be financially disadvantageous as it would block access to certain markets.

The second was to allow a proactive policy on geographical indications to be developed, and to bring this policy to the attention of operators so that it could benefit rural development, preserve the cultural heritage and open up access to markets.

Israel

1. Legal context

Israel has been a member of the Lisbon agreement since 25 September 1966, which makes it one of the founder members. This position is undoubtedly explained by the existence of Act No. 5725 on the protection of DOs dated 7 July 1965. Israel has also been a member of the WTO since 21 April 1995. Its membership of this body led it to amend the Act on Designations of origin in January 2000 in order to introduce protection provisions specifically for geographical indications.

2. Definition

The 1965 Act, as amended in 2000, includes a definition of two levels of geographical indication: designations of origin and geographical indications. The definitions given are almost identical to those set out in the agreements on these signs.

A designation of origin means that the geographical name of a country, a region or a locality contained in the name of the product from which it originates and that its qualities or characteristics are essentially attributable to these geographical area, including natural and human factors.

A geographical indication is an indication which, in Israel, identifies a good as originating from a given geographical area of a Member State where a quality, characteristic or reputation is essentially attributable to its geographical origin.

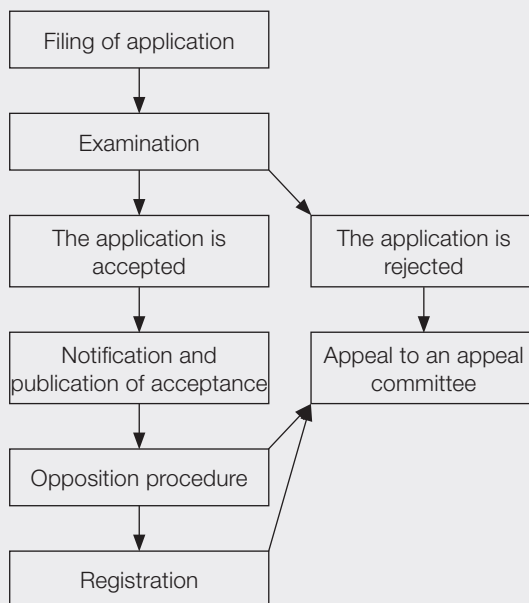
These definitions show the influence of the international agreements that are directly relevant to the matter: the TRIPS agreement and the Lisbon agreement.

3. Competent body

The Israel Patent Authority is the competent body.

4. Procedure

The procedure for registering designations of origin is described in the diagram below³:



It therefore includes two review phases: an internal checking procedure and an opposition procedure open to any interested party.

This procedure applies *mutatis mutandis* to foreign designations of origin notified in the context of the Lisbon agreement.

There is a cancellation procedure, performed before the patent office, which can be instigated by any interested person or by the intellectual property office once

the designation of origin has become an indication of provenance, a generic term or if the conditions which applied at the time of registration no longer exist. The way in which possible “degeneration” of a designation of origin is dealt with appears to be broader than the terms of the Lisbon agreement, under which a registered DO can only become generic if it is no longer protected in its country of origin.

Geographical indications are handled in an entirely different manner. They are incorporated into the law on designations of origin, but the existing framework does not apply to them. This means that there is no registration procedure as such. GIs can be registered either as a collective trademark or as a certification trademark.

5. Protection

The protection defined varies according to the underlying legal framework.

For designations of origin, the protection available is that defined by the Lisbon agreement. A designation of origin cannot therefore be used, even if the true origin of the product is indicated and the name is used in translation or along with words such as «type» or «style».

It should be pointed out that protection is conferred for a period limited to ten years. This can be extended indefinitely.

The use of geographical indications is prohibited if there is a possibility of misleading consumers as to the product's true origin. The protection rules in this situation are the same as those which apply to designations of origin.

Israeli law has additional protection rules for wines and spirits, modelled on the provisions of the TRIPS agreement. If the product does not come from the origin

which is indicated, use of the GI is prohibited without it being necessary to prove any misleading effect, and even if the GI is accompanied by words such as “style” or “type” or is used in translation.

The law also transposes the TRIPS agreement, incorporating all the exceptions to GI protection such as prior use, the generic nature of the name, and conflict with the name of a grapevine variety.

The sanctions available are those laid down in trademark law.

Other provisions taken from the TRIPS agreement cover relationships with trademarks. This means that a trademark which includes a GI cannot be registered if consumers could be misled as to the true origin of the product (section 11 of the 1972 Trademarks Decree).

6. Conclusion

Israel's position with regard to geographical indications is complex. In fact, it has a comprehensive regulatory structure combining a *sui generis* system for DOs and a trademark system for GIs.

It does not use the designation of origin system, and that system has fallen out of favour and is probably regarded as being of little practical use in raising the status of products.

Israel has registered only one product under the Lisbon agreement: Jaffa oranges. This registration has lost all meaning as the name is now used to refer to products from South Africa. However, protection rules are used, especially for foreign designations, where operators so request.

The reason for this might be the lack of interest on the part of domestic economic operators.

Jordan

1. Legal context

Jordan has specific legislation on geographical indications: Law No. 8 of 2000, published in the Official Gazette on 2 April 2000. Jordan has been a member of the WTO since 11 April 2000, and adopted this legislation in view of its imminent membership.

2. Definition

Given the context in which the law was adopted, the definition of geographical indication is identical to that in the TRIPS agreement. Geographical indications are therefore indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.»

3. Competent body

The competent authority is the Industrial Property Protection Directorate at the Ministry of Industry and Trade.

4. Procedure

The Jordanian system provides protection for geographical indications through the trademark system by registering it as a collective trademark.

Law No. 34 of 1999 defines collective marks as:

“the mark used by a legal person for certifying the origin of goods not manufactured by him or the materials out

of which they were made or the manufacturing precision or other characteristic of those goods. “ (Article 2)

This is a traditional definition of a collective mark which requires that the holder of the mark and the producers be different parties. This separation between the holder and the producers allows for compliance with the rule on use to be guaranteed.

But the law on geographical indications does not refer to such registration. This means that if a dispute arises as to the contravention of this right, it is a matter for the judge concerned to decide whether or not the name in question is a GI and therefore eligible for protection under the provisions of Law No. 8 of 2000. The intellectual property office does not appear to favour this approach, as it always refers to protection being conferred by registration of a collective mark.

All the rules defined under trademark legislation as regards procedures therefore apply (registration, opposition procedure, period of protection, etc.).

5. Protection

The law defines protection against any use that would mislead consumers as to the true origin of the product or would constitute unfair competition.

Wines and spirits enjoy specific protection rules that are not conditional on a risk of misleading the consumer, as provided for under the TRIPS agreement.

There are many exceptions to protection, founded on the provisions of the TRIPS agreement (if the trademark was registered in good faith before the law came into force or before the product first enjoyed protection in its country of origin, if the name is generic, patronymic, or if the product has lost or does not have protection in its country of origin).

There are particular provisions under Jordanian law dealing with relationships with trademarks. Trademarks cannot be registered in the cases covered by the protection rules. Furthermore, there is a cancellation procedure in cases where a trademark has been registered in contravention of these provisions, with no time limit for engaging the procedure.

6. Conclusion

Jordan has defined a geographical indication policy which is evidently closer to the American approach than the European approach. The decision to adopt a collective mark system was taken after due consideration and for good reasons. Legislators took the view that it would provide consumers with clear information as to the properties of products and compliance with certain standards, that it offered guarantees in the form of the independent inspections performed by the certifying body, that it used a pre-existing system of marks known to operators, and that it involved a collective approach.

Lebanon

1. Legal context

The legal framework for geographical indications is being developed in Lebanon as a Bill has been drafted. It was approved by the cabinet in decision No. 85 dated 21 May 2007 and subsequently put before Parliament. The law's adoption has been blocked by the current political situation in Lebanon.

Protection of geographical indications is at present based on the Consumer Protection Act, law No. 659 dated 4/2/2005, articles 11, 48 and 105; Customs law No. 4461 dated 15/12/2001, articles 59, 62 to 66 and 181; and Criminal law No. 340 /1943 revised in 1983, articles 682, 701 to 706, and 713 to 717. There are also two specific sets of regulations dealing with geographical indications: the Wines Act (law No. 216/2000 on the production, manufacture, sale and import of wines) and the 1937 Act on the production of arak.

In view of the work which has been done on the Bill, this chapter will be presented in the light of this.

2. Definition

The Bill distinguishes between two rights: designations of origin and geographical indications. It has been designed around these two concepts. It is heavily based on European regulations and includes the definitions laid down in Regulation 510/2006.

A geographical indication serves to identify a product as originating from a region, a specific place or, under exceptional circumstances, a country, where a particular quality, reputation or other specific characteristic of the product can be attributed essentially to this geographical origin and where it is produced, processed and/or made in the defined geographical area.

The DO is defined as the name of a given region or place which serves to designate a product originating from that given region or place and where the quality or characteristics of the product are due essentially or exclusively to the geographical area, including natural and human factors, and where the product is produced, processed and prepared in the given geographical area.

In contrast to the definitions used in the regulations of partner countries, these definitions contain specific requirements as to the constraints on the place of production, processing or preparation.

These definitions are taken from European Regulation 510/2006.

3. Competent body

The Economy and Trade Ministry is the competent authority for registration of GIs and DOs.

The Bill provides for the creation of a department dedicated to registration and protection of GIs and DOs. Another feature is the creation of a review committee responsible for examining applications for registration of GIs and DOs and oppositions to such applications.

4. Procedure

Applications for registration of a GI or DO must be submitted by a representative group of producers and/or processors working with the product, accounting for at least 50% of the production volume and 50% of the number of producers and processors.

Applications must be accompanied by a set of specifications, including the following points:

- the product's name
- the exact geographical area covered
- the description of the product and its characteristics
- the description of how the product is made
- the appointment of an inspection body which is responsible for checking that the product complies with the specifications
- information on packaging and labelling
- the requirements laid down by special local provisions.

Other material allowing compliance with the definitions to be ascertained is also required: for example, technical, economic, historic and legal documents proving the link between the product and its origin.

The details of the procedure by which applications are to be examined have not yet been decided, as the procedure will have to be the subject of implementing regulations once the law has been adopted. The procedure is likely to require that applications are reviewed by an ad-hoc committee which will probably be multi-disciplinary rather than restricted to the Ministry of the Economy.

The Bill defines an opposition procedure open to any interested party. Objections to the registration of a GI may be made on the grounds that the GI in question could undermine prior rights, such as a commercial trademark enjoying protection in Lebanon, provided that this trademark was acquired in good faith and is not liable for cancellation, or where the denomination is generic in nature.

One interesting aspect of the Bill is that objections can be filed on the basis that the applicant group was not representative. Having said this, a clear focus is placed on the collective nature of the application.

5. Protection

Protection of geographical indications and designations of origin prohibits:

- Any use of a protected designation on a product, irrespective of whether or not it is similar to the product that is protected.
- Any use of a protected designation for a product which does not meet the conditions laid down in the specifications.
- Any use which allows the user to benefit from the reputation of the designation or its use.
- Any use which misleads the consumer as to the origins of the product.
- Any imitation of the designation if its origin is not as stated in the designation, even if the true origin of the product is stated and even if the designation is translated or accompanied by words such as «type», «style», «method», «imitation», etc.
- Any imitation of the form and presentation of the product, its packaging or promotion which creates a false impression as to the true origin of the product.
- Any use of a designation which constitutes unfair competition within the meaning of article 10b of the Convention of Paris on the protection of industrial property.

- Any product meeting the conditions of the specifications is entitled to use the protected designation.

These provisions are drawn both from European regulations and the TRIPS agreement.

It should be borne in mind that the Bill explicitly states that the principle of a specialty does not apply to the protection of a name if the use of the name would lead to its reputation being usurped.

There are also exceptions to protection such as where the designation is generic, the use of a patronymic name, the case of homonyms.

An inspection system to ensure compliance with the specifications is necessary, but the Bill contains no detailed provisions in this respect.

Relations between geographical indications/designations of origin and commercial trademarks are dealt with. The provisions of article 23 of the Bill state that the use of a trademark or part of a commercial trademark that contains a geographical indication or a designation of origin is permitted if the right to this trademark has been acquired by means of its use in good faith prior to the entry into force of this law. Holders of commercial trademarks which contain geographical indications or designations of origin who do not act in good faith have three years to remedy the situation, otherwise their trademarks will be cancelled.

6. Conclusion

Lebanon has a focused approach to developing a policy on geographical indications and a significant amount of work has been done on identifying products which could be covered by this mechanism. The work is at an interesting stage as it allows institutional operators to broaden their attention from purely legal aspects to consider the economic implications.

Morocco

1. Legal context

Morocco has been a member of the WTO since 1995. National legislation on geographical indications is based on two laws: Act No. 25-06 of 23 May 2008 on the distinctive signs of origin and quality of agricultural products and foodstuffs, the provisions of which do not apply to the wines and spirits sector, and Act No. 17/97 as amended by Act No. 31-05 of 14 February 2006 on the protection of industrial property, which sets out the procedure for protecting and registering geographical indications and designations of origin.

It should be pointed out that Act No. 25-06 is actually directed at shaping agricultural policy rather than dealing with intellectual property. Accordingly, it covers signs such as «farm labels», which are not regarded as intellectual property rights in international trade.

The two laws are connected in that, for agricultural products, the recognition granted under Act No. 25-06 opens the way to registration with the Moroccan Industrial and Commercial Property Office (OMPIC).

2. Definition

Act No. 17/97 defines two types of rights falling into the general category of geographical indications.

The Act deals both with geographical indications, defined in the same terms as in the TRIPS agreement (see article 180 of the Act) and with designations of origin, defined in the same terms as in the Lisbon agreement even though Morocco is not a party to that agreement.

The same distinctions and definitions appear in Act No. 25-06. However, this law, which deals with agricultural

policy, imposes specific constraints as to the place of production, manufacture or preparation depending on the sign in question.

These provisions are drawn from Community Regulation No. 510/2006 relating to the protection of DOs and GIs. The Act also uses Community terminology, requiring the phrases «protected designation of origin» and «protected geographical indication» to appear on the labels of registered products.

3. Competent body

As stated above, and in view of the fact that specific provisions apply to the agricultural sector, OMPIC is the competent body in matters relating to the registration phase while the Ministry of Agriculture is responsible for examining the substance of applications covered by Act No. 25-06.

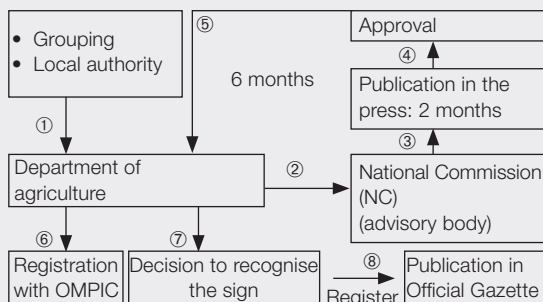
4. Procedure

Only Act No. 25-06 imposes particular constraints as to the capacity of applicants or the content of applications. These constraints therefore apply only to agricultural products. Applications for registration must be made by groups of producers or processors working with a particular product, and must contain a set of specifications which is reviewed by a national commission. The make-up of this commission is interesting, as it includes representatives of public bodies and professional groupings.

The diagram on next page⁴ shows the procedure followed when applying for registration of geographical indications. One specific feature of this system is that it draws on two sources of expertise: that of the Ministry of Agriculture in respect of examination of the substance of applications relating to agricultural products, and that

of the intellectual property office which is fully able to apply the procedures involved in managing intellectual property rights, such as registration procedures, publication, etc. It should however be borne in mind that the opposition procedure as defined in articles 182-2ff. of Act No. 17-97 does not apply to agricultural products since different rules of publication and public consultation apply while the application is being studied by the Ministry of Agriculture.

Recognition of SDOQ



SDOQ = distinctive sign of origin and quality

Moroccan law also allows geographical indications to be registered via collective or certification marks.

5. Protection

Products registered with a designation of origin or geographical indication enjoy protection prohibiting any direct or indirect use of a false or fallacious indication as to the provenance of a product or service, or the identity of the producer, manufacturer or trader. Furthermore, in the case of designations of origin, there is a prohibition on any direct or indirect use of a false or fallacious designation of origin, or the imitation of a designation of origin even if the product's true origin is indicated or if the designation is used in translation or accompanied by words such as «type», «style», «imitation» or similar phraseology.

Protection rules are subject to the specialty principle. Article 34 of the Act therefore prohibits uses which are likely to be misleading or to undermine the reputation of the protected GI or DO.

Finally, designations of origin and geographical indications are protected by the existence of strict inspection rules which require compliance with the specifications to be ascertained by public bodies or certifying bodies. Here again the influence of European regulations can clearly be felt.

Relations with trademarks are dealt with in the conventional manner by prohibiting the registration as a trademark of signs which: *“may mislead the public, particularly as to the nature, quality or geographical origin of the product or service.”* (Art. 135c of Act No. 17-97) or which would infringe prior rights, especially a geographical indication or a protected designation of origin (art. 137d of Act No. 17-97).

Protective measures may be taken in the form of a public action introduced by the Public Prosecutor aimed at controlling the illegal acts referred to in article 182. Action may also be taken under civil law in the form of a claim for damages lodged by any party which has been damaged: a natural or legal person, an association or trade union, and in particular by the producers, manufacturers or traders.

Finally it should be noted that the law on agricultural products deals specifically with the question of property of recognised signs, making clear that this is a right of collective use but that property rests with the governmental authority that applies for registration with OMPIC (art. 32 of Act 25-06).

6. Conclusion

Economic factors have without doubt played a significant part in the recent development of geographical indication policy in Morocco. Work is being carried out to identify products eligible for the system, and a snowball effect is to be expected.

The regulations that were recently adopted are very largely based on European regulations.

Palestinian Authority

1. Legal context

The political situation of the Palestinian authority has a profound impact on the development of an intellectual property policy, especially as regards geographical indication. The association agreement with the European Union provides for inclusion of designations of origin and geographical indications within the scope of IP protection.

According to a report drawn up by the European Union⁵ **intellectual property** is currently regulated in Gaza by the 1993 Civilian Activities Act and in the West Bank by the Trademark Ordinance No 33 of 1952, based on Jordanian legislation.

2. Competent body

Industrial property rights are registered with the Ministry of Economy and Trade.

3. Conclusion

The political situation is such that developing a geographical indications policy is not a major priority. However, considerable interest does exist, as is shown both during the EuroMed Market programme seminars and by the participation of representatives of the agricultural sector in particular in events dealing with geographical indications. Consequently, the matter should be addressed as part of the work on drafting intellectual property legislation which has been under way for seven years.

Syria

1. Legal context

The law covering geographical indications is Act No. 8 of 6 March 2007 on trademarks, geographical indications, models and unfair competition.

2. Definition

Syrian law refers only to geographical indications. It includes an adapted form of the definition in the TRIPS agreement: *“Geographical indications denote the indicators that would determine the origin of the product in a state, region or country or when the quality of the product or description, reputation, fame or other features that affect the promotion of the product is basically a geographical origin”* (art. 70).

3. Competent body

The competent authority is the commercial and industrial property protection directorate at the Ministry of Industry and Trade.

4. Procedure

The only identified rule relates to the capacity of applicants for trademarks which include a geographical indication. Applicants must produce the product on a continuous basis in a geographical area with a particular reputation. Applications must be accompanied by a certificate of origin testifying to compliance with this condition. No details are given as to the nature of this certificate.

This provision implies that protection is subject to registration of a trademark. However, no further details

are given as to the nature of the mark in question, particularly as to whether it has to be a collective mark or a certification mark (the provisions governing these marks are laid down in articles 38ff. of Act No. 8). It seems highly unlikely that the mark would be a certification mark since the applicant has to be a producer, which is incompatible with the system governing this type of mark (see in particular article 39).

5. Protection

Though Syria is not a member of the WTO, it has made use of the protection rules defined by the TRIPS agreement, particularly in granting a higher level of protection to wines and spirits. Their protection is not dependent on the public being misled or an act of unfair competition (see article 73). Protection of other products is therefore subject to these criteria.

Relations with trademarks are also defined with reference to the TRIPS agreement. A trademark cannot be registered if its use would mislead the public as to the product's true origin. Nevertheless, a trademark containing a GI can be registered if the right to the trademark was acquired by use in good faith prior to the date on which the law came into force (11 April 2007) or before the GI first enjoyed protection in its country of origin, or if GI protection has lapsed or if it is no longer used in the country of origin.

Finally, some practices which could be regarded as acts of unfair competition or misleading consumers are forbidden.

For example, an operator residing in a geographical area which enjoys a reputation for certain goods could not use a geographical indication in his/her/its company name or postal address in such a way that the consumer might think that the goods come from that location with a particularly high reputation.

6. Conclusion

The Syrian system brings the country's policy closer to the provisions of the TRIPS agreement. Some additional measures still need to be adopted, particularly in respect of defining registration conditions. These could provide an opportunity for defining geographical indications as a factor in economic development and preserving an extremely rich and diverse cultural heritage. Syria has shown an interest in developing a policy of this kind and has pursued the matter by jointly hosting a seminar with the WIPO in Aleppo in August 2008.

Tunisia

1. Legal context

Tunisia became a party to the Lisbon agreement on 31 October 1973 and joined the WTO on 29 March 1995. There are two national laws dealing with the issue, each applying to different categories of products. The first is Act No. 99-57 of 28 June 1999 on designations of origin and indications of provenance for agricultural products, and the second is Act No. 2007-68 of 27 December 2007 on designations of origin, geographical indications and indications of provenance for handicrafts.

2. Definition

Firstly, it should be pointed out that the laws also regulate indication of provenance, the use of which can sometimes conflict with GIs.

The only recognised designation for agricultural products is the controlled designation of origin. The definition is very similar to that in the Lisbon agreement:

“A controlled designation of origin is the name of the country, natural region or locality which serves to designate a product originating therein, the quality and characteristics of which are due to its geographical environment, including natural and human elements.

Natural elements in general include the geographical environment and provenance of the product with its particular features relating to the soil, water, plant cover and climate.

Human elements comprise in particular production, manufacturing or processing methods and specific techniques mastered by producers or manufacturers in the region in question.

Production methods must derive from ancient, well-established and well-known local traditions.”

This definition includes certain particular elements which are not in conflict with the general principles of designation of origin. These are references to the status of products and the requirement to respect local production methods.

This law is the only one to use the phrase “controlled designation of origin” (*“appellation d’origine contrôlée”* or AOC), a term derived from French legislation.

The law on handicrafts uses the definition of the TRIPS agreement.

3. Competent body

The competent authorities are the Ministry for Agriculture and Water Resources (for agricultural products) and the Ministry for Trade and Handicrafts (for handicrafts). The National Institute for Standardisation and Industrial Property (INNORPI) does not seem to have any particular authority in this field. Each of the ministries involved keeps an official register of designations of origin and geographical indications.

4. Procedure

Designations of origin are granted by the Minister in the form of a decision which fixes the geographical area of production and defines the specifications after taking advice from a technical advisory committee. The make-up of this committee is interesting, as it includes representatives of public bodies and professional groupings (decree No. 2000-2389 of 17 October 2000).

This standard set of specifications must include the following information:

- *the name of the product coming from the area of controlled designation of origin or indication of provenance.*
- *the definition of the product with information as to its raw materials and principal natural, chemical, microbiological and organoleptic properties.*
- *the boundaries of its production area.*
- *the basis on which it can be proved that the product comes from the area of controlled designation of origin or indication of provenance.*
- *the description of the method by which the product is produced, processed or manufactured and in particular any local methods or traditions which are possibly in use.*
- *the option to set annual quantities for certain products covered by a controlled designation of origin (AOC) or indication of provenance.*

The procedure for handicraft products is identical, though the idea of a set of specifications is based more closely on European regulations (Council Regulation (EC) No. 510/2000 of 20 March 2006).

"The standard set of specifications shall include at least:

- The name of the product coming from the area of the controlled designation of origin, geographical indication or indication of provenance.
- The description of the product with an indication of its properties, quality or reputation.
- Information proving that the product comes from the area of the controlled designation of origin, geographical indication or indication of provenance.

- Its area of production.
- The description of the production method and of skills adopted in accordance with long-standing tradition in the geographical area of the designation of origin, geographical indication or indication of provenance."

An opposition procedure has been put in place: parties have six months from the date of publication in the case of agricultural products and four months in the case of handicraft products to lodge objections. Any objections made are put before the consultative committee for consideration.

5. Protection

The rules defined for the protection of controlled designations of origin (AOCs) and geographical indications are similar. The following rules apply to AOCs:

As from the date on which a controlled designation of origin or indication of provenance is approved, the following acts are prohibited:

- *the commercial use of this designation or indication on any similar product coming from outside the geographical area of the designation or indication of provenance;*
- *imitation of the designation or indication, and reference to them if it is indicated that the product in question does not belong to the geographical area of the designation or indication;*
- *reference to the designation or indication on envelopes, containers and packaging, documents or advertising for a product which does not belong to the geographical area of the designation or indication;*

- *the use of containers for processing or selling the product which may create confusion as to its origin;*
- *the use of any sign which might mislead or confuse the consumer.*

The law on designations of origin has created a specific body responsible for protecting and inspecting AOCs in the agricultural sector. Specific inspection rules are also in place for handicraft products. These requirements are similar to those laid down in European regulation 510/2006.

As far as relations with trademarks are concerned, both laws prohibit the registration of trademarks that are similar to AOCs or GIs. Furthermore, article 5 of Act No. 2001-36 of 17 April 2001 on trademarks specifies that a sign which imitates a protected designation of origin cannot be adopted as a trademark. The question of whether this provision will be extended to geographical indications for handicraft products remains unresolved.

The measure does not provide for any method of protecting foreign geographical indications apart from registration as a trademark.

6. Conclusion

The system used by Tunisia is quite close in its approach to that in force in Morocco. Recent adoption of legislation on handicraft products shows that Tunisia wants to take the same approach as it has used for agricultural products.

The lack of clear mechanisms to protect foreign geographical indications could cause problems.

Turkey

1. Legal context

Turkey has been a member of the WTO since 26 March 1995. Relevant national provisions are incorporated into the Decree-Law No. 555 pertaining to the protection of geographical signs of June 27 1995 and its implementing regulation.

2. Definition

Turkey has decided to adopt the generic term «geographical signs» to describe the rights covered by the law in order to overcome difficulties relating to terminology. These signs are divided into two groups: geographical indications and designations of origin.

The definitions given both for geographical indications and designations of origin are drawn directly from European regulations, and in the latter case also include specific restrictions as to the place where products are produced.

3. Competent body

The Turkish Patent Institute is the competent body.

4. Procedure

A specific registration procedure has been defined.

Applications may be submitted by:

- The natural or legal person who is the producer of the product.
- A consumers' association.

- A public institution which has a connection with the product or the geographical area.

It is hard to see what relevance the two latter categories of permitted applicants have, as applications submitted by such bodies could lead to registrations that do not reflect the real production situation or the wishes of operators to become involved in the procedure. This point should be looked at again when the regulations come up for review.

Applications have to comply with certain conditions established in accordance with the European model: they must include a description of the product, definition of the geographical area, description of how the product is produced, and rules on labelling and inspection.

The Patent Institute examines both the formal and substantive aspects of the application. With regard to the substantive aspects it can consult experts working for public or private bodies or universities to verify the technical aspects of the application.

Applications are subject to an opposition procedure open to any interested party for six months from the date of publication in the Official Gazette and in the local and national press.

The number of publications in which applications must appear is to be changed when the law is revised, but no information has been given as to the likely timetable.

Notice of registration is also published in the Official Gazette and in the press.

A cancellation procedure consisting of an invalidation procedure can be conducted before the competent jurisdiction. Declarations of invalidation are retroactive. Accordingly, the sign is regarded as never having been protected except in respect of decisions in which an

infringement of a GI and commercial contracts is established.

5. Protection

Use of the geographical sign is subject to compliance with the specifications as published in the register. There is a system of inspections to ascertain compliance with the specifications. However, it should be pointed out that this task is devolved to the group which made the application, which therefore needs to have sufficient resources and qualified staff. The use of independent inspection bodies appears to be optional.

Protection rules are strictly aligned to European regulations. This means that protection is guaranteed against:

- a) any direct or indirect commercial use of a registered designation for products not covered by registration, to the extent that these products are comparable to those registered under this designation and to the extent that this use allows the user to benefit from the reputation of the protected designation;
- b) usurpation, imitation or evocation, even if the product's true origin is indicated or the protected designation is translated or accompanied by words such as "style", "type", "method", "like", "imitation" or similar phraseology;
- c) other false or misleading indication as to the origin, nature or essential qualities of the product on the packaging, on advertising material or on documents relating to the product, and against the use as packaging of a container which is likely to create a false impression as to the product's origin;
- d) other practice liable to mislead the consumer as to the product's true origin.

The law provides for civil or criminal action to be taken against any acts that are damaging to "geographical signs" and defines the sanctions that apply. Such action can also be taken against signs for which applications have been filed but which are not yet registered.

With regard to relations with other intellectual property rights, Turkey has adopted a rule banning registration of a trademark that undermines a geographical indication.

This legislation also provides for a system of co-existence between a new geographical indication and a prior trademark provided that the trademark was registered in good faith. It is worth highlighting this provision as it is the only one of all the regulatory systems we have investigated that has dealt with this aspect, although the Lebanese Bill includes a similar provision allowing trademarks to be revoked if the party registering the trademark did not act in good faith.

This system has also been challenged before the WTO in the context of the panel convened by the USA, specifically with regard to European regulations on prior PDOs and PGIs (Regulation No. 2081/92). However, the panel's decision published on 15 March 2005 accepted that limited exceptions to the exclusive right created by registration of a trademark were acceptable.

6. Conclusion

Turkey's geographical indications policy is a clear success, as can be seen by the large number of registrations (107) and applications (140). There has been some approximation with European regulations. Changes to some provisions are under consideration.

General conclusions

Observations

The obvious first observation is that all participating countries have regulations dealing with the issue of geographical indications. All of them except for Algeria drew up these regulations after the adoption of the TRIPS agreement. The timing is reflected in the extent to which these provisions are taken into account. The TRIPS agreement is a complex document which requires transcription to make the concepts and rules accessible, so there can be no standard template. Furthermore, the concept of geographical indications is a recent one, and its particular characteristics make it rather hard to grasp as an intellectual property right.

The second observation has to do with the fact that operators are not necessarily aware of the existence of this instrument, even though more work is being done to provide information in the form of seminars and other communication activities. Looking at IP office websites was an interesting exercise. Apart from the Lebanese office, which has a tab headed “geographical indications” on its home page, it is almost impossible to find out any information, apart from the texts of laws, by this means.

Analysis

As was stated in the introduction, geographical indications as defined by the TRIPS agreement in fact cover various notions including the more restrictive concept of designation of origin, in respect of the link with the origin of a product as defined by the Lisbon agreement.

The partner countries have opted for a range of approaches. Some (Egypt, Jordan, Syria) have decided to recognise only geographical indications while others recognise only designations of origin (Algeria). Another

group (Lebanon, Morocco, Tunisia, Turkey, Israel) have opted to define both types of rights either by integrating them into the national regulations transposing international law or by adopting European concepts.

A comparison of the regulations reveals that geographical indications are managed as intellectual property instruments through the involvement of the intellectual property office. Tunisia is an exception here, although it appears that the intellectual property office is a member of the advisory committee.

Nevertheless, this apparent uniformity conceals approaches which are in fact divergent or even conflicting as far as means of accessing protection are concerned. The rules concentrate on ends rather than means. To put it in simple terms, we can divide legislation into two groups. The situation reflects the various approaches described in the SINGER GI project as either prescriptive or permissive systems:

- Legislation defining a *sui generis* system of recognition and protection. This group is made up of five countries: Algeria, Lebanon, Morocco, Tunisia and Turkey. These countries have based their systems on either French or European regulations, or a mixture of the two (for example, the route Morocco is following with the adoption of Act No. 25-06 of 23 May 2008).
- Legislation defining protection rules but not defining the means of accessing them. This group comprises three countries: Egypt, Jordan and Syria. Most of these countries use a pre-existing system such as trademark registration.

Israel falls into both categories, having a *sui generis* system for designations of origin and a trademark system for geographical indications. However, the *sui generis* system has fallen almost completely into disuse, and

so Israel's regulatory system is moving in a direction that would place it in the second group.

The procedures vary within these groups, reflecting the specific characteristics of each country; this makes comparisons difficult.

The recognition or registration of the right is associated with the definition of rules which must be respected in order for an economic operator to be able to use the right⁶. Various terms are used, but not necessarily with different meanings: specifications, production conditions, or rules on use.

The main difference is in how these rules are drawn up and how their relevance is ascertained. A collective mark system, whether or not it involves certification, does not provide for substantive examination by the competent authority. States which have opted for a *sui generis* system do perform this kind of examination. It is generally carried out with the support of a technical advisory committee providing the technical skills required (Lebanon, Morocco, Tunisia). Legislation can also provide for the use of external experts (Turkey) or for the public authorities to be involved in defining production rules (Algeria). There are certainly technical aspects to the question in view of the products covered by registration systems. The replies given by countries on this point differ, but they do take account of this factor in order to ensure that geographical indications are properly registered.

Compliance with these rules is guaranteed by the definition of inspection procedures (Algeria and Jordan for collective marks, and Lebanon, Morocco, Tunisia and Turkey).

As far as protection is concerned, the approach taken by the states is either to align their system with the fundamental protection rules established in the TRIPS agreement or to define broader rules which are compat-

ible with the TRIPS agreement but also take account of the need for greater protection of rights in view of the constraints attached to registration and the products concerned, which are often representative of a shared heritage.

Perspectives:

Interest in this particular right is strong as it allows countries to implement a policy that enhances the status of products and of their heritage.

The partners therefore wished to see certain developments:

- The creation of a network of experts, a forum in which experience can be exchanged, in order to improve the understanding of the concept from a legal and a technical point of view;
- Better provision of information to economic operators with regard to increasing awareness of respect for intellectual property or the use of this instrument to enhance the status of products.

Appendix 1: Summary of legislation

COUNTRY	WTO	LISBON AGREEMENT	REPLIED	LAW	PLAN OF ACTION
ALGERIA	NO, OBS	YES	YES	ACT No. 76-65 OF 16 JULY 1976 ON DESIGNATIONS OF ORIGIN	ASSOCIATION AGREEMENT, PROTECTION OF IP INCLUDING GI
PALESTINIAN AUTHORITY	NO		YES	GENERAL IP PROVISIONS, LEGISLATION MAY BE ADOPTED	
EGYPT	YES		YES	ACT ON THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS DATED 30 JUNE 2002	YES
ISRAEL	YES	YES	YES	ACT No. 5725 OF 7 JULY 1965 ON THE PROTECTION OF GIs AND DOs, AMENDED IN 1999	
JORDAN	YES		YES	ACT No. 8 OF 2000	
LEBANON	NO, OBS		YES+DQ	BILL BEING FINALISED	YES
MOROCCO	YES		YES+DQ	ACT No. 25-06 OF 23 MAY 2008 ON DISTINCTIVE SIGNS OF ORIGIN AND QUALITY OF AGRICULTURAL PRODUCTS AND FOODSTUFFS ACT No. 17/97 OF 14 FEBRUARY 2006 ON THE PROTECTION OF INDUSTRIAL PROPERTY LAYING DOWN THE PROCEDURE FOR THE PROTECTION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OF ORIGIN	NONE, BUT THERE WILL BE A PROGRESS REPORT
SYRIA	NO		YES	ACT No. 8 OF 11 MARCH 2007 ON INTELLECTUAL PROPERTY	
TUNISIA	YES	YES	YES	ACT No. 99-57 OF 28 JUNE 1999 ON DESIGNATIONS OF ORIGIN AND INDICATIONS OF PROVENANCE OF AGRICULTURAL PRODUCTS. ACT No. 2007-68 OF 27 DECEMBER 2007 ON DESIGNATIONS OF ORIGIN, GEOGRAPHICAL INDICATIONS AND INDICATIONS OF PROVENANCE OF HANDICRAFT PRODUCTS.	
TURKEY	YES		YES+DQ	DECREE-LAW No. 555 ON THE PROTECTION OF GEOGRAPHICAL SIGNS (DATES BACK TO 27 JUNE 1995)	ASSOCIATION AGREEMENT, IP COMPLIANCE REQUIREMENT

Appendix 2: Bibliography

Publications:

“Geographical indication and TRIPS: 10 years later ... A roadmap for EU GI holders to get protection in other WTO members” Cabinet O’Connor and Company and Insight Consulting.

“La protection internationale des indications géographiques” [International protection of geographical indications] Denis ROCHARD PUF

Reports of the SENER GI project “Strengthening International Research on Geographical Indications: from research foundation to consistent policy”, and in particular the WP3 REPORT

<http://www.origin-food.org> , see also:

http://ec.europa.eu/agriculture/events/qualityconference/sylvander_en.pdf

Articles

“Passé, présent et avenir des designations d’origine dans le monde vers la globalisation” [Past, present and future of designations of origin in an increasingly globalised world] Jacques AUDIER (Bulletin of the International Vine and Wine Office 2008 vol. 81 No. 929-931, p 405-435)

Internet

- Sites of partner country authorities:

Algeria: <http://www.inapi.org/en/accueil/index.php>

Israel: <http://www.patent.justice.gov.il/mojeng/>

Jordan: <http://www.mit.gov.jo/>

Lebanon: http://www.economy.gov.lb/MOET/English/information_accessible_from_the_home_page

<http://www.economy.gov.lb/MOET/English/Panel/Projects/ProtectionOfGeographicalIndications.htm>

Morocco: <http://www.ompic.org.ma/>

Tunisia: <http://www.inorpi.ind.tn/>

Turkey: http://www.tpe.gov.tr/portal/default_en.jsp

- Other sites

WTO: <http://www.wto.org/index.htm>

WIPO: <http://www.wipo.int/portal/index.html.en>

- Site dealing with Mediterranean products:

<http://www.cybermontagne.org/montagne/index.jsp?langue=gb>

Notes

- 1 Products in the wine sector now come under a similar system: Regulation No. 479/2008 of 29 April 2008 on the common organisation of the market in wine.
- 2 Israeli legislation is the same in this respect.
- 3 Source: presentation by the Israel patent office.
- 4 Source: detailed file prepared by OMPIC.
- 5 European neighbourhood policy. Report on the Palestinian Authority, the West Bank and the Gaza Strip. COM (2004) 373 final.
- 6 If it is accepted that trademarks have to be registered in Egypt, Jordan and Syria.

Auditing and Accounting in the Euro-Mediterranean Partnership

In the private sector:

by

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on the Independence of the Commissioner, Ministry of Economy, Brussels (BE)

and

Maria Teresa VENUTA, General Secretary of the Federation of
Mediterranean Chartered Accountants (FCM), Rome (IT)

In the public sector:

by

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I. General Introduction

In the last Working Group Meeting on 'Auditing and Accounting in the Euro-Mediterranean Partnership' which took place in Palermo, Italy, from 9-12 June 2008 within the framework of the EuroMed Market Programme, participants made a statement which falls within the context of the Euro-Mediterranean policy of the European Union.

In accordance with: the guiding principles defined in Malta (1st Phase 2003), the recommendations formulated at the Training for Trainers seminar held in Rome as well as at the various intra-regional seminars in Ankara and Algiers (2nd Phase in 2004), the recommendations set out in the regional seminar on: "Developments in Auditing and Accounting in the Euro-Mediterranean Area", held in London (3rd Phase 2005), the guiding principles stated in the initial regional seminar on "Euro-Mediterranean Auditing and Accounting" in Luxembourg (4th Phase 2007), the recommendations of the final regional seminar in Athens (4th Phase 2007) and the recommendations on this topic formulated in the Operational Conclusions adopted at the end of the Launching Conference of the 5th Phase of the EuroMed Market Programme, held in Brussels in January 2008, the following final declaration was signed by the Mediterranean partners (MP).

The participants believed that it would be advisable to:

1. Strengthen regional cooperation in the field of auditing and accounting, in both the private and public sectors, and to consolidate a network of expertise in this field, both virtual and real. The former will be supported by the programme website and the latter could be achieved by future face to face meetings.
2. Exchange experience, information and good practices between the South-Mediterranean Partners in the field of auditing and accounting in both the private and public sectors.

3. Provide the necessary assistance to achieve the main objective of the EuroMed Market Programme;
4. Provide all the legislation in force in each MP, as far as it is available in one of the working languages of the programme (English and French) in order to identify the main differences between the various legislations with a view to supporting legislative approximation, which is one of the major objectives of the EuroMed Market Programme, while also taking into account the legal system of each Partner.
5. Promote the establishment of a training centre for Mediterranean Partners whose main objective would be to provide programmes a) for the private sector, on developments in accounting, auditing, corporate governance and capital markets activities, as well as advice and training to reduce the impact of money laundering and related activities b) for the public sector, improve the quality of public sector financial management and public internal financial control.

Furthermore, the participants take note of the specific objectives set for this fifth phase and commit themselves to achieve them by keeping on working together, among others through a number of functionalities of the Programme website of which they have been informed during the meeting. The general objective is to contribute to drawing up a study on the situation of auditing and accounting in both the private and public sectors in the Mediterranean Partners, which will be presented at the end of 2008 on the occasion of the working groups plenary meeting.

The following study takes into consideration the analysis of developments in auditing and accounting in the Meda partners since 2003 in connection with the creation of a free trade zone by 2010. It is conducted on the basis of a comparative analysis, a questionnaire with MP's responses, institutional development, legislation, best practices and a final evaluation.

The study has two parts: audit and accounting have been considered separately for the private and public sector. At the end of each part there is a conclusion on the comparison of the situation and evolution of MPs. Suggestions and/or proposals to achieve the main objective - the Euro-Mediterranean Free Trade Area in 2010 - follow.

II. Private Sector

1. DEVELOPMENTS IN MEDA COUNTRIES

1.1 Algeria

Algeria opened its economy through several economic and financial reforms, total liberalization of foreign trade, the creation of a stock exchange, listing of companies and above all the Association Agreement with the European Union.

1.1.1 Accounting

The effects on the accounting system in place since 1975 and the creation of the National Accounting Council (*Conseil National de la Comptabilité - CNC*) in 1996 were followed by a recent reorganization of the existing accounting plan (heavily inspired by French law). This brought accounting rules closer to international systems with the aim to move towards readable, transparent and detailed financial information.

CNC's is an inter-departmental and inter-professional (accountants, auditors, bookkeepers) agency appointed by the government (specifically by the Minister of Finance). Its original mission was to coordinate accounting standard setting and related research, to discuss and give its advice and recommendations on all draft laws related to accounting and to monitor the developments of international accounting methods, organizations and instruments. CNC's mission has now expanded to include the revision of the existing accounting plan.

The new accounting system provided by the new law¹ adopts IAS / IFRS international accounting standards. It creates an accounting framework and a nomenclature of the accounts based on the European Union system.

This system is based on the principle of fair value and the pre-eminence of economical aspects over juridical ones.

This approach should focus more on meeting the requirements of investors needing transparent and reliable information.

Every type of company, whatever the size, will fall under the implementation of the new law. However, simplified accounts are allowed for small businesses (*livre des recettes et des dépenses*).

The three most important elements of this new approach for the Algerian economy are that:

- The convergence to international rules, based on internationally accepted concepts and principles, should result in more detailed financial information reflecting a fair representation of the financial situation of the company.
- The risk of the manipulation of rules (voluntary or involuntary) should be limited by giving more priority to explicit principles and rules in the recording and evaluation of accounting transactions and in the preparation of financial statements. This should also facilitate the audit of the accounts.
- The availability of readable, comparable and harmonized financial information (possibly along the lines of what is currently applied globally or at least in the European Union) will enable investors to make their investment decisions with full knowledge of the economic and financial situation of the target company.

This accounting change, which will be applied from January 2009, will cause significant problems in terms of the support which will be needed by businesses, accounting professionals and users of the accounts.

The problems of understanding, applying and interpreting accounting standards inspired largely by the Anglo-Saxon doctrine will be numerous.

Training programs in accounting should be adapted to the new rules, and for several years it will be necessary to organize workshops, conferences and events to provide information and training for all interested parties.

Lastly, we note that the obligation of publishing financial statements in the legal notices bulletin of the Registry of Commerce will continue to apply. This is not a disclosure of financial information, as accounting professionals are bound by professional secrecy, but a partial publishing of financial statements.

In the South-South cooperation context there have been actions taken regarding the training of IAS / IFRS international accounting standards.

Concerning ethical standards, the Executive Decree of April 15, 1996 provides the code of ethics for accounting and auditing professionals.

1.1.2. Audit

The Algerian statutory audit was influenced by the French system. It can be made by an auditor (*Commissaire aux Comptes*) belonging to the recognised Algerian professional body (*Ordre Algérien des Experts-Comptables, des Commissaires aux Comptes et des Comptables Agréés*).²

Listed companies, private companies and profit making businesses and associations are controlled by auditors. The auditors are appointed for 3 years (renewable once) by the shareholders. For public banks the appointment is made by a governmental agency.

Joint audits exist for groups of companies and financial institutions (banks, insurance companies). A rotation is expected after the renewal of the mandate (2 times, three years max.)

In cases of non-compliance with audit rules, fines and criminal penalties may be applied.

The professional ethics of auditors is dealt with in the Code of Ethics of the Algerian recognised professional body of 1996. The Prosecutor of the Republic can be informed by anyone interested and particularly by the auditors.

Regarding the possible convergence with the ISAs (International Standards of Auditing), Algeria has the objective of starting a process of convergence through a bill which is currently being prepared.

In the South-South context no actions for further co-operation were noted, however the introduction of ISA standards in the future bill should facilitate the cooperation with MPs who are working towards the same objectives. The agreement with the European Union and the accession to the WTO should make Algerian adaption to international standards more effective.

1.1.3. Profession

Professional bodies

Professional access in Algeria is regulated for professional accountants and statutory auditors. Three different types of professionals exist: *Experts-Comptables, Commissaires aux Comptes and Comptables Agréés*.

The professional body is the "*Ordre des Experts-Comptables, Commissaires aux Comptes et Comptables Agréés*", created in 1992 (Law n° 91-08 27 April

1991). It is not a member of the International Federation of Accountants (IFAC).

Licensing and Education

The law sets the requirements to obtain a license. The requirements are different for *Experts-Comptables*, *Commissaires aux Comptes* and *Comptables Agréés*.

Generally in order to acquire a license a candidate must have completed specific studies (academic studies in the case of *Experts-Comptables* and *Commissaires aux Comptes*) and have a practical experience of at least two years. There are no ongoing requirements to retain the license.

Ethics and Independence

Professional accountants are required to adhere to a code of ethics.

Investigation and discipline

No enforcement actions have been implemented in the last three years.

Regulatory Oversight and Quality assurance

Currently there is no regulatory public oversight and quality assurance system.

1.2. Egypt

Abstract from EU – EGYPT Joint ACTION PLAN

Adopted at the 3rd EU-Egypt Association Council

Brussels, 6 March 2007

2.2.2. Right of establishment, Company law and services.

a) Establishment and company law

- Co-operate to facilitate the establishment of companies and foreign investment and progressively remove obstacles to establishment.
- Improve the environment for business operation, e.g. adopt and implement effectively bankruptcy legislation.
- Work towards the adoption of key principles of international accounting standards for listed companies and consolidated accounts.
- Establish a qualified and independent audit profession and work towards the adoption of international standards on auditing for all statutory audits.
- Implement a code of corporate governance.

b) Services

- Facilitate the supply of services according to the parties' commitments under GATS including by the development of the necessary administrative structures and the removal of identified barriers.
- Prepare for negotiating progressive liberalization of trade in services and right of establishment taking into

account the Euromed Framework Protocol adopted in Istanbul in 2004 and the Marrakech declaration of March 2006.

- Develop a strategy to enhance the competitiveness of the Egyptian services sector including regulatory simplification and administrative facilitation.
- Establish a list of EU Member States contact points on services to provide information to the Egyptian services suppliers/providers who seek to access the European market.

Financial services

- Full implementation of the Financial Sector Reform Program (FSRP).
- Enhance the prudential regulatory framework for financial services.
- Develop the capacity building of independent authorities to ensure effective supervision including through training.

In recent years Egypt has made considerable efforts to align the financial reporting requirements of businesses to the IAS / IFRS international accounting standards. Significant improvements were made in accounting and disclosure requirements for companies using public savings and financial institutions.

The legal framework for accounting and auditing is influenced by the French civil law.

All listed and unlisted companies are obliged to prepare statutory annual accounts.

The Egyptian Society of Accountants and Auditors is responsible for setting the accounting standards which are legally enforced through a ministerial decree.

1.2.1. Accounting

According to Law 95/1992 on the Capital Market, all listed companies are obliged to apply the Egyptian accounting standards and to have them controlled by a certified public auditor. Currently there is a major effort to issue Egyptian Accounting Standards in full compliance of IFRSs. In the absence of national standards IFRS are applied.

Starting from 2002, the new rules approved by the Capital Market Authority aim to ensure proper preparation and presentation of financial statements within a reasonable time frame. The new rules also aim to completely enforce accounting, auditing and other legal requirements. Joint-stock companies are also obliged to establish an Audit Committee with the clear aim of strengthening corporate governance and improving financial reporting.

There is an obligation of disclosure for annual accounts and consolidated accounts.

The banking law obliges all banks to follow the requirements and guidelines of conduct established by the Central Bank of Egypt.

Accountants should be registered with the Registration Committee established in the Ministry of Finance.

Educational/technical standards for accountants should be improved by increasing the quality of university education and introducing a professional qualification exam. These standards are developed by the profession, discussed and adopted by a ministerial committee and enacted by a ministerial decree. This is done in the Committee chaired by the Minister of Investment who reviews, approves and promulgates the standards set by the Egyptian Society of Accountants and Auditors.

1.2.2. Audit

The Egyptian Society of Accountants and Auditors (ESAA), established by Royal Decree, plays a central role in the audit profession. The Companies Code stipulates that the audit standards proposed by ESAA become obligatory after being published by ministerial decree. ESAA is under the legal authority of the Minister of Investment.

ESAA has been a member of IFAC (International Federation of Accountants) since 1992. In mid 2008 the ESAA Board issued a code of ethics to be applied by all its members.

In 2007 ESAA drafted the Egyptian standards on Auditing, Review and Other Assurance Services in compliance with international Auditing Standards. In the absence of Egyptian audit standards international auditing standards (ISAs) are applied. However, it is noted that knowledge of ISA standards and guidelines is not sufficient and that the control mechanisms of the profession are not effective enough. The difference between the standards and their practical implementation as well as the lack of qualifications for people who prepare financial statements and audit them is a problem to be solved.

Auditors are appointed by the shareholders for one year. A joint audit is only required for banks and mutual funds. We should also note that micro-enterprises have been exempted from statutory audit.

Regarding the South-South cooperation only the collaboration efforts within the Arab Organization of Supreme Audit Institutions should be noted.

1.2.3. Profession

Professional titles and bodies

Professional access is regulated for accountants and statutory auditors, but no activity is exclusively reserved for accountancy professionals besides statutory auditing. The Egyptian Society of Accountants and Auditors (ESAA) is the professional body. It groups approximately 1200 professionals and is a member of IFAC since 1992.

Licensing and Education

According to current law, the Ministry of Finance sets the requirements for auditors to obtain a license for professional practice and grants the licence. The ESAA is the entity responsible for certifying the statutory auditors. In order to acquire a license one must have a university degree (bachelor of commerce), 3 years of practical training in a reputable member audit firm and pass a qualifying examination. There are no ongoing requirements to retain the license.

Foreign professionals qualified with another acceptable foreign professional body have to pass two qualifying exams in both Egyptian commercial law and taxation.

Ethics and Independence

In 2007, the Capital Market Authority (CMA) issued a code of ethics to be applied by all auditors registered in CMA register of authorized auditors.

In mid 2008 ESAA Board issued a code of ethics to be applied by all its members.

Investigation and discipline

The Governmental Audit bureau is a governmental agency solely responsible for investigating and disciplining the accounting profession in Egypt.

In addition, the Capital Market Authority (CMA) is responsible to monitor, enforce and regulate activities involved with the capital market in Egypt. A board member of CMA is a board member of the ESAA and both CMA & the Society are reporting to the Ministry of Foreign Trade.

No enforcement actions have been implemented in the last three years.

Regulatory Oversight and Quality assurance

There is neither a public oversight nor a quality assurance system.

1.3. Jordan

Abstract from EU – JORDAN Joint ACTION PLAN

Adopted in January 2005

2.3.2. Right of establishment, Company law and services.

Establishment and company law

(24) Remove obstacles to the establishment and operation of companies.

a) Operation of Companies

– Establish a suitable environment for companies.

– Co-operate to facilitate foreign investment

b) Establishment

– Co-operate to facilitate the establishment of companies.

– Without prejudice of annex VI of the agreement ensure reciprocal national treatment for EU and Jordanian subsidiaries, companies or branches.

c) Company law:

– Work towards convergence with key principles of international and EU rules and standards including the establishment of a public register of undertakings, a national gazette for the publication of companies data and ensure control of the incorporation of a company or the compatibility of certain acts in accordance with national laws and regulations.

- Efficient implementation of a code on corporate governance

Medium Term:

- Establish a high-quality audit profession.

Services

(25) Gradual abolition of restrictions on supply of services

- Establish the Euromed framework protocol to enable the possibility of open bilateral negotiations.
- Develop a strategy to enhance the competitiveness of the Jordanian services sector including regulatory simplification and administrative facilitation for both Jordanian and EU sectors.
- Support Jordan to prepare for future liberalisation of trade in services in selected sectors in accordance with Government Policies. Jordan has to proceed with consultations with its private economic operators to identify sectors for potential co-operation.
- Explore possibilities of facilitating the supply of services including by the development of the necessary administrative structures and the removal of identified barriers.

(26) Development of financial services.

- Enhancement of a prudential regulatory framework for financial services.
- Set up and train independent authorities to ensure effective supervision

The legislative changes since 2002 in accounting and auditing have been influenced by two very important

events dating back to 2003 (new law 73/2003 on the accountancy and auditing profession of 16 June 2003).

The establishment of the ‘**High Council for Accounting and Auditing**’ chaired by the Minister of Industry and Commerce was made to create a public oversight body for the auditing profession. The body also has the power to approve accounting and auditing standards.

Regarding accounting, ‘the Jordanian Association of Certified Public Accountants’ (**JACPA**) established by Law 42/1987 in 1988, was strengthened by gaining new powers. These include the responsibility to set the professional standards, disciplinary authority over members and the right to inspect the working papers of members. JACPA can be considered independent on the financial and administrative side.

1.3.1. Accounting

The legal accounting system is based on Islamic law and the French Code. It is applicable to all commercial activities governed by the Commercial Code, Civil Code and the Companies law.

International IFRS standards should be applied in the preparation of listed company’s financial statements. Law 23/1997 on the Jordanian Securities Commission (JSC) provides listed companies’ accounting and auditing standards as well as publication rules and also stipulates the implementation of international standards from 2004. It specifies that if there is a conflict between international standards and local legislation, the latter will prevail.

Companies Law 22/1997 obliges all types of public companies to prepare and audit their financial state-

ments by applying the internationally recognized standards of accounting and auditing.

Lastly for banking and insurance companies the application of IAS / IFRS standards is required by the Banking Law 28/2000 and the Insurance Regulatory Act 33/1999.

JACPA adopted the international standards unchanged with all the latest amendments.

In 1973 the High Council for Accounting and Auditing was established with the power of auditing profession oversight and the power to approve accounting and auditing standards.

The law gives a Disciplinary Committee the responsibility to judge cases of non-compliance and to address complaints from members of the profession or from other people. This committee has the right to give a warning, a professional restriction of two years or to exclude a member.

The accounting profession is generally organized by Law No 73/2003, the Capital Market law No. 32/1997. For banks it is generally organized by Law No. 28/2000 and the Insurance Regulatory Act No. 33/1999.

Finally there is no legally established national accounting standard setting body in Jordan.

Various problems in the implementation of the existing accounting law exist in Jordan.

Firstly there is a lack of coordination between the various regulatory bodies.

This situation is made confusingly worse by the differences between the international standards and the national legal framework as well as the prevalence of national rules in case of conflict.

Another problem is the lack of a legally established accounting and auditing standard setting body and the lack of qualified accountants and auditors able to apply international standards (applicable without national adaptations).

A rather practical problem arises regarding the publication of audited annual financial statements that must be published in Arabic in a widely diffused newspaper. This may be counterproductive for the users of the financial information and especially if the financial statements are published in a summary format, without the details.

On the other hand corporate law provides that each shareholder has the right to examine all the information and financial documents of a company. He may even get a copy with the approval of the financial controller of the company. Finally each shareholder has the right to examine all unpublished paper if permitted by a decision in court.

1.3.2. Audit

The corporate law No. 22/1997 establishes the rules for financial reporting.

The Jordanian Association of Certified Public Accountants has the responsibility for disciplinary controls, the right to establish professional audit standards and the right to inspect its auditor members. Nonetheless there is not a legally established auditing standards setting body. The international audit standards (ISA) were applied by JACPA.

Audit requirement is on the same level and applies for the same businesses as the accounting requirement.

The auditors are appointed by shareholders for one year, renewable for up to 4 years. This deadline makes the rotation obligatory after 4 years.

In the event of a breach of rules the Discipline Committee has the right to reprimand, to determine a professional restriction for 2 years and to exclude a member.

The problems of implementation of the auditing regulation are the same as those noted for accounting. The absence of a legally established auditing standard setting body and a shortage of qualified auditors able to apply ISAs may be noted as the most important problems.

Although the objective of convergence with ISA is a priority, the weaknesses in the statutory auditing system caused a lack of transparency and consistency with the publication requirements and makes a full implementation of international auditing standards more difficult to achieve.

This situation is made worse by the lack of translation of ISAs and the fact that many professionals do not have access to the ISA-based practice manuals. Consequently adequate knowledge of international standards is currently lacking.

Nonetheless JACPA organizes many training courses and workshops on the implementation of international auditing standards. It also cooperates with the Palestinian Association of Certified Public Accountants.

Jordan is trying to take action to facilitate the exercise of the profession by auditors of other Mediterranean countries.

1.3.3. Profession

Professional titles and bodies

Professional access is regulated by the law for statutory auditors and professional accountants. Access is also

regulated for accountants employed: companies are required to hire a certified public accountant in any job related to accounting.

The Jordanian Association of Certified Public Accountants (JACPA) is the professional body. It's a delegated and self-regulatory authority by law and was established in 1987. It currently includes 481 registered members, of which 380 are employed in public practice. JACPA has been an active member of IFAC since 1992.

Licensing and Education

The "Accountancy Profession Law No (73)" of 2003 sets the requirements needed in obtaining the license for professional practice. The Higher Council of Accounting Profession is responsible for certifying the statutory auditors.

In order to acquire a license the candidate must have done specialized academic studies, have practical experience, pass a licensing examination and have Jordanian citizenship. Regarding the ongoing requirements to retain the license, it is mandatory to renew the license at the office of registration and certification. The JACPA recognizes some foreign accountancy qualifications (AICPA, CAs (UK) and ACCA).

The educational regulations of the accounting profession are set by the Ministry of Higher Education. In order to obtain certification one must have a university degree (in accounting, business or a related major), pass a two part exam divided into 4 sections and have at least three years of practical experience. In addition it is mandatory to be a Jordanian national or the national of a country that recognizes the Jordanian qualification.

Ethics and Independence

In Jordan the professional accountants are required to adhere to the IFAC Code of Ethics.

The Audit law also requires compliance with the IFAC code of ethics.

Investigation and discipline

Regarding investigation and discipline, a committee in JACPA (whose members are appointed by the Ministry of Industry & Trade) is responsible for all misconducts, breaches of professional standards and rules and complaints from members. This committee has the right to make a warning, to exercise a 2 year practice restriction and to exclude membership.

No enforcement actions have been implemented in the last three years.

Regulatory Oversight and Quality assurance

A mandatory quality assurance review program has recently been implemented (January 12 2007) for members of JACPA performing audits of financial statements for listed and unlisted companies. The review is a confidential matter between the organization and the firm.

No audit profession public oversight body has been established.

1.4. Lebanon

Abstract from EU – LEBANON Joint ACTION PLAN

Adopted in January 2007

2.3.2. Right of establishment, Company law and services

(a) Establishment and company law

- Review national legislation with a view to identify measures to facilitate establishment of companies, including foreign-owned companies. Work towards the progressive removal of barriers to establishment.
- Adopt and implement new bankruptcy legislation.
- Strengthen corporate governance, in particular for public companies, in line with international standards.
- Work towards the adoption of international and EU relevant accounting and auditing standards and the promotion of a highly qualified audit profession.

(b) Services

- Pursue bilateral negotiations on services and establishment in accordance with the Association Agreement and the Marrakech Ministerial Declaration.
- Develop a strategy to enhance the competitiveness of the Lebanese services sector including regulatory simplification and administrative facilitation for Lebanese and EU sectors.
- Facilitate the supply of services including the development of the necessary administrative structures and the removal of identified barriers.

Financial services

- Continue the implementation of the Financial Services Assessment Programme (FSAP).
- Work together to train independent authorities to ensure effective supervision.

The Ministry of Finance is the legal authority for accounting in Lebanon. For audit the Lebanese Association of Certified Public Accountants (LACPA), established in 1994, is the only professional organization.

The legal framework is influenced by French civil law as well as British legislation and the legal provisions are found in the Code of Commerce.

1.4.1. Accounting

The main accounting legislation is law 27/80 of the 19 July 1980. All enterprises, whatever their legal form, must respect this legal obligation. In addition, Decree 4665 of the 26th of December 1981 provides the general accounting plan for businesses. For banks and financial institutions the Ministry of Finance Decree 10 / 1 of the 9th of April 1984 is applied.

Listed companies, private companies and profit organizations are required to prepare their annual financial statements.

There are few national accounting standards; instead IFRS are mainly used. However, the differences between national standards and IFRS can be an obstacle for foreign investors. There have been no changes since 2002. It should however be noted that when convergence with international standards was set as an objective, LACPA was asked to make a comparative study of the local standards and the IAS / IFRS stand-

ards. Based on the results of this study, an action plan should be drafted covering two parallel levels:

1. Education and training in cooperation with the Ministry of Finance of LACPA members, managers, financial managers, accountants and shareholders;
2. Proposals for laws/regulations enforcing the implementation of the standards.

This plan should take two years.

The public has access to the financial statements of listed companies.

Regarding South-South cooperation, conferences and exchanges of trainers and speakers have been mentioned. Lebanon is a member of the Arab Federation of Accountants and Auditors, which has applied to become a regional organization of IFAC.

1.4.2. Audit

The Lebanese Association of Chartered Public Accountants (LACPA) is the only professional organization in Lebanon and accepts only certified public accountants as members. Its members are obliged to follow the LACPA Code of Professional Conduct which includes rules on:

- Independence
- Professional competency and skills
- Professional confidentiality
- Integrity
- Objectivity

The statutory auditors are appointed by shareholders for a fixed period. The Code of Commerce stipulates that a joint auditor, selected from a panel of Chartered Accountants approved by the Court of Primary Jurisdiction, may be appointed by order of the Court together with the lead auditor. No auditors' rotation is envisaged

and in cases of misconduct the Ministry of Finance can impose fines.

In legal terms the most important law is the Decree 8089 of 15 March 1996 of the Minister of Finance concerning audit reports that must be added to tax returns and financial statements of companies. This decree was modified by Decree 11671 of 16 January 1998, which provides that the auditor report must embrace the balance sheet, the income statement, the cash flow statement and the notes to financial statements. Listed companies, and partnerships with more than 25 employees or a turnover exceeding a given level (750 million Lebanese Pounds = approximately 500.000 USD) as well as branches of foreign companies that have activities in Lebanon are required to have a statutory audit.

There are no national standards and the legal situation has not changed since 2002. LACPA has the objective to use the international auditing standards (ISAs) as a reference but there is no legislation to confirm this choice. A committee was appointed to prepare a comparative study between ISAs and local laws.

Regarding South-South cooperation, it should be noted that to practice in Lebanon, non-Lebanese auditors must meet the following requirements: come from a country where the Lebanese auditors can also practice, naturally taking into account local conditions (reciprocity), establish a collaboration with a Lebanese auditor, qualified as auditor in their country (provided that qualifications are at the same level as the Lebanese ones) and comply with all requirements for foreigners working in Lebanon. Contacts with some professional associations, Mediterranean countries and with the “Arab Union of Chartered Certified Public Accountants” exist.

1.4.3. Profession

Professional titles and bodies

The Lebanese Association of Certified Public Accountants (LACPA) regulates professional access and was established in 1994. It is a member of IFAC.

Qualified professionals who wish to practice with the title of CPA must register with LACPA and have its membership but no activity is exclusively reserved for accountancy professionals besides statutory auditing.

Licensing and Education

LACPA sets the requirements necessary for a license.

The Parliamentary Committees and the Chamber of Deputies establish minimum education requirements for the accounting profession. The education program and final examination are delivered by the LACPA.

In order to qualify candidates must hold a degree in Business Administration or its equivalent (recognized by the ministry of professional and technical education), have a minimum of three years of practical experience in an accounting firm and pass a final four part qualifying examination.

Continuing Professional Development is a necessary ongoing requirement to retain the licence. A minimum of 40 training hours per year is mandatory for all members.

Ethics and Independence

Professional accountants are required to adhere to the LACPA code of Professional Conduct developed in 1996.

LACPA also adopted the revised IFAC Code of Ethics, issued and in effect June 30, 2006.

Investigation and discipline

The LACPA Disciplinary Council and Members Verification Committee has the right to warn, reprimand, suspend the license (for a period of up to one year) or terminate membership.

No enforcement actions have been implemented in the last three years.

Regulatory Oversight and Quality assurance

LACPA is planning to introduce a Peer Review system by 2011.

No audit profession public oversight body has been established.

1.5. Morocco

Abstract from EU – MOROCCO Joint ACTION PLAN

Adopted in July 2005

2.3.2. Right of establishment, company law and services

Right of establishment and company law

(26) Continue efforts to liberalise establishment and foreign investment (other than establishment in the services sector)

(a) Establishment

- Continue efforts to promote a suitable environment for companies.
- Continue the screening of Moroccan legislation on establishment so as to identify barriers to establishment with a view to widening the scope of the Association Agreement in relation to establishment.
- Extend the scope of the Association Agreement to include companies' right of establishment in the territory of the other party on the basis of the review clause in Article 31 AA.
- Exchange information and know-how on simplifying procedures.

b) Company law:

- Work towards convergence with key principles of international and EU rules and standards in company law.
- Promote a high-quality audit profession.

- Modernise the business register and the system of publicity in the official gazette for informing third parties.

- Start discussions on a Code of Corporate Governance.

Services

(27) Gradual liberalisation of trade in services between Morocco and the European Union

- Screen Moroccan legislation with a view to conclude an agreement on trade in services.
- Under the Palermo action plan:
- Contribute to finalisation of the Euromed services protocol.
- Open bilateral negotiations on services on the basis of Article 31 of the Association Agreement in accordance with Article V GATS.
- Exchange experience and know-how on general or sectoral legislation with a view to convergence with the EU's regulatory framework.
- Exchange experience to promote the development of e-commerce.
- Exchange experience and know-how in order to build capacity for evaluating trade in services.

Financial services

With reference to the FSAP recommendations:

- Develop a regulatory framework for the supervision of financial markets converging towards the EU's.

- Reinforce the prerogatives of the financial market supervisory authorities in accordance with international standards.

There are two competent authorities in Morocco: the National Accounting Council "*Conseil National de la Comptabilité*" (CNC) for accounting regulation and the body of certified accountants "*Ordre des Experts Comptables*" (OEC) for statutory audit.

The CNC was included in the Ministry of Economy and Finance in 2004.

The legal system regarding accounting and auditing is strongly influenced by French civil law and most of the provisions are in the Commercial Code and in the Companies Law.

1.5.1. Accounting

Listed companies and private companies are required to prepare their financial statements according to national accounting standards. IFRS should be used for the consolidated financial statements of credit institutions, listed companies and large private companies. The use of IFRS is optional for consolidated financial statements of other groups.

Law 9-88 is the basic law on accounting obligations of commercial entities and it was introduced by the CNC. In 2006 an amendment was made to the accounting law to soften the provisions for very small businesses.

Every commercial entity, natural or legal person, fall within the scope of the accounting law (corporations, limited liability companies etc.).

There are no problems or obstacles noted in the implementation of the accounting law. There is even a perfect

correspondence between accounting and taxation rules which creates a unity of sources and improves the reliability of the information produced.

The national accounting rules are found in the Moroccan General Code of Accounting Standardization. They were introduced by the CNC following the Decree of 16 November 1989 establishing the CNC and the Order of the Prime Minister of 14 July 1995 approving the internal regulation of CNC.

Convergence with international accounting standards has been targeted as a goal. A CNC's Commission examines the updating of the general code of accounting standard setting and its convergence with international accounting standards. Except for an amendment to the Accounting Act in 2006 (easing the legal requirements for very small businesses) there have been no changes in legislation since 2002. However, as regards non-legal regulatory provisions, CNC has adopted two measures since 2002: the obligation for credit institutions to use IFRS in the preparation of consolidated financial statements and the option for all groups to use IFRS for the consolidated financial statements.

Regarding the publication of financial statements, in Morocco there is an obligation for all companies to file their statutory accounts at the court of commerce and consultation by the public is possible. The consolidated financial statements of listed enterprises on the other hand must be published in the legal bulletin.

There are no actions regarding South-South cooperation in the accounting field to report.

1.5.2. Audit

The body of certified accountants "*Ordre des Experts Comptables*" (OEC), is a private institution created by the profession and established by Law 15-89 in 1993. It

consists of two regional councils and a national council which manages and oversees the entire profession. This includes registration in the supervision of professionals, participation in the qualifying education and training programmes, and the development and updating of professional standards.

The basic audit law is the corporations law 17/95.

A statutory audit based on the IFAC international standards (ISAs) is required for listed companies. The audit of private companies is regulated by the corporations law.

The auditors are appointed by the shareholders for a period of three years. Joint audits exist for all corporations, public companies and banking, credit, investment, insurance, capitals and savings institutions. For limited liability company audit is required when the turnover exceeds 7.5 Mdh.

A rotation is prescribed by the corporations law since the three-year term is renewable only once. Criminal penalties and fines can be applied for non compliance with existing rules.

The possible obstacles in the implementation of the audit regulation are related to the company's specific context and particularly to its quality of governance and transparency.

In cases of lesser quality (family or closed businesses) auditing is much more difficult.

The rules on independence and on the provision of services other than auditing are very clear. On the other hand the actions to monitor compliance are not yet sufficient and should be expanded.

Auditing standards are set by the corporations law and are also found in the manual of auditing standards

which was amended in 2008 by the OEC to comply with the IFAC rules. This amendment has led to a clear and total separation between auditing and consultancy services. Currently an auditor can not receive fees in any capacity from the audited group, other than those relating to statutory audit.

In February 2008 the accounting profession updated the auditing standards in force in Morocco with the latest version of the ISA international standards. Since 2006 control over the professional activity is made with reference to these standards.

Independence rules have not changed since 2002. In terms of education and training OEC has established rules for continued professional education compliant with the IFAC prescriptions. The procedures for monitoring compliance with these rules were implemented in 2007 together with the establishment of a training institute which is operational today.

Regarding South-South cooperation nothing has been done so far. Yet actions to facilitate the exercise of the profession for auditors from MP have been taken by Morocco in terms of qualifications (equivalent qualification), right to practice the profession in the country of origin and the existence of a reciprocal agreement between the two countries. There are also exchanges of experiences between professionals in Morocco and some Mediterranean countries, the most frequent and substantial being with France.

1.5.3. Profession

Professional titles and bodies

Professional access is regulated for accountants and statutory auditors, but no activity is exclusively reserved for accountancy professionals. Three professional bodies exist in Morocco: the *Ordre des Experts Comptables*

(OEC), the *Corps des Comptables Agréés* (CCA) and the *Conseil National de la Comptabilité* (CNC), respectively established in 1989, 1995 and 1989. The OEC includes 340 registered members whereas the CCA includes 290 members. Only the *Ordre des Experts Comptables* is an IFAC member.

Licensing and Education

Whereas the law determines the licensing requirements, the OEC regulates the application and admission procedure and is responsible to certify the statutory auditors.

In order to acquire a license one must have done a specialized academic study, have practical experience, pass a qualifying examination (*Mémoire d'Expertise Comptable*) and complete the admission procedure of the *Ordre des Experts Comptables*. Continued Professional Development is mandatory in order to retain a license. In addition all members should comply with OEC ethics and professional rules. In accordance with the code of ethics in the event of serious non-compliance a license can be withdrawn.

The *Institut Supérieur pour le Commerce et l'Administration des Entreprises* sets the educational requirements for acquiring certification from the body.

Ethics and independence

Professional accountants are required to adhere to a code of ethics developed by the *Ordre des Experts Comptables*. The national code does not differ from the IFAC code.

Investigation and discipline

The *Ordre des Experts Comptables* is responsible for the investigation and discipline of misconducts, breaches of professional standards and rules by professional accountants.

No enforcement actions have been implemented in the last three years.

Regulatory Oversight and Quality assurance

In Morocco a public regulatory oversight of the profession does not exist yet. A quality assurance program for the members of the OEC has existed since 2006.

1.6. Palestinian Authority

Abstract from EU – PALESTINIAN AUTHORITY Joint ACTION PLAN

Adopted in May 2005

2.2. Economic reform and development

(13) Improve the conditions for the establishment and functioning of a market economy

- Carry out necessary legislative reform and ensure adoption and implementation of a basic regulatory framework (including: Capital Market Authority Law, amended Income Tax Law, Companies Law, Competition Law)
- Strengthen the administrative capacity of the Palestinian Authority and other relevant agencies in the area of economic reform.
- Strengthen the capacity of the Land Authority

2.3. Trade-related issues, market and regulatory reform

(14) Develop trade relations between the European Community and the Palestinian

Authority

- Proceed with gradual liberalisation of trade in agricultural and fishery products and develop the necessary tools for trade control and management, including the gathering and analysis of data.
- Implement the Palermo Action Plan approved at the July 2003 Euro-Mediterranean Conference of Trade Ministers.

- Examine priorities for veterinary and phytosanitary standards in order to improve access to the EU market.

(15) Strengthen regional cooperation with neighbouring countries

- Reinforce co-operation among the EC, the Palestinian Authority and Israel to facilitate implementation of trade-related aspects of the Interim Association Agreement.
- Develop competencies, required knowledge and skills for trade negotiations.
- Enable Palestinian participation in the Pan-Euro-Mediterranean cumulation of origin.

(16) Develop the regulatory framework for a modern taxation system and institutions based on international best practices.

- Revise the Income tax law in line with international best practices, and encompassing a single tax code for the West Bank and Gaza Strip.
- Continue efforts to unify the taxation administration in the West Bank and Gaza Strip, and to improve the overall effectiveness of revenue collection.
- Improve coordination between the West Bank and Gaza treasuries and tax Administrations.
- Strengthen administrative capacity of the treasuries and tax administrations.

(17) Revitalise the private sector

- Provide support for sustainable private sector development, including institution building.
- Strengthen relations between the Palestinian private sector and its institutions and EU counterparts.

- Strengthen EU-PA cooperation on enterprise policy, including implementation of the EuroMed charter for enterprises.
- Simplify administrative procedures for business.

(18) Further develop the statistics system based on international best practices

- Reinforce the administrative capacity of the statistics bureau and improve overall coordination on collection of data.
- Ensure the appropriate legal framework for a modern statistics system based on impartiality, reliability, transparency and confidentiality of data.

There is no authority in the Palestinian Authority responsible for accounting.

The existing legal authority on auditing is the Palestinian Association of Chartered Certified Public Accountants (PACPA) responsible for overseeing the audit profession in the Palestinian Authority.

1.6.1. Accounting

The existing accounting law, contained in the Companies Law, was not influenced by any external regulations. This means that for public, private and even non-profit companies IFRS should be used for the preparation of annual financial statements. There is no national accounting legislation itself but the Companies Code suggests companies to follow IFRS. Except for the suggestion to follow international standards the situation has not changed since 2002. Due to the problematic situation of the country there is a lack of a proper control process or even field tests to verify whether standards are being applied correctly.

Regarding the publicity of accounts all entities, except those with less than 20 shareholders, are obliged to file their financial statements with the Companies Registrar. For the filing of consolidated accounts companies must file financial statements separately (at the legal entity level) with tax authorities. All filed financial statements must be accompanied by the report of an independent auditor. The public can not access registered accounts except in cases of public companies.

1.6.2. Audit

The PACPA (Palestinian Association of Certified Public Accountants) oversees the auditing profession. Although the first license to practice the profession is given by the Board of Auditing Profession, the PACPA is responsible for renewing the license.

These provisions are based on the Auditing Practice Law No. 9 of 10 August 2004.

Regarding statutory audit, listed companies and private companies should be audited according to international auditing standards (ISAs).

The audit mandate is for one year and shareholders appoint the statutory auditor. There is no joint audit or auditor rotation envisaged in the regulations.

In the event of non compliance sanctions (fines) can be inflicted, but taking into account the country's current situation, compliance with the rules are not always enforced in reality.

Another problem lies in the fact that corporate law provides only for general aspects in the absence of more precise requirements.

Regarding the application of auditing standards, there are no national standards and ISAs standards have been applied since 2004.

PACPA requires some continued professional education as a condition for renewing the license. Ethical standards, confidentiality and professional secrecy rules derive from the existing IFAC international code of ethics. However there is a significant implementation problem given the situation of the country.

1.6.3. Profession

Professional titles and bodies

The titles of professional accountant and statutory auditor are legally regulated by the "Auditing Practice Law No.9" enacted in 2004 by the Council of External Audit Profession.

No activity is exclusively reserved to accountancy professionals besides statutory audit.

The Professional body is the Palestinian Association of CPAs which includes at least 200 registered members throughout the country. It was established in 1995 and is still a relatively young association. The body is a delegated self-regulated authority by law and not a member of the IFAC.

Licensing and Education

The Board of Audit Profession sets the requirements for obtaining a license. The Council of External Audit Profession and the Palestinian Association of CPAs is responsible for certifying statutory auditors. To acquire a license it is necessary to have completed a specific university degree (in accounting from either the school of commerce or economics), have practical experience

and pass a licensing examination. Continuing professional development is the only ongoing requirement necessary to retain the license. No arrangements have been introduced for recognition of foreign accountancy qualifications.

Ethics and independence

Professional accountants have to adhere to the IFAC code of ethics.

Investigation and discipline

The Palestinian Association of CPAs is responsible for investigation and discipline but the sanctions haven't been specified. No enforcement actions have been implemented in the last three years.

Regulatory Oversight and Quality assurance

At present there is neither a regulatory public oversight nor a quality assurance system.

1.7. Syria

Auditing regulation in Syria has been influenced by the legislations of various countries such as France, Germany and European Union. Accounting and Auditing regulations are present in a variety of different sources such as the Civil and Commercial Code, the banking and insurance law and the companies law.

1.7.1. Accounting

Private limited liability companies must (under the Companies Law No. 3) prepare annual accounts. According to the prime minister's Decision No. 3943 of 28 August 2006 large companies (so called private contribution corporations) are required to prepare their accounts according to international accounting standards.

There is no national accounting standards setting body. The preparation of standards is made by the Ministry of Finance in cooperation with the association of Syrian auditors.

The practical consequences of the decision to apply international standards will only be measurable in 2009, after two years of implementation. This measure should make more transparent company accounts prepared in accordance with international standards and facilitate cooperation with MPs which adopted the same standards.

Such cooperation could benefit from the publication of consolidated accounts, as required by the Stock Exchange Law. This includes the possibility for the public to read the balance sheet, the income and cash flow statements and the auditor's report.

There are still some practical problems because in many cases the financial statements submitted to the auditor are not clear.

Actions for further cooperation have been initiated via partnerships with foreign companies, financial institutions of the MP countries, and by allowing branches of these entities to establish in Syria.

Regarding the practice of the accounting profession, rules of professional conduct exist and are found in the code of ethics.

1.7.2. Audit

The Ministry of Economy and Commerce is responsible for granting licenses to qualified people wanting to access the auditing profession.

Listed companies are audited by auditors included in a list established by the Syrian Commission on financial markets and securities. International auditing standards (ISAs) are applied.

The auditors are legally appointed by the shareholders for a period of one year with the option of renewal for a maximum of four successive years (three successive years for banks).

Joint audits are not generally required, they are only necessary in some cases depending on the level of activities of the companies.

In case of the auditor's misconduct fines, loss of limited liability status, loss of license, a prison sentence (for managers) and liability claims for damages made by the shareholders are all possible.

Regarding private companies, and more specifically the audit of small businesses, problems are recognized because of the management scarce capacity to prepare clear annual accounts. Auditors have an important role to play monitoring the transparency and reliability of the accounts.

There have been no major changes in the audit legislation since 2002. Recently, proposals to implement (or at least to converge towards) international standards have been established as an objective. A committee to study, examine and discuss whether ISAs can be applied unchanged has been established and should produce a report. This report should lead to a decision on the general implementation of IFAC standards.

Currently cooperation between MPs is not developed but may increase in the future through agreements with the other countries and through exchanges of experience in meetings and conferences.

When actions to increase the quality, efficiency and experience of auditors will be fruitful, cooperation with the MP will be easier. These actions shall focus on the organization of education and training programmes, monitoring programmes, rules dealing with audit documents and with the final report reflecting the real position of the company.

1.7.3. Profession

Professional titles and bodies

Access to the accounting and statutory audit profession is regulated. The Association of Syrian Certified Accountants is the body and was established in 1958. The association has 2618 registered members in public practice. It is not a member of IFAC.

Licensing and Education

The Ministry of Economy and Trade is responsible for certifying and licensing the statutory auditors.

Legally in order to acquire a license a candidate must have an academic education, practical experience,

and pass qualifying and final licensing examinations. In addition the statutory auditors of listed entities have to be registered by the Association of Syrian Certified Accountants. There are no ongoing requirements to retain the license.

No rules have been introduced regarding the recognition of foreign accountancy qualifications.

The educational requirements are established by the Ministry of Economy and Trade with the Association of Syrian Certified Accountants and the College of Economy and Trade.

In order to obtain certification from the professional body it is necessary to have a degree in economics and trade (of at least four years), pass professional examinations and have five years of practical experience.

Ethics and Independence

Members of the Association of Syrian Certified Accountants are required to adhere to a national code developed by the Ministry of Economy and Trade in 1990.

Investigation and discipline

Syria does not have a commission responsible for investigation and discipline of accounting misconducts, breaches of professional standards and rules. No enforcement actions have been implemented in the last three years.

Regulatory Oversight and Quality assurance

There is neither a regulatory public oversight nor a quality assurance system.

1.8. Tunisia

Abstract from EU – TUNISIA Joint ACTION PLAN

Adopted in July 2005

2.3.2. Right of establishment, company law and services

Right of establishment and company law

(25) Promote greater freedom in relation to establishment and foreign investment (other than establishment in the agriculture and services fields)

- Foster suitable conditions for companies, e.g. through effective implementation of bankruptcy legislation;
- comparative study of Tunisian and EU legal systems for all aspects of company establishment, to identify in particular suggestions for improvements that would encourage foreign investment;
- screening by Tunisia of national legislation so as to identify barriers to establishment;
- ensure that the conditions for establishment of companies are not more restrictive than when the Association Agreement was concluded;
- widen the scope of the Association Agreement to include the right of establishment (on the basis of the review clause in Article 31).

Company law

- Establish a high-quality audit profession;
- implement the key principles of accountancy laid down in international and EU rules and standards and ensure their effective application;
- modernisation of the business register and the system of publicity for informing third parties;
- start discussions on a code of corporate governance.

Services

(26) Gradually eliminate restrictions on trade in services between the EU and Tunisia in a significant number of services and negotiate an agreement to liberalise trade in services in accordance with Article V GATS

- Contribute to finalisation of the framework protocol on service liberalisation in the Euro-Med services working party;
- launch bilateral negotiations on the conclusion of a free trade area in services in accordance with Article V GATS;
- exchange experience and know-how of existing general or sectoral legislation in the EU;
- identify national priorities and draw up an appropriate schedule of negotiations in the service sector with the EU.

Financial services

- Continue implementation of the IMF's July 2002 Financial Sector Assessment Programme (FSAP).

The legislative framework for accounting and auditing in Tunisia was strongly influenced by the French civil law but is now increasingly influenced by international standards.

1.8.1. Accounting

The main law which regulates accounting and financial statements in Tunisia is Law No. 96-112 of 30 December 1996 setting up the accounting system for enterprises.

The accounting conceptual framework was established by Decree No. 96-2459 of the same date and enforcement of accounting standards has been done by different orders by the Minister of Finance.

The accounting rules are applicable to all entities (natural and legal persons) that are required to have statutory

accounts. The only exceptions being for enterprises subjected to the provisions of the public accounting code and those allowed to have simplified accounts.

The obstacles in the practical implementation of this regulation may lie in the divergence between accounting and tax rules, leading some companies to meet the fiscal requirements but move off from the accounting rules.

The standards are purely national and established by the National Accounting Council (*Conseil National de la Comptabilité - CNC*), an advisory body chaired by the Minister of Finance and with a mandate to give its opinion on draft accounting regulations and any matters relating to accounting. In 2007 Decree No. 1096 of 2 May 2007, establishing the composition and internal regulation of CNC, reorganized the body by strengthening the presence of the profession in it and establishing steering committees to technically prepare accounting standards, opinions and interpretation notes.

Listed companies are obliged by the commercial code to prepare and publish financial statements in accordance with existing regulations.

The Commercial Code also requires private companies to submit their financial statements in accordance with the legal accounting system for enterprises.

The law requires profit making associations authorized to grant micro-credits to follow the applicable accounting system for enterprises. There is a particular rule specifically dealing with such associations.

Since 2002 the accounting legislation has completed the accounting standards provisions by introducing a standard on consolidation (2005), standards for particular sectors (particularly banks and insurance companies) and a standard on rental contracts (2008).

Tunisian accounting standards are mainly influenced by the IFRS standards, but are also influenced by the French, Canadian and American GAAP standards.

The setting up of an action plan for making the consolidated financial statements of “public interest” companies fully compliant with IFRS was recommended by the World Bank Support Program for Strengthening the Competitiveness of the Economy (PACE IV), among other measures on improving the quality of financial information of listed and non-listed companies above a certain size. The decision to move towards convergence with international accounting standards was taken on the basis of the results of a study on the possible strategies for accounting standards setting in Tunisia carried out by a working group established by the Minister of Finance.

The 1996 law on the accounting system of enterprises specifies that companies can choose an accounting system other than the Tunisian with the authorization of the Minister of Finance and provided that this system is internationally recognized.

Regarding the South-South cooperation, the evaluation of the impact of the application of IFRS for the consolidated financial statements of “public interest” companies could result in a decision to increase the cooperation with countries which already apply the IFRS. In this perspective the requirement for the parent company to publish consolidated financial statements of the group in accordance with existing regulations could favour an opening of the market towards countries following the same rules because of the public access to statutory financial information. It is certain that training programmes on convergence towards and implementation of IFRS shall greatly contribute to cooperation.

1.8.2. Audit

Statutory audit is imposed by the code of commercial companies and in a decree (87529) for public companies. The auditors's (called *commissaires aux comptes*) mandate is of 3 years - renewable 2 times (i.e. maximum 3 mandates) for individuals, and renewable 4 times (i.e. 5 mandates) for companies (and this is actually a mandatory rotation). The auditors are appointed by the shareholders. Credit institutions using public savings, multiple branch insurance companies, companies that must prepare consolidated financial statements and companies where debit exceeds a certain level, are required to have a joint audit by the Companies Code.

In case of non-compliance and certification of false information the auditor is subject to fines and even to imprisonment.

The “*Ordre des Experts Comptables de Tunisie*” (OECT) groups all the accountants under the responsibility of the Minister of Finance and of the other two audit authorities. The national audit standards are developed by the OECT and enforced after the approval by the Minister of Finance. The bookkeepers (*comptables agréés*) are allowed to audit companies whose turnover is below 3 million dinars (approx 1.6 M Euro).

Established by law, a quality control process was introduced in 1988 by establishing a monitoring committee responsible to ensure the implementation of the obligations of independence and professional diligence of professionals Auditors. The same law has extended this control to all persons performing statutory audit missions.

The OECT has already started a diagnostic study on the statutory audit quality control process in the perspective of preparing proposals for its improvement. The current situation will be reviewed, Tunisian rules and practices

will be compared to the best international practices and concrete proposals will be formulated.

Since 2002 an important change in the auditing regulation is noted: the adoption by the “*Ordre des Experts Comptables de Tunisie*” of IFAC standards. Following this decision a OECT commission was charged with translating the ISAs and preparing an implementation guide. It should be noted that the aspects not covered by international standards are governed by national standards.

In the audit field a cooperation with the European Union is envisaged and in particular with Belgium and France.

Finally Tunisia is expecting that the creation of a free trade area in 2010 will increase professional expertise and strengthen convergence towards international practices in both auditing and accounting. To achieve this goal free movement of professionals shall be strongly eased, also through better mutual recognition of qualifications.

1.8.3. Profession

Professional bodies

Access to the accounting and statutory auditor profession is regulated. There are currently two professional bodies in Tunisia: The *Ordre des Experts Comptables de Tunisie* and the *Compagnie des Comptables de Tunisie*. The *Ordre des Experts Comptables de Tunisie* is a self-regulating body and was established in 1982. It currently includes 500 registered members. The *Compagnie des Comptables de Tunisie* is also a self-regulating body and was established in 2002. It currently includes 1400 members.

The *Ordre des Experts Comptables de Tunisie* is member of IFAC and an IFAC’s Council member since 2008.

Licensing and Education

The law sets the requirements to obtain a license. In order to acquire a license a candidate must have completed specific academic studies, have practical experience of at least three years and pass a final qualifying examination (*Mémoire d’Expertise Comptable*). There are no ongoing requirements to retain the license.

The *Ministère de l’Enseignement Supérieur et de la Recherche Scientifique* determines the educational requirements for a licence.

Ethics and Independence

Professional accountants (employed in public practice) have to adhere to the “*Code des Devoirs Professionnels*”.

Investigation and discipline

The *Chambre de Discipline* is the body responsible for investigation and discipline. No enforcement actions have been implemented in the last three years.

Regulatory Oversight and Quality assurance

There is a public regulatory oversight but not a quality assurance system.

1.9. Turkey

The Turkish accounting regulation does not have a fragmented structure anymore. The organizations which issued standards before, the BRSA (Banking Regulation and Supervision Agency) in November 2006 and the CMB (Capital Market Board) in April 2008, accept to use the standards issued by the TASB (Turkish Accounting Standards Board). Regarding the financial statements to be used to determine the tax assessment, it is regulated by the Regulation on the Uniform Accounting System which requires those statements to be based on TMSK's standards. Regarding the audit services, it is compulsory that these services be conducted by TURMOB (Union of Chambers of Certified Public Accountants of Turkey) members. Legal regulations require audits required by CMB and BRSA for the firms to be conducted by TURMOB members. Ministry of Finance requires the tax returns be signed by professional members and the tax audits be conducted by TURMOB YMM (sworn-in CPA) members.

The new Commercial Code only contains principles to be complied and requires the use of Turkish Financial Reporting Standards/Turkish Accounting Standards (TFRS/TMS) which are fully convergent with the IFRSs/IASs. Throughout history, the need to achieve good financial reporting has obliged the different authorities, like the CMB (Capital Market Board) for listed companies; the BRSA (Banking Regulation and Supervision Agency) for banks and other financial institutions which are under the supervision of the BRSA to create their own rules to regulate the financial reporting and Accounting. The Ministry of Finance has created their own rules to regulate the financial reporting and Accounting. In order to seek solutions to end this fragmentation the TASB (Turkish Accounting Standards Board) was established in 1999.

1.9.1 Accounting

The TASB has the legal status of public entity and it is independent administratively and financially. It has the goal of promoting the development and adjustment of national accounting standards towards a fair, comparable and comprehensive financial reporting. It has the mission of issuing national accounting standards and promoting their implementation in the general interest.

The Turkish legal system was particularly influenced by a variety of legislations like the Swiss law, the German commercial code and the Italian penal code.

The life of an enterprise is regulated by the Turkish commercial law, the capital markets law, the banking law and the assurances law.

Listed entities must use full IFRS. In the future these standards will be replaced by the TFRS adopted for those entities by the European Union.

Other private companies must apply the Turkish national standards. TASB sets national accounting standards compliant with full IFRS. Although TASB has currently no legal power to oblige any entities to apply these standards, large entities and public organizations use them. So far, only CMB and BRSA have the legal power to oblige the entities falling within their regulatory scope to apply IFRS (fully translated into Turkish by TASB). The Draft Commercial Code under discussion at the Turkish Parliament, regulates the obligation on national standards to be inserted in company law.

Since 2002 there have been legislative changes to keep up with European and international developments. The international standards are now applicable to listed companies as well as to banks and insurance companies.

1.9.2. Audit

As regards audit regulation, the Ministry of finance, CMB, BRSA, Undersecretariat of Treasury, Radio and Television Supreme Council (RTUK) and Energy Market Regulatory Authority (EPDK) are responsible for audit obligations. They have a status of legal public entity and are independent administratively and financially. The CMB has the goal of implementing audit rules and exercising its supervisory authority (granted by the Securities market law).

Regarding Audit services the CMB regulated the usage of the audit standards which are for the most part compatible with the ISAs. Statutory audit is compulsory for listed companies and for public interest companies (banks, insurance companies, companies operating in the energy sector, pension funds and mutual funds). Tax oriented audit is optional.

The Draft Commercial Code requires statutory audit for entities and requires the establishment of a statutory auditing standards board. Currently, the audit regulation is applicable to listed companies, banks, pension and mutual funds etc. which are in most cases medium or large enterprises and legal persons.

The Draft Code prescribes that practitioners work alone for smaller entities and public firms which have audit authority for bigger entities. Regarding the Auditing Standards TURMOB has a special Board (TUDEKS). The Commercial Code states that the activities of this Board should be used until the reformation of the Turkish Auditing Standards Board. In the Draft Code, a rotation is expected after a period of 7 years and a waiting period of 2 years. The shareholders have to appoint the auditor or audit firm proposed by the company's Board of the Directors. There is no obligation for joint audits.

Criminal penalties and fines can be imposed in case of infringements the licence of auditing firms is withdrawn if they do not comply with auditing and accounting rules.

As regards existing problems in the implementation of auditing standards, the absence of an effective public oversight system of auditors poses a challenge for the future. The second problem is the lack of experience and knowledge of IFRS by professional auditors.

The changes occurred since 2002 in the audit regulation were influenced by European regulations, the Sarbanes-Oxley law and the ISAs. TURMOB's TUDEKS Council has translated all the ISAs (International Standards on Auditing) and then in 2006 an Audit Communiqué was published requiring the use of ISAs in the audit of listed companies and financial market institutions (such as investment companies, mutual funds, pension funds, etc.).

1.9.3. Profession

Professional titles and bodies

Access to the accounting and auditor professions is regulated by licensing.

Accounting, auditing and tax services are activities reserved exclusively for members of the institutes. Three professional bodies exist in Turkey: The Union of Chambers of Certified Public Accountants of Turkey (TURMOB), The Expert Accountants' Association of Turkey (EAAT) and The Association of Independent Auditors, respectively established in 1989, 1942 and 1988. TURMOB distinguishes three categories of professional accountants: GCA (SM); with 28.939 members, CPA (SMMM); with 43.656 members and Sworn in CPA (YMM; with 3.840 members. EAAT has approximately

1400 registered members of which 71 are owners of Independent Auditing firms.

Only the Union of Chambers of Certified Public Accountants of Turkey has a legal authority to regulate the profession and EAAT regulates the profession voluntarily since 1942. TURMOB has been a full member of IFAC since 1994 and EAAT since 1977.

Licensing and Education

The Capital Market Board licences the audit firms for listed entities and firms that operate in capital markets. Those firms established by the professional members, certified by TURMOB must meet special conditions. Audit firms must be authorized by the banking regulatory, supervisory agency and the Undersecretariat of Treasury. They must be composed of professional accountants. Individual auditors must be authorized by TURMOB. To obtain a license one must have completed a specific academic study, have some practical experience and have passed a licensing examination.

There are no ongoing requirements to retain the license. No arrangements have been introduced regarding the recognition of foreign accountancy qualifications.

The educational requirements are to meet the general conditions of the Turkish Accountancy Law No: 3568 and have a university degree in law, economics, finance, management, banking, public administration and political sciences or to have a master's degree in those fields. In addition one must have a TURMOB certificate and some experience to acquire an audit certificate. In order to operate as an accountant and statutory auditor, professionals must be members of TURMOB. In order to acquire certification from the body one must have completed a specific university degree, passed the necessary professional examinations and have some practical experience.

Ethics and Independence

Accountants are required to adhere to the "Code of Professional Ethics of Chartered Accountants". It was created by TURMOB by adapting to the IFAC code. This national code is nearly the same as IFAC code of ethics for professional accountants.

Investigation and discipline

The Union of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey has an authority to enforce minimum standards of auditor performance and behaviour for accountants/auditors. Also, the Capital Market Board (CMB) has the authority to enforce some standards on auditor performance and behaviour in capital markets. Within its supervisory functions the CMB oversees the records of statutory auditors and audit firms, for example checking the licenses of statutory auditors to see if the scope of operation of audit firms conforms to the legislation. There are many recent cases of enforcement.

Regulatory Oversight and Quality assurance

A program of quality assurance review does not exist in Turkey, however, audit reports prepared by an audit firm for a bank or insurance company are reviewed either by persons responsible for quality assurance system with firm or by another audit firm to assure the quality of the audit.

Regarding to regulatory public oversight system a draft code prepared according to EU regulations is being discussed in the Turkish Parliament.

2. GOOD PRACTICES

The responses to the questions concerning good practice in the two domains that the MPs could eventually put forward are very weak. On the basis of Morocco's response and keeping in mind that such practices can be endorsed by other MPs we can mention:

For accounting:

- regarding preparation of statutory accounts: the production of intermediate statements, the voluntary use of contractual audit and external expertise as well as the quality of summary financial statements;
- regarding preparation of consolidated accounts: the quality of published information and transparency in financial reporting.

For auditing:

- regarding the access to the profession: the requirement for a recognised quality qualification and at least 3 years of pre-qualification work experience as a trainee;
- regarding the practice of the profession and in particular the quality of audit work: the existence of a double audit, the rotation of auditors and the oversight of the professional activity;
- regarding the independence of the auditor: fairly strict rules compliant with the ISAs (International Standards on Auditing);
- regarding the control of the implementation of auditing regulation: the systematic control the following year of auditors who were found non complying with or non respecting the regulation; and the control at least every three years of the professional activity of auditors or audit firms auditing public companies;

- regarding continuing professional development of the auditor: the cooperation in education and training with universities and possibly other educational bodies, the set up of an Institute for professional education and training, the establishment of a regulation on continuing professional education and, of course, international cooperation in the field of ISA standards.

3. CONCLUSIONS AND SUGGESTIONS

3.1. First Remarks

On the basis of the table summarising the responses of the MPs, we note that **from the accounting perspective** the preparation of annual statutory accounts is obligatory in the majority of countries.

The legal framework seems to differ from country to country and this is often due to differences existing in the types of enterprises.

There is sometimes an absence of local accounting legislation, with however the presence of a few local standards, or the simple application of the IAS/IFRS international standards.

At the same time the consolidation of accounts is more an option than a requirement, even though the objective of several MPs is to move increasingly towards international standards.

It is evident that the countries' choice to adopt IAS/IFRS standards provokes particular problems for the SMEs that form in practice the biggest numerical party of enterprises in each MP.

In the auditing perspective big differences exist, the audit of the accounts being sometimes optional and sometimes obligatory. The auditing standards are often local but inspired by the international standards (ISAs) and the IFAC code of ethics. The rules of access to the audit profession are also different depending on whether a legal framework exists.

Regarding the practical implementation of standards there are important differences depending on whether the application of these standards is well controlled and whether training is developed or not. In addition, ethics and independence rules are different according

to whether a body exists (professional or not) that controls the profession. In many MPs the quality control of auditors is undeveloped or nonexistent at all, which provokes credibility problems for the profession. Significant problems are also to be noted in the education and training of auditors before access to the profession as well as during their professional activity by the lack of quality continuing professional education.

The existing FCM (Federation of Mediterranean Accountants / *Fédération des Experts Comptables Méditerranéens*) is already working towards convergence and improving the quality and implementation of standards. The main objective should be putting in place a system that works well as a whole, improves the quality of education/training and reinforces the skills needed to guarantee quality.

Regarding the standards: it is absolutely necessary to evaluate existing standards also in the perspective of their applicability to SMEs. This to help the enterprises in the standards' actual implementation.

3.2 South-South Cooperation

The cooperation between MPs in the field of Accounting and Auditing seems to be still at the beginning.

Although there are no significant projects to point at, the presence of certain regional organisations (like FCM, ARABOSAI and PEMPAL) can be important to consolidate possible first initiatives towards further co-operation.

A few projects can be specifically mentioned in this area.

In Egypt the will to cooperate (through for example the existing FCM and the Arab organisation of accounting) with the objective of increasing the quality of the ac-

counting education, increasing the quality of Egyptian standards (also introducing simplified standards for the SMEs) and controlling the implementation of professional standards was clearly expressed.

In Jordan a programme of management reform was set up. The Jordanian Office of Auditing asked for the help of Germany, the UK and the EU for their auditing problems. Cooperation with other existing bodies and an exchange of information to establish a code of good governance for the private sector is currently sought.

Although Morocco did not provide a real cooperation example, it showed its will to cooperate through specific actions like conferences with Tunisia, Lebanon and Egypt as well as through active work as a member of FCM and FIDEF.

The Palestinian Authority has indicated its willingness to cooperate with Jordan and its interest in the creation of a development programme supported by the European Union with the objective of creating more financial transparency and better education, training and quality control of auditors.

Syria does not have any specific cooperation agreements. However they highlighted their membership and work in the Arab organisation. In addition a bilateral cooperation with Turkey is being started to exchange information and experience. Cooperation has also been established with the European Union for study of and training on the international standards.

Turkey has agreements with several European countries regarding education and training on international standards. In the field of auditing the establishment of a Council of Public Control is underway with the goal of better controlling the independence of auditors and putting an end to the fragmentation of the regulation.

3.3. Conclusions and propositions for the private sector

In the area of private sector accounting, a convergence movement towards international IAS/IFRS standards seems to have started in the MEDA region.

In order to achieve a free trade zone by 2010 a further development of accounting practices as well as annual and consolidated accounts is strongly needed to facilitate investments between MPs.

The most important objective should be to ensure that a more convergent regulation is not only introduced in the legislation but also implemented. This can be achieved through an increase of efforts in education, training, transparency of financial information and public control.

In order to achieve a free trade zone by 2010 the process of correct implementation of local and international rules should be sped up.

Market enlargement as well as the increasingly international investments and financial information by 2010 will need a careful reflection on consolidation rules in order to achieve more transparent financial information of large enterprises and groups.

In addition, a significant increase in capacity and quality of accounting training and education will be needed. Gaps should be closed not only in education and training for accessing the profession but also with regards to continuing professional education.

Lastly, the force and capacity of accounting institutions is a problem for a significant number of MPs. *The necessary conditions should be created for the accounting institutions to implement accounting rules in a way that financial statements reflect reality.* In this perspective a

high quality audit of accounts by qualified professionals should be pursued in the medium term.

Such statutory auditing should be envisaged for the majority of enterprises, thus allowing all the stakeholders to have comparable and reliable financial information. This shall facilitate investments in a larger market, which is exactly the goal of the EuroMed Market Programme.

Trans-national audit by qualified professionals of other MPs should be possible. This will need a serious comparative study of the access rules to the profession followed by a convergence process as well as a mutual recognition process.

Current differences in the local audit standards of MP should be examined and compared among other national rules and with international standards. Local adaptation should always be possible keeping in mind the specificities of each country. Perhaps the creation of a database containing this information would be beneficial.

In order to create qualified professionals, it will be necessary to urgently study the educational requirements for students wanting to enter the profession. It will also be necessary to put in place adequate continuing professional education systems for auditors already in practice. Considerable resources will be needed to achieve these objectives. Cooperation between MPs could add real value to the enlargement of the Euro-Mediterranean Market.

In order to centralize all these efforts and needs, a EuroMed entity could be established with the assistance of the European Union and the support of all Meda Partner Countries. The existing FCM could perhaps serve as a base to build further cooperation and increase the exchange of information and experience.

At the same time we must also take into account that each MP can not necessarily move at the same speed. For this reason coordination and support in helping MPs to catch up will be crucial and this goal should be centralized in one Meda agency. This central body will have an advantage in representing the Meda zone and EuroMed in international forums (such as between IASB and IFAC) and in supporting a positive and effective institutional capacity of national accounting and auditing systems.

Lastly the creation of a MEDA region accounting and auditing regulatory agency could support and foster the coordination and convergence efforts towards more reliable and transparent financial information. Such organization would be of great support in creating a larger market and a free trade area.

3.4. Some practical proposals

To prepare for the possible opening of the Euro-Mediterranean market in a practical manner it would be highly desirable to establish a specific body that coordinates and supports initial actions towards the convergence of accounting and auditing rules.

Since FCM already exists and already works for co-operation and support of the MP, a pertinent question is to ask is if the Federation could serve as a basis to build an institution to become the hub of the Euro-Mediterranean Cooperation in the fields of Auditing and Accounting.

The MPs shall give their full support in order to make an inventory of all the applicable laws and professional standards in the two areas of auditing and accounting in order to note the differences and reduce them as much as possible.

This inventory will help projects aimed at converging the different national rules. Such work will take some years given that the MPs are available to change where necessary their own legislation or professional standards.

No doubt that the support of the European Union could facilitate convergence in a very important way. Since the speed of progress will be different for all partner countries, it will also be important to monitor specific developments.

In the field of education and training, this common institution should use its knowledge of the legal and professional situation in the various Meda countries to propose and support specific education and training actions and events involving all or part of the MPs.

From the legal point of view, actions to increase the transparency of financial information (annual and consolidated accounts) and if necessary to implement public oversight systems of the accounting and auditing profession should be started by 2010 at the latest.

Work needs to be done regarding the access to the accounting and auditing profession. It will be important to reduce and possibly eliminate the obstacles created by the different access conditions to the profession: qualifications, diplomas and the local licenses.

If possible FCM should have a role in the convergence of professional accounting and audit standards. Such role would not only facilitate the cooperation process towards convergence of regulation in partner countries. It would also give to the Mediterranean region a much stronger and more influential representation within the international organisations.

The last practical point regards the timing of the project. The results of the multiple contacts had and of this final study show that 2010 deadline will only be the beginning of a convergence process. Such process will only

succeed if all the MPs, with the support of the European Union, agree to provide a central Meda institution equipped with all the necessary resources (much larger than those that are currently being invested).

III. Public Sector

1. Introduction:

1.1. An aim of the Mediterranean Partnership is the achievement of a sustainable and balanced economic and social development with a view to creating an area of shared prosperity. The following are the long-term objectives:

- An acceleration of the pace of sustainable socio-economic development;
- The improvement of the living conditions of populations, an increase in the employment levels and a reduction in the development gap in the Euro-Mediterranean region;
- The encouragement of regional cooperation and integration.

1.2. To achieve these objectives, the participant countries agreed to establish an economic and financial partnership which, while reflecting local circumstances, is based on:

- the progressive establishment of a free-trade area;
- the implementation of appropriate economic cooperation and concerted action in the relevant areas;
- a substantial increase in the European Union's financial assistance to its partners.

The success of the Euro-Mediterranean partnership requires a substantial increase in financial assistance, which must encourage sustainable indigenous development and the mobilization of local economic operators.

1.3. All countries of the Region who are participants in the Euro-Mediterranean Partnership, are involved in heavy investment in public services and are subject to increasing pressures to increase that investment. They will also be expected to manage very significant inflows of financial support, especially from the European Union. Yet many of these countries have great difficulty in doing so because of significant economic constraints and more importantly generally inadequate methods of public financial management. Public financial management systems in these countries were generally designed for a relatively limited State involvement in the economy and the high levels of expenditure now occurring (and which are likely to occur in the future, on such social services as health, education and social welfare) can be difficult to manage efficiently and effectively. Yet improved systems of public financial management are essential if countries are to meet the increasing demands that will flow from the full implementation of the objectives of the Partnership. A well managed public sector will also facilitate the development of the private sector, not least by using public resources more efficiently and effectively.

1.4. Therefore although the focus of a 'free trade area' appears to be upon the private sector, in reality the public sector has a very important contribution to make. The need for improvements in public financial management is therefore an essential concomitant to the success of the 'free trade area' policy.

1.5. This need to improve the quality of public sector financial management is reflected in the agreed action plans formulated for most countries as part of the development of the Partnership process. They include a focus on the need for improved public internal financial control. This is consistent with the standards that all countries wanting to join the EU or making use of EU funds are expected to meet.

1.6. This need is also reinforced in the recent Report of the Expert Group convened by the Mediterranean Institute on the Mediterranean Union project³ which envisaged that a very substantial increase in resources was required for the objectives of the Partnership to be achieved, and that added and early emphasis needed to be given to the basic structures, infrastructure, education, combating poverty, ahead of economic choices, and that a significant increase in decentralisation should occur to regions, cities and departments who could benefit from the availability of structural funds.

1.7. This report also pointed out that the growth content in employment is still largely dependent on public sector growth in employment. However, the institutional reforms that have been implemented are designed to cut public sector employment to the benefit of private employment. What this points to is a need for a significant improvement in the efficiency and effectiveness with which public sector resources are utilised.

1.8. Because of these needs, the Auditing and Accounting Seminars have covered both the private and public sectors. The public sector discussions and recommendations have focussed on the possibilities for reforms to improve the quality of public sector financial management and the directions of reform and methods for achieving those reforms have been explored through presentations, debate, questionnaires and analysis. There are many common themes, including a need to improve public sector accounting, internal and external audit and public financial management in the broadest sense. There also is a considerable demand for investment in training including the establishment of a regional training centre and certificated training programmes in public sector accounting and internal and external audit, in the establishment of networks to exchange information and experiences between neighbouring countries and for twinning arrangements, especially with those countries that have similar 'professional'

backgrounds. To meet these demands funding support would be required.

1.9. Each country public sector is unique, reflecting the traditions, culture, political structures and political pressures existing within a country. As a result, there is no prospect of achieving commonality of legislation between countries. However, there is a possibility of achieving a greater coherence of aims, objectives and standards within those different public sector systems in the area of public internal financial control and especially over the arrangements for the use of EU funds. However, the different countries are each at different stages of development and the timing of reform as well as the scope of reforms depend upon the stage of development that has been reached. For example, some countries still maintain their public accounts on a single entry basis. Others are well advanced and are looking towards the adoption of international public sector accounting standards (IPSAS).

1.10. Equally, the identification of 'best practice' is difficult in a general sense. There are examples of 'best practice' elements in most countries but the term 'best practice' needs to be understood in the context of a particular country. And what may seem 'best practice' to one country may not be regarded as such by another, because it all depends on the context and on what a particular country is looking for. That in turn, depends upon the stage of reform that has been reached. However, the strong desire for the development of neighbouring country exchanges evidenced from the replies to the questionnaires and debates will allow countries to make their own judgements about what is 'best practice'. 'Best practice' should also not be regarded just as a system or even as an element of a system, but it can be a process for reform. Some partnership countries are currently engaged on extensive reform programmes designed to improve public financial management. From the evidence of the seminars some of these reform programmes have

been extremely well thought out and they can provide a model of how to go about reform, irrespective of the actual systems or other arrangements that might flow from those reform programmes.

2. Country action plans:

2.1. Individual country action plans have been developed and published for most countries covered by the Partnership arrangements. Summaries relating to public financial management are set out below⁴. (No information is available for Algeria, Syria and Turkey.) Since these action plans were published various reforms may have been introduced or are being considered.

2.2. Egypt: Action Plan: Specific public internal financial control and related issues:

“-Exchange of information on the concepts and legislative framework for public internal financial control in Egypt and EU Member States, taking into account EU best practices.

- Cooperate in view of establishing, and implementing a policy for upgrading the Public Internal Financial Control system on the basis of a gap analysis of the current internal control systems as compared to the relevant internationally agreed standards and best EU practice.
- Exchange of expertise and cooperation in order to upgrade the institutional capacity of the public internal control system to internationally agreed standards and methodologies as well as EU best practices in the area of internal control and internal audit, covering all income, expenditure, assets and liabilities, of the general Government and budget entities and economic authorities.

- Ensure effective cooperation with the relevant EU Institutions and bodies in the case of on-the-spot checks, audits and investigations related to the management and control of EU funds.”

2.3. Israel: Action Plan: Specific public internal financial control and related issues None raised.

2.4. Jordan: Action Plan: Specific public internal financial control and related issues

Develop the conditions for good financial management, accountability and control

- “- Take first steps to develop independent internal audit systems for national budget in line with EU and international norms and standards.
- Strengthen and build the capacity of the Jordanian Audit Bureau in line with EU and international norms and standards.
- Start work to develop administrative capacity to prevent irregularities affecting national and international funds.
- Ensure effective co-operation with the relevant EU Institutions.”

2.5. Lebanon: Action Plan: Specific public internal financial control and related issues.

Public Internal Financial Control

- “- Establish a Central Audit Coordination unit within the Ministry of Finance; develop a strategy and policy paper for the public internal financial control system (managerial accountability and decentralised internal audit).

- Establish the legislative framework for public internal financial control.
- Pursue gradual harmonization with the internationally agreed standards (IFAC, IIA INTOSAI) and methodologies, as well as with EU best practices for the control and audit of public income, expenditure, assets and liabilities.
- Ensure and publish regular audits, along the best international standards, of the CDR, the National Social Security Fund and the Municipal Development Fund.
- Introduce internal audit units in all budgetary entities, in line with agreed strategy.

External Audit

- Further strengthen the administrative and procedural capacity of the Court of Accounts; focus its role on external audits solely (work on attest, systems-based and performance audits of public sector bodies); strengthen the independence of the Court of Accounts by ensuring that it reports to and has its budget approved by Parliament.”

2.6. Morocco: Action Plan: Specific public internal financial control and related issues

Strengthen internal financial control in the public sector

- “- Enhance the audit capacity of public finance control bodies, e.g. the Inspectorate General of Finance (IGF).
- Adapt the legislative and regulatory framework of the IGF to the new accounting and financial context.

- Finalise the project for developing IGF audit standards by reference to international audit standards.
- Improve the effectiveness of controls and audits of regularity.
- Arrange exchanges of experience and know-how between Moroccan public finance control and audit bodies and their EU counterparts.
- Introduce legislation on the accountability of management (authorising officers), controllers and accountants in the public sector.
- Implement the legislation on State financial control of State-owned enterprises.

External audit: develop contacts between the Commission and the State finances external audit body.”

2.7. The Palestinian Authority: Action Plan: Specific public internal financial control and related issues

- “- Public administration and civil service reform: Continue implementation of the civil service and public administration reform programme, in particular making the non-ministerial public institutions operating outside the jurisdiction of the Council of Ministries and the Palestinian Legislation Council (PLC) accountable, and continuing the restructuring efforts in various Ministries, including the development of mandate, mission statements, and development programmes;
Strengthen the capacity of institutions responsible for implementing the reform programme.
- Continue efforts to establish a modern and well-functioning system of financial control in line with international best practices:

- Strengthen internal audit within the Finance Ministry and all PA spending agencies
- Provide training in modern methods of financial control (internal and external audit)
- Pursue adoption and implementation of the new law on external audit that provides for a modern and efficient Supreme Audit Institution, headed by an independent Auditor General, empowered to conduct audits on the public sector on a regular basis and accountable to the legislature.
- Submit annual reports of the General Control Institute to the Palestinian Legislative Council, in accordance with legal requirements
- Continue cooperation on exchange of information between the Palestinian Authority's law enforcement authorities and other relevant authorities (including specialised bodies at European level)
- Continue cooperation with relevant EU institutions and bodies in the case of on-the-spot checks and inspections related to the management and control of EU funds.

Continue work to improve transparency of the PA finances and to take concerted action to tackle corruption within public institutions and to fight against fraud.

- Complete the implementation of the Palestinian Reform programme on budgetary and fiscal transparency
- Provide training for public institutions on anti-corruption measures
- Develop sufficient administrative capacity to prevent and fight against fraud and other irregularities af-

fecting national and international funds, including the establishment of well-functioning co-operation structures involving all relevant national entities."

2.8. Tunisia: Action Plan: Specific public internal financial control and related issues:

"Introduce sound management of public finances: introduce a strategy for the gradual adoption of goal-oriented budget management; develop the practice and publication of consolidated accounts of financial transactions of the State, local authorities, social security funds and government administrative enterprises.

"Strengthen internal financial control in the public sector: continue development of a strategy for a system of public internal financial control (managerial accountability and internal audit) taking account of internationally agreed standards and methodologies (IFAC, IIA, INTO-SAI); strengthen the legislative framework for internal financial control in the public sector.

"Strengthen external audit: gradually align the control methods of the Court of Auditors with international standards and EU best practice for external audits; promote the development of sufficient administrative capacity to prevent and combat fraud and other irregularities affecting national and international funds; exchange experience and know-how on administrative capacity building to tackle fraud in the management of Community funds better and thereby improve their management; ensure effective cooperation with the relevant EU institutions and bodies in the case of on-the-spot checks and inspections related to the management and control of EU funds."

3. Report of the Expert Group convened by the Mediterranean Institute:

3.1. The report of this group of experts is important in providing a linkage between the public and private sectors. Specific points from this report that have a particular relevance include those summarised in the Executive Summary as follows:

- “The second issue concerns the relationship between the Mediterranean Union and Europe. After analyzing the current situation, the participants agreed that what was being done in Euro-Mediterranean relations should be continued, in particular the establishment of a larger free trade area. It was pointed out that given the importance of the common European policies, the Mediterranean Union should aim to be well positioned in comparison with European policies, and in particular, the Neighbourhood Policy. However, the limitations of this kind of process were highlighted, in particular those related to the failure of the current plan to correct the gap between the starting positions, to facilitate adjustments in order to avoid the rise, even temporary, of poverty, to install a real convergence policy and to develop intercultural dialogue.
- “The third theme has consisted in clarifying the principles that should govern the functioning of the Mediterranean Union acting in a complementary manner in relation to the European Neighbourhood Policy. It was especially emphasised: (i) that the Mediterranean Union should provide a forum for political dialogue “as equals” to the extent that it is no longer responding to a “European policy” but conceive together a “Mediterranean policy”, (ii) that such a policy would not be a substitute for political endeavours, but that it would complement, (iii) that a major concern should be to pay attention to the delay in the basic structures, infrastructure, education, (iv) that the considerations aimed at combating poverty and

balancing the territories should be integrated ahead of economic choices, (v) that a major effort should be undertaken to institutionalize networks where the civil society actors are mobilized. It was recommended to install operational structures combining sub-national action and international action, working in conjunction of the greater Mediterranean region, sufficiently equipped, capable of learning and developing real expertise.

- “The eighth issue concerns financial resources and related institutions. The panel believes that without significant new resources, available in the long term, the proposed Mediterranean Union must be abandoned. Two possible idiosyncrasies were highlighted, the first is the AMU, a union which, for the lack of resources, and faced with the inability to make progress with conflicts between its members has lost its credibility; the second, would be to create an ambitious and symbolic Union containing a significant number of small projects poorly articulated.
- “The ninth issue concerns the enumeration of facts between decentralised cooperation, which has grown dramatically since Barcelona and the intergovernmental level. Given the standard (weight, measure, burden, load) of decentralised levels in Europe, which represent over 60% of public funds available, the fact that these levels (regions, cities, the department) live the Mediterranean in terms of coexistence with those in the South, their confrontation to issues affecting peoples life very directly, the expert group recommends that they be associated to strategic decisions and they could benefit, as is done in the current practice in Europe for a significant contribution of the structural funds.”

3.2. This report also pointed out a number of particular factors that are relevant to the need for a well managed public sector, (see paragraph 23 of this report) namely:

- “First: The trajectory of growth and the employment growth in all Mediterranean partner countries, without exception, are insufficient to enable the employment of new entrants to the labour market (youth and women). It should be noted that this shortcoming, if it continues, will be necessarily inconsistent with the objectives of evolving societies (generalisation of women's work, expansion of schooling, improved levels of study, overall democratisation of societies that bear even less youth unemployment, opening to ICT which displays the consumption patterns of rich countries etc.).
- “Second: according to different concurring estimates at least 22 million new jobs should be created over the next fifteen years in the Mediterranean partners of the EU to maintain their current levels of unemployment, without any change in activity rates, in particular for women's work and return in formalised employment of many individuals. This means that at the current rate of employment growth, a GDP growth rate of around 7/8% per year is needed (they are on average slightly above 4% in the most favourable and erratic years today). Added to this, the growth content in employment is still largely dependent on the public sector growth in employment and all the institutional reforms implemented are designed to cut it down to the benefit of private employment. We are clearly facing an explosive situation in some countries like Algeria, where nearly two thirds of the population are less than 30 years old. The panel wishes to emphasise that the 20/30 coming years will be decisive in the sense that all the southern Mediterranean countries are in a situation of demographic transition which means that at this term, the balance achieved between supply and demand for labour will be, in the absence of unforeseen circumstances, almost final for the rest of twenty-first century.
- “Third is that, by reducing the gap of income per capita between, on the one hand, the fifteen mem-

bers of the EU and the new members, and on the other hand, Mediterranean third countries appreciably increased what consolidates the role of adhesion in the convergence of the standards of living. Two principal reasons explain this fact: 1) The entry in the process of adhesion represents a quasi-certainty that all institutional reforms will be made without return behind what generates strong entries of foreign capital 2) The sums granted for the convergence of new member states (CAP ERDF, ESF, other common policies) is not comparable with what the Mediterranean partners receive. We notice that during the period of 2007-2013, Poland only will receive around 60 billion convergence fund, while all the Mediterranean partners will receive only 11 billion, half of which is in form of loans from FEMIP/EIB.”

3.3. Whilst this report clearly points to the important role that the public sector has to play, the general experience of existing EU member states indicates that as GDP per capita grows and as wealth becomes more evenly distributed throughout society, and particularly as educational standards improve, poorly organised and low standard public services are no longer acceptable. Power in effect shifts from the provider of the public service to the consumer of the public service. The general population becomes more articulate, demanding a greater involvement in public sector decision making; requires as a consequence better quality and more understandable information; is more able to hold governments to account; seeks better quality and more responsive public services and generally looks for higher quality public services.

3.4. In addition, the wider environment in which public services are provided also changes and the public sector not only has to manage the improvement in the quality and other elements of public service provision referred to in the previous paragraph, but it also has to meet presently unimagined new demands such as demands arising from the consequences of climate

change or economic and structural reforms necessitated by globalisation or developments made possible through the use of new forms of information technology. As a general rule, taxation cannot be increased without severe economic and political consequences and therefore public service management needs the capacity to improve the efficiency and effectiveness of public service delivery in order to generate the funds required to finance new services or to improve the quality of existing services. Improvements in public financial management are central to the achievement of this objective.

4. Public internal financial control and public financial management:

4.1. There are two terms that are widely used namely, public internal financial control and public financial management. These terms are fundamentally interchangeable and tend to arise from the different underlying traditions and legal backgrounds that exist. Those countries with a French-speaking background tend to put a greater emphasis upon 'financial control' compared with those with an Anglo-Saxon background where the emphasis tends to be upon 'financial management'. However, for the purposes of clarity, we set out below the principles of modern public financial management and these provide a model against which existing arrangements for the delivery of public services in the Partnership countries can be compared.

4.2. There are three aspects to public financial management and these are:

- Securing stewardship — an emphasis on control, probity, meeting regulatory requirements and accountability.
- Supporting performance — responsive to customers, efficient and effective, and with a commitment to improving performance.
- Enabling transformation — strategic and customer led, future orientated, proactive in managing change and risk, outcome focused and receptive to new ideas.⁶

4.3. These aspects of public financial management should underpin all administrative arrangements that are made, although in many countries the emphasis is solely upon securing stewardship. As a result, there can be a limited real interest in supporting performance and often the tools to achieve this are not available (such as cost accounting or adequately trained managers, or appropriate systems of delegation). So far as enabling transformation is concerned, the emphasis, if any, is limited to managing risk, but even then, usually in the context of 'control'. The principles of public financial management as practised in most developed country economies include the following:

- All expenditure, cash and income should be subject to Parliamentary approval;
- Parliament exercises legislative control of all expenditure through approval of the budget estimates;
- The Ministry of Finance submits the budget estimates to Parliament and is the Ministry responsible for all financial relations with Parliament;
- The Ministry of Finance should exercise administrative control of all expenditure to ensure that actual expenditure is in line with the parliamentary legislative approvals and that additional commitments are not made that prejudice future budgets.

4.4. On a day to day basis, public financial management is about the practical application of the administrative

control exercised by the Ministry of Finance. Public financial management at this level is about:

- Preparing medium term expenditure plans and performance objectives and targets;
- Preparing detailed budget estimates;
- Monitoring expenditure and ensuring that agreed plans are delivered (and this can include both expenditure plans and service delivery objectives);
- Improving financial management and value for money.

4.5. Ministers have responsibility for the activities of their ministries. The powers of ministers generally will be derived from statute in most countries. In turn the powers of officials are derived from those of ministers.

4.6. In countries with an Anglo-Saxon tradition, the most senior official in any public sector organisation would have the full responsibility for public financial management, and this frequently is a personal responsibility. The powers and responsibilities of this most senior official should include ensuring that:

- There is the necessary legal and Ministry of Finance authority for expenditure;
- Expenditure is only incurred on those activities approved by the Parliament.

4.7. In countries with a stronger French-speaking tradition this division of responsibility can be less marked and the minister may have total responsibility for the public financial management processes. Whilst this may be appropriate where the focus is on 'control' or 'stewardship' using the definition above, the question arises as to whether this high degree of focus on ministerial responsibility can be maintained when the defini-

tion of responsibility is extended to include 'supporting performance' and 'enabling transformation'. Given the emphasis that will need to be put upon these two aspects of financial management in the future, Partnership countries will need to consider how best to allocate responsibilities, especially since ministers will be heavily concerned with the development of policy and related political issues and will tend to have little time available for day to day management roles.

4.8. However, whether exercised by an official or by a minister, the following specific responsibilities in a modern financial management system do need to be properly defined and exercised to ensure that:

- Resources available to their ministry are organised to deliver the ministry's objectives in the most economic, efficient and effective way;
- A comprehensive risk management system is established and that risk is fully taken into account when decisions are made and in the formulation of policy;
- Full regard is had to regularity and propriety;
- A sound system of internal control is maintained that supports the achievement of the ministry policies, aims and objectives and that those standards follow standards specified by the Ministry of Finance (or where the requirements of the European Union are to be followed, as in Turkey, a country negotiating accession, the Central Harmonisation Unit (CHU), located generally within the Ministry of Finance);
- Proper financial procedures are followed and that the accounting systems meet the standards laid down by the Ministry of Finance and provide the information needed to ensure that objectives are met in the most economic, efficient and effective way;

- Public assets are safeguarded and utilised only for approved purposes;
- Any public funds for which Ministers are responsible are properly managed and safeguarded; and,
- Independent assurance that the above specific procedures and responsibilities are being properly followed, is provided by internal audit to standards specified by the Ministry of Finance (or the CHU).

4.9. In fulfilling these responsibilities the minister or the appropriate official ought to:

- Sign the accounts of the ministry at the year end and accept personal responsibility for their accuracy and proper presentation according to rules laid down by the Ministry of Finance;
- Ensure that the accounting system is relevant to the needs of management as well as meeting the standards and requirements of the Ministry of Finance;
- Ensure that public funds for which he/she is responsible are well managed and safeguarded with independent checks on those responsible for holding cash;
- In considering proposals for expenditure or income, all relevant financial considerations are taken into account, that value for money is properly assessed and full regard is had to issues of propriety and regularity;
- Sign an annual statement of internal control (see paragraph 4.10 below) in the format specified by the Ministry of Finance.

4.10. These modern financial management arrangements require that effective financial management leadership in the form of a specialist and highly skilled

senior financial manager, exists within public sector organisations to provide the specialist advice and knowledge that will be required (in much the same way as a finance director would in a major private company, bearing in mind that many public sector organisations are larger than most private companies and have to achieve more complex objectives frequently in a more complex operating environment). That senior financial manager would have responsibility also for supporting the minister or the responsible official, in the definition of the ministry's aims and objectives, the preparation of the medium term financial plan and the annual budget (including the investment budget), and for ensuring that he/she could be confident about the integrity and robustness of the systems which would underpin the responsibilities set out in the immediately preceding paragraphs.

4.11. A modern financial management system also requires the establishment of effective internal audit led by a head of internal audit. The head of internal audit would report directly to the minister or where an official has responsibility, to that most official (although in practice even where a minister has responsibility, the head of internal audit would frequently still report to a senior official with reporting to the Minister being a 'fall back' position).

4.12. The statement of internal control (referred to in paragraph 4.7 above) would cover the following:

- The scope of responsibility of the minister or the appropriate official;
- The purpose of the internal control system;
- The capacity of the ministry (or other public organisation) to handle risk;
- The risk and control framework;

- A review of the effectiveness of the internal control framework including strengths, weakness and failures, remedial actions and the roles of the different players in the internal control system such as the audit committee and internal audit.

4.13. Another key element in a modern public financial management system is the existence of an effective external audit. The role of external audit is to provide independent verification to Parliament and other stakeholders that the management responsibilities have been properly fulfilled and that the statements that are made by management (whether minister or official) both about the quality of the internal control system and the state of finances are materially correct. The external auditor may also be able to add further comments about the value for money approach of the management and its ability to achieve value for money in meeting the objectives laid down for it.

5. The existing accounting arrangements in Partnership countries:

5.1. In order to establish how well developed accounting arrangements were in Partnership countries (as compared to overall public internal financial control or public financial management arrangements) a first questionnaire was circulated. This first questionnaire was confined to accounting arrangements because such arrangements provide the basic context against which all other public internal financial control or public financial management arrangements can be set. In other words, where accounting arrangements are limited then so will be the budgetary arrangements, the internal audit and external audit contexts. It also attempted to cover a range of public sector institutions including central government, central government agencies and business enterprises and local and regional (where appropriate) government.

5.2. The conclusions and observations from the responses to this questionnaire were as follows:

- i). The responses about central government accounting seemed to be the same as all other sectors in most countries and therefore the focus of the debate about the results of this questionnaire dealt only with central government. (This response may not reflect the real situation in each country because the knowledge of the delegates completing the questionnaire may have been limited to central government. However, the likelihood is that local and regional governments would not be more advanced in the techniques of accounting than central government especially when the central government seems to be the determinant of the accounting rules that apply.)
- ii). Some countries only use single entry bookkeeping at the present time. An important first step in the improvement of accounting systems would be to move to a double entry bookkeeping system.
- iii). All countries presently use a cash based accounting system although one (Turkey) has commenced the transfer to an accrual based accounting system. Other countries such as Algeria, even though presently accounting using a single entry book keeping system, had though, instigated a reform programme that would lead straight from this level of accounting to one using double entry and based upon accrual accounting principles.
- iv). Budgets are all cash based but a small number were considering converting to accruals budgeting when they move to accruals accounting.
- v). No use was made at present of international accounting standards and in particular no use was made of the cash International Public Sector Accounting Standard (IPSAS), although this will

change in some countries as they introduce accrual accounting.

- vi). Accounting policies are mainly set by the Ministry of Finance, although in one or two countries (Morocco, for example) the accountancy profession is involved. However, in the majority of countries there is a consultation process involving the local accountancy profession.
- vii). The Supreme Audit Institution (SAI) is not involved in any consultation about accounting policies.
- viii). In most (but not all) countries reports are not made to Parliament about the development and application of accounting standards and policies.
- ix). Monthly management information is available on a cash basis in all countries.
- x). Several countries intend to move to an accrual basis of accounting within the next 5 years and some have been engaged in lengthy preparations.
- xi). Investment in training staffs has occurred where there are proposals to move to accruals based accounting, but generally not otherwise.
- xii). In few countries there has been an increase in the number of qualified accountants working in the public sector, and where there had been an increase this tended to be in those countries (but not all of them) where there is an intention to move to an accruals based accounting system.
- xiii). There has been some retraining of internal audit staff, in some countries but it is not clear if this has been related to proposals to convert to accrual accounting.

xiv). The main problems for those who are proposing to convert to an accruals basis of accounting, include:

- Translation of the IPSASs.
- Obtaining information about assets.
- A lack of qualified accountants in the public sector. (Associated with the shortage of qualified accountants in most countries, is a seeming lack of support for the public sector transformation to accrual accounting from the accountancy profession, in terms of providing the training that is needed).

5.3. Overall from the results of this questionnaire, it does appear that the Partnership countries, (apart from Israel, which has already developed more sophisticated financial reporting systems using an accruals basis of accounting, although not for the provision of internal management financial information) fully recognise the need to improve their public financial management arrangements and some of the countries have already embarked on major reform programmes. None, though, have yet come to maturity. What is also clear is that in most Partnership countries the accountancy profession, as a profession, has made little contribution to improvements in public sector accounting and audit practice (with some notable exceptions such as Morocco and to some degree, Lebanon), although in some countries (the Palestinian Authority, for example) accountancy firms, acting as consultants, have been making, and are continuing to make, a significant contribution to reform.

5.4. Also the general shift towards the introduction of accrual accounting amongst the Partnership countries, means that the demand for accountancy skills and accountancy advice will grow, not only to provide the expertise to prepare financial reports but also to audit

those financial reports. Without support from the accountancy profession, countries will have difficulty in applying and interpreting the international accounting standards, in developing and applying appropriate accounting policies, and in maintaining an up to date perspective on both standards and policies bearing in mind that accounting standard setting is a dynamic process, not a 'one-off' activity. This underdeveloped relationship with the accountancy profession in most countries reflects another point, namely the general lack of consultation with Parliament, and with the Supreme Audit Institution (SAI) about the development and application of accounting standards and policies (although there are some notable country exceptions to this). Hence there would appear to be some lack of transparency in the accounting standard setting and accountancy policy development processes. This lack of transparency does leave open the possibility for political interpretation of accounting standards and policies in what should principally be a technical process, and this could result in distortions in financial reporting over time. Yet an important element of civil society, capable of advising both Parliament and the SAI on the technicalities of interpretation, is the accountancy profession.

5.5. This situation though, creates the potential opportunity for the development of South – South co-operation by the accountancy profession to support developments in Partnership countries. However, there are major problems in doing so which need to be addressed if that cooperation is to be of benefit. Not the least of these are:

- The present lack of focus on the public sector in many southern European countries by the accountancy profession;
- A shortage of resources available to professional accountancy bodies in Southern Europe to enable them to develop and provide expertise and support; not least because of:

- The reform requirements affecting private sector accounting and auditing, which is the traditional area of accountancy profession interest, and which are consuming the intellectual and financial resources of these bodies;
- The presently very limited (and in some countries non-existent relations) between the accountancy profession in many Partnership countries and the public sector, (Turkey and Syria for example);
- The seeming total lack of knowledge of public sector requirements and understanding of the public sector management culture by Partnership country professional accountancy bodies.

5.6. How these problems might be dealt with is discussed in Section 9 below.

6. The needs of Partnership countries aiming to improve public financial management:

6.1. Following from the results of the first questionnaire, a decision was made to further explore what the particular needs of Partnership countries were, given the generally accepted recognition that public sector financial management reform was not only highly desirable but was also in all countries, actively being pursued to a certain degree. This decision led to the issue of a second questionnaire designed to examine the particular requirements of countries and to establish if there were any commonalities and hence policies that might be developed.

6.2. This second questionnaire was divided into a number of sections designed to explore:

- The issues that countries consider important in their drive to develop public sector financial management and public sector internal financial control.
- The training needs that will assist in the improvement of public sector financial management and public sector internal financial control and how those needs might be met.
- Proposals as to how the accountancy profession would be able to assist in the development of financial management and audit skills.
- What countries would like to see included in a professional training framework to provide a public sector based externally awarded, certificated professional accountancy qualification for the public sector which the Mediterranean group of professional accountancy bodies might support? The questionnaire also sought to establish what in particular countries would like to see in a syllabus and training scheme?

6.3. In addition, Partnership countries were asked to make suggestions about the main issues that ought to be considered as part of the arrangements for the introduction of public sector accrual accounting arrangements. They were also asked about the arrangements for financing the costs of improving the quality of public financial management and public sector internal financial control and the main areas for which external financial support may be required.

6.4. All Partnership countries completed the questionnaire apart from Israel.

6.5. The results from this questionnaire provided key information about the direction of reforms that were needed, the form of support required and the extent to which financing (but not evaluated in cash terms) was required. In summary the responses showed the following.

6.6. Section 1: The issues that countries consider important in their drive to develop public sector financial management and public sector internal financial control: these were:

1. All countries recognise that improvements are required to their financial regulations, that budgetary processes require reform and these reforms can include to the classification of budget items, the development of programme and performance budgets as well as multi-year budgets, all accompanied by appropriate training.
2. All countries also recognised the need for the establishment of robust double entry accounting systems with systematic monthly reporting for control purposes and for the introduction of efficient IT accounting systems.
3. Similarly all countries recognised the need for robust internal control systems to European standards accompanied by the establishment of strong internal audit departments.
4. Again there was a recognised need to improve accountability through improving the quality of external audit, and one country emphasised the need for better reporting to Parliament. The inculcation of professional ethics also emerged as a beneficial development.

6.7. Section 2: The training needs that will assist in the improvement of public sector financial management and public sector internal financial control: these were:

1. The role of short courses was recognised as important and those courses would need to be targeted on specific topics directly related to the requirements of each country.

2. All countries felt that there would be great benefit from exchanges with neighbouring countries and most countries had a clear idea of the countries which would be best for them to develop exchanges with. The establishment of twinning arrangements was also felt to be a valuable form of training and again most countries had a clear idea of the countries with which they would wish to establish twinning arrangements. These tended to include those countries where they felt that systems would either be similar or had the same basic cultural roots. (Because these countries had such a clear idea of the countries with whom they would like to establish twinning arrangements this would have implications for the present 'competitive' arrangements for the award of twinning contracts.)

3. All countries regarded the introduction of certificated longer term training in public sector accounting, internal and external audit to be an important feature of development and at the present time this is wholly missing from the portfolio of training arrangements that presently exist. (Such training could be provided through the accountancy profession and suggestions about how this might be done are set out below in Section 9.) This form of training, if linked to the accountancy profession, would bring with it a requirement to meet international professional standards of discipline and ethics as well as a requirement for continuing professional development.

4. There was also a recognised need for some specialist training basically to improve the quality of financial management generally.

6.8. Section 3: Proposals as to how the accountancy profession would be able to assist in the development of financial management and audit skills: these were:

1. Although in some countries there is a considerable interaction between the accountancy profession and

the public sector, that interaction even so is relatively limited, at least compared with the relationships that exist in some (although not all) established members of the European Union. It can also be heavily focussed on those areas of public sector activity that are closely related to the private sector, such as the external audit of public sector trading activities. In other countries there is either no relationship or only a very limited relationship. Very little training for the benefit of the public sector is provided by the accountancy profession in most countries. However, most countries did see the local accountancy profession as a potential source of support provided a number of conditions could be met. In particular, countries wanted the profession to become more knowledgeable about the public sector and its specific requirements. The issue for the profession is then how can this be achieved and some countries felt that their local profession was not only lacking knowledge but was under resourced and needed significant development.

6.9. Section 4: What countries would like to see included in a professional training framework: i.e.

1. There was considerable unanimity amongst the countries about what they would like to see in a training syllabus. The subjects to be covered included: accounting; financial reporting; cost management; financial management; budgeting; internal audit and internal control; external audit; public sector management and information systems management. These are all subjects that should follow the same basic syllabus because the principles can be applied internationally. Essentially differences relate to individual country contexts including cultures. In addition, countries wanted to see included in the syllabus, subjects that related specifically to their circumstance such as local law and tax. Some countries had specialist requirements although how far these related to the special needs of certain civil servants was unclear.

One generic topic that was referred to as needed by a number of countries was on the subject of 'good governance'.

2. For those who would enter the training programme, all countries regarded first degree standard as the minimum entry level. Most countries were reluctant to see the substitution of work experience for academic qualifications (although this is often a common practice in developed countries). In practice any generic professional training programme can easily be tailored to meet the specific entry requirements of a particular country so differences of view on this point are not material. There was agreement that 4 years should be regarded as the minimum period of training, with the possibility of some exceptions to this depending upon the prior experience of trainees. All countries agreed that training programmes should require a mix of academic and work based experience and that 400 days would be an appropriate work experience requirement to be fulfilled during the 4 year period of training.

3. On completion of the professional training programme all countries agree that those who qualified should be permitted to take up membership of the appropriate professional accountancy body.

4. As for the type of training arrangements, countries were divided in their opinions. About half the countries would like distance learning arrangements to be available although all wanted training to be also supplied through taught courses. Some countries would prefer a mixture of the two types of training.

5. All countries wanted to see provided specialist certificated courses in both public sector internal audit and public sector external audit.

6.10. Section 5: This section of the questionnaire sought information about the issues that ought to be

considered as part of the arrangements for the development of accrual accounting and they were asked to indicate what countries thought were the main issues that should be considered. These were:

1. That the IPSAS should be translated into the local language and that this translation facility should also extend to updates and extensions to the IPSAS as those updates and extensions are published. Most countries would like specific advice on the application of certain of the IPSAS and would be helped by the availability of appropriate checklists.

2. All countries would like specialist training programmes to be provided to be available to train both finance and managerial staffs in the implementation and use of accrual accounting.

3. All countries, apart from one, which regarded the proposal as premature, saw a need to create an independent standard setting process which had the capacity to regularly update standards. Countries were divided over whether or not the standard setter should report directly to the Parliament rather than to the Ministry of Finance. All countries agreed that it was desirable that the accounting policy determination process was independent, and all agreed that the SAI should be involved in or consulted about the development of the standard setting and accounting policy determination process. All, bar one country, also thought that the national accountancy profession should also be consulted about both the accounting standard and accounting policy processes.

6.11. Section 6: This question addressed the extent to which financial support would be required to facilitate the reform process. This showed:

1. All countries required some financial support, some for all activities and others for specific reform activities only. Some countries were already engaged on

extensive reform programmes for which finance was already being provided and therefore any reform programme and financing would need to be integrated with the current programmes. Other countries were engaged on less extensive reform programmes and their financial circumstances and requirements would then be different. Generally, financial support would be required by most countries for the introduction of improved budgetary systems, either in total or towards elements of the reform programme. Where IT base accounting systems were required then financial support would be needed to sustain such reforms. About half the countries required financial support to improve the quality of their public internal financial control systems.

2. Extensive financial support would be required to sustain the level of training that was required. This included towards the provision of short courses as well as to facilitate the development of the local accountancy profession. (See next point for the support required for the implementation of professional training.)
3. The implementation of professional training would require extensive financial support. This included financial support towards the costs of the actual training, fees to professional bodies and other costs, such as, towards the subsistence of trainees and the localisation of the learning materials where these were provided on an international basis.
4. Specifically on the introduction of accrual accounting, financial support would be required for the translation of the IPSAS and activities associated with their introduction. Most countries also required financial support for specific courses on the introduction of accrual accounting for accounting and managerial staff, and about half the countries wanted financial support to assist in the development of the standard setting process.

7. A comparison with the country action plans:

7.1. Neither the debates with Partnership countries nor the questionnaires specifically focussed upon a comparison between the country action plans and the extent to which reforms were already under way or which were currently planned. In-depth individual country studies would be required in order to make such comparisons. However, what is clear is that countries recognise that there is a need for reform, have reasonably clear ideas about what they wish to undertake by way of reform and will be responsive to proposals for reform. All have some processes of reform under way. There are two main uncertainties. The first concerns timing. Some countries, like Algeria, fully recognise that the process of reform will take a long period of time, several years in fact. Algeria is being supported by a reasonably comprehensive reform support programme. However, other countries have not put in place such a comprehensive programme and indeed may not at this stage have the capacity to support such a comprehensive programme. Therefore a critical initial step for these countries would be to complete a 'stock take' of where they are now in terms of public internal financial control (public financial management) and then benchmark that against the appropriate European and international standards. The second uncertainty concerns culture. The traditional administrative culture in many of these countries is one of 'control'. The inspectorial type of regime is well embedded and a real understanding of the EU's PIFC approach may not exist. Inspection is very different from audit. Allied with inspection regimes is also a style of public administration that does not necessarily facilitate the development of public service management with the requirements for delegation that are implicit in the EU PIFC approach, with its emphasis on 'management responsibility'.

7.2. In order to clarify the exact situation in these Partnership countries and through that clarification to un-

derstand more clearly the current reform requirements and the timing of those requirements, detailed country reviews should be undertaken in conjunction with the individual countries. This will be essential if the European Commission is to establish what the direction of reform programmes should be and the likely costs of such programmes. To undertake such reviews probably the most appropriate model would be 'peer' reviews of the type currently undertaken by SIGMA with the same degree of support from the European Commission that exists with the present SIGMA programme of reviews.

8. A comparison with the Experts Group Report:

8.1. The Experts Group Report focussed on the need for significant additional investment in the Partnership countries, mostly from the EU and in doing so advocated additional social reform programmes ahead of 'economic choices'. This report also pointed to the need for significant decentralisation of functions to regions, cities and departments. In addition, the report drew attention to the fact that the private economy is incapable of absorbing the increased numbers into employment that will be required and that the growth content of employment is still largely dependent upon public sector employment growth. At the same time the paradox is that absorption of employment into the public sector will inhibit the development of the private sector.

8.2. These three factors, added public investment in social programmes, decentralisation and employment growth, all point to the need for improved public financial management. Additional social investment will add to the pressures upon public sectors originally designed for a more limited state role with highly centralised public administration decision-making. Decentralisation will similarly add to the pressures upon the existing decentralised administrations. To absorb more employment

the public sector will both need to improve its efficiency and effectiveness and also ensure that the services it provides are well focussed to facilitate the growth of the private sector, meaning less bureaucracy rather than more, with well targeted services based upon identified private sector requirements. In other words service delivery has to shift from being 'producer led' to 'customer led'. This is a major cultural change.

8.3. Improving public financial management can be a significant contributor to these objectives. However, improved public financial management which is not accompanied by the major cultural reforms that will be required will not be particularly successful in delivering more efficient and effective public services. These cultural reforms will involve a change from a public administration style of service delivery to a public management style and they are also likely to involve making more extensive use of the private sector to deliver public services (which will of course also aid the objective of increasing private sector employment). They will require significant changes to the budget process to focus on programmes and performance and move away from the traditional detailed day to day control.

8.4. With regard to devolved administrations, whilst the quality of public sector financial management may be higher in some countries in devolved administrations than at the central government level, this is unlikely to be so in countries with highly centralised administrations and where the central government generally sets the requirements. In the discussions, and in answering the questionnaires, there was no evidence that decentralised administrations in the Partnership countries were in any way significantly different in terms of quality from the central government.

8.5. In summary, the added burdens that the Experts report envisages that are likely to fall upon the public sector are unlikely to be effectively handled without significant reform to the processes of public financial

management. Those reforms will though, be much more effective where accompanied by significant cultural changes to the way in which the public sector is managed and controlled.

9. Steps to improve the quality of public financial management:

9.1. The responses to both questionnaires and to the debates show that there is a significant need for financial management training (encompassing public accounting, internal and external audit) and for the exchange of experiences between countries.

Training:

9.2. On the issue of training, the provision of such training can clearly fall within the competence of the accountancy profession, especially where certificated professional training is required and when there is such a strong move towards the introduction of more sophisticated accounting arrangements in the form of accrual accounting. There was strong support for the provision of certificated training in public sector accounting, public sector internal audit and for public sector external audit. However, there are two major problems that have been identified. One is that the accountancy profession in most Partnership countries has little knowledge of, or apparent involvement with, the public sector, and therefore the public sector can feel it has little to contribute and does not have the right qualification programmes available. The other is that the Partnership country professional bodies lack the resources to enable them to develop an understanding of the public sector and to provide the training that is required.

9.3. One possible solution to these training problems is that extensive twinning arrangements are developed between Southern European accountancy bodies and those of the Partnership countries (and the professional

accountancy bodies of other EU Member States could also become involved in this as well) in order to provide the expertise and training support that is required. However, there are major problems with such a solution on its own, although twinning would have a valuable contribution to make to support private sector development. These problems are that some Southern European accountancy professional bodies may have little knowledge or experience of the public sector and that their present education and training schemes are fundamentally designed with private sector external audit needs in mind. They may also lack resources to enable them to diversify into new activities. In other words they could suffer from the same type of criticisms as the professional bodies in the Partnership countries. However, these problems could possibly be remedied by accountancy professional bodies from elsewhere in the EU (for example, the Netherlands - NIVRA <http://www.nivra.nl/> , and the UK, CIPFA <http://www.cipfa.org.uk>) working with Southern European professional accountancy bodies to provide the public sector financial management specialisms and qualifications that would be required. An organisation like the *Fédération des Experts Comptables Européens (FEE)* could possibly assist in the organisation of such support. This solution would require financial assistance to professional accountancy bodies to support the twinning arrangements.

9.4. An alternative arrangement would be to establish a regional training centre that would be supported by the accountancy professional bodies from the EU, and particularly those bodies that have specialist public sector experience such as CIPFA and those that have experience of the organisational and cultural circumstances of the Partnership countries. Working in conjunction with one or more EU professional accountancy bodies such a centre could provide certificated professional training in all the main areas of public financial management. The EU professional accountancy bodies would be able to ensure quality control and international

standards in education and training. (And this same model could be used to support training in connection with developments in private sector accountancy and audit training.)

9.5. A regional training centre would have a number of advantages that other training solutions would not be able to provide. These advantages include:

- Deep knowledge of the cultural and operational arrangements in the region for the delivery of public services.
- No problems with the language of training delivery;
- An ability to 'localise' international training materials to ensure that they are relevant to the needs of Partnership country public sector requirements;
- Would provide a single focus for training thereby making easier cooperation with EU based professional bodies;
- Could provide training at different levels to meet local needs, e.g. technician as well as professional levels, certificated and non certificated programmes;
- Could provide training in specialist areas such as internal and external audit;
- An ability to develop both face to face training as well as distance learning arrangements;
- Economies of scale and therefore lower costs;
- A greater ability to 'market' courses in the region than organisations external to the region would have;
- An ability to develop country sub-centres to build individual country expertise in training;

- An ability to develop a 'centre of excellence' for the region (for example, providing a translation service for international standards into Arabic, or providing standard technical advice or information such as an audit manual, so that each country does not have to undertake the same activity.)

9.6. The main disadvantages of a regional training centre are that it would diminish the opportunities for individual country development of training and where face to face training was required, the costs of training would be increased because of the need for added travel and subsistence costs for trainees. In addition a decision would have to be made about where to locate such a regional centre and this could be a cause of debate and delay. However, a body with a role similar to that of the Centre of Excellence in Finance, based in Slovenia but sponsored by Ministers of Finance of ten countries, would provide a workable model. The CEF was established in 2001, when it was clear that the existing education system — mainly universities supported by local institutes and a limited number of international training centres — did not provide sufficient support to the growing training needs of transition countries in South-East Europe. This was especially true in light of the fast and overwhelming reform process in public finance management in the region. The following are the overall objectives of the CEF:

- Organizing tailor made in-service training for government officials that are involved in all aspects of public finance reforms;
- Working as a meeting point for exchange of experiences gained in the process of reforms—and consequently—by learning from each other coming to solutions for common problems, and developing joint strategies for a design and implementation of public finance reforms;

- Upgrading of capacities for public finance reforms through development and implementation of medium and long-term training and certification programs;
- Ensuring sustainability of reforms through training a core team of experts from participating countries who will assure further training and expert advice in their countries.

Because it has the support of the Ministers of Finance, uses its capabilities to not only provide courses at the main centre in Ljubljana but also supports the localisation and development of facilities in partner countries, the CEF has become very successful.

9.7. There are several possible locations for the development of such a regional centre. One is a centre previously offered by the Egyptian Government, based in Cairo, a second would be a centre using the resources of the training centre of the Supreme Audit Institution of Jordan based in Amman and a third would be a centre using the resources of the Institute of Finance of Lebanon, based in Beirut.

9.8. The establishment of such a centre would require aid support in addition to any local financial support that would be provided by member governments.

10. Exchange of experiences:

10.1. The development of the exchange of experiences between countries can be promoted through both bilateral and multilateral arrangements. Both forms of arrangements have benefits and need not be mutually exclusive. Problems that ought to be addressed in developing exchange arrangements are how to maintain successful exchanges of experience once the initial momentum has faded and how to gain the maximum benefit from such exchanges. The benefit of multilateral arrangements is that they can bring to bear on a prob-

lem a much wider range of experiences than bilateral exchanges. Through such experiences the identification of 'best practice' can be achieved, with 'best practice' being defined by the participating countries as that which provides the most relevant examples at the time for their circumstances.

10.2. There is a model for the development of multilateral arrangements which is the Public Expenditure Management Peer Assisted Learning Network (PEMPAL) model developed by the World Bank and other aid agencies. PEMPAL creates a network of public expenditure management professionals in various governments in the Europe and Central Asia (ECA) region. These professionals can benchmark their public expenditure management systems against one another and pursue opportunities for 'peer' learning, increasingly understood to enhance knowledge transfer. This model could be applied to the Partnership countries. But for such a model to work successfully a secretariat is required to organise the network and to maintain momentum, regular meetings need to be arranged as well as other facilities such as information exchange arrangements. These arrangements would need financial support.

11. Conclusion:

11.1. The evidence of the Country Actions Plans and the advice of the Experts Group show that there is a significant requirement to improve the public financial management capabilities of the majority of the Partnership countries. The evidence of the information obtained from the Partnership countries during the EuroMed Market Programme activities is that there is a recognition of this need and a willingness to do something about it. Some countries have embraced the wide scope of reform that is required, others have been more tentative. In all countries though there is a desire to move forward, and the question is 'how'?

11.2. The exact state of the reform process in each Partnership country has been impossible to establish and the recommendation is that to undertake that task 'peer' reviews of the type currently undertaken by SIGMA would be required. However, the undertaking of such reviews should not delay other actions being pursued.

11.3. A major contribution to improving the quality of public financial management can come from two main sources, namely improved and consistent training of staffs to ensure that a skilled and capable cadre of civil servants is available, and the second is through the exchange of experiences. However, for these to be most effective they do need to be accompanied by cultural change and administrative reform.

11.4. The accountancy profession has a largely untapped resource that could be employed to support the developments that are required. However, to do so requires not only support from individual Partnership accountancy bodies, but they in turn need support not least from the accountancy profession of the countries of the existing member states. As has been shown in this report, this is not straightforward and both the accountancy profession and the Partnership countries will require financial support.

11.5. The establishment of a regional training centre could make a significant contribution to this objective.

11.6. Exchange of experiences through twinning and improving interaction with neighbours can also prove to be a valuable learning source. However, more has to be done than merely the encouragement of such relationships. On twinning given the clear ideas of the Partnership countries, the evidence suggests that such countries should be the prime determinant of the twinning partner. On other exchanges the process would be facilitated through the development of

a more formal process along the lines of the PEMPAL arrangements.

Notes

- 1 Law n° 07-11 of the 25 November 2007 on the financial accounting system, Order of 26 May 2008 implementing the provisions of law n° 07-11
- 2 Decision N° 103/94 of 02/02/1999 (modified in 2001) on the professional procedures of the auditor. Executive Decree 1997/138.
- 3 Published in October 2007.
- 4 These extracts have been taken from individual country action plans and these are available on the Europa Web site, External Relations, Euro-Mediterranean Partnership – Association Agreements.
- 5 Institut de la Méditerranée (ins.med@femise.org)
- 6 Chartered Institute of Public Finance and Accountancy (UK): Financial Management Model (www.cipfa.org)

Financial Services in the Euro-Mediterranean Partnership

A. Banking

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A. Banking

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1. Introduction

Methodology

Towards the goal to gather a better understanding of the banking structure and the regulatory practices in place, the Working Group on Financial Services in the Euro-Mediterranean Partnership developed a survey. This survey is based on a questionnaire which was addressed to the States of the MEDA region. The questionnaire tackled various topics related to the banking regulation, supervisory institutions in charge and the prevalent market conditions such as current market data. Furthermore the jurisdictions were asked to assess the compliance with the Core Principles for Effective Banking Supervision (BIS 25) in their countries.

The MEDA representatives made a significant effort to provide useful and meaningful answers to the questionnaire. Their answers were compiled during the meeting of the Working Group from October 28 to 30 in Luxembourg.

Answers were provided by the following nine jurisdictions:

- Algeria
- Egypt
- Israel
- Jordan
- Lebanon
- Morocco
- the Palestinian Authority
- Tunisia and
- Turkey

The turnout of responses was very high so the report is in a position to reflect the situation in all the above mentioned jurisdictions appropriately. However, in some exceptional cases the questions have not been an-

swered by all the jurisdictions. If such data was not available in particular countries, the report based its outcome on the answers received indicating the number of responses.

Context

The European Neighbourhood Policy (ENP) is aiming at substantially deepening the EU's relations with its neighbours. The EU offers the neighbouring countries a privileged relationship, building upon a mutual commitment to common values, such as market economy principles, better governance and sustainable development. The European co-operation and assistance with the southern Mediterranean neighbours is embedded in the MEDA. The mutual interest of the EU and the MEDA is to promote reforms towards prosperity, stability and the rule of law.

The importance of the financial sector to economic growth and development is now well established.

Numerous studies, using various methodologies, have found evidence that greater financial sector development has a positive causal impact on key macroeconomic variables such as growth, productivity, and even poverty reduction.

The past decade has seen a rapid increase in the empirical literature investigating the links between financial development and macroeconomic outcomes. In a comprehensive survey of the literature, three broad conclusions may be drawn from these studies (Levine, 2005)¹. First, countries with more developed financial sectors grow faster. Through careful use of instrumental variables and sophisticated econometric methods, the evidence suggests that simultaneity bias is not driving this conclusion; finance does seem to have a positive causal effect on growth. Second, the degree to which a country's financial system is bank-based or market-

based does not matter much. This does not necessarily imply that institutional structure does not matter for growth; rather, different institutional structures may be optimal for different countries at different times. Third, industry and firm-level evidence suggests that one mechanism through which finance influences growth is by easing external financing constraints on firms thereby improving the allocation of capital.

Until the 1980s the financial sector was probably one of the sectors where state intervention was most visible both in developing and developed countries. In many countries, banks were owned or controlled by the government, the interest rates they charged were subject to ceilings or other forms of regulation, and the allocation of credit was similarly constrained. Explicit or implicit taxation also weighted on the volume of financial intermediation. Entry restrictions and barriers to foreign capital flows limited competition. Since then, many countries have liberalized and deregulated their financial sector, although the process is by no means complete.

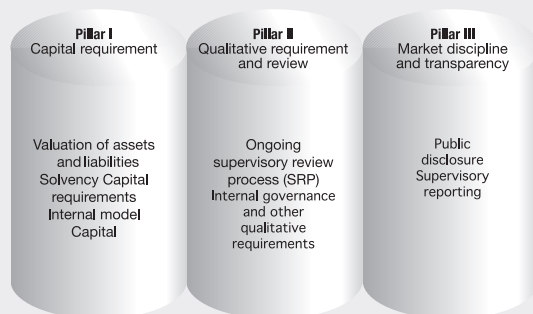
A healthy and dynamic financial sector is essential to achieving high and sustainable economic growth in the Mediterranean region.

Preliminary Remarks on Banking Supervision and Integration

The regulatory framework of banking supervision is based on various international and cross-border rules. The core elements of banking supervision on an international scale are set out by the **Basel Committee on Banking Supervision**. The most prominent rules are the Basel Accords (Basel I dated 1988 and Basel II dated 2004). Basel II aims to provide an up-to-date regulatory standard for banking supervisors. Basel II stipulates three pillars as stated below. The rework of the European Directive relating to the taking up and

pursuit of the business of credit institutions and the Council Directive on capital adequacy of investment firms and credit institutions are merged under the title “Capital Requirements Directive”, under which the Basel II regulations have been implemented in European legislation and eventually national acts in all Member States

One of the main ideas of Basel II are qualitative aspects in the field of banking supervision. According to Pillar I credit institutions in the European Union are obliged to reasonably value all material business risks. The pillar II of Basel II describes the ongoing supervisory review process (SRP) as a requirement for banking supervision. In Germany for instance, the regulator (BaFin) co-operates closely with the central bank (Bundesbank) to achieve a flexible, risk-oriented and high-quality supervisory process, which allows sufficient latitude for the credit institutions to design their risk management process and supervise the necessary changes to their workflows and methods. Another pillar includes requirements to disclose the banks’ qualitative and quantitative information regarding equity capital and all relevant risk indicators. This aims to improve market transparency and thus also to reinforce market discipline and a successful good corporate governance.



Another tool for enhanced and effective banking supervision are the **BIS 25** Core Principles for Effective Banking Supervision originally published by the Basel Committee on Banking Supervision in 1997 and revised in 2006. In an appendix to the questionnaire the MEDA jurisdictions were asked to indicate whether and to which extent their jurisdiction complies with each of the 25 Core Principles. The very large majority of answers to the 248 items (94 %) is positive or “compliant”. This point will not be developed further more in this report in this regard.

Within more than five decades the European Community has managed to create an integrated cross-border European market entailing the 27 EU Member States as well as the 3 EEA Member States thus encompassing thirty European States. The Area is based on the so-called “four freedoms”, the freedom of goods, persons, services, and capital. The realization of these freedoms was the foundation stone for an integrated market also referred to as Single European Market.

European integration

The Single European Market on banking has been achieved steadily by the implementation of several European directives. National obstacles and barriers have been diminished continuously to allow a free float of banking services. This concept has been institutionalized by the so called “European Passport” basically requiring only one license issued by the competent administrative authority of the Home Member State. Thus the credit institution is in a position to also e.g. open branches or offer banking services in other Member States without going through another authorization or approval procedure by the Host Member State in which the bank envisages to operate. The authority of the Host Member State trusts the licensing procedure undergone in the Home Member State due to a level playing field in place. The implementation of the Euro-

pean banking directives ensures that basically the same requirements and rules are in place across all Member States. Thus one can easily presume that the same set of rules are adhered to no matter which of the European supervisory authority has actually been in charge so there is no need for any other authority to reopen the question of authorization. These circumstances speed up the pan-European process significantly and ensure a higher level of flexibility for the banks.

Recent economic developments in MEDA region

The main characteristics of the financial systems in the Maghreb region are common to the whole region and include the following: (a) bank dominance and heavy public sector presence in most countries; (b) limited financial sector openness in some countries; (c) bank soundness exhibiting significant cross-country variations; (d) public banks burdened with inefficiencies and a high level of nonperforming loans (NPLs) in certain countries; (e) still embryonic fixed-income and equity markets, [...] [in some countries]; (f) nascent institutional investor industry and generally underdeveloped microfinance; (g) shortcomings in the legal, regulatory, and supervisory frameworks despite tangible progress; and (h) a largely cash-based payment systems that is being modernized (Tahari & al., 2007²).

The MEDA countries are at various stages of economic development and have different endowments of natural resources. The economic reforms that have been already undertaken over the past two decades have generally achieved macroeconomic stability and contributed to raising growth in some countries. The growth dividend has been dispersed: Growth in GDP per capita in purchasing power parity (PPP) terms in the region has accelerated somewhat during the past decade though the pace of growth varies dramatically (Table 1).

Financial systems have developed substantially in the last decade. Countries to different degrees, have improved their legal and regulatory frameworks, privatized state banks, and enhanced competition in the financial sector.

In quantitative terms, the average domestic credit provided by the banking sector to GDP ratio (except two countries) combined rose from 65 percent in 1995 to 89 percent in 2006, when the domestic credit to private sector to GDP ratio rose in average from 42 to 55 percent for the same period (Table 2).

The volume of credit is not an indicator to be taken as sufficient alone; in some countries of the area, the level of non-performing loans (NPLs) remains important, in spite of some recent important improvements. For example, the NPLs to gross loans ratio is 32.4 in Algeria (as of end 2005), 20.9 in Tunisia and 10.9 in Morocco as of end 2006 (Tahari & al., 2007²).

2. Outcome of the Questionnaire

Institutions in Charge of Banking Supervision

Each jurisdiction may assign one authority or co-operating institutions to carry out banking supervision. These duties may lie with the central bank or a specific financial supervisory authority in charge of banking or following the concept of integrated supervision an integrated regulator.

The vast majority, six jurisdictions indicated that banking supervision is carried out directly by the central bank. In most of the cases the central bank plays a key role as independent institution which is not accountable to a government body such as a ministry. This is also corroborated by the fact that where the central bank is the supervisor, the central bank is typically also in charge of regulation (see below). Two jurisdictions on the other hand designed a special body as a banking regulator whereas another one stipulates interdependence between the central bank and a supervisory entity. In that case the supervision responsibilities are split between the Central Bank and another authority in a joint approach.

Accountability of Supervisory Institutions

To define the status of an authority it is worthwhile to see to whom this entity is responsible or accountable, e.g. in terms of reporting about its operations. Accountability to a prominent rank may serve as an indicator for an institution's standing.

In three jurisdictions the status of the authority is expressed by the fact that reference is made to the Head of State in that concern. In two other jurisdictions ac-

countability is addressed to the Governor of the central bank. In another jurisdiction reference is made to the State Council, another one foresees reporting to the Council of Ministers and Parliament.

Legal Liability of Supervisors

This item addresses the question whether the supervisor in charge can be held liable for administrative action or an omission of necessary activity. The extent of liability both in terms of threshold and addressees may vary in each jurisdiction. Some may also hold liable the employee in charge whereas others may restrict the liability to the institution itself, the legal person.

All the respondents but one indicated that their supervisors are legally liable for their actions. One of the jurisdictions giving an affirmative answer clarifies that legal liability cannot occur as long as the supervisor acts within the scope of its mission. Further specifications are not provided. The answers do not aim to encapsulate the whole liability system in each jurisdiction as this would mean a very detailed description and reduplication of legal provisions which would not serve the purpose of this questionnaire.

Deposit Insurance System

An effective deposit insurance or deposit protection scheme may be of high relevance both for boosting market confidence and integrity as well as investor protection. The EU has covered the statutory deposit insurance system in the Deposit Guarantee and Investor Compensation Directives from 1994 and 1997. In the aftermath of the recent financial turmoil the European institutions are committed to further enhance the deposit protection, the EU threshold per depositor appears to increase ways above the current 20.000 €. Furthermore as the European Directive only stipulates

minimum standards a number of Member States have gone beyond for investor's sake. Also on an international scale deposit protection has become a prominent issue.

However, to which extent such system is needed depends significantly on the market conditions. While the majority of respondents gave an affirmative answer, three jurisdictions clearly stated that they do not have an explicit insurance system in place. In one of these jurisdictions the market circumstances did not call for such system as there has been a surplus of liquidities so far. The other two jurisdictions indicated that governmental or central bank steps may be taken for the sake of investors. Four out of the six respondents confirming the existence of a deposit guarantee scheme have certain thresholds in place up to which a reimbursement is safeguarded. This underlines that the deposit protection mainly aims to protect retail clients.

Legal Framework for Banking Supervision

This chapter focuses on the question which authority is in charge of licensing and compliance. This item is related to the first question above but puts a stronger emphasis on the particular field of supervision.

The first question aims to point out which authority gives authorisation of banking establishments, i.e. licensing. In five jurisdictions the central bank is in charge of authorizing banking establishments. In two jurisdictions the same other authority which is generally in charge of supervision is also responsible for licensing. In the other two jurisdictions authorization is embedded with a different institution, i.e. a special council or the Ministry of Finance.

The second question raises the issue which institution has powers to address compliance with (banking) laws

as well as safety and soundness concerns. Except one jurisdiction, the same institution is both in charge of licencing and compliance.

Basel Accords Compliance

Since the Basel Accords are of utmost relevance, one key part of the questionnaire was to verify to which extend the jurisdictions have settled for the respective banking requirements. In the European Union the Basel II requirements are in place since 2007. It is in the discretion of the credit institution whether they follow the Standard Approach which to a great extent is similar to Basel I or the Advanced Approach. So far a significant majority of banks decided to apply the Standard Approach while only a smaller number of banks opted for the Advanced Approach which may be more challenging for institutions especially in the beginning.

All MEDA jurisdictions comply with the Basel I requirements.

All respondents expressed their commitment towards the implementation of Basel II. The transposition is currently in place or should at least be envisaged in the near future. One jurisdiction declared to review the Basel II requirements in the wake of the financial turmoil and to adapt the rules if necessary. The respondents indicated that banks usually follow the Standard Approach. In two jurisdictions the Advanced Approach is explicitly only foreseen as of 2010.

Number of Banks

Globally, banking markets in the area have a relative big size, and are diversified.

The amount of banks may serve as a good indicator for the degree of competition and to which extent the

citizens are in a position to rely on banking service even though disparities in the level of servicing may vary between urban and rural areas.

The number of banks is two digits in all jurisdictions varying from 16 to 50. It varies from one country to another, with an average of 32 per country and a standard deviation by 16.22 (Table 3). The smallest market in terms of number of banks is Morocco with 16 banks whereas the biggest number of banks is 64 in Lebanon.

Access to financial services is often low, transaction costs tend to be high and the legal basis for collateral enforcement remains limited. These are the main reasons why financial intermediation relies heavily on retained earnings, thus limiting growth. This is particularly true for SMEs, which very often have no other choice than relying on internal and/or family finance.

In order to analyse the market and its exposure it is also worth knowing whether the market is dominated by domestic banks or foreign banks also play an active role. All jurisdictions do have foreign bank exposure though the extent of foreign bank business varies a lot. One jurisdiction is dominated by domestic banks in a way that the only foreign banking subsidiary and the four foreign banking branches only amass a total of less than 2% of the market share. As concerns the other jurisdictions foreign banks have a stronger standing. The figures of the market share or assets of foreign banks provided by some other respondents lead to the conclusion that the vast majority of market share is in the hand of domestic banks. A final conclusion cannot be drawn since three jurisdictions could not specify the market share.

Size of the Banking System

To determine the position and power of a country's banking system it is helpful to see the relation of the

banking assets to the GDP as well as the correlation between the banking assets and the total financial system assets.

In the majority of jurisdictions the banking sector assets represent more than the annual GDP. In one country the banking assets amount to 362% of the national GDP indicating a strong standing of the banking sector in the economy. One jurisdiction ranges slightly below the annual GDP and in two jurisdictions the banking assets represent about two third of the GDP (Table 4).

Six out of the nine respondents also provided figures with regard to the correlation of banking system assets as a percentage of total financial system assets. In one jurisdiction the assets make about 40% of the total assets (including government bonds) whereas the other jurisdictions indicated higher degrees. In the country with the highest participation of banking system assets these represent more than 86% of the total assets (Table 4).

Accessibility of Banking

A well-developed banking sector ensures that the population has sufficient access to banking services. The accessibility is typically expressed by the ratio of bank branches and the number of inhabitants. The figure reflects the overarching situation across each jurisdiction. Certainly the accessibility may vary in different regions of each country, e.g. one may assume that the capital and other major towns allow for higher accessibility. However, a further differentiation was not chosen as these figures just should provide a general nationwide overview.

A fine indicator of the market and in particular the potential access of the population to banking services is given by the number of branches serving every 100 000 people : this figure varies from 4 to 21,5 among MEDA

countries (Table 5). These figures are comparatively low taking indications e.g. in European countries into account: in Germany for instance it is 47.6, 63.1 in France and 57.6 in the Euro area. Nonetheless the banking industry is in an emerging process in most of the MEDA countries which may go in hand with higher accessibility in the future unless other channels such as online services substitute the need of agencies to a greater extent.

This indicator shows then a broader banking structure than the single number of banks as an indicator could have illustrated.

Government Ownership

To assess the banking sector in a country it is worth verifying to which extent the State or the government respectively runs or owns a bank. The extent of government activities may have an impact on the competitiveness as well as the services of the banking industry.

This issue is to which extent the banks are commercial banks, also referred to as private banks or whether they are public banks.

This question led to a very diverse picture of MEDA countries. While three jurisdictions indicated that they are no public banks whatsoever, other jurisdictions reported about public banks (Table 6). But even in those jurisdictions with a public banking sector a wide disparity exists to which extent these banks penetrated the whole banking market. In the other six countries the figures vary from 4% to 38% meaning that in none of the countries the state-owned credit institutions stay for the majority in number.

To really determine the government ownership and its market role it is also relevant to indicate whether public banks are larger than the commercial banks in

the respective jurisdiction. The lowest percentage is about 27% of all the banking assets. In further two jurisdictions the banking assets accumulate about 30% whereas another two contribute more than 40%, and in one jurisdiction the public banking sector dominates to an extent that it encompasses a maximum of 92% of the deposits and credits (Table 6).

The Competitive Environment

This chapter reflects the competitive environment by indicating the concentration of the banking industry. A high level of concentration may stay for restricted competition, on the other hand these credit institutions may be in a better position to offer a wide range of products and services.

The study comprises the percentage of assets and deposits accounted for by the largest, the three largest and the five largest banks.

Out of the seven jurisdictions which provided figures for the largest bank as regards assets two jurisdictions indicate about 15% another three jurisdictions provide figures or roughly speaking one quarter. Another one quotes 30% and in one country the biggest bank accumulates more than 37% of the assets. This country also provided a figure for the two largest banks which is 56.3%.

Seven jurisdictions, too, indicated the assets for the second threshold, assets of the three largest banks. While four indicated between 36 and 44%, the figures are 60% or above in three jurisdictions going up to three quarter. As concerns the “top five” data is available from eight jurisdictions. In three jurisdictions the figures range between 50 and 60%, one jurisdiction indicated a concentration of the “top five” with an asset percentage of 94%.

As concerns the percentage of deposits the question referred to the “top three” and “top five” only. The seven answers received give a quite diverse picture again. In one jurisdiction the three largest banks only make up 37 ½ % whereas five jurisdictions indicate a majority of assets amounting up to more than 75%. Similar disparities appear when it comes to the top five banks in this field. While all the answers indicate a majority of deposits accounting for the “top five” the figures range all the way from 52 to almost 95%. In the latter case the top five banks are the predominant credit institutions with barely any room left for market share of others. Two jurisdictions did not quote figures for the “top five” but for the eight largest and ten largest banks respectively (Table 7).

Measured by the Herfindhal-Hirschman Index (sum of squared market shares of individual banks’ assets) the banking industry shows a relatively low concentration (Table 7).

Foreign Involvement in Banking

Both market concentration and share of state-run banks are good indicators for the banking sector. As mentioned before it may be worth knowing to which extent the banks are domiciled in the respective jurisdiction or are from abroad to complete the picture. However, the domicile alone does not express the actual ownership so the question aiming to measure foreign involvement focuses on the percentage of banks which are foreign-owned as well as the share of foreign ownership in terms of bank assets.

In all jurisdictions foreign-owned banks are the minority so that the market is predominantly domestic. However the participation varies a lot. In one jurisdiction the number of foreign banks is almost half of the total amount while the lowest number is 7.7% only (Table 8).

Apart from the absolute number, it is also worth reflecting the actual bank assets that are foreign-owned as a sheer number of foreign banks do not indicate their market share in a country. In that concern it is remarkable that six respondents indicated a lower threshold in terms of banking assets compared to the sole number of banks. In most of these countries the actual banking assets are roughly speaking only one third of the percentage of banks. That may indicate that foreign banks have a lower market share than domestic-owned ones. Only in one country the amount of banking assets (compared to the total) exceeds the percentage of foreign-owned banks giving those banks a comparatively high market share. However, since this jurisdiction is the one with the lowest level of foreign-owned banks (7.7%), the percentage of bank assets is below one fifth of the total amount.

Permissible Powers of Banks

Depending on the supervisory context and framework credit institutions are allowed a different range of activities. A jurisdiction may opt for universal banking allowing a wide range of financial services while it may also restrict the banks to particular fields of duty. The framework would regulate whether the banks shall carry out classical banking services only or also go across this segment and also offer insurance activities or real estate services. If that was the case the regulator must take the wider field of operation into account since the bank would then for instance also act like an insurance undertaking. Nonetheless even in case of separation between banking and insurance companies the bank may also engage in an insurance undertaking e.g. by acquiring voting rights unless there is a further restriction not to engage likewise.

The answers reflect a wide range of different regulatory approaches.

As concerns the first question whether banks are allowed to carry out securities activities such as underwriting, dealing and brokerage services for securities and mutual funds the respondents gave all sorts of possible answers. Two jurisdictions stated unrestricted activities whereas two others declared that those activities are prohibited. The other five jurisdictions indicated that those activities were more or less permitted. The answers just aim to get a general overview so that it cannot be specified to which extent permitted activities differ from unrestricted ones. The notion permitted may however imply that a bank must take other factors into consideration while executing services in this field while this compliance test seems more remote in a fully unrestricted environment.

The second question deals with insurance activities such as underwriting and selling of all kinds of insurance policies and acting as a principal or agent. Three respondents gave an affirmative answer that this business is permitted. Three jurisdictions allow for these services in a restricted manner only. In one jurisdiction a bank is prohibited from carrying out this business. Another jurisdiction differentiates: while carrying out insurance activities as an agent is restricted, it is prohibited to carry these services out as a principal.

The third question on real estate services led to all sorts of answers again. One jurisdiction offers the option of unrestricted operating in real estate services, another two jurisdictions permit this business. Three jurisdictions take a restricted approach towards carrying out this business. In two states this business is prohibited for banks (Table 9).

Ownership Opportunities

How do credit institutions interact with companies of non-financial background? This question touches both the extent to which banks may participate in non-finan-

cial firms and on the other hand also whether such firms may hold a share in banks.

Two jurisdictions explicitly stated that banks are not allowed to own any non-financial firms. Another jurisdiction makes a distinction between conventional and Islamic banks. While conventional banks are not allowed to do so, Islamic banks may own such firms as this is required in order to operate in line with Islamic banking principles. The other jurisdictions take per se a more open approach towards ownership opportunities. However, the applicable rules and regulations set certain limits for this kind of ownership. Four of these jurisdictions apply limits according to certain thresholds such as a percentage in relation to the bank's funds.

The other way round four jurisdictions allow non-financial firms to engage and own banks without any further restrictions. One jurisdiction requires non-financial firms to totally refrain from ownership in banks. The remaining four jurisdictions give a basically affirmative but conditional answer. In these jurisdictions the ownership is restricted, e.g. two of these jurisdictions foresee an approval by the supervisory institution.

Rating of Banks

Significant banks which play a vital market role and are active in the international arena are often rated by international credit rating agencies. A rating may be of high relevance to assess an institution and its solvency. For an international exposure it therefore matters whether the major banks have got a rating.

In one jurisdiction all the ten biggest banks are rated by at least one international rating agency. Seven other respondents indicated that two to six banks have been rated in their jurisdiction.

3. Conclusion

All countries are well aware of the importance of modernizing their financial sectors and have been implementing reforms for some time, with encouraging results.

Essential Banking laws and regulations are now in place in most countries of the region and Central Banks are upgrading their oversight capacity. Management systems are becoming more and more sophisticated and often include enhanced risk-based supervision functions procedures, with related manuals for supervision and training of staff. Bank Corporate governance as well as regulatory compliance with capital adequacy ratios have significantly improved as a result of staff better prepared to carry out their newly introduced or strengthened obligations.

Despite progress and a number of successful reforms, several challenges remain and need to be addressed to prepare the banking industry. Some of the necessary reforms would also facilitate financial integration in the region accommodating the envisaged free trade:

- Strengthen the soundness of the banking systems in all countries. In particular it is important to reduce the high level of non performing loans, to restructure state-owned banks, and to secure compliance with prudential rules ;
- Increase competition in the banking system. Notably, extensive state ownership and restrictions on foreign bank entry stifle competition and financial deepening in the region; opening up the banking sector for commercial banks both for domestic credit institutions and those abroad is a solution ;
- Deepen the financial markets where they are bank-dominated. Financial markets (money, interbank, foreign exchange, equity, and securities markets) are

nascent or shallow in most countries, and nonbank financial institutions are generally underdeveloped ;

- Upgrade financial sector infrastructure. In particular, accounting and auditing practices, transparency and corporate governance, the legal and judicial framework, and the payment systems need to be strengthened.

Tables

Table 1. Gross national income (GNI) per capita, PPP (current international USD)

	2000	2005	2006	2007	2007/2000 (%)
ALGERIA	5 130	6 820	7 140	7 640	49
EGYPT	6 886	8 638	9 262	9 852	43
ISRAEL	18 890	22 610	24 310	25 930	37
JORDAN	3 270	4 480	4 850	5 160	58
LEBANON	7 530	9 480	9 610	10 050	33
MOROCCO	2 560	3 520	3 860	3 990	56
SYRIA	3 150	3 880	4 110	4 370	39
TUNISIA	4 600	6 080	6 640	7 130	55
TURKEY	8 600	10 250	11 390	12 350	44
GERMANY	25 670	30 540	32 120	33 530	31
FRANCE	26 390	30 830	32 230	33 600	27
EURO AREA	25 007	29 442	31 029	32 508	30

Source: World Bank

Table 2. Indicators of financial development

	DOMESTIC CREDIT PROVIDED BY BANKING SECTOR (% OF GDP)		DOMESTIC CREDIT TO PRIVATE SECTOR (% OF DGP)	
	1995	2006	1995	2006
ALGERIA	45	NA	5	12
EGYPT	81	99	37	55
ISRAEL	78	76	65	89
JORDAN	89	116	75	98
LEBANON	52	196	55	78
MOROCCO	79	78	48	58
SYRIA	48	33	11	15
TUNISIA	71	71	68	64
TURKEY	20	46	14	26

Source: WDI (World Bank)

Table 3. Banks

END 2008	BANKS OWNED BY THE STATE (PARTLY OR TOTALLY): NUMBER	NATIONAL PRIVATE BANKS: NUMBER	PARTIALLY OR TOTALLY FOREIGN BANKS: NUMBER	TOTAL
ALGERIA	6	2	11	19
EGYPT	6	27	7	40
ISRAEL	1	4	5	10
JORDAN	0	15	8	23
LEBANON	0	54	10	64
MOROCCO	5	6	5	16
PALESTINIAN AUTHORITY	0	10	11	21
TUNISIA	10	4	11	25
TURKEY	8	19	23	50
FRANCE	1	129	161	291

Source: MEDA countries and CECEI report 2008 for France

Table 4. Banking assets

	BANKING ASSETS AS A PERCENT OF GDP 2007	BANKING SYSTEM ASSETS AS A PERCENT OF TOTAL FINANCIAL SYSTEM ASSETS* 2007
ALGERIA	69.3	NA
EGYPT	121.0**	55.0**
ISRAEL	145.0	40.7
JORDAN	239.9	NA
LEBANON	362.0	75.7
MOROCCO	106.0	55.0
PALESTINIAN AUTHORITY	180.0	NA
TUNISIA	92.0	86.4
TURKEY	67.9	75.7

*: as measured by the sum of banking system assets, stock market capitalization, and bonds outstanding

** : as of June 2008

Source: MEDA countries

Table 5. Measure of the accessibility of banking to the population: average number of branches serving every 100,000 people (2008)

ALGERIA	4.0
EGYPT	4.3
ISRAEL	15.0
JORDAN	9.7
LEBANON	21.5
MOROCCO	14.9
PALESTINIAN AUTHORITY	5.2
TUNISIA	10.6
TURKEY	11.5
GERMANY	47.6
FRANCE	63.1
EURO AREA	57.6

Source: MEDA countries and ECB

Table 6. State presence in the banking market (%)

END 2008	PART OF BANKS OWNED BY GOVERNMENT	PART OF BANKING ASSETS OWNED BY GOVERNMENT
ALGERIA	38	90*
EGYPT	15	47
ISRAEL	4	30
JORDAN	0	0
LEBANON	0	0
MOROCCO	24	27
PALESTINIAN AUTHORITY	0	0
TUNISIA	25	41
TURKEY	14	30

*: deposits and credits

Source: MEDA countries

Table 7. The competitive environment

	PERCENT OF ASSETS ACCOUNTED FOR BY THE LARGEST BANK	PERCENT OF ASSETS ACCOUNTED FOR BY THE 3 LARGEST BANKS	PERCENT OF ASSETS ACCOUNTED FOR BY THE 5 LARGEST BANKS	PERCENT OF DEPOSITS ACCOUNTED FOR BY THE TOP 3 BANKS	PERCENT OF DEPOSITS ACCOUNTED FOR BY THE TOP 5 BANKS	MEASURE OF MARKET CONCENTRATION BY THE HERFINDAHL-HIRSCHMAN INDEX
ALGERIA	37.7	NA	NA	NA	NA	NA
EGYPT	22.9	43.4	52.6	43.4	52.8	NA
ISRAEL	30.0	75.7	94.0	75.7	94.8	0.22
JORDAN	23.6	46.3	58.9	50.5	62.3	NA
LEBANON	14.7	37.6	53.8	37.4	51.8	NA
MOROCCO	25.7	63.4	81.1	67.0	83.3	0.17
PALESTINIAN AUTHORITY	NA	60.0	80.0	65.0	79.0	NA
TUNISIA	14.9	43.2	61.4	44.8	63.3	0.1
TURKEY	NA	NA	59.8	NA	62.2	0.088*
GERMANY			22.0			0.0183
FRANCE			51.8			0.0679
EURO AREA			54.7			0.1006

Source: MEDA countries and ECB "EU banking structures" October 2008

Table 8. Measure of foreign involvement in banking

2008	PERCENT OF BANKS THAT ARE FOREIGN-OWNED	PERCENT OF BANKS ASSETS THAT ARE FOREIGN-OWNED
ALGERIA	57.8	8*
EGYPT	17.5	6.5
ISRAEL	7.7	17.8
JORDAN	34.8	11.2
LEBANON	15.6	4.3
MOROCCO	31.3	21.7
PALESTINIAN AUTHORITY	52.4	52.0
TUNISIA	35.0	27.6
TURKEY	46.0	14.0
FRANCE	55.3	10.9

*: estimate

Source: MEDA countries and CECEI for France

Table 9. Permissible powers of banks

	ALGERIA	EGYPT	ISRAEL	JORDAN	LEBANON	MOROCCO	PALESTINIAN AUTHORITY	TUNISIA	TURKEY
SECURITIES ACTIVITIES (UNDERWRITING, DEALING, AND BROKERAGE SERVICES FOR SECURITIES AND MUTUAL FUNDS)									
UNRESTRICTED	X				X				
PERMITTED		X	X	X		X			X
RESTRICTED			X*						
PROHIBITED							X	X	
INSURANCE ACTIVITIES (UNDERWRITING AND SELLING ALL KINDS OF INSURANCE, AND ACTING AS A PRINCIPAL OR AGENT)									
UNRESTRICTED									
PERMITTED				X	X				X
RESTRICTED	X**		X***			X		X	
PROHIBITED		X					X		
REAL ESTATE SERVICES (INVESTMENT, DEVELOPMENT, AND MANAGEMENT)									
UNRESTRICTED	X								
PERMITTED		X		X					
RESTRICTED					X			X	X
PROHIBITED			X			X	X		

*: mutual funds

** : mainsons mères des filiales (agrément)

***: agent: restricted, principal: prohibited

Source: MEDA countries

Notes

- 1 Levine, Ross, 2005, "Finance and Growth: Theory and Evidence," in Philippe Aghion and Steven Durlauf, eds., *Handbook of Economic Growth*, Vol. 1 (Amsterdam, Netherlands: Elsevier Science).
- 2 Tahari & al., "*Financial Sector Reforms and Prospects for Financial Integration in Maghreb Countries*", IMF Working Paper WP/07/125

B. Insurance

by

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Introduction

In year 2007, the insurance sub-group of the « Financial services » working group of the EuroMed Market Programme met twice. The final aim of the EuroMed Market Programme is “to contribute to the creation of a free trade area in year 2010”, this being set as a target date.

It was noted during these two meetings:

- that insurance legislations of MEDA countries were rather close to one another from the one end, to EU insurance legislation from the other hand;
- that insurance services trade, among MEDA countries from the one end, between MEDA countries and EU from the other end, were still limited in extension. It must be noted, however, that insurance services trade among EU countries also remain limited in extension, at least when it comes to services which are not provided through an establishment (see below).

The Euromed program was extended for year 2008, with the aim, with regards to insurances services,

- to develop a comparative analysis of insurance legislations of MEDA countries, and of MEDA countries vs EU;
- to examine whether conditions of an insurance services free-trade area, either between EU and MEDA countries, or, in a more limited way, within smaller areas (for instance, among some MEDA countries, or between some MEDA and some EU countries) were already met.

The questionnaire on insurance services was sent to MEDA country representatives on 4th July 2008. On 28 and 29 November 2008, a meeting in Luxembourg permitted a first study of received answers and a discussion on the conditions of an insurance services free-trade area, and on the aims and form of the report.

Conditions for a free-trade area

Generally admitted conditions for such an area are the following:

- Prudential rules (security rules) should be equivalent;
- Organisms or bodies supervising that these rules are complied with should also be « equivalent », and trust one another.

Often, economic and political conditions are added—for instance, the absence of substantial imbalance between the countries.

To this respect, the EU experience and history is an interesting laboratory, and could contribute to relativize the first condition. At present, the insurance services free trade area within the EU is nearly completely completed, whereas prudential rules are by no means equivalent.

Before undertaking the analysis of MEDA countries insurance legislation, a few words should be said about the EU insurance legislation, as well as about another „international insurance legislation“ that is also of interest for the MEDA countries, that of the IAIS/AICA.

Relevant international rules for the region

A) IAIS / AICA rules.

The International Association of Insurance Supervisors, or IAIS¹, groups (as of 08.12.2008) 144 Member jurisdictions². With regards to the Euro-Mediterranean region, are members:

- Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia, Turkey;

- The 27 Member States of the EU.

For many jurisdictions, IAIS standards, rather than being fully enforceable standards, are rather seen as „strong“ recommendations. As a matter of fact, most jurisdiction endeavour to implement these standards.

AICA standard cover all areas of insurance supervision, including:

- quantitative, or financial aspects: for instance, calculation of liabilities (technical provisions), asset valuation, solvency requirements;
- qualitative aspects: for instance, corporate governance, fitness and propriety rules, cooperation between supervisors.

It is generally admitted that IAIS rules are more developed on qualitative aspects. When it comes to quantitative (or financial) standards, there is no doubt that EU rules are more elaborated—even though they do not, at present, correspond to a full harmonization.

The difference between EU rules and IAIS standards with regards to insurance groups—a specially relevant theme for this study— has for long been a perfect reflection of this. While the EU legislation³ has since 1998 provided detailed rules on the elimination of double gearing, on the calculation of group solvency, only recently has the IAIS produced a (less) detailed standard.

B) EU rules

When it comes to insurance services, the UE has practically reached a complete free trade area since the 1st January 1994, when the „3rd directives“⁴ were implemented into national legislation. The move to „closed“ market to the free trade area hasn't been performed

overnight; on the contrary, it took several decades. This should be kept in mind when thinking about an insurance services free trade area, whether it should cover the whole Euro-Mediterranean area or smaller sub-areas.

Another relevant point when reflecting upon insurance free trade area is that, contrary to what is often spontaneously thought or said, sometimes even by EU officials, the EU insurance services free trade area was set at a time when legislative harmonization was far from being fully completed.

First conclusions

The received answers, hereunder analysed, confirm what already came out from the 2007 meetings: most MEDA countries insurance legislations are, in most areas, rather similar to one another, and rather similar to EU legislation. This does not mean that these legislations are (fully) harmonized, but it's just been seen that EU legislation neither is.

When it comes to the possibility, in the existing insurance legislation and supervision, of setting up a free trade area, a number of respondents underline the substantial differences between insurance legislation and supervision, the lack of sufficient confidence among supervisors, and the substantial gaps between markets, in terms of size, economic wealth, and consuming habits. While the first two elements could probably be relativized—they also exist within the EU and did not prevent the Single market to be set up—the third one should not be neglected. Finally, one should keep in mind that if EU insurance supervisors had been asked about the feasibility of a single market when the « first directives »⁵ were taken and set up legislative harmonization, very few of them would have provided an affirmative reply.

Analysis of received answers

This analysis is divided into 12 chapters, which correspond to the 12 chapters of the questionnaire⁶. A number of chapters start with a reminder of the corresponding legislation within the EU—and within the IAIS, when appropriate; it then analyses the MEDA countries answers. These latter, depending on the questions, are in turn also separated into two parts in some chapters: *i)* existing legislation; *ii)* future possible options.

1. Competent authority

a) IAIS and EU regulations; the situation within the EU.

EU legislation does not impose any specific form for the insurance supervisor. IAIS standards—in particular, ICP n°3⁷—do not either explicitly prescribe any special form, even though they *implicitly* tend to recommend an independent organization (see EC *d, e, f, g, h, o, p*)⁸.

Within the EU, there is a noticeable diversity of forms of insurance supervisor. The German supervisor (BAFIN), for instance, is an « integrated », that is, it is both distinct from the government, and common to insurance, bank and securities supervision. The French supervisor (ACAM) is also a non-governmental authority; but, different from Bafin, it only supervises the insurance sector, and banking and securities supervisions lie with two other authorities. The Spanish authority (DGS) also only supervises the insurance sector and is a department of the Finance Ministry of Spain.

Within the EU, a definite incentive towards the setting up of non-governmental authorities has been the financial independence, which, in practice, provided higher resources, and, sometimes too, a greater flexibility in hiring staff.

At present, there is not within the EU a clear demonstration that a certain form of supervisor would be more, or less efficient than the others.

b) Results of the questionnaire.

Responses to the questionnaire show a variety of forms of supervisors within MEDA jurisdiction that is similar to the variety existing in EU. In Algeria, Morocco and Turkey, the supervisor is a part of the Finance Ministry. In Lebanon and Tunisia, authorities only supervise the insurance sector and are separated from the Ministry. The Palestinian Authority supervisor is an integrated authority.

2. Market Data

The number of supervised insurers varies from 11 (Palestinian Authority) to 54 (Lebanon). These data should also be considered with respect of each market size.

The part of insurance premium in GDP varies from 0.70% (Algeria) to 2.90% (Lebanon).

Main marked data are summed up in the table below:

	DZ	JO	LB	MA	PA	TN	TR
NUMBER OF SUPERVISED INSURERS	16	29	54	18	11	18	52
ANNUAL TURNOVER IN 2007 (M€)	656	282	518	1752	51	675	391
PART OF INSURANCE PREMIUMS IN GDP (%)	0.0	2.60	2.90	2.87	2%	2%	1.30
NUMBER OF LIFE INSURERS	1	1	5	1		2	21
NUMBER OF NON-LIFE INSURERS	3	11	18	8		3	30
NUMBER OF «COMPOSITES» INSURERS	11	17	31	8	11	12	
NUMBER OF REINSURERS	1	0	1	1		1	1
NUMBER OF MUTUALS; MARKET SHARE OF MUTUALS	2 ; 6%	0		3 ; 6%		4 ; 19%	0

3. Duties of the supervisor

a) IAIS and EU regulations; the situation within the EU.

IAIS / AICA regulation sets the minimum that must be supervised: for instance, licensing (ICP 6), portfolio transfers (ICP 8), exits from the market (ICP 16), tech-

nical provisions (ICP 20). IAIS / AICA regulation does not impose that all these tasks must fall upon one single authority, although it is expected that the “core” tasks, like the supervision of technical provision, fall upon the insurance supervisor, whereas more “peripheral” tasks, like licensing, could be allotted to other authorities.

EU regulation neither imposes that these various tasks fall upon a single authority, but it is more precise than IAIS regulation on a number of points.

In various areas, EU regulation sets what must *not* be regulated. For instance, article 8.3 of 73/239 Directive prohibits prior approval of tariffs in non-life business, except as part of general price control systems. This means that maximum tariffs would be allowed as part of a price control system, but minimum tariffs as part of a supervisory system are prohibited. This provision was introduced by Directive 1992/49. It does not apply to *life insurance*, where tariffs control is allowed (art. 21 of Dir. 2002/83).

Practice in UE varies with regard to “peripheral” supervisory tasks. In France for instance, licensing, amicable portfolio transfers do not lie with the ACAM (even though its advice should be requested – but not necessarily followed).

Licensing withdrawal lies with the ACAM but the Court will appoint a liquidator, on whom the ACAM has no control. Situation is similar in Germany, where petition for the opening of insolvency proceedings against the insurer may only be filed by the supervisor. The insolvency court must immediately forward the order to open insolvency proceedings to the supervisor. The supervisor can demand information on the status of proceedings from the insolvency court and the insolvency administrator at any time.

In other countries, the insurance supervisor has wider powers such as licensing, portfolio transfers, appointment of a liquidator.

With regards to the scope of insurance supervision, situation has evolved over time, and varies among country within the authorized limits of EU regulation.

For instance, with regards to the non-life premium tariffs, in Germany as well as in France, a supervisory control—that is, the right for the supervisor to set minimums—existed until the implementation of the directive 1992/49.

With regards to life premiums, some countries, like France, set maximum guaranteed interest rates and “minimum” mortality tables; other countries, like United Kingdom, do not have national legislation on this point. In Germany as well, the prior control of premiums in life and non-life was abolished in 1994 with the implementation of the third generation directives. However, the insurer must notify the supervisor about new principles for the calculation of the premiums and mathematical provisions in life and health insurance.

With regards to the policy conditions, prior control was likewise abolished with the implementation of the third generation directives, but most supervisors though exercise a form of supervision. In Germany for instance, in compulsory insurances the intended use of new or changed general insurance policy conditions must also be lodged with the supervisor. In France (art.L.310-18), insurers can be required to send insurance contracts to the Minister for him to examine them.

Finally, IAIS regulation states that supervisors should deal with consumer protection (ICP 25). As a matter of fact, most EU supervisors have a department that is dedicated to the dealing of consumers’ complaints.

b) The results of the questionnaire

Answers show a variety of situation that is similar to that existing—or that existed—within the EU.

Concerning the “peripheral” activities, all MEDA countries require that an insurer must be authorised for insurance business, but in two countries (Algeria and Tunisia) licensing lies with a Ministry. In one country as well an insurer’s liquidation does not fall upon the supervisor, and in one case the publication of statistical information on the insurance market lies with a Ministry.

Life premiums are not controlled in Jordan and Lebanon; they are controlled in other countries (from 2009 on in Tunisia). In Algeria there is also a provision that sets a minimum guaranteed interest rate.

For non-life premiums, the situation is quite different from one country to the other, and similar to that that existed in EU before the implementation of 92/49 Directive. Lebanon does not control non-life premiums. 3rd party motor insurance premiums must be over a minimum in Turkey (supervisory control). In Jordan, the Palestinian Authority and Tunisia, these are fixed: this is both a price control (still allowed in EU) and a supervisory control (prohibited in EU since 1994). In Algeria and Morocco, non-life premiums in general are controlled.

All countries report the control of insurance policies.

All MEDA countries except Lebanon and Algeria control the shareholders of the companies.

All supervisors deal with consumers’ complaints.

The prevention of money-laundering is also common in all MEDA jurisdictions.

With regards to the “core” activity of insurance supervision (e.g. supervision of the insurer’s investments, of technical provisions, of capital requirements and

of public financial returns, on-site inspections...), all these tasks lie with the insurance supervisor, as could be expected.

4. Freedom of establishment / of taking a participation in an insurer; licensing regime

Results of the questionnaire

i) Existing legislation

All jurisdictions reported detailed prudential regulations both for domestic and foreign investors. Fit and Proper testing, competence and financial soundness of shareholders is also applied in all MEDA countries.

As a principle, the granting of authorisation does not depend on the access that MEDA countries have in other countries (no reciprocity condition)⁹. Several jurisdictions explicitly state that it does not depend on the shareholder's nationality (Lebanon, Tunisia and Turkey).

The following table is a—partial— indicator of how each market is opened to foreign investors:

	DZ	JO	LB	MA	PA	TN ¹⁰	TR
NUMBER OF INSURERS THAT ARE CONTROLLED BY FOREIGN INVESTORS	4	3		4	0	0	29
MARKET SHARE OF THESE INSURERS	8%	11%		23%			52%
NUMBER OF INSURERS WHOSE MORE OF 20% OF CAPITAL SHARE IS OWNED BY FOREIGN INVESTORS	4	6		6		6	29

In four cases, an authorisation from the supervisor is required for the taking of a participation in an insurer when the participation goes over determined thresholds. Lebanon and the Palestinian Authority do not provide such authorization. One jurisdiction hasn't answered.

Several jurisdictions (Lebanon, Morocco, Palestinian Authority, Tunisia) specify that application for authorization may be considered in the light of the economic requirements of the market¹¹. Turkey, on the contrary, explicitly states that authorization does not depend on economic requirements of the market.

Composite insurers—that is, insurers that are allowed to simultaneously operate in life and non-life—are prohibited in Morocco¹², Turkey; they are prohibited in Algeria from 2011 on (that is, former composite insurers will have to split up into two separate entities). In Jordan and in Lebanon, new composite insurers are not allowed, but those already licensed can continue to operate. In the Palestinian Authority and Tunisia, composite insurers can be licensed but must comply with strict separation requirements.

ii) Future possible options.

4 jurisdictions out of 7 consider that conditions for freedom of establishment in their country are currently met¹³.

When it comes to the freedom of establishment of domestic operators—and in particular of domestic insurers—in other countries, answers vary. Lebanon notes that such freedom of establishment would be appropriate towards MEDA countries, but perhaps not towards EU where markets are more developed. In a similar way, Tunisia notes that it would be more appropriate to establish in similar markets (e.g. from North Africa) where consumers behaviours etc. are similar. Morocco and Turkey do not notice particular restrictions.

As regards regulation, in most cases a domestic insurer can freely create an insurance subsidiary or take a participation in an existing insurer; in one case, when it must require authorization this is for other reasons (e.g. exchange transactions control) than insurance supervision. However, authorization is required by the Palestinian Authority, and by Morocco unless the acquired shares are listed in OECD, EU or UMA.

5. and 6. Regulation and supervision of insurance groups and of financial conglomerates

Results of the questionnaire

None of the MEDA countries reported to have regulations about insurance groups and conglomerates.

However, in some jurisdictions (Jordan, Morocco, Palestinian Authority and Turkey) double gearing is eliminated inasmuch as, in the calculation of available own funds, investments in insurance subsidiaries are deducted.

In a number of cases (e.g. Morocco, Tunisia, Turkey), provisions regarding group / conglomerate regulation, as well as cooperation between insurance / banking supervision, are under discussion and should be adopted in the (relatively) short run.

7. Provision of services: licensing and authorisations with regard to non-domestic providers

Classically, there are two ways for a foreign provider to provide services in a host jurisdiction, when not establishing a subsidiary:

a) Provision of services through a branch that is supervised by the host jurisdiction

b) "Free provision of services" (FPS), that is, direct provision of services by the foreign insurer¹⁴.

Results of the questionnaire

i) Existing legislation

Regarding the provision of services from a foreign insurers, the results are as follows: (L, Licensing ; D, simple registration or Declaration; N, Not allowed).

	DZ	JO	LB	MA	PA	TN	TR
PROVISION OF SERVICES THROUGH A SUPERVISED BRANCH	L	L	L	N	D	L ¹⁵	L
FPS (OR PROVISION THROUGH AN UNSUPERVISED BRANCH)	N	N	N	N ¹⁶	N	N	N

As can be seen, the free provision of services or the establishment of a non-supervised branch is not allowed in the MEDA area. Morocco (following former disappointments) does not authorize branches, and Tunisia restrictively authorizes it. In other countries, a branch of a foreign insurer needs to undergo a formal licensing procedure, except in the Palestinian Authority who only require registration. In no case can authorizations be dependent on the petitioner's nationality¹⁷.

When it comes to cross-border provisions emanating from domestic insurers, 1 country does not authorize them, 1 submits them to specific authorization, 2 require the information of the supervisor and 3 have no particular requirements¹⁸.

ii) Future possible options

Most respondents do not believe that in the short run, the FPS is an appropriate means to promote a free-trade area for insurance services, or at least are reluc-

tant to accept FPS as host jurisdiction, even in the case where the insurance services come from neighbouring MEDA countries. On the other hand, convergence of regulatory regimes¹⁹ being what it is, respondents believe that the provision of services through licensed branches supervised by the host authorities, is a more appropriate way to develop cross-border provision of services.

The Palestinian Authority, however, notes that FPS could be envisaged coming from MEDA countries, with safeguards such as limitation to some insurance classes, institution (by the home jurisdictions) of a guarantee fund protecting policyholders against the failure of the insurer, and as long as the host supervisor remains responsible to supervise contracts and their fulfilment and is allowed to take sanction against the insurer.

On the other hand, 2 MEDA countries would find it appropriate that a freedom be granted to insurers from their jurisdiction to provide services to all host MEDA and EU jurisdictions; one other would find FPS appropriate only towards MEDA countries; one answer notes that such FPS would depend on host supervisors and the ability of domestic insurers to comply with the host country provisions; 3 countries do not provide an answer.

8. Exchange of information between authorities — standardization of supervisory returns and of public accounts

Results of the questionnaire

i) Existing legislation

In most cases there is no general provision on the exchange of information between authorities²⁰. Most often, exchange of information takes place on a case-

by-case basis²¹, and / or through MoUs or particular agreements²², and / or in regular meetings, working groups etc that are set up by regional institutions²³. In two cases, such exchange is not yet allowed, or has been recently allowed and hasn't yet taken place.

The content of these exchanges also vary on a case-by-case basis.

There is a fair cooperation between supervisors with regards to the settlement of international disputes, in particular relating to motor insurance: parties cooperate through the Orange Card system²⁴, and / or the Green Card system²⁵, though the Palestinian Authority states that such cooperation is hindered as long as there is no freedom of circulation. Jordan also mentions that there are also ADR²⁶ mechanisms that are available to foreign policyholders.

ii) Future possible options

The question of what information exchanged between supervisors could favour complete or partial / restricted FPS (such as exchange of information on the financial position of insurers, on insurance legislation, etc), and whether the UE "Sienna" Protocol²⁷ could constitute (among other) an appropriate basis for such information exchange, could not be discussed at length in the Working Group. Jordan noted that the scope of exchanged information should be quite extensive, including general information sharing, requests for assistance, insurance legislation and training. The Palestinian Authority noted that the Sienna Protocol could be an appropriate basis for the exchange of information.

With regards to current exchanges of information (are they appropriate? How should they be standardized), two jurisdictions state that they still haven't taken place; one jurisdiction finds them appropriate, but another one noted that they still lacked practicability and were of little use. One jurisdiction noted that supervisory re-

turns should be standardized, and other statistical and qualitative data should be available, for the information exchanged between supervisors to be fully relevant.

9. Guarantee fund

a) Reminder of EU regulation and practices (TBC):

At present, there is no directive from the EU covering insurance guarantee schemes. However, the Commission set up a working group on Insurance Guarantee Schemes in 2001.

Within the IAIS, nothing either exists; it has been proposed, as an advanced criteria to ICP 25 (Consumers protection), to recommend such fund covering compulsory insurances, to the benefit of retail policyholders.

Germany has a guarantee fund for life and health insurance. The legal basis was implemented in 2004. The objective of both schemes is the continuation of insurance contracts. Paying compensation is not considered to be a function of the schemes. The funding takes place on the basis of contributions from the insurers participating.

Since 1994, there is also a guarantee fund in the area of Third-Party-Liability Insurance (TPL). This fund pays i.a. compensation for damage to persons or property in case the TPL insurer becomes insolvent.

There are no differences in eligibility criteria depending on nationality, place of residency of the policyholder, location of the risk or the way the contract was underwritten (directly with the insurer, through a branch or through FPS). All contracts of the participating insurers are protected.

b) results of the questionnaire

i) existing legislation.

In 4 jurisdictions a guarantee fund currently does not exist at all²⁸, but in two of them (Algeria and Jordan) a project is under review.

Morocco has a fund covering 3rd party motor insurance, other compulsory insurances and health insurance.

Tunisia has a fund that covers all insurance policies, without other limits than those stipulated in the contracts.

Turkey has a guarantee fund covering losses in respect third party motor liability insurance and other compulsory insurance. The amount that can be paid by the fund cannot be higher than coverage limit set by the Minister.

In all cases where a fund exists, there is no discrimination with regard to the nationality of the policyholders, or to the way the insurance contract was underwritten (i.e. the fund would cover any contract underwritten by the insurer, whether the contract was underwritten in the jurisdiction, through a branch or —if applicable— through FPS).

ii) Future possible options

To the question whether the setting up (by the foreign home jurisdiction) of a guarantee fund would favour the FPS (in the domestic host jurisdiction) in those classes covered by the fund, 1 jurisdiction says it wouldn't, 1 doesn't answer and 5 say it would but, in two cases, with the caveat that this should be studied on a case by case basis and that such LPS assumes the equivalence of supervisory regimes²⁹.

Conversely, to the question whether the domestic home jurisdiction could envisage the setting up of a guarantee fund, in order to favour the FPS by its own insurers in

foreign host jurisdictions, 2 jurisdictions say they do not envisage such device, 1 doesn't answer, 3 say it could be envisaged and 1 say it already exists.

10. Calculation of technical provisions

a) reminder of IAIS and EU regulations (TBC)

The establishment of run-off triangles is often an important supervisory tool to assess the robustness of non-life outstanding claims provisions. A description of such possible triangles is provided by the IAIS supervisory standard on non-life disclosure (§28)³⁰, but there are other examples. IAIS' standard provides that such triangles should be segmented among main insurance classes, and should be disclosed.

b) Results of the questionnaire

With regards to non-life provisions, there is no tangible difference as to the provisions an insurer should set up, such as provisions for unearned premiums, for unexpired risks, and for claims outstanding. Understandably, equalisation/catastrophe provisions are not compulsory in every jurisdiction.

Differences are more tangible in the field of life insurance where, according to the local features of insurance contracts, insurers may have, or may not have to set up provisions for bonuses and provisions for unit-link policies. This is summarized in the table below:

	DZ	JO	LB	MA	PA	TN	TR
MATHEMATICAL PROVISION	Y	Y	Y	Y	Y	Y	Y
PROVISION FOR BONUSES	N	N	Y	Y	Y	Y	Y
PROVISION FOR UNIT-LINKED INSURANCE POLICIES	N	N	N	Y	Y	Y	N

With regards to calculation methods of the provision for outstanding claims, in all countries a case by case method is compulsory, and in most countries this must be, in some insurance classes (typically motor insurance), completed by statistical methods such as chain-ladder methods or the use of other statistical means. Please refer to the table of answers for further details.

Two countries do not provide for run-off triangles in supervisory returns. 4 make them compulsory in supervisory returns, and one makes them compulsory in both supervisory returns and public accounts..

Two countries report that (non-life) claims outstanding provisions should be discounted.

With regards to the *maximum discount rate* used in the calculation of *life* insurance provision, 1 country has a provision that is similar to that of Article 20.1.B.a.i) of the 2002/83 Directive ("prudent" discount rate, as "not more than x % of the rate on bond issues by the State"), 1 is about to implement similar provision, 3 provide that the discount rate should be set by an actuary (and, in one case, disclosed in application of IFRS4), and 2 have no specific provisions.

With regards to *mortality tables*, 3 countries provide tables to be used by the insurer; in 2 countries the tables should be notified to the supervisor, who can require the use of other tables; 2 countries have no specific requirements.

Finally, most countries have specific requirements with regards to assets covering technical provisions (see below and table of detailed answers).

11. Investment regulation

a) Reminder of IAIS regulations, EU regulations and practices

Present EU legislation sets limits on assets that are admitted to cover technical provision (list of admitted assets). These rules are then implemented in various ways and details by Member states.

In Germany for instance, each insurer must report on a regular basis about its assets. These have to be placed in accordance with the legal provisions whose objective it is to have investments which are profitable and secure. A proper mixture and diversification of the investments are to safeguard the insurer and thus the insured against the risk of major losses of assets

b) Results of the questionnaire

All countries report detailed regulations on admissible assets, along with specific rules on diversification and spreading, similar to those existing in current EU regulation. Besides, the Palestinian Authority seems to have a mixed system of the prudent person approach and detailed regulations on admissible assets, and Turkey also has a capital charge on assets (see below §13).

4 countries reported the existence of mandatory investments³¹.

In 3 countries assets are accounted for at purchase price, and in 2 they are accounted for at market value³².

12. Capital requirements

Results of the questionnaire

With regards to *life insurance*, 4 respondents describe a system quite similar to the one set up by EU 2002/83 Directive, whereas in 2 cases own funds requirements are only based on premiums³³. Besides, Turkey also reported a more complete risk based approach, taking asset, reinsurance, excessive premium increase, underwriting and currency risks into account; the higher amount is retained.

With regards to *non-life insurance*, 3 respondents likewise describe a system similar to the one set up by EU 1973/239 Directive, with the finer approach of underwriting risk in the case of Morocco (capital charge depending on lines of business). Jordan also reports a capital charge on assets, and Turkey reported a more complete risk based approach similar to the one it has in life.

13. Elements eligible as own funds

Results of the questionnaire

Quite similar to life technical provisions, with regards to elements eligible as own funds, most countries have “core” common elements, and differentiated elements (such as subordinated loans) depending of the characteristics of their financial markets. Please refer to table of answers for further details.

Most countries provide that own shares (and sometimes own bonds) should be deducted from admissible own funds. Algeria, however, does not provide any deduction. Lebanon the Palestinian Authority and Tunisia provide the deduction of intangible assets.

Quite interestingly, Jordan, Morocco and Turkey provide the deduction of investments in financial or insurance subsidiaries. As said earlier, such provision supplements the absence of double gearing prohibition in conglomerate / insurance group regulation.

Conclusion

The study showed that the prudential insurance legislations of the MEDA countries were, with few exceptions, quite similar to the current legislation in the European Union and consequently there was also little difference between each legislation of individual MEDA countries. However, there is probably more difference between the way in which legislation is implemented, especially when it comes to the methods used by supervisors to exercise prudential control; this was in any case the overall perception of the supervisors that responded to the questionnaire.

The differences between the MEDA countries should not however lead us to forget that similar differences also exist within the European Union, but have not prevented the creation of a single insurance market. The absence of „complete“ harmonisation between insurance legislations and control systems should not be regarded as an insurmountable obstacle to the (gradual) creation of one or more free-trade areas in insurance.

On the other hand, one factor which needs to be borne in mind if we are using the European Union as a point of reference is that the single insurance market was not created overnight but through a long, gradual process; in fact, it could even be argued that this process is not yet finished. Two decades passed between the adoption of the „first“ directives which introduced freedom of establishment in the early 1970s and the „third“ directives which put the final touches to freedom of service provision; legislative harmonisation continued in 2002 with the adoption of the „Solvency 1“ directives, and is now continuing with the „solvency 2“ reform, which is still a work in progress.

Therefore, and as some of the respondents emphasised, efforts aimed at setting up a free-trade area for insurance could have limited objectives to start with, in terms for example of the area covered (regional sub-

unit) and/or the insurance services to which it would apply (as was the case for a time in the EU). Whatever their scope, the creation of these areas should be accompanied by greater cooperation between supervisors. Finally, several responses made the point that the setting up of guarantee funds by countries, which would step in to cover the liabilities of any defaulting insurer, would encourage insurance free trade in areas (such as motor vehicle insurance) covered by these funds.

Notes

- 1 In French: AICA, *Association internationale des contrôleurs d'assurance*.
- 2 The term „jurisdiction“ is used rather than „State“, because Members do not always coincide with countries or states. With regards to France and Germany, for instance, both the insurance supervisor (ACAM and BAFIN) and the Finance Ministry are members. With regards to UK, are members, besides the UK supervisor as such (the FSA), Gibraltar, Guernsey, the Isle of Man, British Virgin Islands, Jersey, etc. The European Commission is also member of the IAIS.
- 3 1998/78 Directive on insurance groups
- 4 1992/49 (non-life insurance) and 1992/96 (life insurance) directives.
- 5 73/239 (non-life insurance) and 79/267 (life assurance) directives.
- 6 Chapter 5 and 6 were merged.
- 7 The *Insurance Core Principles* (ICPs), adopted by the IAIS in October 2003, set the « core » of insurance supervision. Direct links : http://www.iaisweb.org/__temp/Principe_de_base_en_matiere_d_assurance_french.pdf (French version) ; http://www.iaisweb.org/__temp/Insurance_core_principles_and_methodology.pdf (English version).
- 8 ICP comprise of *essential criteria* (EC) and of *advanced criteria* (AC). Evaluators such as IFM or World Bank use EC to assess the observance of an ICP. IFM and World Bank assessment reports are available on the websites of these organizations.
- 9 This applies to insurers that are *incorporated* in the jurisdiction. On the other hand, when it comes to *branches*, reciprocity condition may apply (e.g. Algeria).
- 10 Tunisia specifies that authorization for investors to hold more than 50% of equity has recently been implemented (Feb. 2008).
- 11 In EU, as early as « first » directives (1973/239; 1979/267) it has been prohibited that authorization may be considered in the light of the economic requirements of the market (cf. art. 8.4 dir. 73/239). In practice, in various cases this consideration has continued to operate for several years after these provisions were adopted.
- 12 In Morocco, insurers that simultaneously operate in health insurance (accident and sickness) and life insurance are permitted.
- 13 Algeria, Jordan, Lebanon, Turkey.
- 14 In theory, one could think of a third way: the provision of services through a non-supervised branch. Such third way is difficult to distinguish from the „free provision of services“. In EU regulation, the third way is treated as free provision of services.
- 15 In Tunisia, branches' activities is limited to non-residents.
- 16 In Morocco, the FPS is allowed on a case-by-case basis, for instance when a prospective policyholder does not find local insurers to cover their risk
- 17 With an exception in the case of Morocco, where, pursuant to an agreement with the United States, insurers from this country are free to provide services in *ships and transportation classes*.
- 18 With the exception, in one case, of a restriction due to exchange control legislation, when the transferred amount exceeds a given ceiling.
- 19 This expression not only refers to the legislative framework, but also to supervisor's *practices* and how confident they feel toward each other.
- 20 With the exception of the Palestinian Authority.
- 21 E.g. Lebanon.
- 22 E.g. Jordan, Tunisia, Turkey
- 23 E.g. Algeria.
- 24 The *Orange Card System* is an inter-Arab agreement between 15 countries, which organises the settlement of "cross-border" motor insurance claims.
- 25 Similar to the *Orange Card Agreement*, the *Green Card System* is an agreement between Member States of the EU relating to motor insurance, to which non-Member states such as Morocco or Turkey are also parties.
- 26 Alternative Dispute Resolution
- 27 Protocol relating to the collaboration of the supervisory authorities.
- 28 Lebanon has a provision under the terms of which an insurer should deposit a certain amount of funds at a bank; should the insurer fall insolvent, these deposited funds would serve to indemnify policyholders. These deposited funds are called "guarantee fund". However and despite the terminology resemblance, such device is not comparable to the "guarantee funds" that are designed to indemnify policyholders according to amounts settled in the law or in the insurance contracts, and not according to the amount of funds secured by the insurer.
- 29 This caveat is probably shared by other respondents.
- 30 Direct link : http://www.iaisweb.org/__temp/Standard_on_disclosure_concerning_technical_performance_and_risks_for_non_life_insurers_and_reinsurers.pdf
- 31 Such as bonds guaranteed by the State.
- 32 Two countries have not responded.
- 33 One country has not responded.

Competition Rules in the Euro-Mediterranean Partnership

by

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This report presents and assesses the development of the Competition Law and Policy in the Mediterranean Countries associated to the European Union under the framework of the Union for the Mediterranean.¹

Within the European Union (hereafter “the EU”), unlike as in the United States,² the concept of Competition Law and Policy includes of private anticompetitive behaviours prohibitions or “antitrust” [regarding restrictive agreements, abuses of a dominant market position and merger control] as well as provisions on the control of granting of State Aids to the Private sector. It also includes provisions concerning the performance of services of general interest [in other words “utilities” or “public services”] either by state-owned enterprises or private-owned enterprises enjoying exclusive or special rights granted by the State or its local entities and subdivisions. The concept thus may concern the issues and problems raised by the liberalisation of certain sectors of the economy. Within the EU, breaches to Competition Law are mainly treated as administrative law offences.³

In the group of countries of the Mediterranean associated to the EU, the concept of Competition Law and Policy mirrors that EU approach to Competition Law and Policy, although in terms of institutional design and sanctions, its enforcement gives rise to somewhat differentiated approaches mixing the EU administrative approach and the US criminal and civil approach.

In a first section, this report recalls the brief history of the regional integration that has started to take place some decades ago and which are the Mediterranean countries participating. In a second section we examine the Competition Law enforcement institutions and the institutional organization of the concerned countries. A third section briefly highlights the actual competition law enforcement in the concerned countries: most of that section derives from countries answers to a question-

naire drawn up in January-June 2008 and discussed in a regional meeting in Paris on 8-10 July 2008.

A conclusion presents some policy recommendations deriving from observations in the first three sections and in view of debates during the Euromed segment of the European Competition Day under the French Presidency taking place in Paris on November 19, 2008.

Section 1

a. The Process of Euro-Mediterranean Integration and Competition Law and Policy

Competition Law and Policy has been taking a decisive role in the institutional integration of the European Union in the last decade of the 20th century which was sharply accelerated with the enlargement to the East, making the EU a Union of 15 States grow to 25 Nations on May 1st 2004 and then to 27 States on January 1, 2007. After a long period of Eastward oriented political and economic expansion, the first decade of the 21st Century seems to lead to a Southward oriented enlargement process. Indeed the Mediterranean side of the EU may look like more directly important to Countries such as France, Greece, Italy or Spain. However given the strategic nature of the Middle-East, the future economic, political and social evolution of the region in question do represent a major challenge to the whole of the EU Members States. Some of these States – e.g. Germany – have perceived that strategic importance and have been managing major cooperation or Twinning Programs over the recent years with Mediterranean Countries – e.g. Morocco and Jordan.

The political situation in the Mediterranean region today differs of the problems of transition that were encountered by Central and European Countries. Mediterranean countries have specific problems created by persistent tensions due to the Middle East conflicts, the war in Iraq and its spill-over to other neighbouring countries, regular upsurges of terrorist activity with domestic political tensions in some countries. Consequently, lack of political openness, criticism on corruption and increasing popularity of political Islam movements are also a factor of relevance in the region. In the economic field, a combination of fast demographic and labour force expansion and slow economic growth is resulting in high unemployment and flat incomes growth. The economic situation is aggravated by

three socio-political “deficits”, the freedom deficit, the women’s empowerment deficit and the lack of access to knowledge and education. The prospects for long-term economic growth are further threatened by the non-sustainable management of the environment and natural resources.

If the evolution of South of Europe countries is likely to follow the kind of approach that has benefited the Eastern and Central European Countries, Competition Law and Policy Institutions will definitely play a major role in North African and the Middle Eastern Countries. Observers can already identify the shaping of a Free-trade zone that is still in a process of construction where competition institutions do contribute not only to a North/South dynamic but also to the achievement of South/South objectives. This evolution rests on a European initiative known as the Euro-Mediterranean Partnership or as the “Barcelona Process” starting in November 1995 and vastly reorganized in July 2008. This partnership has evolved with the development of a European neighbourhood policy and of a European Neighbourhood and Partnership Instrument (ENPI). In turn, the States of North Africa and the Middle-East have developed their own integration approach known as the Agadir Group development. Competition Policy plays a key role in the Agadir Treaty implementation process.

As recalled by Geradin and Petit, there were three main reasons for the introduction of more specific provisions on competition in the Euro-Med agreements:

- The fact that the link between trade and competition had gradually become a “hot issue”, especially following negotiations in the WTO and other multilateral fora. In this respect, the European Union also had a specific interest in exporting its own provisions on competition as a way to facilitate trade with neighbouring countries.

- Drafting of the “Europe agreements” facilitated the (partial) replication of some provisions also in bilateral agreements with Euro-Med partners. In this respect, the EU enjoyed “economies of scale” by replicating similar provisions in bilateral agreements with different countries.
- The Euro-Med countries had become increasingly important trade partners for the EU, following the elimination of some tariff and non-tariff barriers to trade with the previous wave of agreements in the 1960s, 1970s and 1980s. This suggested that a further opening of the Parties economies could boost trade to the mutual advantage of the signatories.

b. The European Neighbourhood and Partnership Instrument (ENPI)

Since 2003, the European Neighbourhood Policy and its bilateral Action Plans derive from the Euro-Med Barcelona Declaration. Policy priorities under the European good Neighbourhood Policy in the region until 2009 have been decided by the Heads of State at the Second Euro-Mediterranean Summit of Barcelona in November 2005, with still the establishment of an EU-Mediterranean Free Trade zone by 2010.

They relate to four broad domains: political and security cooperation, sustainable socio-economic cooperation, education and culture, and migration. This Regional Strategy Paper channels the contents of the five-year work programme into three priority objectives to be implemented at regional level:

- a common Euro-Mediterranean area of justice, security and migration cooperation;
- a common sustainable economic area, with a focus on trade liberalisation, regional trade integration, infrastructure networks and environmental protection;

- a common sphere for socio-cultural exchanges, with a focus on cultural and people-to-people exchanges, and raising awareness of the Partnership through the media.

The Regional Indicative Programme 2007-2010 transposes this policy response into concrete action programmes representing a total of € 343.3 million. Within the ENPI, the Euromed programs are developed in bilateral perspective linking the EU and each of the Euromed countries in support to economic transition: the aim is to prepare for the implementation of free trade through increasing competitiveness with a view to achieving sustainable economic growth, in particular through development of the private sector and strengthening the socio-economic balance: the aim is to alleviate the short-term costs of economic transition through appropriate measures in the field of social policy. Examples of projects financed by MEDA include structural adjustment programmes as well as development and capacity building in the field of Competition Law and Policy in Jordan, Morocco and Tunisia, a Syrian-Europe Business Centre, the social fund for employment creation in Egypt, rehabilitation of the public administration in Lebanon, rural development and Consumers protection in Morocco, etc.

The ENP lies on the premises that EU institutions and the “*acquis communautaire*” should be mirrored in the legal environment of all associated countries. One of the key elements of functioning and of regulation of the EU Internal Market is the EU Competition Policy which rests on the following:

- *Antitrust rules regarding anticompetitive behaviours*, prohibiting agreements restricting competition, such as price fixing and cartelization among producers, or abuses of a dominant position by firms enjoying market power on a given relevant market, for example through predatory pricing aiming at eliminating

competitors and/or preventing new entries on the market.

- *Mergers and acquisition rules to monitor market structures evolution* that prevent merging firms from reducing competition by reducing substantially competition or by creating or strengthening a dominant position on some given markets with highly concentrated market structures.
- Creation since May 1, 2004 of a most powerful *European Competition Network* that brings all National Competition Authorities in a network with the EU Commission's DG Competition which organizes daily cooperation and transmission of information on anticompetitive behaviours and their authors.
- *Liberalisation of the market* so as to avoid national impediments to the good functioning of the internal market: EU liberalization Policies have aimed at increasing a more efficient provision of services in a variety of areas that had previously been considered as areas for public or private provision of services under special and exclusive rights creating *de facto* if not *de jure* monopolies. Thus, areas such as fixed and mobile telecommunications, airports facilities and ground services, maritime and road transportation, ports facilities, energy, insurance, broadcasting, water utilities have been opened up to competition with new sets of regulation as a corollary especially in those sectors where barriers to entry to the market and scale economies may affect the actual working of the competitive processes. The liberalization final objectives have been an improvement of the internal market integration as well as an improved service delivery to consumers in an ongoing process.
- *State Aid rules* though possibly not overly important for Jordan, these rules are essential within the EU and some former centrally planned economies in a process of approximation with EU rules: these

rules place rather restrictive conditions on member states, who may in the past have been giving certain firms or products favoured treatment, in the form of financial aid or fiscal advantages, to the detriment of other firms or products. However State Aid rules do allow some exception in specific conditions, for instance with regard to certain types of support aimed at promoting the economic development of underdeveloped areas or some research efforts.

To implement the ENP with regard to competition policy, several Association Agreements have been agreed between the EU and its neighbours of the Mediterranean and Middle-East Region under the MEDA partnerships programmes. All MEDA Agreements incorporate the types of provisions that reciprocate the EU treaties approach to questions raised by anticompetitive practices (namely provisions against cartels, abuses of a dominant position, regarding state aids). This is the main driving reason for having competition institutions developed in all Sub-Mediterranean countries in question.

The Euro-Med Agreements and their status of implementation

COUNTRY	TITLE OF THE AGREEMENT	
ALGERIA (COM (2002) 157 FINAL)	EURO-MED ASSOCIATION AGREEMENT	SIGNED ON 22.04.02 IN PROCESS OF RATIFICATION
EGYPT (COM (2001) 184 FINAL)	EURO-MED ASSOCIATION AGREEMENT	SIGNED ON 25.06.01 IN FORCE SINCE 1.06.04
ISRAEL (OJ L 147)	EURO-MED ASSOCIATION AGREEMENT	SIGNED ON 20.11.95 IN FORCE SINCE 1.06.00
JORDAN (OJ L 129/02)	EURO-MED ASSOCIATION AGREEMENT	SIGNED ON 24.11.97 IN FORCE SINCE 01.05.02
LEBANON (COM (2002) 170 FINAL)	EURO-MED ASSOCIATION AGREEMENT INTERIM AGREEMENT FOR EARLY IMPLEMENTATION OF TRADE MEASURES	SIGNED ON 17.06.02 IN PROCESS OF RATIFICATION. IN FORCE SINCE 01.03.03
MOROCCO (OJ L 70/00)	EURO-MED ASSOCIATION AGREEMENT	SIGNED ON 26.02.96 IN FORCE SINCE 1.03.00
PALESTINIAN AUTHORITY (OJ L 187/97)	INTERIM ASSOCIATION AGREEMENT, AWAITING A EURO-MED ASSOCIATION AGREEMENT	SIGNED ON 24.02.97 IN FORCE SINCE 1.07.97
SYRIA (FINAL TEXT WILL BE SOON PUBLISHED)	EURO-MED ASSOCIATION AGREEMENT	NEGOTIATIONS CONCLUDED. INITIALLED 19.10.04 COUNCIL TO DECIDE ON SIGNATURE.
TUNISIA (OJ L 97/98)	EURO-MED ASSOCIATION AGREEMENT	SIGNED ON 17.07.95 ENTRY INTO FORCE 1.03.98
TURKEY (OJ L 35/96)	AGREEMENT ESTABLISHING THE DEFINITE PHASE OF THE CUSTOMS UNION	SIGNED ON 6.03.95 IN FORCE SINCE 31.12.95

c. The Agadir Agreement and the creation of the Euro-Mediterranean Free Trade Area in 2010.

The Agadir process explains the efforts that have actively and successfully been undertaken since 2002 in Egypt, Jordan and since the late 1990s in Tunisia, Morocco and Algeria and that are still in motion although at slow speed in Lebanon, Syria and in the Palestinian Authority. Competition Laws already existed in some Agadir Countries prior to the beginning of this process: Enforcement has started in Tunisia as early as 1991, in Algeria in 1995, in Morocco in 1999, in Jordan in 2002 and in Egypt in 2005 largely due to broader commitments such as World Trade Organization accession of those countries. The variety of Competition Policy institutions in place in those countries demonstrates an institutional convergence. The 2010 objective of establishment of a Free Trade zone remains on the paper, although nothing has been written or said about it in the Paris Summit creating the Union for the Mediterranean in July 2008.

d. The Union for the Mediterranean, Paris, 13 July 2008

Competition Policy has not been mentioned so far in the creation of the renewed Process of Barcelona: Union for the Mediterranean (in French: *Processus de Barcelone: Union pour la Méditerranée*), previously known as the "Mediterranean Union" (French: *Union méditerranéenne*). This Union for the Mediterranean is a community established on 13 July 2008 at a Paris Summit by the French President Nicolas Sarkozy, as a development of the Euro-Mediterranean Partnership. Its institutions remain in the making and the Union remains in a process of creation with the seat of its administrative body still undesigned at the end of October 2008.

The Union for the Mediterranean appears as a looser grouping than the EU. The Mediterranean Union con-

sists of all the EU states and states on the Mediterranean rim or those which are participating in the Euro-Mediterranean Partnership. The idea is to form a connection between Europe, North Africa and the Middle East. President Sarkozy called on the Mediterranean people to “*do the same thing, with the same goal and the same method*” as the European Union, though he stated it would not be based on the EU model.

When the framework project was modified in 2008, many proposals remained undefined or were dropped, such as a Mediterranean Investment Bank (modeled on its European counterpart). Instead it would focus on more practical projects. Under the original plans, members would form a regular council under a rotating presidency (similar to the current EU model) dealing with energy, security, counter-terrorism, immigration and trade. President Sarkozy also offered that French nuclear power expertise would be exchanged for North African gas reserves. In addition, a Mediterranean Solar Plan was designed as a project of the Union for the Mediterranean to install concentrating solar power in the deserts.

Amidst some EU skepticism and expressed concerns, at the Paris Summit of 13 July 2008, sustainable development and energy issues were defined as priority and essential objectives of the Union.⁴ This determined the appointment by the co-Chairs of the Union, Presidents Sarkozy of France and Mubarrak of Egypt, of two coordinators for sustainable development, Minister Jean-Louis Borloo, Minister of State, Minister of Ecology, Energy, Sustainable Development and Territorial Management of France, and Minister Rachid Mohamed Rachid, Minister of Trade and Industry of Egypt.

The Mediterranean and European Unions would work together and share some institutions, including a common judicial area to fight corruption, terrorism, organized crime and people smuggling. Still, so far, *one must stress that Competition Policy issues have not been*

officially mentioned as goals of the Union and Member countries have to rely only on the existing document setting up its creation and development as a tool to achieve a better regional integration.

The predecessor to the Union for the Mediterranean, the Euro-Mediterranean Partnership, was seen as a failure by some, because it included *all* EU members, which is considered to have distracted from focusing on purely Mediterranean issues as well as it was poised into the debates gridlock on relationships between the Arab Community and Israel. The original «Mediterranean Union», which would have included only Mediterranean states, was also hoped to avoid this situation by having a clearer direction. However, when the Mediterranean Union was modified to become the Union for the Mediterranean, it was decided that all EU members would be involved and no significant progress was made on the Israel/Arab countries debates.⁵

To strengthen the taking into account of and to integrate Competition policy within the *Union pour la Méditerranée*, it was decided under the French Presidency of the European Union from July to December 2008 to hold during the Competition Day organized by each Presidency a specific segment devoted to Competition Law and Policy enforcement in the Euro-Mediterranean region. The Proceedings of that session have been released in February 2009.⁶

e. Competition Law and economic development in Sub-Mediterranean Countries

Given the conditions of economic development prevailing in North Africa and the Near-East, it should be stressed here that a Competition Law is by no means a “luxury” that should be reserved for developed countries. Indeed, a Competition Law - adapted to the prevailing concentration of the market in developing countries - is one of the necessary tools in the fight against poverty.

However, in the terms of an Indian NGO, developing countries should not be dogmatic about withdrawing all public involvement from the markets as *“distortions and failures in markets are quite ubiquitous and the state needs to play a role in promoting a fair and orderly market”*.⁷

Promoting competition both in developed and developing economies may thus well contribute to increasing the competitiveness of industries, enhancing the real income of consumers, and allowing the exercise of freedom of entrepreneurship. In the context of economic development, a competition policy is necessary both to prevent domestic monopolization, crony capitalism with devastating effects on national and regional economies (as evidenced in the Asian Financial crisis of 1997-1998) and anticompetitive practices leading to inefficiencies as well as to allow economic agents to reap the benefits of economic freedom. However, within the context of a developing economy, an industrial policy, as well as micro-economic capacity building, are also useful in the initial stages of economic development because of imperfect markets, scale economies and need of technology transfer.⁸ Indeed, developing countries (just as developed countries have done) need an «optimal amount» of competition (a blend between competition policy and industrial policy). As markets progress in maturity (i.e. develop), competition policy can therefore play an increasingly important role in support of national competitiveness.⁹

As can be considered in a small economy, it should be stressed that in small economies, market concentration tends to be higher than in larger economies (see «relevant market» definition perspectives); small economies are particularly vulnerable to abuses or misuses of market power.¹⁰ Small economies tend to be more open and more dependent on foreign trade than larger economies and more vulnerable to offshore anticompetitive practices.

In the context of developed economies as well as in the context of economic development, the design of a Competition law must take into consideration several factors:

- The legal environment (i.e. administrative fines tradition vs. criminal sanctions tradition for businesses; public enforcement vs. private enforcement traditions; private tendency for consensus-seeking rather than legal conflicts, per se rules vs. rules of reason etc.)
- Economic circumstances (efficiency defence, exemptions, relationship with regulatory agencies)
- Political and social choices (scope of the law, substantive standards such as public interest, consumer surplus, regional surplus etc.).

Trade liberalization in a given country or group of countries is insufficient to ensure that international trade will take place or that the expected benefits from trade will materialize. Indeed, private anticompetitive practices as well as domestic regulations can defeat trade liberalization and deprive nations of the benefits of free trade. Unlike many observers have noticed, there are several competitions provisions within already existing agreement at the World Trade Organization.¹¹ As a matter of fact, within the Basic Telecommunications Agreement, a Reference Paper on Basic Regulatory Principles provides for a commitment by members to adopt appropriate measures to prevent anti-competitive practices by major suppliers.

These provisions produced a direct incentive for the adoption of a Competition Law in Algeria, Egypt, Jordan, Morocco for instance (the case of Tunisia is different as it had adopted a Competition Law as early as 1991). This WTO factor also explains to a certain extent why in some developing countries, and more specifically among the Agadir group of countries, such as Jordan in the Arabic Peninsula or Morocco in the Maghreb area,

the National Telecommunications Agency in charge of sectoral regulation has been provided some responsibility in the field of Competition Law enforcement pursuant to this WTO broad commitment. This also explains why such sectoral agencies may thus claim a role in the field of competition rules enforcement vis à vis Telecoms operators, thereby somehow conflicting with the Competition Agencies. Such a situation calls for a real cooperation framework between the two types of regulators to avoid costly discussion among the government as well as in the interest of the market and of the operators.

In the Jordan legal context, the WTO commitment to enforce the Telecommunication Agreement and the "Reference Paper" has allowed this country to start its experimentation of market liberalization and competition law principles enforcement. Consequently a Telecommunication Regulation Commission has been set up in 1995, with powers to enforce competition law elements in its telecommunications statutes. The same scheme seems to have determined evolution in most other Agadir Countries where Telecoms Regulatory Agencies have the capacity and indeed do enforce, Competition Laws as Competition Laws with dedicated enforcement institutions have been created at later stages than the Telecom Regulatory frameworks.

f. Sub-Mediterranean countries, the Arab League and Competition Policy

The location of most sub-Mediterranean countries among the Community of Arab Nations as well their association with the European Union under the Euromed program explains how and why the regional context has been further inspiring the development of Competition Law institutions after their accession to the World Trade Organisation.

The Arab League has started to consider the benefits of establishing a Competition Law in the late 1990s, at

a time when only Tunisia, Morocco and Algeria were in the beginning of national Competition Laws operation. A Conference was organized in Cairo in 1999 at the initiative of Secretary of the Arab League. In the early 2000s, the idea of a Pan-Arab Market has emerged with a regional agreement among countries using the same language in North Africa and the Middle-East : the Great Arab Free Trade Area (GAFTA). The GAFTA is still in the making and has developed only few operative institutions to date. The GAFTA Treaty is a Free trade program which aims at reviving the 1981 Agreement for Facilitation and Promotion of trade among the members which was signed at Tunis on February 27th 1981. The GAFTA treaty contains no detailed competition provisions but it calls for the application of international rules regarding subsidies, countervailing measures, safeguards and anti-dumping measures, which should be possible under World trade Organization Agreements. However the program does not explicitly refer to the WTO agreements since not all GAFTA countries are WTO members. Furthermore, these provisions are very close to the basic European Union Treaty provisions regarding Market integration and the Free Circulation of goods within the Internal Market. However, there are no specific competition provisions and one may regard now the utility of the adoption of competition provisions in the future evolution of the GAFTA Treaty.

Lastly, as a majority of the set of countries under review belong to Islamized North Africa and the Near East, a few words should be said about the Muslim environment and context that shape legal and Market institutions in those countries and in which a Competition Policy is being developed. Until the Umayyad period, a function of Market Governor existed which aimed at supervising the normal and proper functioning of Markets (Sukhs) upstream and downstream. During the Abbasid's period, this function of Market Governor evolved into a Market Accountant function that had gained an important markets overseeing role regarding economic activities performance. This Ac-

countant function was less concerned with price fixing and classical accountancy functions than a regulatory function: in particular the Market Accountant could prohibit any speculating operation on some given goods, to avoid abusive pricing on basic consumption goods and pricing agreements among traders and retailers trying to speculate on some food stuffs. This accountant had a power to force traders to sell their stocks, since speculation is considered as a sin in Islamic Law and prohibition of sins is compulsory for the government.¹² Some genuine aspects regarding market regulation have survived in most states situated in the Muslim area as governments have kept important market monitoring functions including powers to administer prices in exceptional situations.

Those aspects of a religion playing a role in the functioning and inspiration of rules applying to Markets and Consumers in the Euro-Mediterranean region have to be borne in mind when some Euromed Countries are pressing the EU to accept the integration of the Arab League Secretariat as a player in the Barcelona Process: Union for the Mediterranean. The Egyptian President Mubarrak for instance was said in the Egyptian Press to support this request during his October meetings with the French President of the Union. From a Competition Policy standpoint which is our perspective in this chapter, it would be necessary to consider the inclusion of Competition Policy provisions in the GAFTA to make the Arab League a potential participant to the Union for the Mediterranean for all what regards future regional markets and economic integration.

Section 2

Competition Law enforcement institutions and institutional organization in Mediterranean Countries

Elements presented hereafter mainly derive from the countries questionnaires responses presented by each Competition Authority at a regional Seminar that took place in Paris on July 8 to 10, 2008. As already mentioned, the Agadir process explains the efforts that have been successfully undertaken in Tunisia and Morocco since the late 1990s and in Jordan and Egypt since 2002 and 2005: this group of Agadir Countries appear as fairly homogeneous in the level of development of their competition law enforcement. The enforcement is essentially administrative, giving a priority role to Divisions, Directorates or Authorities institutionally situated within Ministries of Internal Trade and Industry, although Tunisia and Morocco have been clearly designed as Administrative and Egypt and Jordan were initially designed as Criminal. Developments are still taking place (albeit at a slower pace) in Lebanon, Syria and in the Palestinian Authority. In the cases of Turkey and Israel, competition law institutions development has reached a level of development similar to that of EU Member Countries. Algeria follows the same pattern of institution building as Tunisia and Morocco, although significantly less developed. In this section, competition rules of the 10 Mediterranean Partners of the EU are treated in alphabetical order for purposes of presentation: Algeria, Egypt, Jordan, Israel, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia and Turkey. The regulatory framework from Algeria, Morocco and Tunisia is largely inspired by the French regulatory system whereas that from Egypt, Israel and Jordan resembles more that of the EU Commission with some hints of the US system, in particular with regard to the criminal nature of breaches to the Law. The System of Turkey is clearly shaped after the Competition regulation of Germany.

Algeria

The Competition law in Algeria was introduced with the *Ordonnance n° 95-06 of January 25 1995*, substantially amended by *Ordonnance n° 03-03* of July 19, 2003. Specific measures to implement the law were then adopted through executive decrees.

The stated objectives of the law are to “*set the conditions for the existence of effective competition in the market, to prevent any practice that restricts competition and to control mergers, to stimulate economic efficiency and protect consumers welfare*”. The legislative framework covers all activities of production, distribution and services. Activities performed by public entities fall within the scope of the law whenever they do not constitute a specific prerogative of the public entity at stake or do not concern the execution of its duties/mission. In Algeria, the respondents to the EIPA questionnaire specify that there are two institutions in charge of competition: the Ministry of Commerce and the Competition Council.

The Ministry of Commerce

The Ministry of Commerce is a Government Department in charge of competition policy design and its implementation. It is composed of a Directorate of Competition with expertise in the areas of Competition, Regulation, Economic Expertise, Markets Monitoring, Prosecution and Control of Anticompetitive Practices and Mergers. It also supervises Commerce Directorates within the forty-eight Wilayas (territorial units like the French *Départements*) and nine Regional Directorates with responsibility of competition investigations. Upon completion of investigations, reports are in principle to be filed to the Competition Council for treatment and possible sanctions.

A Competition Council (CC) established as an autonomous body within the Ministry of Commerce

The Algerian respondent to EIPA questionnaires over the last three years regularly stressed that a major condition for establishing an effective antitrust system in line with EU system of Competition regulation is the design of a powerful and independent competition authority. In Algeria, since 1995 the *Conseil de la Concurrence* (hereinafter, "CC") has been established within the Ministry of Trade as the main "market regulator" since the Government is considered to be the most powerful of all institutions. This also means that the CC in Algeria is a government agency, not an independent authority. It is largely served by civil servants and resources are determined within the Directorate of Competition of the Ministry. The 2003 Order provides greater details than the original order of 1995 on the composition of the CC and its competences. As reported by the Ministry of Commerce, a revision of the 1995 provisions was deemed necessary following the rather disappointing performance of this body: the initial structure, composition and functioning of the CC turned out to be inadequate to perform its important tasks. And there are signs that the CC has not changed its course of action characterized by a reduced level of enforcement until the summer of 2008.

Although established within the Ministry of Trade, the CC is presented in the questionnaire answer as a "*separate body with financial independence*".

With regard to its structure and organization, the CC is composed of nine permanent members (this number is to be raised to twelve) including a Chairman, with the following backgrounds:

- two members having served as a Judge or Counsellor in the Council of State, in the Civil Supreme Court or in the Court of Auditors;

- seven members with proven economic or legal track record in competition policy, distribution policy or consumer protection matters;
- One of the latter members is nominated by the Minister of Home Affairs.

CC members have a five year mandate, renewable. They are supposedly supported by the staff provided by the Ministry of Commerce but no figure is available so far.

The CC has to present annual reports on its activities to the Head of Government and to the Minister of Commerce. Reports are to be published in the Official Journal of the Republic of Algeria after one month from the initial publication although it seems that no report has been effectively reporting any completed case over the last five years.

The CC has in principle and on the paper the power to decide, propose and advise on any issue or action in order to ensure the proper functioning of competition in the market. It has in principle powers of investigation, injunction, sanction and advocacy. In addition, the Council has to be consulted on all legislative projects pertaining to competition and on all measures causing one of the following effects:

- submitting specific professions / activities or, more generally, access to the market to quantitative restrictions;
- establishing exclusive rights for certain areas or activities;
- establishing particular conditions for activities related to production, distribution or services;
- establishing identical conditions (*pratiques uniformes*) for retail conditions (*conditions de vente*).

Under the condition of reciprocity, the CC can also establish cooperation with foreign competition authorities by exchanging information and relevant documents. As pointed out by the Ministry of Commerce, such competence does not only aim at ensuring that national and foreign competition law is correctly enforced, but it also plays a key role in the cooperation with the European Union, as specified by the Association Agreement. The CC can act upon request and *ex officio*. The Council's action can be requested by the Minister of Commerce and also by private undertakings filing complaints or asking for a clearance certificate. In addition, regional bodies, financial and economic institutions, professional associations, trade unions, and consumer associations can require the intervention of the CC on matters falling within their competences. The Council decides if the case falls within the scope of the law on a case-by-case basis. Whenever the facts at stake do not fall within its competences or available evidence is insufficient, the Council can declare the complaint inadmissible: in this case, the decision must be expressly motivated. No case related to practices or conduct that took place more than three years before the complaint can be opened. All decisions issued by the CC can be appealed by the parties. Appeals have to be filed with the Commerce Chamber of the *Cour d'Appel d'Alger* (High Court).

Sector Specific authorities

Next to the Ministry of Commerce and its CC, sector-specific regulators appear to have been set up and actually deal with markets perturbations including anticompetitive practices. Those authorities seem to be more effective including in the competition law principles enforcement area:

- the Regulatory Authority in charge of Postal services and Telecoms (*Autorité de régulation de la poste et des télécommunications* or *ARPT*), which is to guar-

antee the competitive and transparent functioning of the Post and Telecoms market.

- the Regulatory Commission of Electricity and Gas (*Commission de régulation de l'électricité et du gaz* or *CREG*) which is to guarantee the competitive and transparent functioning of electricity and gas markets.
- in addition, respondents to the questionnaire have enumerated a series of other regulatory authorities in the sectors of Water, Mining, Oil, Transports, Money and Credit. Those authorities seem to have structural duties in privatization processes and the opening of those sectors to new entry of competition-driven operators.

Egypt

Market competition regulation in Egypt is defined by Law No. 3 of 2005 on the Protection of Competition and Prohibition of Monopolistic Practices. To evidence that the Egyptian regulatory system is fully alive, the Law has been amended after the first three initial years of operation by Law No. 190 of June 2008. The amendments entered into force on the 23rd of June 2008. The amendments included the following:

- a) Increasing both the minimum and maximum limits of the fine to be between 100 thousands L.E. (20 thousands US\$) to 300 million L.E. (60 million US\$).
- b) Imposing fine for non compliance with the Competition Authority's decisions.
- c) Imposing fine for not providing the Competition Authority with the requested information and documents. The fine is to be doubled in case of providing false or misleading information.
- d) Introducing an obligatory mergers and acquisitions notification for merging where the annual turnover of the companies involved exceeds 100 million L.E. (20 million US\$).
- e) Introducing a partial leniency program (exemption of half of the fine) in cartel cases. The implementation of such program is up to the discretion of the court on a case by case basis after assessing the extent to which the information provided by the person concerned has helped in revealing the crime.

The Egyptian Competition Authority (ECA)

The Authority responsible for the enforcement of the Competition Law is the Egyptian Competition Authority (ECA). The ECA is an Agency which has an autonomous

legal existence under the Prime Minister. The role of the ECA is to:

- a) Receive complaints and initiating inquiries in relation to anti-competitive agreements and practices.
- b) Receive notifications on mergers and acquisitions.
- c) Set up a comprehensive database relating to the economic activity and performing necessary studies and researches to detect acts that are harmful to competition.
- d) Take measures to stop the violations detected.
- e) Comment on draft laws and regulations relating to the regulation of competition.
- f) Coordinate with competition authorities in other countries on matters of common interest.
- g) Organize training and educational programs with a view to creating awareness about the provisions of the Competition Law and free market principles in general.
- h) Issue periodic reports including decisions, recommendations, procedures and measures taken by the Authority.
- i) Prepare an annual report on the activities of the Authority and its future plans and recommendations to be submitted to the Competent Minister. A copy of the annual report shall be sent to the Parliament.

With regard to its structure and organization, the ECA is governed by a Chairperson and a Deputy (who must be a Judge) and Board of directors comprising 15 members including three experts on competition issues and representatives of all the General professional and economic Federations of Egypt. Its executive body

consists of the executive director (also a Judge) on top of the hierarchy, and five departments, namely, economic department, legal department, IT department, communication department, and administration and finance department. The ECA is served by 40 persons including technical staff, administrative and finance staff and support staff.

The Law provides for all types of competition provisions of modern Competition Laws in force in OECD countries such as rules governing horizontal agreements (exhaustive list of anticompetitive agreements and per se approach), vertical agreements (rule of reason approach) abuse of dominant position (exhaustive list of anticompetitive practices), mergers and acquisitions notification (binding), confidential treatment of all information received and fines. The law also applies extraterritorially to behaviours that affect the Egyptian market (under the European standard of the theory of effects). Exceptions and exemptions under the law include public utilities managed by the state (which are not subject to the law according to a reasoning that very much resembles the US State Action Doctrine). Private firms managing public utilities may apply for exemption of the provisions of the law. Agreements concluded by the government concerning essential products are decided by the Council of Ministers after consulting the ECA.

The Authority is vested with the power to receive complaints and initiate inquiries regarding anti competitive practices stipulated in the Law, use law enforcement powers whenever needed in conducting inspection, take final decisions regarding the cases under inspection, take necessary measures to stop the violations and, refer the case to the competent minister to refer it to court in case a violation to the Law is proven.

Other Specific sector Authorities and Courts

Next to the ECA some sector specific authorities and institutions have been created namely the Telecommunication Authority (NTRA), the Electricity Authority (EA) and the Consumer Protection Authority. The NTRA and EA were both created in the 1990s and were designed as independent Divisions within their relevant ministries. The reform process of the Telecom sector in Egypt is recognized as one of the most advanced and forward-looking of the Arab countries: privatization of Telecom Egypt and privatization and the introduction of competition in mobile communications and Internet service supply.

The Ministry of Investment is the body responsible for privatization. The Law does not provide for a binding consultation mechanism in the privatization process. However, there is voluntary cooperation between the Ministry of investment and the ECA through advisory opinions on the position of the firms under privatization in the market.

The three types of violations stipulated in the Egyptian Competition Law are of criminal nature. In case referred by the competent minister to the prosecution office, they follow the same criminal procedures applicable to criminal offences. The court depends on the report prepared by the ECA and may hear lawyers and economists of the Authority as expert witnesses. Decisions of the court may be appealed to the courts of appeal. A final court decision of conviction is to be published in two widespread daily newspapers.

Israel

Competition Law enforcement in Israel has reached the same level of development and sophistication as the most advanced states within the European Union both in terms of Institutions activity and of tools for enforcement. The Israel competition law system design very much looks like the Canadian Competition system which appears as a mix between the German Model (an independent Agency like the *Bundeskartellamt*) and the American Model, and more particularly after the organization of activities and enforcement of the Antitrust Division of the US Department of Justice: from the American experience, the Israel Antitrust Authority (IAA) investigates and has broad settlement powers like the DOJ's Antitrust Division, whereas it has to go before an independent judge for sanctioning offenders, the Antitrust Tribunal: this is exactly the Canadian type of organization with the Competition Bureau and the Competition Tribunal of Canada. Borrowed from the German system, the Israel system also features an important advisory body with a policy making or shaping role, the Exemptions and Mergers Advisory Committee (which also exists *mutatis mutandis* in the Jordan Competition Law system with the Competition Matters Committee).

A powerful investigating Competition Authority: the Israel Antitrust Authority (IAA)

Israel's antitrust enforcement was created almost fifty years ago, with the enactment of the Restrictive Trade Practices Law of 1959 ("the 1959 Law"). The legislative history of the 1959 Law reveals a clear understanding of the significance of competition in the marketplace. The legislature has aptly recognized the harm that restrictive trade practices can inflict on the public and sought to remove the legal and economic effects of the previously-existing austerity regime to introduce a free-market economy. In 1988, based upon approximately thirty

years of antitrust enforcement and significant developments in modern antitrust thinking, the Israeli legislature enacted the Restrictive Trade Practices Law of 1988 ("the Law"). The Law amended many of the 1959 Law's provisions, shaping Israel's competition law so that its unmistakable objective became the prevention of harm to competition. The Law was first amended in January 1994, when the Israel Antitrust Authority ("the IAA") was established. Together with the 1994 amendment, the statute also provided for significant additional funding and personnel for Israel's antitrust enforcement system and for pro-competitive advocacy initiatives. A recent amendment of the Law (entered into force on 11 Jan., 2007) narrowed § 3's international air transportation exclusion considerably.

In March 2005, the Minister of Industry, Trade and Labor appointed a committee, headed by Professor Zohar Goshen, to consider and make proposals regarding the modernization of the Restrictive Trade Practices Law. The Committee has issued a draft legislative bill and a statement of purpose concerning the amendment of the definition of the term "restrictive arrangement" in § 2. The proposed amendment is likely to yield greater transparency and stability and create more certainty in the legal determination of which arrangements are restrictive. Moreover, the amendment intends to rationalize § 2 (the restrictive arrangement section of the Law) by, among other things, eliminating any vertical situation from the categories of restrictive arrangements listed under § 2(b) as presumptively illegal. In addition, the proposed amendment is expected to streamline the number of transactions that require notification to the IAA in order to attain an individual exemption.

The Goshen Committee also examined the Law's provisions dealing with oligopolies, and concluded that there was a clear need to make a substantial change regarding the handling of the oligopolies in the Law's framework, in order to respond to the competition problems resulting from the existence of oligopolies in the Israeli

economy. The Israeli market is limited in size, in comparison to other developed economies, inter alia, due to the small local demand and the existence of various barriers to trade, such as geographic isolation, political barriers and language barriers. These characteristics occasionally limit the number of players who can operate efficiently in a wide variety of industries. Therefore, in many Israeli industries there are only a few actors, and the level of competition between some of them is often unsatisfactory. The Proposed Law is important because it will, for the first time, allow the IAA to deal with competitive failures that prevail in the markets with few competitors – a type of market which is relatively common in Israel.

Subsequently, the IAA distributed on 19 June 2008 a bill (the Proposed Law) that provides new tools for dealing with oligopolies. These are established through two main amendments that address the deficiencies in the current statutory language: an amendment of the definition of an oligopoly and distinction between a monopoly and an oligopoly and the manner in which the Law regulates them.

The IAA is an independent government enforcement agency established in 1994 under an amendment to the Law. The General Director is independent in carrying out the IAA's mission. Ministerial responsibility lies with the Ministry of Industry, Labour and Trade. However, the IAA's independent budget, coupled with its authority to hire personnel independently, allows administrative independence. The fact that all IAA decisions are subject to a *de novo* judicial review forces the IAA to adhere to the strictest professional standards.

The IAA mandate includes preventing market power through merger control and anti-cartel enforcement, restraining abuse of dominant position by firms and enhancing competition in the various markets. An Antitrust Tribunal, sitting within the District Court of Jerusalem, has exclusive jurisdiction over non-criminal

governmental antitrust proceedings. The District Court of Jerusalem has exclusive jurisdiction over criminal antitrust matters. Both criminal and civil antitrust rulings are subject to appeal before the Supreme Court

Regarding its organisation, the IAA employs 71 staff and management in four departments (legal, economic, investigations and administrative). The IAA does not support a strict structural separation between the areas of mergers, anti-cartel and dominance-related issues as explained hereunder. In practice, the investigations department comprises of 15 investigators and operates independently to gather intelligence and carry out investigative activities. The professional staff working for the legal and economic departments is usually not confined to a single area of competition enforcement. The legal department comprises of 20 lawyers, 7 of which work mainly (but not exclusively) in the area of anti-cartel. Their work consists in leading criminal cases, while the remaining lawyers work on civil antitrust cases. In the civil branch of the legal department, the day to day work is being carried out in an integrative manner which allows lawyers to take part in various types of cases, including mergers and restrictive arrangements. The IAA perceives the integrative approach as a means to improve the professional capacities of its lawyers. In addition, the legal department allocates legal interns to assist in individual cases as necessary. Currently there are 7 interns who work at the IAA for a one year period.

The economic department, comprises of 13 economists, is in charge of handling merger filings and conducting economic assessments in relation to monopoly declarations and unilateral conduct. In certain cases, depending on the complexity of the merger cases, its legal implications and market consequences, a lawyer joins the assessment process. Economists working at the IAA are often required to offer their expertise in various cases, even if those are not related to specific mergers.

A substantial percentage of IAA lawyers and economists are actively involved in various legislation proceedings on which they are consulted. Moreover, professional staff is often required to accompany privatisation processes and provide legal advice or economic assessments with regards to relevant competition issues that emerge. In addition, the IAA initiates each year a number of seminars, workshops and conferences in which professional employees regularly take an active role as lecturers and discussants.

With regard to the issue of state aid, Israel has adopted the same approach as Egypt, Tunisia, Morocco and Jordan, like most Competition Agencies of the EU Member States having entered the EU before 2004: state aid is not included in the Law, hence the IAA does not have any relevant powers.

As for liberalization, as the Israeli Government's sole antitrust agency, the IAA has long been playing an active role — both formally and through advocacy work — in shaping and facilitating pro-competitive government reforms and privatizations. Based on its expertise, the IAA frequently renders antitrust advice and counsel to government ministries, other government entities and the Knesset Committees. In recent years, the IAA has worked closely with several government agencies and regulators on the promotion of pro-competitive initiatives, structural changes, liberalization reforms and privatizations. In addition, through its General Director, the IAA attends all meetings of what is commonly known as the “capital market's forum of regulators,” comprised of the Commissioner of Capital Markets, the Commissioner of Insurance, the Supervisor of Banks and the Chairman of the Israel Securities Authority. At these meetings, Israel's financial market regulators discuss proposed structural changes, reforms and other matters that require inter-ministerial coordination. The IAA is a frequent commentator at hearings and discussions held by the Knesset's Economic Affairs Committee and regularly presents its procompetitive perspectives on

the issues discussed by the Committee. Additionally, the IAA frequently appears before other Knesset committees, such as the Finance Committee.

It should be noted that although the IAA has been involved in the majority of reforms and privatizations affecting competition in the underlying markets, the IAA's *formal* role in such structural changes is not sufficiently defined. No statute, regulation or rule grants the IAA formal responsibility in the implementation of reforms or privatizations aimed at enhancing competition or which are intended to lower the barriers to entry in specific sectors of the economy. Similarly, there is no specific duty imposed upon government agencies to consult with the IAA regarding matters involving competition.

The IAA has exclusive authority with respect to cartels, other restrictive arrangements, abuse of monopoly position and prevention of illegal mergers. However, sector-specific regulators are often vested with the authority to consider competition issues when granting licenses and approving transactions of licensees in their areas of expertise. To this end, as part of the IAA's advocacy efforts, regulators are encouraged to take competitive consequences into consideration when drafting or reviewing sector-specific regulation. It is important to note, however, that the IAA is the only body responsible for preventing activities on the ground that they may hinder competition. Further, the IAA is the only body which also has the powers to enforce and prevent violations of the Antitrust Act embodied in such activities.

With regard to enforcement, the record of the IAA is particularly impressive and has won the IAA an exceptional praise among the OECD Competition Committee Members during the examination session of Israel's Competition Policy on October 22, 2008 within the OECD Accession Review exercise. Since its inception in 1994, the IAA has issued hundreds of decisions pursuant to the powers conferred on it by the Restrictive Trade Practices Law, 1988 (“the Law”). Below is a

review of the different categories which the IAA's decisions fall into.

- *Restrictive Arrangements*: Pursuant to §§ 2 and 4 of the Law and the relevant case law, arrangements which may prevent or stifle competition in the marketplace, referred to as "restrictive arrangements", are prohibited unless either the General Director or the Antitrust Tribunal have accorded such arrangements by an IAA Exemption under § 14 or Tribunal Approval under § 9, respectively.

Thus, § 14 of the Law authorizes the General Director to issue an Exemption to a restrictive arrangement provided that such an arrangement is not likely to stifle competition in a significant portion of the relevant market or, alternatively, if the restrictive arrangement is not likely to considerably harm competition. The General Director may attach conditions to an Exemption for a proposed restrictive arrangement. In addition, Pursuant to §§ 43(a)(1) and (2), the General Director may issue a Determination that an arrangement entered into by parties who have not sought an Exemption or Tribunal Approval, or a policy set by an industrial association without seeking such Exemption or Approval, respectively, amounts to a restrictive arrangement. All General Director Determinations pursuant to § 43 constitute *prima facie* evidence in all ensuing legal proceedings. In sum, the General Director may issue five types of decisions in connection with restrictive arrangements: (1) Exemption without conditions; (2) Exemption subject to conditions; (3) Denial of an application for Exemption; (4) Revocation or modification of existing Exemption; and (5) Determination finding an arrangement to be restrictive.

- *Mergers*: The IAA's powers to evaluate the potential anticompetitive effects of a proposed merger are triggered when the proposed merger at issue meets both the general definition of a "Corporate Merger" under § 11 and one of the three alternatives detailed in § 17(a):

(1) the merged company's market share is expected to exceed the statutory market share presumption for a monopoly (typically, 50%); (2) the parties' sales turnover exceeds a statutory threshold; or (3) the proposed merger involves a company which amounts to a monopoly under the Law's Monopolies Chapter. Pursuant to § 19, the General Director may attach conditions to its Approval of a proposed merger. Similar to the law regarding restrictive arrangements, the General Director may issue a Determination, pursuant to § 1 The definition of a "Corporate Merger" under § 1 is "Including [sic] the acquisition of most of the assets of a company by another company or the acquisition of shares in a company by another company by which the acquiring company is accorded more than a quarter of the nominal value of the issued share capital, or of the voting power, or the power to appoint more than a quarter of the directors, or participation in more than a quarter of the profits of such company; the acquisition may be direct or indirect or by way of rights accorded by contract." 43(a)(3), that an unreported corporate merger was subject to the premerger notification system.

- *Abuses of a Dominant position and Monopolies*: the IAA uses the American concept of Monopolization imbedded in Law, rather than the EU standard of Abuse of a dominant position. But the actual reasoning and enforcement does not raise significant differences with the EU standard. Pursuant to § 26, a monopoly is defined as the concentration of over 50% of the total supply or buying of assets or services in the relevant market. Sections 29 and 29A prohibit certain monopoly conduct which amounts to abuse of dominant position. Section 26(a) authorizes the General Director to issue a Determination finding a corporation to be a monopoly. Section 43(a)(4) allows for a General Director Determination that two or more competitors who do not sufficiently compete with each other are a "concentration group," subject to the Law's monopoly chapter. Section 43(a)(5) states that the General Director may issue a Determination that a monopoly has abused

its dominant position. Pursuant to § 30, the General Director may issue binding instructions to a company which harms competition or the public as a result of its being a monopoly or its conduct as a monopoly on how to remedy such harm.

- **Exemption Regimes:** Sections 3 and 3A of the Law are the main source of the various exclusions and exemptions from Israeli antitrust law. Thus, all sectors and industries within the Israeli economy are subject to the IAA's antitrust enforcement, unless they are mentioned in § 3. However, the exclusions and exemptions listed in §§ 3-3A apply only to restrictive arrangements and not to any other practice, and the courts and Antitrust Bodies have consistently interpreted them narrowly. For instance, in order for a statutory exclusion or exemption to apply, the connection between the underlying restraints and the exempt subject matter must be tight, and each and every restraint must relate to an exempt subject matter. Moreover, the IAA has determined that a proposed restrictive arrangement that technically falls under § 3, but exceeds the exemption's legitimate purpose, is not protected by the exemption.

Role of Courts

The Israeli general courts have almost forty years of experience hearing antitrust cases, following the enactment into law of the former Restrictive Trade Practices Law, 1959. In 1988, a new specialized court, the Antitrust Tribunal, was established under the Restrictive Trade Practices Law, 1988 — Israel's current competition law. Provided below is a short review of the different categories of antitrust court decisions in Israel.

- *The Antitrust Tribunal:* Section 32(a) of the Law established the Antitrust Tribunal as a division of the District Court for the District of Jerusalem, headed by two District Court judges - a President and a Deputy - and adjudicating antitrust cases in a forum of three

panel members. Pursuant to §§ 35-36, the Antitrust Tribunal is authorized to issue antitrust decisions, as well as any orders and interim rulings it deems necessary to ensure that such decisions are implemented. The Antitrust Tribunal hears original cases brought by either corporate parties, consumer organizations, or the General Director.

- *The General Courts:* Criminal antitrust proceedings are brought by the General Director to the District Court of Jerusalem. In addition, pursuant to § 50, an act or omission contrary to the provisions of the Law shall constitute a tort in accordance with the Torts Ordinance [New Version], and therefore private litigants may seek remedy in the general courts to enforce the antitrust Law. A class of consumers may also bring an antitrust class action pursuant to §3(a) of the Class Action Act, 2006. In addition, any litigant injured by a decision of the Tribunal may appeal against such decision to the Supreme Court (§39). Finally, non-appealable IAA actions give rise to the narrow judicial scrutiny by the Supreme Court in its capacity as the High Court of Justice which is available to petitioners against any government action.

Jordan

The last decade has demonstrated for Jordan how a developing country could benefit from economic liberalization and cooperation with the EU. However, economic liberalization could not progress without the design of appropriate tools to make sure that some private operators would not confiscate the benefits of trade liberalization.

The Competition Law n° 33 of the year 2004 was first issued in a provisional form on August 15, 2002 as part of Jordan's Economic Reform Program. This law has been an element of the modernization of the national legal framework towards consolidating market economy in the country. The clearly stated objectives of the Law show that Jordan's Competition Law and Policy is a part of a broader framework. Indeed, pursuant to the enforcement of a strategy of development, the Competition Law aims to :

- achieve sustainable economic growth,
- improve the Jordanian economic environment to attract foreign direct investments
- provide incentives for enterprises to improve their competitiveness,
- protect small and medium enterprises from restrictive anticompetitive practices, provide consumers with high quality products at competitive prices.

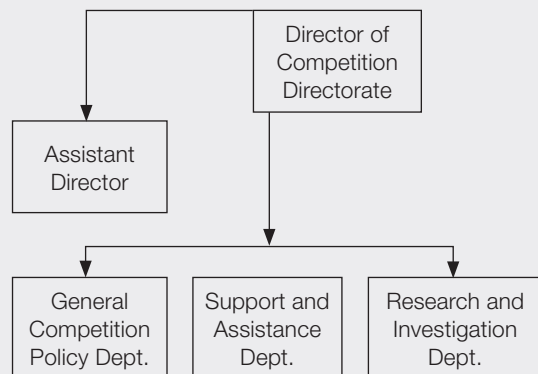
Thus the broad nature of those objectives help ensuring a commitment of the government of Jordan to sustain a high level of enforcement of its competition law in the future. But this also suggests that Jordan's Competition Law enforcement has to meet the specific needs of a developing country.

Deriving from the organization of the American Antitrust institutions with an Antitrust Division at an Executive Department investigating and bringing eventual cases before Criminal and Civil Law Courts, the key enforcement role in the Jordan Competition Law is vested to the Competition Directorate at the Ministry of Industry and Trade with some opinions requested from an advisory body, the Competition Matters Committee, and an important sentencing role on criminal matters granted to the High Court of Amman. Enforcement of Competition Law also rests in Jordan on Mediation.

The Competition Directorate at the Ministry of Industry and Trade

The Competition Directorate (CD) is a Division at the Ministry of Industry and Trade (MIT) with full-time government officers that are entrusted with the main role of enforcement of Law n° 33. The Competition Directorate was established at the Ministry of Industry and Trade on 17 December 2002 and was incorporated into the organizational structure of the Ministry. The Directorate conducts the following duties: work to spread and preserve the culture of competition, participate to prepare the general competition plan and related legislation, conduct the necessary investigations of practices that may contravene competition, receive complaints and requests for economic concentration activities and exemptions and following them up, issue clarifying opinions in competition matters, cooperate with similar entities outside the Kingdom for the purpose of exchanging information and data and in relation to the execution of competition rules to the extent permitted by international treaties.

Organizational structure of the Directorate



Officers of the CD delegated to conduct investigations and research enjoy the same powers as officers of the Court, within the limit of their jurisdiction. Their powers include the right to conduct necessary inspections and searches in all business premises, to inspect documents, records and files and seize any of them and to record the testimony of the relevant parties.

According to Law n° 33 of the year 2004, officers of the CD and any person looking into its activities is and shall be required to maintain strict professional confidentiality. In compliance with article 12 B of Law n° 33, the Competition Directorate established at the Ministry of Industry and Trade according to the law is charged with the mission of preparing an annual report on its activities and on the state of competition in the Kingdom, and the Minister of Industry and Trade is charged with presenting this report, or a summary thereof, to the Council of Ministers, pursuant to the provisions of Paragraph B of Article 12.

The report aims to introduce the provisions of the Law and spread the culture of competition and the awareness thereof, and inform the public of the various facets of its activities and the complaints, consultations and other cases presented to it and the proceedings

followed or instituted by it within the framework of its follow-up of the progress of market mechanisms.

The publication and dissemination of this report also provides a mechanism for the publication of the decisions issued by the parties delegated to execute the Competition law in Jordan, and placing them at the disposal of researchers and reviewers, and Arab and international organizations seeking to avail themselves of the Jordanian experience in view of its precedence in the region. The report is published and distributed through the various communities that are concerned by competition law enforcement. So far, three reports of activities have been issued.

It should be noted here that, according to some observers interviewed, other Regulatory agencies vested with competition law principles powers within the ambit of their sectoral laws are not bound by such a kind of provisions which may significantly hamper business security in the area of consistent Competition Law enforcement in the Country.

The Competition Matters Committee

The Competition Matters Committee was formed with the Minister of Industry and Trade as chairman, pursuant to the Decision of the Minister of Industry and Trade No. 1 of 2003, by virtue of Article n° 14 A of the Competition Law. The membership of the committee is as follows:

- the Secretary General of the Ministry of Industry and Trade (Vice-Chairman).
- the Director General of the Insurance Commission.
- the Chief Executive Officer of the Telecommunications Regulatory Commission.

- the Director General of the Transportation Regulatory Commission.
- The President of the Union of Jordanian Chambers of Commerce.
- A representative of the business community (currently Mr. Hatem Halawani, President of the Management Committee of the Amman Chamber of Industry)
- A representative of the consumers (currently Dr. Mohammad Obeidat, President of the Consumer Protection Association)
- A representative of the academic world (currently Prof. Ibrahim Sayf)
- Eng. Omar Maani.
- A member of the Amman Bar.

- The Director of the Competition Directorate as rapporteur.

The Competition Matters Committee (CMC) is an advisory body set up to give opinion to the Minister of Industry and Trade. So far, the CMC has held four one-day sessions (one per year of actual enforcement of Law n°33).

The CMC was intended to be an opinion-making institution on all aspects of competition law enforcement, in a way which very much resembles the German Monopoly Commission or the British Competition Commission (though without its role in the sensitive area of merger control). However, it has seldom met not because of lack of willingness of support or intent of the CD Director who in principle should propose to convene meetings to the Minister in charge of the MIT. Rather, the small number of meetings of the CMC can be attributed to the high turnover of MIT's portfolio holder: five ministers

have succeeded each other in the last three years of operation of Law n° 33.

- Assessment of the actual role of the Competition Directorate at the Ministry of Industry and Trade
- Assessment of the actual role of the Prosecutors
- Assessment role of the Courts
- Appeal issues
- Assessment of role of the Business community, Consumers' associations, professional and Unions associations
- Assessment of the role of Sectoral and Regulatory Commissions

Judicial Institutions and Courts role

The Ministry of Justice has appointed the Public Prosecutor of the Court of First Instance (CFI) of Amman who is specialized in Competition Law Matters as mandated by the Law n°33. Other Judges from the Amman Court of First Instance have also been appointed to adjudicate Competition Cases. The competition law allows the Supreme Court of Justice to hear appeal of the decisions issued by the Minister regarding an approval or prohibition of a merger operation or decision of an exemption application. CFI decisions in cases related to competition shall be appealable before the Court of Appeal and the Supreme Court. The Court's Jurisdiction shall include claims for damages arising out of the violations

Competition Law, Business Law and Legal Mediation in the Jordanian context

There seems to be in Jordan a “*culture of compromise*” or preference for Dispute Resolution rather than Actions in Courts, like in Tunisia: i.e. there is a tendency to strike deals and achieve commitments or administrative settlements through lawyers or compromises with the Administration rather than risk or initiate prosecution which is perceived as an action involving the Government.¹³

One should also consider the fact that his culture of compromise is not exceptional in Asian countries (Jordan is located on the Minor Asia Continent). For instance, in China, Japan, India, Pakistan, arbitration develops as a major mode of dispute resolution. This allows the business community to avoid or escape the shortcomings of judicial legal systems in developing countries impaired by the lack of resources. This lack of resources prevents the judicial systems to function properly (especially with regard to the delays of treatment on individual cases, in which full treatment of a case may take as much as ten years). Therefore several developing countries in Asia are actively supporting developments of dispute settlement systems that involve agreements between parties where the general interest supported by a given Government is represented by law firms.¹⁴

In the field of Competition Law enforcement, in most jurisdictions in the World, including in Japan, Korea and China, decisions have been taken to avoid burdening Legal systems with competition cases in first instance cases: such first instance cases are most often treated and adjudicated by specialized independent quasi-judicial bodies under the form of Competition Commissions filled with specially trained lawyers, magistrates and economists.

Morocco

The Moroccan Competition Law entered into force on July 6, 2001. It is known as the *Loi 06-99 sur la liberté des prix et de la concurrence* (Price Liberalization and Free Competition Act) adopted by the Moroccan Government on June 5, 2000. It was further completed and detailed by two decrees n° 2-00-854 and 2-02-1 regarding the quality of the Prime Minister as the Authority in charge of Competition and the authority for the Prime Minister to appoint a Chairman and members of the Competition Council (hereafter CC). The law has remained unchanged since then and is currently under review for modifications as a follow-up of an EU twinning program managed by Germany since early 2007. So far, all decisions have been advertised and made by the Prime Minister's Office. Opinions of the CC, if any, have not been published.

Following a pattern very similar to that of Jordan, in connection with the accession to the WTO of the Kingdom of Morocco and in light of the increasing cooperation with the European Union, the objectives of the law are to foster the modernization of the Moroccan economy and increase the protection of consumers. The Competition Act is conceived as a natural by-product of the economic reforms and the gradual opening of markets to competition and liberalization of the Moroccan economy initiated in the 1980s.

The scope of the Competition Act covers all physical and moral persons whenever their activities have an impact on the level of competition within the Moroccan market or on a significant portion thereof, to all activities of production, distribution and services and to all public entities for economic activities that do not fall within their prerogatives as public bodies or that do not relate to the execution of their duties/mission. The law covers also exports agreements whenever they may have an effect on the domestic level of competition of the Moroccan market (art.1). The Competition Act adopts

a rule of reason approach by providing substantial flexibility and discretion to the administrative authority in charge of competition.

Like all the other Agadir Countries, the main provisions of the law deal with anticompetitive practices (concerted arrangements, agreements, collusive behaviors or collusions explicit or implicit), abuse of dominant position (refusal to supply, discriminatory selling terms, tying arrangements, and abusive commercial terms) and economic concentrations which should be notified to the Prime Minister. There are exemptions when anti-competitive practices are the result of implementing legal or regulatory provisions, or in case their authors can show their positive effect on economic progress. While the law stipulates that prices are freely determined by market forces, it allows for price fixing in specific sectors or geographical areas where price competition is limited by the existence of *de jure* or *de facto* monopolies, by shortages of supplies or by existing legislative or regulatory measures. Temporary price regulation can be allowed in special cases such as excessive fluctuation of prices or natural disasters. The duration of those temporary measures cannot exceed six months.

The Ministry of General Economic Affairs (MGEA) as a competition authority

As detailed in the Questionnaire answers this Law n° 06- 99 empowers the Prime Minister of Morocco as “*the ultimate Authority in charge of the enforcement of that Competition Law*”. The Prime Minister has delegated this authority to his Minister of General Economic Affairs (hereafter MGEA) who has supervision over a Directorate of Competition and Prices (DCP) which is a Division within the MGEA.

The DCP is composed with 14 case handlers under a director. They work on all competition issues at the national level. To deal with issues of unfair competition

(advertising, refusals to deal, unlawful increase of regulated prices are deemed “restrictive trade practices”) a specific group of investigators from the Ministry of the Interior is seconded to the DCP.

The Competition Council: a consultative body within the MGEA

The Moroccan Competition Council (*Conseil de la Concurrence*) has been instituted in 2003 as a consultative body within the MGEA. The Moroccan situation reflects the same approach that was adopted in the Kingdom of Jordan with the consultative Committee on Competition Matters located within the Ministry of Industry and Trade. The CC is composed by twelve members and a Chairman: six members represent the administration, three members are chosen on the basis of their competences in juridical, economic, competition or consumer matters, three members having exercised a professional activity in the sectors of production, services or distribution. The president of the CC is designated by the Prime Minister while other members have a five year mandate (renewable once) and are appointed by decree, on the basis of recommendations of the administration and the entities they represent.

Case Handlers (“*Rapporteurs*”) are appointed to ensure the functioning of the CC and are assigned to individual cases; among them a Head Case-Officer (*Rapporteur Général*) is selected in principle by the Chairman of the CC with the task of leading and supervising the work of the other *Rapporteurs*. Tasks are assigned by the Chairman. The CC can be consulted by the standing committees of the Parliament for all legislative proposals pertaining to competition; by the government for all competition-related matters; and by regional and local entities, chambers of commerce, other representative bodies and consumers associations for all matters relating to competition that fall within their competences. Finally, competent jurisdictions can consult the CC on

cases they are referred to: the CC can issue its opinion only after a procedure in which both parties have been heard. In any event, the opinion of the CC cannot be published before the final decision of the case. In principle, the CC must be consulted before introducing any price fixation or any creation of Monopoly, exclusive or special rights or the granting of State Aids.

In addition, the CC should be consulted on all matters pertaining to anticompetitive practices, mergers and price regulation according to the relevant articles of the Competition Act. Facts older than 5 years cannot be brought to the attention of the CC if no action has been taken during that timeframe: this prescription period is suspended as soon as the CC is consulted. The CC can recommend measures, conditions or injunctions, but final decisions are taken by the Prime Minister. Appeals against the Prime Minister's decisions have to be filed with the competent administrative jurisdiction. The CC should submit annual reports on its activities to the Prime Minister but none have been published so far.

Answers to the EIPA questionnaire stress the fact that the Competition Law should be amended as a key component of the ongoing EU Twinning program between Germany and Morocco. It has been announced in January 2009 that the Competition Council should see its powers and authority broadened within the context of a major amendment to the Moroccan Competition Law that should take place by the beginning of 2010. The new CC Chairman, appointed in November 2008, has also announced in early 2009 that its authority would launch a series of about ten to twelve sectoral investigations to examine the major competition problems in key sectors of the Moroccan economy. A national seminar is also to be held with support of an EU Twinning program between competition authorities of Germany and Morocco. This Seminar is to be held on April 23 2009 to further mobilize support for the increase of resources granted to this authority and set priorities for reforms.

Tunisia

Despite a wording somewhat similar to that of the Competition Law system of Morocco, the Competition institutions of Tunisia are indeed very different in practice as, for instance, The Tunisian Ministry of Trade is one of the two Tunisian competition authorities with a Directorate for Competition and Economic Investigations (*Direction générale de la concurrence et des enquêtes économiques* or DGCEE), without interference from the Prime Minister's Office. And a second Competition authority, the Tunisian Competition Council, possesses a fully independent capacity to exercise its powers and make decisions on sanctions for anti-competitive practices.

The record of the Tunisian Competition Council in this respect is particularly impressive and ranks the Tunisian Competition Authorities as the first and most advanced enforcers of the Agadir Community in terms of actual competition decisions effectively taken by competition authorities. An EU twinning program was successfully completed in 2006-2007 between the French and Tunisian Competition Authorities under the leadership of a Deputy Director General at the French Competition Division of the Ministry of Economy and Finances (*the Direction générale de la concurrence, de la consommation et de la répression des fraudes* -DGCCRF) with the participation of a key expert from the French *Conseil de la concurrence*. To sum up the whole program, 59 experts missions were conducted over 18 months by DGCCRF and the French Competition Council, which represented about 270 days-experts and 10 training sessions were organized in France for 69 Tunisian case handlers and investigators (370 days-agents).

In Tunisia, the Competition and Prices Act (*Loi N. 64-91 du 29 juillet 1991 relative à la concurrence et aux prix*) was introduced in 1991 and was amended several times, with the last modification occurring in 2005. The text provides for an extensive definition of tools for the

development and protection of competition on the Tunisian markets: it deals with price liberalization, defines the prohibition of anticompetitive and discriminatory practice, merger control, and contains measures on consumer protection and transparency of practices. The main goals of the law are to modernize the Tunisian economy and strengthen its competitiveness on the international scene. The Tunisian Competition expertise has reached a point where Tunisian experts have already engaged into cooperation programs with younger agencies including within the Agadir Community, such as in the Kingdom of Jordan of which the Competition Directorate of the Ministry of Industry and Trade has been developing extensive cooperation with the Tunisian Ministry of Commerce since its creation in 2004. The Tunisian Competition System has been successfully reviewed in 2007 by Peers at Geneva by the UNCTAD group of experts on Competition.

From a historical perspective, thus, the Tunisian system of Competition Regulation is clearly the oldest operating one in the group of Agadir Countries. The provisions on competition law were introduced gradually in Tunisia, with amendments to the main competition law (of 1991) starting in 1993. The first provisions focused in particular on transparency rules and vertical restraints – such as franchising and exclusive representation contracts. The ban for the latter types of vertical agreements was lifted in 2005, with the introduction of a *rule of reason* which mirrors more closely the development of the EU Competition Law and economics literature in that area. The provisions on merger control were also significantly updated in 2005, and a leniency program was even introduced in 2003.

The Ministry of Commerce as a Competition Authority

To develop enforcement of the Competition and Prices Act, a system of two authorities has been developed,

the first authority being the Ministry of Commerce (MC) with a specific Directorate General of Competition and Economic Investigations (DGCEE), that mirrors the organization of the French DGCCRF. The DGCEE investigates on cases and complaints of anticompetitive practices and monitors transparency and reports violations to the courts or to the Competition Council for cases falling within the Council's competences. DGCEE oversees the functioning of the market and monitors compliance with existing regulations on pricing, consumption and competition. The DGCEE has approximately 20 agents working on Competition issues.

An independent Administrative Competition Authority: the Competition Council

The second Tunisian Competition Authority is a truly independent Agency, also modeled after the French Competition Council and is totally distinct from the MC. Using the same name as its sister institutions in Algeria and in Morocco - but with the major difference that the second Tunisian Competition Authority is an effective agency acting independently from the Ministerial Department with which it has to cooperate - it is named CC (*Conseil de la Concurrence* or CC). The CC was created by the Act No. 95-42 of 24 April 1995. The CC has both advisory, decision-making powers and advocacy capacities. Under the leadership of its previous and present Chairman, the Tunisian CC has started to issue in 2008 its comprehensive annual reports in Arabic, English and French, detailing all decisions taken within a full year of reference.¹⁵

The Tunisian Competition Council is composed by thirteen members divided in four sections and is chaired by a president (normally a judge or an outstanding professional in the fields of economics, competition or consumption) and by two vice-presidents, the first being a Counselor ("*Conseiller*") of the Supreme Administrative Court while the second should be a Counselor from

the Court of Auditors. The Chairman and the two Vice-Chairmen constitute the first section of the authority. The second section is composed by four judges; the third by four professionals exercising or having exercised their activities in the sectors of production, distribution, handicraft or service provision; finally, the fourth section is composed by two independent personalities with a proven track record in economics, competition or consumption matters.

CC members are nominated by decree as proposed by the Minister of Commerce; the mandate of the president and of the vice-presidents lasts five years and is renewable once; members from the professional sector have a four year mandate non renewable, and the two independent experts are appointed for six years with a non renewable mandate. The members of the CC are supported by a group of about ten case handlers (*"Rapporteurs"*) in charge of preparatory inquiries; their activities are coordinated by a Head-Case Officer (*"Rapporteur général"*). In addition, a representative of the Ministry of Commerce is appointed with the role of defending the general interest and of presenting the observations of the public administration to the Council.

As far as its advisory role is concerned, the CC may be consulted by the Minister of Commerce for all legislative texts and for matters relating to competition. The MC must consult the CC for all regulatory measures imposing specific conditions for the exercise of a professional or economic activity or establishing restrictions to market access. Consultation of the CC is also compulsory for all merger cases since the 2005 revision of the Competition Act. Before that date, the Council was consulted at least on seven occasions about merger issues. Through the intermediation of the MC, consumers' associations, chambers of commerce, professional organizations and trade unions may also consult the Council on competition issues in their industry. Finally, regulatory authorities may directly submit questions related to competition to the CC.

Phases of Competition Law Development in Tunisia

1993	1995	1999	2003	2005
TRANSPARENCY PROVISIONS	MERGER CONTROL	GREATER FLEXIBILITY FOR FRANCHISING AND REPRESENTATION AGREEMENTS	CONSOLIDATION OF THE RIGHT TO DEFENCE	THE COUNCIL IS GIVEN LEGAL PERSONALITY AND FINANCIAL INDEPENDENCE
ACCREDITATION OF INSPECTORS	STRENGTHENING OF COMPETITION BOARD (BECOMES COUNCIL)	BROADER POWERS TO THE COUNCIL	FLEXIBILITY IN URGENT CONSULTATIONS	EXTENSION OF THE COUNCIL'S ADVISORY FUNCTION AND JURISDICTION
	PROHIBITION OF EXCLUSIVE FRANCHISING AND REPRESENTATION AGREEMENTS	IMPROVEMENT IN ORGANISATION OF THE BOARD	LENIENCY PROCEDURE	RELATIONSHIP BETWEEN THE COUNCIL AND REGULATORY AUTHORITIES IS DEFINED
		FURTHER TRANSPARENCY PROVISIONS	RULES ON ACCESS TO EVIDENCE	STRENGTHENED COOPERATION BETWEEN ADMINISTRATIVE BODIES IN THE FIGHT AGAINST ANTICOMPETITIVE CONDUCT
			TRANSPARENCY AND FAIR COMPETITION	LIFTING OF THE BAN FOR EXCLUSIVE FRANCHISING AND COMMERCIAL REPRESENTATION CONTRACTS
				REVIEW OF MERGER CONTROL RULES BROADER DEFINITION OF PREDATORY PRICING MANDATORY GREATER TRANSPARENCY IN DISTRIBUTION INTERNATIONAL COOPERATION

Source: UNCTAD (2006)

Turkey

The competition law system in Turkey meets the best standards of requirement of the most advanced Competition Systems of EU Member States. In the Mediterranean, Turkey has a system comparable to that of Israel, both in quality, density and quantity of cases brought up to a solution or a sanction. Turkey adopted the “Act on the Protection of Competition” in 1994.

Following the model of development of the German Competition Law and of the *Bundeskartellamt*, the Act created the *Rekabet Kurumu* or Turkish Competition Authority (TCA) as an autonomous antitrust enforcement agency, with a Competition Board to resolve cases and set policy in order to achieve efficient markets and promote consumer welfare. The Act is in line with Articles 167 and 172 of the Turkish Constitution, which require that the state “takes measures to protect and inform consumers.” In 2005, as a Member State of the Organization of Economic Cooperation and Development, Turkey has been reviewed under the Regulatory Reform exercise at the OECD and its Competition Authority was praised for its tenth year of development.

The Turkish Competition Authority

The Competition Authority is an Independent Administrative Authority governed by a Board which is vested with the Agency's decision-making powers. The Chairman of the Board is also the President of the TCA and acts as its chief executive, managing it and representing it publicly.

The Board is composed by 11 full-time members (including the Chairman) appointed for 6 years (renewable). One-third of the terms expire every 2 years. The Chairman is appointed by the government from among three sitting members nominated by the Board.

The Competition Act creates a complex mechanism for appointing Board members (Art. 22), designed to balance expertise with political responsiveness. Appointments are made by the government from among individuals nominated by several designated institutions. The Ministry of Trade and Industry can nominate for 2 positions, and 5 bodies – the Ministry of State with which the State Planning Organisation is affiliated, the Court of Appeals, the Council of State, the Inter-University Board, and the the Turkish Union of Chambers and Exchanges – can each nominate 1 member. The Competition Board itself submits nominations for the remaining four positions, and half of those nominees must be experts from the Authority.

As regards the independence of the Authority, the Competition Act provides that “*no organ, authority, entity or person can give orders or directives to affect the final decision of the Authority*”. Board members are subject to conflict of interest rules about shareholdings and, under applicable civil service law, may not be members of a political party. The Competition Act states that the agency is a legally separate entity from the government and possesses “administrative and financial autonomy.” Appeals of TCA's administrative decisions are introduced before the Administrative Supreme Court, the Council of State.

Among the extended powers the TCA has developed an extensive secondary legislation in the form of communiqués and guidelines.

The TCA has one of the most original sources of financing of OECD countries. The Competition Act originally provided that the budget of the agency would arise from three sources: an appropriation in the budget of the Ministry, a 25% share of the fines it collected for violations of the Act, and revenues from sale of publications. No Ministry appropriation has ever been made, nor has the TCA ever charged for its publications. The provision for a 25% share of the fines collected was repealed in

2003 in response to criticism that such a mechanism created an improper prosecutorial bias. In any event, the fines provision was never a significant source of funds, as the amount received by the Authority totalled in 2005 only TRL 196 billion (USD \$131,000). The Authority's income actually comes entirely from another law – i.e. Law No. 4077 of 1995 which introduces registration fees for newly-constituted corporations. 19% of the capital amount registered was initially allocated to the Authority, and the percentage was later drastically reduced to 0.04%. The TCA has a staff of about 300 agents including support personnel.

Competition provisions

Starting its operation on the same pattern as the British Competition Authorities decades ago, with a regime of registration of anticompetitive behaviour, the Competition Act provided at its inception that any agreement, decision, or concerted practice *“within the scope of Article 4 must be notified to the Board within one month of the conduct's execution, unless the conduct qualifies for protection under a block exemption”*.

In full line of compliance with all EU Competition Law developments and prohibitions, the Turkish Competition Act prohibits agreements and concerted practices between undertakings and decisions and practices of associations of undertakings which have as their object or effect or likely affect the prevention, distortion or restriction of competition (article 4), abuses of dominant position (article 6) and mergers and acquisitions including privatization transactions creating or strengthening a dominant position as a result of which competition is significantly decreased (article 7). Exemption for agreement, concerted practices between undertakings and decisions of associate of undertakings limiting competition is possible under the same conditions as the EC Treaty article 81-3.

Failure to file where otherwise required is a separate violation subject to a fine, in addition to any penalty that may be assessed if the conduct is subsequently found to be unlawful. From 1999 through 2004, the TCA received a total of 193 applications for exemption or negative clearance and resolved 159 of them. Of the applications resolved, 49 were subjected to conditions and the rest were granted unconditionally. Article 9(4) of the Act provides that the Board may impose *interim* relief orders during the course of an investigation “where there may arise serious and irreparable damages until the final decision.” The Board used this authority on 7 occasions in the years before 2002, but only once between 2002 and 2005. Most members of the legal and academic communities in Turkey praise the quality of the Boards decisions, particularly in comparison to those issued by other agencies. Some lawyers complain that the Board provides inadequate analysis of such legal issues as the proper admission of evidence. Also, the Board's decisions do not always describe and consider the EU case precedents relevant to the issues in dispute. The sophistication of the Board's economic analysis varies considerably from decision to decision, reflecting in part the fact that the TCA is still a relatively new agency and partly the fact that the TCA does not have a staff of industrial organization economists. Even the harshest critics of the TCA, however, do not usually assert that the decisions reached are incorrect on economic grounds, but rather that the analysis in the decisions should be more thorough and incisive.

As regards appeals to the Competition Authority's decisions, most of the (few) decisions in which the Council of State reversed the previous ruling by the Authority were grounded on procedural points.

Unlike most other Competition Law regimes in the Euro-mediterranean countries, it should be stressed that the TCA is the only responsible Turkish Authority to implement the Competition Act in all sectors of the economy including

telecommunications and banking sectors as well as electricity, petroleum, natural gas and LPG markets.

Sanctions

Procedural as well as substantive fines may be imposed for the Competition Act enforcement purposes. For instance, regarding procedural fines in case on the spot inspection is prevented or complicated, the relevant undertaking can be imposed 0.5% of its annual gross revenue provided that the fine is not less than ten thousand Turkish Lira (TRL), an equivalent to 5000€. Moreover, preventing or impeding on the spot inspections is subject to a fine amounting to 0.05% of the annual gross revenue per day. Regarding substantive fines, fines can be imposed up to 10% of the annual gross revenue (article 16). Moreover, the executives or employees of the undertaking or the association of undertakings which is detected to have had a determining impact on the violation will be imposed fines up to 5% of the substantive fine imposed on the undertaking or association of undertakings. Immunity from or reduction of fines is possible for those cooperating actively with the TCA for uncovering the violation of the Competition Act under a leniency policy.

Lebanon, Palestinian Authority and Syria

In this short section, the situation of the remaining three countries of the Union for the Mediterranean is reviewed briefly as these three countries do not have yet any competition institutions.

Lebanon

The Lebanese Ministry of the Economy has commissioned a study by Toufik K. Gaspard in 2003 to develop a favourable environment for competition.¹⁶ This author has empirically assessed what was perceived for decades by observers of the Lebanese economy, namely that many sectors are shielded from competition. According to the study, about half of Lebanon's domestic markets can be considered oligopolistic or monopolistic. And a third of those markets have a dominant firm with market share above 40%. The reasons for such high concentration indexes (and hence, many potential anticompetitive behaviours) are manifold, but always relate in one way or another to the existence of barriers to entry and exit. Some of the barriers identified are natural, such as economies of scale. Others are artificial, and stem from rules, regulations and norms that practically restrict entry at least to some enterprises. In this regard the study lists outdated commercial laws, long delays in commercial disputes settlements, non business-friendly administrative regulations, corruption, and the existence of exclusive agencies as important artificial barriers to entry. Given the interpenetration of the Lebanese economy with that of Syria, there is no doubt that the evolution of positive relations between the two countries as well as the evolution of the Syrian economy towards market liberalization will do a lot to create the appropriate instruments to fight against market power abuses affecting the Lebanese economy.

Palestinian Authority

The Palestinian Authority (PA) still does not have a competition law. A draft law has been reportedly discussed since 2002, when the PA launched an extensive reform programme. In the context of the EU-Palestinian Authority bilateral trade negotiations, the enactment of a competition law was included as one of the priorities, but no significant developments have been observed since then. Any draft to be presented would most likely be in line with EC concepts. The partition of the Country and internal as well as international political hurdles evidently hamper any positive evolution of the regulatory framework of the Palestinian Authority.

Syria

In November 2008, Syria has adopted an antitrust law creating a Syrian Competition Authority and Competition Council depending on the Prime Minister Office but with financial independence such as the Japanese model. Enforcement decrees are now said to be in preparation. The Syrian national competition authority is now also in a building process. But at the time of writing this report there was still no specific Governmental entity or committee governing competition. No Syrian competition Delegate could attend the November 2008 Euromed Competition Roundtables at the European Competition Day referred to in introduction. And all issues related to market behaviours and consumers' protection are still currently governed by the General Trade Law. In addition, the Syrian Criminal Code contains Articles 671-674 which cover the "Unlawful Speculations", and Article 700 which covers "Fraudulent Competition". However, studies are underway with the help of the European Commission to implement new regulations regarding Market operations. It is expected that the new Syrian Competition Authority will start its first activities in 2009.

Section 3

Competition Law enforcement in Sub-Mediterranean Countries

The set of ten countries answers to the EIPA questionnaire clearly show that there are currently three groups of differentiated countries in the Mediterranean from a competition enforcement point of view. Although each of those ten countries is bound to the European Union by an Euro-Med Association Agreement, the level of enforcement – as measured by the number of cases completed by the national competition authorities each year – clearly demonstrates that a first group of countries emerges with a practice of enforcement that runs into hundreds of cases since the ten years or more that their competition institutions have been in place. By its practice, this group is equivalent to most advanced EU member countries: it includes Turkey and Israel, the first being a long-standing member of the OECD and the second one being in a process of accession to OECD membership. A second group of countries is characterised by already operating competition authorities, with a lesser developed level of enforcement: the Member States of the Agadir Treaty Community plus Algeria. This group is nevertheless characterised by differentiated types of enforcement with Tunisia clearly on top of the group and Morocco at the end of the Agadir Group, followed by Algeria, that still remains outside the Agadir Group. A third group is composed of three countries that are also bound to the European Union by an Association Agreement but all three countries remain without any Competition Institutions so far: Lebanon, the Palestinian Authority and Syria. Still, notwithstanding these differences, the observation of competition law enforcement demonstrates that there are only very few cases regarding cross-border anti-competitive practices demonstrating that no country at all is regionally integrated. The enforcement of competition law in each group of countries is briefly surveyed in this section.

TWO OECD DEVELOPED COUNTRIES: TURKEY AND ISRAEL

Turkey

As evidenced in the answer to the EIPA questionnaire, the level of enforcement of the Turkish Competition Authority runs into hundreds of cases over the last decade and an average of 300 decisions are taken each year, a rate of enforcement more important than most EU member countries, including the most important.

In 2007, the TCA took a total of 148 final decisions on anti-competitive agreements and abuse of dominant position. 79 of them concern anti-competitive agreements, 48 deal with abuse of dominant position whereas the remaining 21 are about both anti-competitive agreements and abuse of dominant position. Number of decisions on mergers and acquisitions is 232. Fines around € 7,000,000 have been imposed in 2007 in investigations finalised. Concerning exemption and negative clearance, 39 decisions were taken. The numbers indicate an increasing trend in number of files concluded. The highest increase emerges in mergers and acquisitions indicating that Turkey is also affected by the recent global rise in such transactions. Number of files concluded regarding anti-competitive agreements keeps its stable rise. Therefore, caution should be exercised against the possibility of removal of evidence by the undertakings whose knowledge on competition law has been increasing year by year. Increase in number of abuse cases by 60% and that in number of cases on anti-competitive agreements and abuse by 69% is also notable.

Sectoral statistics obtained via examinations concluded regarding infringements of competition provide important clues on the competitive map of Turkey as well as behaviours of undertakings. These statistics may be of a peculiar importance for further investigations in the neighbouring countries since the regional factor as well

as the level of development may induce the same type of restrictive and anticompetitive behaviours as those observed in Turkey. Sectors where examinations are mostly carried out are *transport, food products and beverages, education, sports, professional occupation and other services, health and medical products, telecommunication, post and bureau machines and computers*. Apart from post and telecommunications, all these sectors have concentration levels that may be deemed to be relatively competitive markets. Two arguments may be made against this assessment: Firstly, there is a tendency to act in a collective manner in these sectors. Secondly, concentration levels or the number of undertakings in the market is not adequate to create a competitive structure.

It should also be underlined that certain sectors have been subject to many examinations in the last six years. These sectors are *food products and beverages, transport, telecommunication, chemistry and chemical products, health and medical products and equipments*. Despite the existence of many examinations in these sectors, the fact that no decrease is observed in the number of allegations and examinations initiated based on such allegations implies that it would be proper to initiate joint studies with the relevant authorities responsible to regulate these sectors in order to take certain structural measures for these sectors. The statistics on decisions where it was determined that the Competition Act was violated support this argument. As a matter of fact, main sectors where the Competition Act was violated in the last eight years are press and broadcasting, transport, telecommunication, food, cement and ready-mixed concrete. One can observe that sectors which are examined following allegations of violation of the Competition Act and those sectors where violation of the Competition Act was proved coincide. As a result, it is seen that there is a need to create a coordination mechanism between the TCA and the legislator and the public authorities responsible to regulate these sectors.

Another important activity in 2007 is the Opinions sent to various public authorities as part of advocacy powers of the TCA. These Opinions concerned *banking, energy market, civil aviation, professional accounting, and pharmaceuticals*. Such Opinions are important as they regard sectors that take a significant place in economic activities and some of the sectors have the characteristics of network industries.

Israel

In Israel, major breaches of the Competition Law are regarded as criminal violations, sanctions being imposed by the Antitrust Court as a result of cases investigated and prosecuted by the IAA. The criminal nature of sanctions may be a factor hindering the development of the Competition Law in the region (when compared to Israel, the Turkish administrative model doesn't know any hindrance to development. It seems that Tunisia's administrative model, in which no criminal sanctions are applied, allows the same kind of development.

The IAA considers that the prison terms and fine maximums set in the RTPL, if applied, would be sufficient to deter violations. A problem confronted by the IAA is that, in cartel cases, the courts have failed to impose consistently high fines on defendants, instead assessing fines that the IAA believes fall well short of either the actual harm inflicted by the defendants or the level necessary for optimal deterrence. Although the Supreme Court emphasised in a 2002 decision that a "severe fine" is appropriate in a cartel case, fines imposed in cartel prosecutions over the past five years have averaged only approximately ILS 157,000 (USD 43,650) for individuals and approximately ILS 874,000 (USD 243,000) for corporations.

The IAA considers that the courts' record in imposing substantial prison sentences against cartel participants could also be improved. In the early 1990s, defendants argued with some success that harsh sentences were unjust because the law had been so rarely enforced in the past. For the balance of that decade, sentences languished in the 3 to 6 month range, and defendants frequently avoided incarceration completely under a Penal Law provision specifying that, at the sentencing court's discretion, prison sentences of six months or less may be discharged by assignment to "public work."¹⁷ The first sentence mandating actual jail time was not imposed until 2000. Prison sentences of six to

nine months were imposed in a 2002 case in conjunction with a pair of 2002 Supreme Court opinions stating that appropriate punishment for an individual participant in a hard core cartel was "actual imprisonment" even if the defendant had no previous criminal record. The Court followed those opinions in 2003, forcefully emphasising that "actual imprisonment" meant confinement and not public work. Still, no prison sentences were handed down from 2003 to 2005, and since then only two have been imposed: a 30 day term in the 2006 frozen vegetables case and a 100 day term in the 2007 LPG case. The IAA believes that such sentences fall too far below the maximums to reflect the true gravity of the offences or to deter future violations effectively. During the past five years, the Supreme Court resolved 3 appeals from district court criminal antitrust decisions in which the government sought to require harsher punishment than the trial court had imposed.

No comparable problem arose in the merger area, as the merger control process is administrative only. During 2007, the IAA issued 237 merger decisions. It is worth noting that the average review period of all merger notifications stands on 23 days, two days less than in 2006. The average review period of "green" mergers stands only on 20 days in average. In 2007 most merger notifications were approved without conditions and only one merger was blocked.

With regard to regional market integration issues only one case is reported to have dealt with anticompetitive behaviours affecting trade between Israel and an EU member country, namely Cyprus. Israel Salt Industries Ltd. exports 20% of its output and in 1999 it supplied half of the salt consumption of the Cyprus market. In 1997, a Cyprus company competed with Israel Salt Industries Ltd. both in Israel and in Cyprus. Although it exported only a small amount to the Israeli market, the managers of Israel Salt Industries Ltd. claimed that it had actually influenced the local prices of salt. According to the General Director's determination, Israel

Salt Industries Ltd. took action to block the import of salt. It had exerted pressure on the Cyprus firm, inter alia, by threatening with dumping the Cyprus market with under-priced salt. In addition it realized its threats, when for a period of 10 days, it exported to Cyprus 1000 tons of salt, which constitute 1/7 of the yearly consumption of the Cyprus market. Consequently, the Cyprus firm gave in as it stopped exporting salt to Israel and became an agent of the Israeli company. Israel Salt Industries Ltd., a declared monopoly in the edible salt market, reached a restrictive agreement in 1999 with a Cyprus based salt company (hereinafter – Cyprus company) that exported salt to the Israeli market. According to the agreement, the foreign company would become an agent of the Israeli company and refrain from exporting salt to Israel. Indeed, the export of salt to Israel stopped and has not been resumed since. For many years, Israel Salt Industries Ltd. enjoyed full control of the Israeli salt market, inter alia, thanks to agreements it reached with another Israeli salt company according to which the latter would not enter the retail marketing of salt. Those agreements were abolished by the Antitrust Tribunal in 2004 as part of a consent decree that was reached by the General Director.

The IAA General Director explained in 2008 the reasons of successes of operations of its authority: *“in 1994, a reform upgraded a small and secondary department at the Ministry of industry and trade into an independent Authority with extensive investigative and prosecutorial powers and a substantial degree of institutional independence to protect its work from external and political pressures. The fact that the Authority has an extensive range of powers and tools in-house considerably enhances our professional capacity and independence. Another advantage is the fact that we have a clear and unambiguous objective – the protection of competition (not competitors) for the benefit of consumers. Multiple objectives may lead to adverse results and constrain the ability of competition agencies to attain the best possible outcome. Taking a step-by-step approach, the*

Authority began to bring results and justified its mandate by the mid 1990’s. Our own experience teaches us that it is worthwhile investing in laying solid foundations for a stable competition regime by bringing cases to court in order to create precedents and develop a local competition case law. We do, however, need to cope with a certain degree of uncertainty surrounding the fact that the local case law is still evolving. The upside is that there are opportunities for the Authority to break new ground in various cases and play a pioneer role in shaping the law and creating precedents”.¹⁸

THE FOUR AGADIR MEMBER STATES: EGYPT, JORDAN, MOROCCO AND TUNISIA

The situation in the Agadir group partly reflects the dichotomy of enforcement observed in Turkey and Israel. Where the sentencing system rests on Criminal sanctions enforced by Courts after investigation of Authorities under the Prime Minister or under a Minister of Trade – thus giving the ultimate role to a Member of Government - the institutional and enforcement developments are confined within the administrative investigative authorities. And anticompetitive practices prosecution are very limited: this is the case of Egypt, Jordan and Morocco. Where the Competition Law is enforced with investigations by a Directorate under the Minister of Trade and where administrative sanctions are applied by an independent administrative agency, such as the Tunisian *Conseil de la concurrence*, ten years of experience or more show interesting and indeed promising developments with a steady rise of the number of cases.

Egypt, Jordan and Morocco

The Competition Law systems of Egypt and Jordan are fairly close with a legal setting influenced by the British Law system: in Egypt, a Competition Authority is autonomous under the Prime Minister, whereas in Jordan the Competition Authority is vested to a Competition Directorate within the Ministry of Industry and Trade, both countries being similar in this sense more to Morocco with a French legal tradition.

In Egypt, since its creation in 2005, the Egyptian Competition Authority (ECA) has investigated 30 cases, concluded 14 of the cases, of which 8 were advisory opinions, 6 were “studies” (investigation on unlawful conducts). One case has been referred to the Prosecution Office of Cairo in October 2007 and then to court in January 2008. The case is still pending trial. And 15 of these cases are still pending, which makes an average of only 3 investigations brought to an end per year. Such a number should by no means be judged according to advanced EU member States standards as the first years of operation of those countries have yielded quite comparable figures. Rather, one should try and identify which impediments prevent the ECA from operating at a wider scale.

One of the main problems affecting the work of ECA is the lack of information on the markets and consequently the lack of evidence and proofs. Indeed, violations of the Law include both engaging in anti-competitive behaviour and failing to comply with the ECA's decisions. But failures of firms to provide information (data and documents), within a reasonable period of time, or the provision of false or misleading information is not yet considered as a violation to the Competition Law. Furthermore, no provision in the Competition Law imposes clear penalties to stop any data or information manipulation by firms. Consequently as the respondents to the EIPA questionnaire observe: *“Awareness of market players is also a problem as competition culture is not yet*

well established. Moreover, economic analysis related to competition violations is not yet up to the required standards due to the non-introduction of such courses at universities”. Thus a specific provision encouraging firms to cooperate in data and information issues would allow the ECA to perform a much more efficient role in its investigations.

Another problem may lie in the fact that sanctions in the Egyptian law are not effectively dissuasive as they do not compel or threaten firms. For instance, the sanctions do not include divestiture, rescission, restitution to injured consumers or an effective power of injunction for the ECA. Although a provision in Article 20 states that the “violator [to articles 6, 7, 8] would be requested to adjust its position”, this statement is too vague as it does not specifically define the actual significance of an “adjustment” and the Law does not vary the fines according to the type of infringement. Indeed, although breaches of any of the provisions of the Law may be sanctioned with a fine between 30,000 E£ (approximately €4,000) and not exceeding 10 million E£ (roughly €1,200,000), the power to impose the fine is vested to the Minister in charge of the industry where violations were found, following a request by the Authority. Then, the Law allows the said minister to settle the issue with the concerned parties without referring the case to Court if the violator stops the contested practice and pays the corresponding fine. Again, this provision adds to the discretionary power of the concerned Minister and impedes the efficiency and capacities of the ECA and the whole system despite the internationally recognized quality of its Management and Agents.

Very few cases are reported by the ECA. One of the cases mentioned deals with Concrete industry in which nine firms – most if not all being subsidiaries of foreign-owned firms - allegedly have cartelized the Egyptian Market. However, no case is reported with regard to interstate trade among members of the Mediterranean Union. The case is currently under judicial review.

With already more experience than Egypt, Jordan has followed the same pattern of enforcement with more successes since the Jordan Minister of Industry and Trade has followed all recommendations made by the Competition Directorate. In Jordan, law enforcement is the responsibility of the Competition Directorate at the Ministry of Trade and Industry (MIT). The duties and powers of the Competition Directorate include competition policy shaping and legislation drafting, competition advocacy, conducting investigations ex officio or upon complaints or those assigned to it by the competent courts, and preparing reports on its findings and receiving notifications of mergers operations. The investigative powers of the Directorate include the power to enter into commercial establishments and inspect documents, and the Director may request any person who has or may have knowledge of information relating to a violation, to testify in an investigation. If the violation is ascertained, the Minister shall, upon the recommendation of the Director, refer the violation to court. The Competition Directorate is composed of a permanent staff of about 9 persons. It is also assisted by a "Committee for Competition Matters" (CMC). The Committee is chaired by the Minister and includes heads of other regulatory bodies (Insurance, Telecommunications, Transportation). The Committee is responsible for presenting consultations and advice regarding the general plan of competition in various sectors and for reviewing matters related to the provisions of the Law. Furthermore, the Court of First Instance has the jurisdiction to hear cases relating to any violation of the provisions of the Law pertaining to anti-competitive practices, economic concentrations and non-compliance with certain decisions issued by the Minister pursuant to the Competition Law. All other violations of the provisions of the Competition Law are subject to the general rules of court jurisdiction. Moreover, one or more specialized judges who have been appointed by a decision of the Judicial Board are assigned to hear cases of practices that are in violation of competition. The Law specifies the parties that may

file cases relating to practices in violation of competition, and such cases shall be granted summary status while the court shall have the power to issue temporary (interim) orders or decisions. Decisions of the court may be appealed before the Court of Appeal and the "Cour de cassation". Nevertheless, the possibility of evaluating the degree of enforcement of the existing Law is limited by the relatively short experience of the Competition Directorate.

In 2007 four cases were sent to the prosecutor by the directorate, and one of them was sent to the Court of First Instance by the prosecutor, and 2 cases were filed directly to the court of first instance by personal act. In 2006, twelve complaints have been dealt with, ten opinions were made on mergers notifications, four consultations were made with the business community and nine studies and investigations were conducted, a remarkable achievement performed by a most active little team at the Competition Directorate. Indeed, after some years of existence, the Competition Directorate has received a fair amount of trust by the Jordanian Business Community which does not hesitate to consult or refer cases to the MIT. Some cases show a strong relationship between Competition Policy and Interstate Trade Policies such as the Meat Industry case: for instance in 2004, a couple of months prior to the holy month of Ramadhan, the Directorate received a consultation request regarding the increase in meat prices which could have potentially resulted from anticompetitive activities in that sector, with potentially major foreseeable consequences in social unrest at a critical period. The issue was addressed with a sense of urgency to avoid problems resulting from the anticipated increase of demand during the holy month of Ramadhan. The Directorate conducted field investigations which highlighted the Trade barriers that prevent competitors from neighbouring countries to enter the Jordanian market. Talks were held between the various bodies that regulate the meat industry such as the Ministry of Agriculture and the Ministry of Health to discuss

the potential for opening up new import markets, and removing barriers of entry to this industry. The adopted policies succeeded in lowering prices and maintaining them at reasonable levels during Ramadhan.

In Morocco, given the French background of legal institutions in that country, one would expect the same type of development of enforcement. On the contrary, the two systems are very different: in Morocco, the Competition Council is an advisory body without legal and autonomous existence, being a part of the Prime Minister's Office, who is the National Competition Authority within the meaning of the Competition Law. A major institutional reform is likely to take place by 2010 with the current formulation of an amendment of the national Competition Law that would give a fully-fledged independence status to the Competition Council. The reform is being prepared under supervision of the German managers of a Twinning programme between Germany and Morocco aiming at strengthening institutional and technical capacities of Moroccan Competition Authorities. In January 2009, Members of the Board of the Moroccan Competition Council after appointment of a new Chairman in November 2008 have been installed to that purpose. Mobilization of resources is under way under a current EU Twinning program between the German and Moroccan Competition Authorities aiming at strengthening the national capacities in the area of Competition. This program is scheduled to run up to April 2009.

Tunisia

In Tunisia, the Competition Council (CC) is fully autonomous and independent from the Department of Commerce which has a General Directorate in charge of investigations to be conducted pursuant to the National Competition Law. From the answers to the EIPA questionnaire, one cannot get an accurate view of the merging picture of the most spectacular Tunisian Competition Law developments over the last three years. These developments, in particular with regard to the activity of the CC make the competition regulatory system of Tunisia almost if not already fully comparable to the enforcement systems of Turkey and Israel. In particular, in a country where price regulation concerns about 13% of the products on the market and 20% of the distribution sector (UNCTAD 2005 Voluntary Peer Review estimate), the situation of competition enforcement can be better assessed after the publication in 2008 of the CC Annual Report for 2006 and this exhaustive document is of a peculiar value as it is unique in advocacy terms and information terms among the Agadir Countries and even in the whole Mediterranean area where Competition Authorities operate.

In the sphere of litigation, the Council rules on the cases concerning anticompetitive agreements and abuse of dominant position and can act upon request or of its own initiative. The latter possibility was, until fairly recently, confined to quite exceptional circumstances, such as cases in which a complaint had been filed and later withdrawn, or cases in which during an investigation the Council decided *ex officio* to extend the proceeding to adjacent markets where *fumus boni juris* suggested a closer look. Most often, the Council's intervention is requested by the Minister of Commerce and his Directorate General, by enterprises, consumers' associations, chambers of commerce, professional organizations, trade unions, regulatory authorities and regional or local bodies. When acting on its own initia-

tive, the CC must inform the Minister and the relevant regulatory authorities.

With regard to actual enforcement, the CC has been increasingly active in the last three years, following a rather slow start due to the fact that both institutions and market players had to get to grips with the main principles and goals of competition legislation. The number of legal cases presented to the CC during the period 1992-2002 did not exceed 48, that is an average of 4.3 cases per year and of 2.5 if we do not take into account the years 1993, 1999 and 2002 where the cases brought before the CC were respectively 9, 11 and 8 cases. The CC explained the relatively modest resorting to its competences by the various parties, by the transition of the Tunisian economy and a competition culture not deeply taken in by the operators. The parties which have the most referred cases to the Council are respectively firms which referred 39 cases to it, i.e. 81.2% of the total. The Minister of Commerce referred a modest number of 5 cases, i.e. 10.4% of the total. In 2001 and 2002 two cases were initiated by the CC *ex officio*. Out of the 48 petitions that were presented to the CC during this period, the Council has considered that 26 among them did not fall within

the scope of the Competition Law because almost all of them were unfair competition and not market anticompetitive restrictions. The steady activity increase of the Tunisian CC in the table hereunder.

In 2006 alone, the Tunisian CC issued 20 decisions on detailed anticompetitive cases and issued 38 opinions, a total superior in one year to its total activity over its first ten years of operation. Out of the 20 decisions, 16 were dismissals or rejections, 1 dealt with a cartel case and 3 were prohibitions of abuses of a dominant position or of abuse of superior buying power. Out of the 38 opinions evidencing a prominent and leading advocacy role among the Tunisian administrative bodies and authorities, thirty were delivered on specifications or terms/conditions, two regarded projects of merger and two dealt with general competition principles.

The substance and the industries which have been investigated and surveyed are worth mentioning as well, showing that the CC is becoming a key administrative body to fuel the process of regulatory reforms in Tunisia and to improve the setting of the Tunisian Economy as a whole. The wide variety of sectors and industries surveyed in the advisory activity alone is worth detail-

Matters on which the Tunisian Competition Council was consulted (1991-2005)

SUBJECT	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	TOTAL
MERGERS	0	0	0	0	0	0	2	3	1	1	NA	NA	NA	2	NA
EXCLUSIVE PRACTICES	0	0	0	0	0	0	0	0	1	0	1	5	2	2	11
DRAFT LEGISLATION	0	0	0	0	0	2	6	4	3	3	6	5	1	2	32
TERMS/ CONDITIONS	0	0	0	0	0	0	0	6	2	4	2	2	3	1	20
OTHER	0	0	0	0	0	4	4	3	1	4	3	2	1	1	23
TOTAL	0	0	0	0	0	6	12	16	8	12	NA	NA	NA	8	NA

ing as Tunisia equals Turkey or France with regard to the advocacy capacity, quality and sophistication of analyses and the variety of areas of surveyed activities: in 2006 the CC decided cases dealing with Lawyers, Attorneys and Chartered Accountants rights to exercise their profession, the distribution of foreign newspapers and magazines, drugs and pharmaceuticals wholesale, car paintings, spare parts and electrical components of household appliances, luxury perfumes (2 cases of abuses), electricity transformers public demand and supply, public procurement of water canals and polyethylene pipes and scuba diving pricing policies. The CC also investigated and delivered opinions on many draft legislation elements regarding terms of references, specifications, terms/conditions in various agricultural and industrial areas of production of goods and services: i.e. controlling of sheep milk production, creation of cattle breeding centres, rabbit breeding and production centres, import of cardboard, seats, furniture and furniture components and spare parts, import of tyres and wheels, imports of TV sets, activities of travel agents, imports and exports of energy consulting services etc... In that same year, the Tunisian CC also delivered opinion on draft legislation with regard to the granting of broadcasting rights, trade and distribution law, the organization of Maritime Professions, Drugs pricing, Olive Oil regulation and subsidies and public road transportation. So far, thanks to the development of the activities of the Tunisian CC, the Tunisian experience of competition law enforcement and advocacy is unique in the Agadir Countries for its variety and comprehensiveness. This notable increase of activities has coincided with the EU Twinning program between Tunisian and French Competition Authorities (2006-2007), but the trend clearly started one or two years before. The present capacity of the CC to communicate openly on its enforcement and experience is also a powerful instrument to integrate the Tunisian competition authorities in the regional and international Competition enforcement community.

COUNTRIES WITHOUT COMPETITION INSTITUTIONS: LEBANON, PALESTINIAN AUTHORITY AND SYRIA

Lebanon

In Lebanon, there is no modern competition law, and consequently no competition authority yet at work. The *European Neighbourhood Policy Action Plan* was jointly adopted by the EU and Lebanon and scheduled to enter into force in January 2007. However some major disruptions have affected the political and economic setting of the country, including bombings in the summer of 2006. Thus, for the time being, it is difficult to assess implementation of that Plan. In terms of competition policy, like all other Action Plans signed between the EU and each of the other Mediterranean countries, it aims at ensuring the creation of a national competition framework and establishing an operational and effective competition authority.

Palestinian Authority

The Palestinian Authority has to overcome major political problems to integrate its economy for the time being disrupted by two differing political and regulatory settings in its two territorial components, the Gaza Strip and the so-called West Bank. A European Neighbourhood Policy Action Plan was jointly adopted by the EU and the Palestinian Authority on 4 May 2005. Since then political shifts (including the Hamas victory in 2006 elections) have delayed the enforcement of that Action Plan. It aims at strengthening political co-operation and economic integration to approximate them with the EU institutions. The Plan is based on a Palestinian Reform Program adopted before 2005 under leadership of President Mahmood Abbas. It aims at political, economic, social and institutional changes (consolidation of democracy, accountability, transparency and justice, building of institutions and infrastructure necessary for an independent Palestinian state; the achievement of the Palestinian statehood, good governance, development of economy, including trade. With regard to competition policy a draft competition Law is said to be under consideration by the Palestinian Authority and the Palestinian Parliament, taking into account a differentiated regulations in the West Bank and Gaza Strip where legal structures have been inherited from Jordan or the British Mandate. The Plan foresees the adoption and implementation of a legal framework to guarantee the functioning of a market economy and includes the introduction of a Competition Law, most likely in line with EU concepts.

Syria

In Syria, political stability and evolution due to the exchange of Ambassadors between Syria and Lebanon in October 2008 may well lead to acceleration of an overhaul of the economic regulatory structure. Due to numerous tariff and non-tariff barriers, Syria's trade regime remains restrictive, excluding trade with GAFTA and neighbouring countries. Unclear regulations, quantitative restrictions, and other non-tariff requirements continue to prevail and to add to the costs and length of conducting international trade transactions. Non-tariff barriers generate distortions in the allocation of resources in the Syrian economy and undermine the positive effects of the ongoing economic liberalization on domestic competition and external competitiveness. As was said above, a new national Competition Law has just been adopted in November 2008. It is too early to report on activities of enforcement of this law. But it is expected that the new Syrian Competition Authority and Competition Council that are being set up will not start their operations before 2009.

Conclusion

Some policy recommendations may be formulated, deriving from the analyses in the three sections of this report with a major contribution by the heads of National Competition Agencies themselves when they formulated their observations on Competition Law and Policy in the Mediterranean Region at the European Competition Day in Paris in November 2008. As already mentioned in the section one, an exhaustive record of the proceedings of that meeting has been released in February 2009 under the academic revision of Professor Catherine Prieto.¹⁹

A first recommendation is about the European assistance programs to Euromed countries. Despite very strong efforts undertaken by the European Union in some countries (such as Tunisia, Morocco and Jordan), there seems to be a strong demand for increases of technical assistance and improvements of that assistance and training, as evidenced by the opening statement of the Chair of the Egyptian Competition Authority at one of the round tables of the already mentioned November 2008 European Competition Day. She stressed that despite European Aid has indeed been granted, this was not always consistent with aid from other countries, including from the United States: *The “Egyptian competition law came in effect at the end of 2005 and the Competition Authority was formed in September 2005. The first seminar we had in December of that year, was arranged by the Euro-Eight countries. We had experts from six different countries giving us what were essentially private lessons on organization and process, which were eye opening. Unfortunately, the Euro-Eight project now is closed. There is another EU Assistance Program called TAIEX; we find it bureaucratic and slow. We are not getting the help we used to get. Sometimes we still get individual help. For example, Professor Jenny came to Egypt several times through the “Cour de Cassation” or through the USAID assistance program. We had four experts from the Ital-*

*ian authority, who were very helpful. But in the last year the most active assistance we received was from the United States, with experts from the FTC and the DOJ visiting. This was a more active exchange because the AID office responds very quickly to our needs. I hope that with the “Union des Pays Méditerranéens” organization we can do more things in that respect.”*²⁰ One should thus recommend that Assistance programs in the area of competition Law and Policy in the Mediterranean region become a priority both in a North/South and in a South/South perspective (see hereafter remarks by H.E. Montaser Oklah). Some very precise formulations were made such as “induction programs” at basic, intermediate and senior levels to be set up on a regional basis with high level of technicality and concrete cases discussed.²¹ However, such programs should not necessarily involve “twinning programs” or “jumelages” because of too strict conditions sometimes associated to such programs.²²

A second recommendation relates to the institutional framework which has been put in place over the last decade in the concerned countries. The existence of a functionally independent authority coupled to administrative enforcement of Competition Law, properly deriving from the European Competition Law system and experience have clearly demonstrated the superiority of a system of enforcement by the number of cases of actual enforcement. Where such a system is in place, such as in Turkey and Tunisia, the countries clearly have a record of enforcement that differs from the other countries experiences. One should thus recommend that in the initial phases of development, Competition Law enforcement in the Mediterranean mirrors as closely as possible the prevailing experiences within the European Union, setting up an Administrative process of enforcement with authority vested in an Independent decision making body.²³

A third recommendation relates to the setting up and institutionalization of a Mediterranean Competition

Network with its own “regional identity” as suggested by the representatives of Tunisia, Morocco, Egypt, Jordan and a German lawyer at the 2008 European Competition Day. The first initiatives taken in this area by the EIPA could be further developed in connexion with efforts of electronic communication by Competition Agencies.²⁴ A new level of regional cooperation could possibly be envisioned by the setting up of such a Mediterranean Competition Network as considered by Mona Yassine to avoid the limits of reflexions and actions undertaken so far against regional anticompetitive behaviours. Such behaviours have been coped with on a purely national basis by Agadir Countries National Competition Authorities.²⁵

A fourth recommendation relates to the possible organization of a program of peer reviews among the Mediterranean Countries. Such peer reviews could have the benefit to analyze the actual strengths and weaknesses of Competition Law Systems in the region on the model of Peer reviews performed at the OECD Competition Committee, OECD Global Forum on Competition, and at the UNCTAD Intergovernmental Group of Experts (among developing countries such as Tunisia, Senegal, Kenya, Jamaica, the COMESA and the UEMOA-WEAMU have volunteered to such reviews so far).²⁶

A fifth recommendation aims at drawing attention on the fact that GAFTA currently has no competition Law and Policy component. Such regulatory component is highly desirable to speed the process of economic integration and should possibly be considered or studied to promote further regional economic and market integration among the community of Arab countries.

Beyond purely competition-related regional cooperation, a fifth recommendation derives from remarks made at the 2008 European Competition Day by H.E. Montaser Oklah, Secretary General of the Jordan Ministry for Industry and Trade, relating to trade and competition discrep-

ancies and issues between the EU and Arab countries, but also between the Mashrek and Maghreb countries themselves with regard to the EU.²⁷ As the Euromed Agenda under the Barcelona and Agadir Processes in theory calls for the creation of a unified Free Trade zone in 2010, initiatives should be taken by the UpM Secretariat to call for Seminars leading to a regional Conference to address Competition and Trade issues having distortive effects upon trade within the Agadir Countries themselves and between these countries and the EU.

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Notes

- 1 The Union for the Mediterranean (in French: *Union pour la Méditerranée*), previously known as the "Mediterranean Union" (in French: *Union méditerranéenne*), is a community established on July 13th as a development of the Euromediterranean Partnership. It unites all EU members with several non-EU countries that border the Mediterranean Sea. The idea was originally proposed in April 2007 by French President Nicolas Sarkozy as an alternative to Turkish membership in the European Union, whereby Turkey would instead form the backbone of the new Mediterranean Union. However, modifications to the plan were made in March 2008, when Turkey was given a guarantee that the project would not be an alternative to Turkish EU membership. Since UfM membership was no longer seen as an alternative to joining the European Union, and instead considered more as a stepping stone into the EU, Turkey accepted the invitation to participate. French President Nicolas Sarkozy had eschewed the Union during his election campaign. Following his election, the idea was further developed, with plans being drawn up. Despite the potential division it could cause to the Muslim world, with a part of it being united with Europe, and a part separated, President Sarkozy saw the initiative as a way of promoting peace between Israel and its Arab neighbours. An institutional core has been established at the Ministerial Conference at Marseilles on November 3-4, 2008. Among other institutions, a Secretariat of the Union of the Mediterranean has been created. It will be based at Barcelona and is scheduled to start operating by April 2009.
- 2 In the United States, the "Antitrust" is concerned exclusively by Private sector behaviours. And a special Doctrine – known as the State Action Doctrine – immunizes from prosecution public behaviours, public actions or private actions on the Market following public instructions or licenses, provided that the said public authorities exercise the mandatory responsibilities attributed to them by the Constitution.
- 3 Whereas in the US, offenses to the Antitrust provisions are of a Criminal nature (regarding cartels) and of a civil nature (private monopolization, private attempts to monopolize and prohibited anticompetitive mergers).
- 4 The Egyptian unofficial Daily *Al Ahram*, stressed in an October 23, 2008 leading article: "*Originally the brainchild of Sarkozy, for which the French president arduously extracted some European support, the Union for the Mediterranean was launched in Paris 13 July, amid considerable scepticism, in pursuit of a multi-faceted Mediterranean cooperation that the Barcelona Process failed to deliver since its launch in 1995 -- in part due to the many shadows cast by endless deadlocks in the Arab-Israeli peace process. It was launched to promote joint projects among some, and not necessarily all, its 40 plus member states, especially in areas of environment and migration regulations. It was also expected to help foster cultural, if not political, dialogue among countries of the Mediterranean.*" See EZZAT, Dina (2008).
- 5 The original proposals would have excluded the EU states not bordering the Mediterranean. All other EU states apart from France, Spain, Italy, Slovenia, Malta, Greece, and Cyprus, would have been silent observers which angered those countries who would not be involved, such as Germany, as it did not approve of EU funds being used in a project over which it had no influence. Frank-Walter Steinmeier, German Minister of Foreign Affairs, gave a cautious response to the initiative and emphasized that it should not compete with the EU or the Barcelona process. In December 2007, German chancellor Angela Merkel criticized Sarkozy's plans, saying that they risked splitting and threatening the core of the EU. In particular she criticized that just a small number of EU countries, excluding the others, would form the union with EU funds, stating that "*this could release explosive forces in the union I would not like.*" When Slovenia took the EU presidency in 2008, Slovenian Prime Minister Janez Janša added to the criticism stating: "*We do not need a duplication of institutions, or institutions that would compete with EU, institutions that would cover part of the EU and part of the neighborhood.*" In response to criticism from his European partners, President Sarkozy modified his original plans for the union. Disagreements with Germany led to a mini summit between the two leaders being delayed three months until June 2008. At the start of the semester of French Presidency of the EU, President Sarkozy consequently held a summit on 13 July 2008 involving the relevant EU states and the Southern countries. The Union for the Mediterranean was then created and it is still in a process of construction.
- 6 See PRIETO, Catherine (2009). In 2008, an evaluation of the implementation of competition law in Mediterranean countries was carried out within the framework of the European Institute of Public Administration (EIPA). During that segment of the Competition Day, two round tables were organized to bring together representatives from competition authorities in both Mediterranean countries and the EU. The first round table was moderated by the French chair of the OECD Competition Law Committee, Professor Frederic Jenny, a Justice at the Civil Supreme Court (*Cour de Cassation*). It allowed participants to assess how competition authorities in Mediterranean countries operate, their level of development and actions taken in tandem with the EU in the area of competition. This round table detailed the shared experiences of representatives from Portugal, Morocco, Italy and Tunisia. The goal of the second roundtable was to set objectives and define the means for implementing competition policy in 2009. The actions will take place within the context of the creation of the new Union for the Mediterranean institutions in Barcelona in the first semester of 2009. The second round table, moderated by the Chair of the Egyptian Competition Authority, Mrs Mona Yassine, led to a discussion between representatives from the State of Israel, Turkey, Jordan and Germany.
- 7 CUTS (2005), p. 9.
- 8 SINGH, Ajit (2001)
- 9 JENNY F. (2004)
- 10 STEWART, Taimoon (2004)
- 11 SOUTY F. (2005)
- 12 République Tunisienne (1995), p. 101.
- 13 Discussion of the author a.o. with Law Faculty professor and Lawyer Omar ALJAZY and Senior Magistrates (e.g. Judge Ali AL-MUSEIMI, at the time of the interview General Prosecutor of AMMAN Court of First Instance). This may also be connected to the religious and government tradition which conferred a market overseeing role to a Market governor or Market Accountant by the head of state in the Umayyads or Abbasids Kingdom.
- 14 To evidence this trend, see among others the Chinese Supreme Court issuance of draft *Provisions regarding the handling by the People's Supreme Court of cases involving foreign-related arbitrations and foreign arbitrations*, Dec. 31, 2003.

- 15 See Republic of Tunisia (2008). The book presents all decisions as well as all opinions formulated as a part of its consultative activity.
- 16 GASPARD Toufik K. (2004)
- 17 A sentence to public work is considered a form of imprisonment and leaves the defendant with a criminal record. Public work service entails working full time in a hospital, shelter, or similar facility.
- 18 KAN, Ronit (2009)
- 19 PRIETO, Catherine (2009)
- 20 YASSINE, Mona (2009)
- 21 *"First, training – we need to have an induction program where we can train the new hires for the competition commissions. We hire academics, economists, lawyers, but they need to be trained in competition. Therefore, in our region we can have, for example, once a year an induction program, seven to ten days long, which will give basic training on competition specifically. We can also have an intermediate training program for those who are already seasoned, two to three years into this business, to discuss cases and how they were handled in different countries so that there is an exchange of experience. A third program can be a senior meeting where change in legislation, need for change in structure and timing and other matters that have to be taken at a senior level [can be discussed]. Heads of competition agencies and the executive directors could come together and exchange views and experiences once a year".* YASSINE Mona (2009)
- 22 *"‘Jumelage’, most of the people here like it. But from our experience in Egypt – we did not want to do it because it had conditions. We were very new and did not know what kind of structure we will need to have and we wanted to be very dynamic and flexible, so it was still early to have a diagnostic of our institution, which was required. There was nothing to diagnose in 2006 as we were just starting. But another condition was we had to commit to have the same organizational structure and process as the agency with which we ‘jumelize’. We did not want to commit at the time to that because we did not really know which structure we would use in the end. These two conditions made us skeptical about going into ‘jumelage’. Maybe later, once we know more about our markets and how we are going to proceed. But certainly this is an important tool of cooperation for effectiveness".* YASSINE Mona (2009)
- 23 Within the Mediterranean countries, at initial stages of development, the existence of criminal powers has led to very cautious approaches hindering for more than a decade actual enforcement. This has been the case in Egypt, Israël, Jordan and Morocco. Whereas in Israël, after 50 years of experience and with a major reform in 1994, fifteen years ago, this has led to an efficient system of enforcement, one needs to stress the time of development of a fully-fledged competition law system. In the initial phase of development administrative sanctions clearly lead to faster development, as evidenced positively in Tunisia and less positively in Egypt, Jordan or in Morocco. It should be stressed here that within the European Union, criminal law enforcement has not been retained as an option at the initial stage of institutional development for Community Law enforced by the Commission since 1962, nor by a majority of EU member countries. With regard to those countries which adopted criminal law sentencing systems, such as the United Kingdom, more than *fifty* years of prior experience were necessary.

24 See in particular BIERWAGEN Rainer (2009).

25 *"Another problem is that our laws deal with the effects of a given problem on our national local economies. If internally there is an action that affects another country we do not care as it is not under our jurisdiction. But should we care and work together and make sure that in our region competition is the rule? Let's think about that level of cooperation."* YASSINE Mona (2009). See also BIERWAGEN Rainer (2009).

26 *"Also, in terms of cooperation we can have peer review that looks at comparative analysis. Since our countries are at different stages of competition law enforcement we can comparatively say are they on the right track or too slow, what do they need to do more? We need the ability to measure effectiveness and through peer reviews do something about it".* YASSINE Mona (2009)

27 H.E. Montaser OKLAH explicitly made the following statement: *"As I said, we are very proud of our partnership with the EU, but, and underline this please, Jordan was shortchanged in terms of ultimate and true benefits of our partnership with the EU. I will tell you why and support it with evidence. Jordan is the recipient of technical and financial support from the EU, which we appreciate and we have tried to make the best out of it. But in terms of results on the ground Jordan did not fully integrate its economy with the EU. Trade statistics shows that Jordan was not able to export effectively since the implementation of the partnership agreement. Our imports from the EU increased approximately ten times, reaching high levels. However our exports are at standstill, at 100 million dollars. That is not fair. Do you know why that is the case? The reason lies in the pan-EuroMed's rules of origin, which are anticompetitive and protectionist in their nature, which prohibits countries like Jordan to fully integrate and compete with the EU member states and be able to fully export and trade fairly with the EU. That is one dimension. The other dimension is the discriminatory nature of the partnership agreement signed with the Mashreq Arab countries as compared with the Maghreb Arab countries. All Maghreb Arab countries were given the full accumulation privilege, whereas the Mashreq Arab countries were forbidden from that, which prohibited them from being able to export into the EU. That is not a level playing field. We have to have one set of rules apply to all, have to have instruments that enable partner countries to fully integrate and benefit from partnership with the EU."* OKLAH, Montaser H.E. (2009)

III

ANNEXES

1. LIST OF ACTIVITIES

The activities carried out between June 2002 and April 2009 are the following:

- * 8 information workshops on the 8 priority areas
- * 3 additional deepening workshops
- * 8 train-the-trainers seminars
- * 18 intra-regional activities
- * 18 regional seminars
- * 7 regional conferences
- * 59 study visits
- * 4 expert missions
- * 6 working groups meetings
- * 5 comparative studies and
- * 2 publications

More than 2.300 participants from the Mediterranean Partners have attended the various activities scheduled in the programme with more than 130 activities organised.

Full list of activities

1st PHASE

Opening Conference of the EuroMed Market Programme, Barcelona, 17-18 June 2002.

8 Thematic Workshops :

- 1) Free Movement of Goods, Brussels, 30 September - 2 October 2002.
- 2) Customs, Taxation and Rules of origin, Brussels, 28-30 October 2002.
- 3) Public Procurement, Maastricht, 16-18 December 2002.

- 4) Intellectual Property Rights, Madrid, 3-5 February 2003.
- 5) Auditing and Accounting, Valletta, 24-26 February 2003.
- 6) Protection of Personal Data and e-Commerce, Rome, 12-14 May 2003.
- 7) Competition Rules, Berlin, 26-28 May 2003.
- 8) Financial Services, Athens, 2-4 June 2003.

Closing Conference of the 1st phase, Brussels, 30 June-1st July 2003.

2- Volume publication:

- * Proceedings of the activities of the 1st Phase
- * Comparative studies

2nd PHASE

3 Additional Deepening Workshops :

- 1) Free Movement of Goods – New Approach– Global Approach– Market Surveillance, Paris, 13-15 October 2003.
- 2) Competition: State Aid and Anticompetitive Practices, Barcelona, 1st - 3 December 2003.
- 3) Public Procurement, Nicosia, 15-17 December 2003.

8 Train-the-trainers Seminars:

- 1) Rules of origin: Extending the pan-European cumulation of origin to the Mediterranean Partners, Brussels, 19-23 January 2004.
- 2) Presentation of Community law in the field of Protection of innovations, products and services in order to promote regulatory convergence, Lisbon, 26-30 January 2004.
- 3) Customs practices regarding fight against counterfeiting and piracy, Paris, 9-13 February 2004.

- 4) Public Procurement, Athens, 24-27 February 2004.
- 5) Auditing and Accounting, Rome, 29 March - 2 April 2004.
- 6) Free Movement of Goods: Risks Evaluation, Choice of Standards, Conformity Assessment, General Products Safety, Madrid, 22-26 March 2004.
- 7) Financial Services: Banking, Insurance and Securities, Berlin, 26-30 April 2004.
- 8) Competition, Vienna, 3-7 May 2004.

2 studies carried out by external experts and published in May 2005:

- * Study on Intellectual Property: comparative study on the different Mediterranean Partners and EU Member States systems and best practices, material law, administrative and judicial procedures
- * Study on Different techniques to promote trade: Traditional techniques, Consumer protection, New techniques: e-Commerce.

4 tailor-made intra-regional seminars for the States party to the Agadir Agreement:

- 1) Free Movement of Goods. Harmonisation of technical regulations, Rabat, 28 June -1st July 2004.
- 2) Pan-Euro-Mediterranean Rules of origin and the Agadir Agreement, Amman, 27-30 September 2004.
- 3) Public Procurement– Auditing and remedies, Tunis, 4 -7 October 2004.
- 4) Intellectual Property Rights, Cairo, 29 November - 2 December 2004.

8 tailor-made intra-regional seminars for groups of 3 or 4 countries :

- 1) Auditing and accounting (for Israel, the Palestinian Authority and Turkey), Ankara, 22-25 November 2004.
- 2) Pan-Euro-Mediterranean Rules of origin (for Algeria, Lebanon and Syria), Beirut, 17-20 January 2005.
- 3) Competition Rules (for Israel, the Palestinian Authority, Malta and Turkey), Valletta, 24-27 January 2005.
- 4) Auditing and Accounting (for Algeria, Lebanon and Syria), Algiers, 28 February - 3 March 2005.
- 5) Customs co-operation and fight against counterfeiting and piracy (for Algeria, Cyprus, Lebanon and Syria), Nicosia, 7-10 March 2005.
- 6) Competition Rules (for Algeria, Lebanon and Syria), Damascus, 14-17 March 2005.
- 7) Public Procurement (for the Palestinian Authority, Israel and Turkey), Brussels, 11-13 April 2005.
- 8) Pan-Euro-Mediterranean Rules of origin (for the Palestinian Authority, Israel and Turkey), Brussels, 10-13 May 2005.

Closing Conference of the 2nd phase and launch of the 3rd phase of the programme, Brussels, 20 June 2005.

3rd PHASE

During the third phase, the PMU carried out 6 additional regional activities:

- 1) Public Procurement, Paris, 4-7 July 2005 ;
- 2) The Implementation of variable geometry in the context of the Pan-Euro-Mediterranean Protocol on Rules of origin, Lisbon, 5-8 July 2005 ;
- 3) Intellectual Property Rights in the Euro-Mediterranean Partnership, Rome, 14-17 November 2005 ;

- 4) Developments in Auditing and Accounting in the Euro-Mediterranean Area, London, 21-24 November 2005 ;
- 5) Customs co-operation and fight against counterfeiting and piracy, Barcelona, 12-15 December 2005 ; and
- 6) Competition in the Euro-Mediterranean Partnership, Berlin, 20-23 February 2006;

and 6 intra-regional activities:

- 1) Public Procurement. New Developments and Future Challenges (for Israel, the Palestinian Authority and Turkey), Ankara, 12-15 December 2005;
- 2) Customs Co-operation and Fight against Counterfeiting and Piracy (for the States party to the Agadir Agreement and a delegation of the Palestinian Authority), Casablanca, 6-9 February 2006.
- 3) Customs co-operation and fight against counterfeiting and piracy (for Algeria, Lebanon and Syria), Barcelona, 2-5/5/2006;
- 4) The implementation of the Pan Euro-Med Protocol on Rules of origin (for Israel, Turkey and the Palestinian Authority), Maastricht, 24-27/4/2006;
- 5) Competition rules in the States party to the Agadir Agreement (for the States party to the Agadir Agreement and a delegation of the Palestinian Authority), Amman, 3-6/4/2006.
- 6) The implementation of the Pan-Euro-Med Protocol on Rules of origin (for Algeria, Lebanon and Syria), Damascus, 3-6/4/2006.

* Closing Conference of the 3rd phase, Brussels 16 May 2006

4th PHASE

* Launching conference of the 4th phase, Brussels, 6 July 2006

Regional seminars:

- 1) Intellectual Property Rights in the Euro-Mediterranean Partnership, Brussels, 13-16/11/2006 (Initial seminar)
- 2) The implementation of variable geometry in the context of the Pan-EuroMed Protocol on Rules of origin, Rome, 27-30 November 2006
- 3) Competition in the Euro-Mediterranean Partnership, Madrid, 18-21 December 2006 (Initial seminar)
- 4) Public Procurement, Prague, 29/1-1/2 2007 (initial seminar)
- 5) Customs co-operation and fight against counterfeiting and piracy, Paris, 26/2-1/3 2007
- 6) Competition in the Euro-Mediterranean Partnership, Munich, 26-29 March 2007 (Final seminar) + European Competition Day organised by the German Presidency of the EU.
- 7) Intellectual Property Rights in the Euro-Mediterranean Partnership, Brussels, 7-11 May 2007 (final seminar)
- 8) Public Procurement in the Euro-Mediterranean Partnership, Istanbul, 21-24 May 2007 (final seminar)
- 9) Financial Services in the Euro-Mediterranean Partnership, Madrid, 18-21 June 2007 (initial seminar)
- 10) Auditing and Accounting in the Euro-Mediterranean Partnership, Luxembourg, 9-12 July 2007 (initial seminar)
- 11) Financial Services in the Euro-Mediterranean Partnership, Lisbon, 22-25 October 2007 (final seminar)
- 12) Auditing and Accounting in the Euro-Mediterranean Partnership, Athens, 26-29 November 2007 (final seminar).

2 studies carried out by external experts and published in July 2007:

* Comparative Study on Competition Policy in the Euro-Mediterranean Partnership.

* Comparative Study on Improving Repetitive Purchases and e-Procurement in the Mediterranean Partners.

5th PHASE

* Launching conference of the 5th phase, Brussels 21-22 January 2008

6 Working Groups Meetings (regional scope)

- 1) Working Group Meeting on Public Procurement, Amman, 10-13 March 2008
- 2) Working Group Meeting on Customs co-operation and fight against counterfeiting and piracy, Bucharest, 14-17 April 2008
- 3) Working Group Meeting on Intellectual Property Rights, Seville, 5-8 May 2008
- 4) Working Group Meeting on Auditing and Accounting, Palermo, 9-12 June 2008
- 5) Working Group Meeting on Competition, Paris, 8-10 July 2008 + European Competition Day (18/19 November 2008) organised by the French Presidency of the EU.
- 6) Working Group Meeting on Financial Services, Luxembourg, 28-30 October 2008

* End-of-the-programme Publication "Towards the Free Trade Area"

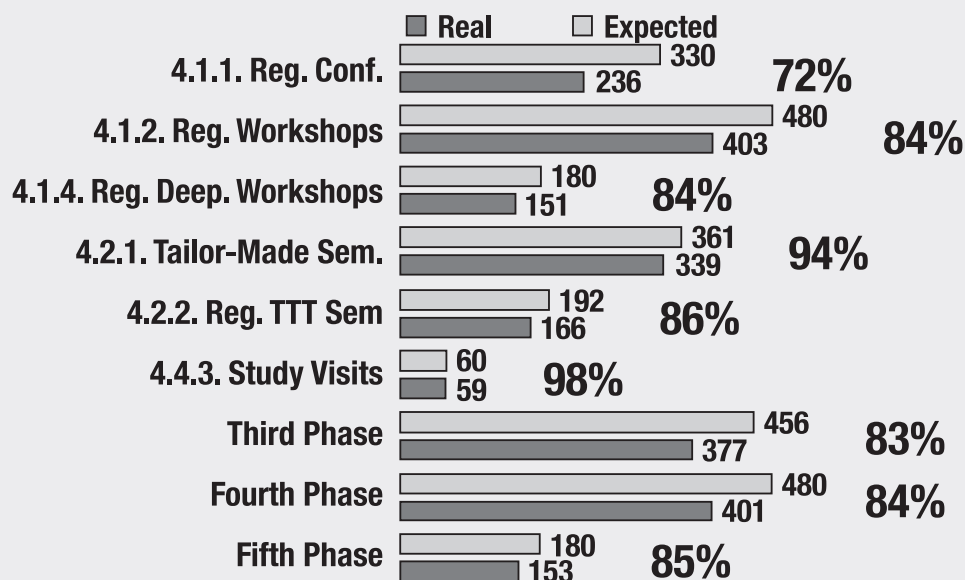
* Final conference of the whole programme, Barcelona, 28-29 April 2009

STATISTICAL DATA

5 Phases of the programme (2002-2009)

Number of MP participants

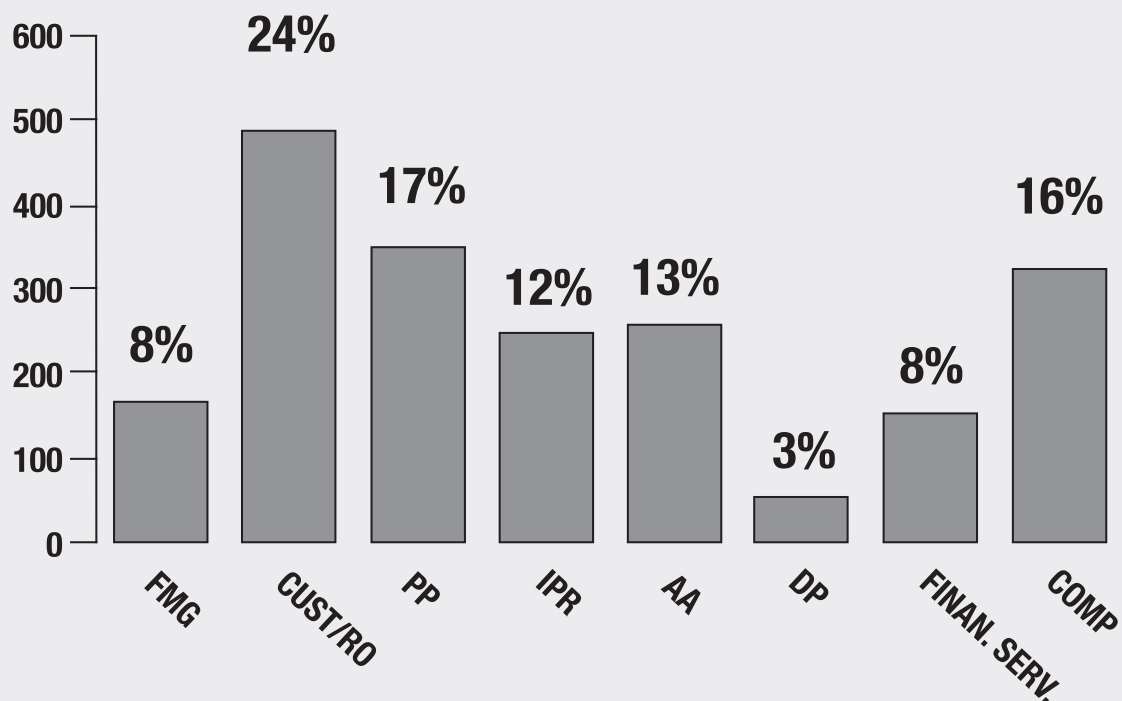
TOTAL: 2228 Participants



STATISTICAL DATA

Participation rate

By priority areas



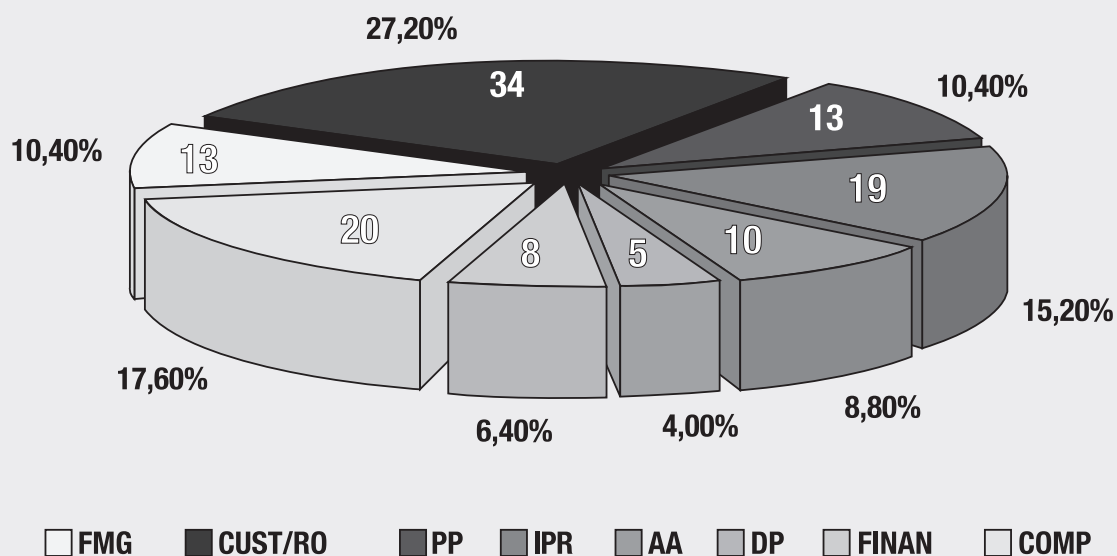
(Regional Conferences not included)

STATISTICAL DATA

Organised activities

By priority areas

TOTAL: 125 activities (Not included: 7 general conferences, 4 studies, 2 publications)



STATISTICAL DATA

Venues of activities





EuroMed Market

Regional Programme
for the Promotion
of the Instruments and Mechanisms
of the Euro-Mediterranean Market