Published in March 2020 in the newsletter of the European Group of Valuers' Associations (TEGoVA)

Business, the most European Valuation

EU legislation and business valuation in EBVS 2020

*by **Michael MacBrien**, Adviser of TEGoVA*

Members of TEGoVA are well aware of the importance of EU policy to real estate valuation: EU banking law requires mortgage lenders to use qualified, independent valuers and the European Central Bank polices valuation of bank collateral, repeatedly giving precedence to European Valuation Standards over all others. EU Treaties and secondary legislation guarantee the freedom to buy and sell land and buildings all over the Union without obstacle, all real estate professions can practice freely anywhere in the EU, EU state aid rules control social housing for middle-income tenants, EU competition authorities break up building products and elevator/escalator cartels, the European Semester process for coordinated, systemically secure national economic governance includes housing as a gauge of member states' macroeconomic stability, EU equal treatment law extends to access to buildings by the disabled, EU environmental protection, energy efficiency and renewables law targets buildings and there are clear valuation elements to all these issues.

And yet, in the greater scheme of EU action, real estate is a latecomer and not totally within the EU ambit. Most EU real estate policy has developed over the last twenty-five years and there are fundamental aspects of real estate that are not Union competence, at least in terms of hard law: housing policy, property taxation, planning and zoning law.

Furthermore, what look like 'EU real estate freedoms' when considered in isolation, are in fact offshoots of wider, more comprehensive rights: the freedom to buy and sell land and buildings is just one (very important) aspect of the free movement of capital; almost all service providers of any kind have European freedom to practice anywhere with or without establishment; competition law concerns almost all enterprise; equal treatment covers all forms of discrimination; environmental and energy law encompasses all climate warming factors (of which, admittedly, buildings are the most important by far).

It shouldn't come as a surprise, then, that business is the most European valuation, because business covers the whole economy. The EU has been regulating business since the inception of the European *Economic* Community, but whilst the initial goal was to dismantle the most glaring and egregious obstacles to 'trade' between member states, today the goal – already partially achieved – is a completely integrated EU 'internal market' ensuring that nothing can stop industry and services from developing to a European scale with seamless, just-in-time production chains nourished by a European capital market and a European industrial policy, European R&D and corresponding EU funding, all properly protected from unfairly advantaged foreign predators, 'foreign' now meaning 'non-European'.

In this context, Europe is truly the business valuer's oyster. A single, ever more integrated European economy and market covering the EU and, de facto, all the many candidate member states who have to legislate for integration *before* they can join the Union, creates exponential growth in business and valuation work permeated with EU regulatory aspects. Indeed, as the EU regulates mostly through Directives that are transposed into national law, it is important for the valuer to be able to recognise the EU hand behind the national or sub-national law when estimating the likelihood and timescale of possible changes to regulatory impacts on the business being valued.

In light of this, EBVS, like EVS, is designed in lock-step with EU law so as to provide public authorities and clients with the assurance that the Standards fit with the EU normative framework and also to didactically imbue the practicing business valuer with awareness of EU impacts and the ability to exploit that knowledge to produce better adapted Valuation Reports.

As in EVS, this is done in two ways: by systematically adopting EU definitions in all Standards and Guidance Notes – for example, explaining that the EU definitions of Basis of Value are to be applied in case of valuations performed within a framework for the recovery and resolution of credit institutions and investment firms – and by devoting a separate, bespoke Part V to European Union Legislation and Business Valuation.

Part V is no mere general culture add-on; it is basic knowledge for European business valuers. After a general introduction and overview of how EU regulation of companies has covered formation, capital and disclosure requirements, rules on takeover bids for public limited companies, mergers and divisions, minimum rules for single-member private limited liability companies, financial reporting and accounting and easier and faster access to information on companies, and on how the EU has evolved from concentrating on regulating listed companies to now covering SMEs with the specific goal of reducing their administrative burdens and has also created a statute for a European Company (the Societas Europea or 'SE'), it goes on to highlight the specific valuation aspects of EU regulation of company law, credit institutions, insurance and reinsurance institutions, investment funds, taxation, transfer pricing, state aid, enforcement of intellectual property rights and insolvency proceedings or restructuring plans.

The EU regulatory aspects of the body of the Book and of Part V are highly complementary – for instance, European Business Valuation Guidance Note 3 on Valuation of Intangible Assets is complemented and enhanced by Part V's section 9 on Valuation for Enforcement of Intellectual Property (IP) Rights:

The Guidance Note provides:

- the EU Accounting Rule definition of intangible assets for the purpose of financial statements;
- the definition of IP as defined by EU Regulation;
- the instruction to business valuers that they must consider all relevant legal factors of valuation of IP – protected status, copyright, patents, licensing agreements or third party claims – at all levels, national, EU and international.

Seamlessly, Part V outlines:

- the EU Directive on enforcement of IP rights, its measures, procedures and remedies that allow effective civil enforcement and provide a common high level of protection throughout the internal market;

- the European Commission Guidance Communication clarifying the Directive in light of the case law of the Court of Justice of the EU;

- the valuable advice on the valuation of IP rights in the final report of the European Commission's Expert Group (including business valuers) that reviewed valuation methods for IP rights and their use, identified bottlenecks in the valuation methods used for companies' financial reporting, access to finance and litigation and provided recommendations.

Anchorage in the EU legal order is fundamental to these European Business Valuation Standards that can be relied upon by public authorities, investors, the financial industry and valuers throughout the Union and beyond.

Michael MacBrien is an adviser to TEGoVA, director general of the European Property Federation and founding partner, MacBrien Cuper Isnard European Affairs