

## George Panteli

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**From:** George Panteli  
**Sent:** Παρασκευή, 22 Μαρτίου 2013 12:18 μμ  
**To:** constantinos.petrides@gmail.com  
**Subject:** FW: Information on levy and bilateral investment agreements

*George Panteli*  
*Senior Economic Officer*  
*Ministry of Finance*  
*Nicosia – Cyprus*  
*Telephone: +357 22 60 11 84*  
*Telefax: +357 22 60 27 46*  
*Email: [gpanteli@mof.gov.cy](mailto:gpanteli@mof.gov.cy)*

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**From:** Jakob-Wegener.FRIIS@ec.europa.eu [mailto:Jakob-Wegener.FRIIS@ec.europa.eu]  
**Sent:** Friday, March 22, 2013 11:53 AM  
**To:** Andreas Charalambous; George Panteli  
**Cc:** ASIMONE@imf.org; JPodpiera@imf.org; agostino.consolo@ecb.int; Philipp.Mohl@ecb.int; Markita.KAMERTA@ec.europa.eu; Christos.PASCHALIDES@ec.europa.eu; Stylianos.PANAGIOTOU@ec.europa.eu; AHajdenberg@imf.org; SSegal@imf.org; Valeska.GRONERT@ec.europa.eu; phoebus.athanassiou@ecb.int; Constantinos Lycourgos; Maryann Stavrinides; KFunke@imf.org; Clemens.Ladenburger@ec.europa.eu; Richard.Lyal@ec.europa.eu; Bernardus.Smulders@ec.europa.eu; Jean-Paul.KEPPENNE@ec.europa.eu; mario.tamez@imf.org  
**Subject:** RE: Information on levy and bilateral investment agreements

Dear Andreas and George,

Let me express my surprise about the below mail from colleagues in the office of the Attorney General and request an immediate clarification from the Cypriot authorities.

The Eurogroup statement of 16 March is explicit that "These measures include the introduction of an upfront one-off stability levy applicable to resident and non-resident depositors." I believe a clear discussion took place between Cyprus, the EWG chair and representatives of EA Member States, during which the Cypriot authorities confirmed that imposition of a one-off stability level on non-resident depositors is legally possible. I also believe that this was a key element of the political agreement reached.

As part of the programme partners' work on a consistent macro-economic and fiscal projection, it is essential to understand if such a stability levy is applied to non-residents or only to residents. This has a major impact on the economic outlook and thereby a direct bearing on the possibility to respect the targets of debt ratio in 2020 and financing envelope.

I put in copy colleagues from the legal services of IMF, ECB and the Commission and would encourage an immediate clarification by the Cypriot authorities of your legal opinion. We would appreciate an answer within the next couple of hours in order to be able to progress with our work.

Best regards,  
Jakob

**From:** Constantinos Lycourgos [<mailto:clycourgos@eudep.law.gov.cy>]  
**Sent:** Thursday, March 21, 2013 11:30 AM  
**To:** Funke, Katja  
**Cc:** Velculescu, Delia; Tamez, Mario; 'George Panteli'; [mstavrinides@law.gov.cy](mailto:mstavrinides@law.gov.cy)  
**Subject:** RE: Information on levy and bilateral investment agreements

Dear Ms Funke,

The application of a deposit levy, particularly to non-residents, would be legally problematic in a number of ways.

Bilateral agreements, as you rightly mention, are one of the problems we have to face. Cyprus has Bilateral Investment Treaties (BITs) with 26 countries (table is attached), which provide, inter alia, for the case of nationalisation and expropriation and measures having equivalent effect to nationalisation or expropriation (see Art. 5(1) of BIT with India attached). Such expropriation can only be made, and measures having equivalent effect to expropriation can only be taken, "against fair and equitable compensation..."

Given the breadth of the relevant clause ("*measures having equivalent effect to .. expropriation*"), and the manner in which such clauses in BITs have been interpreted in the awards of arbitral tribunals such as the International Centre for Settlement of Investment Disputes ("ICSID"), it seems highly likely that the deposit levy contravenes these clauses (e.g., in *Deutsche Bank AG v Democratic Socialist Republic of Sri Lanka* (ICSID Case No ARB/09/02), ICSID found that Sri Lanka had misappropriated Deutsche Bank's assets, in breach of a BIT between Germany and Sri Lanka, by preventing it (by means of a Supreme Court Order and letter from the Central Bank) from enforcing a debt due to the bank under its hedging agreement with a state owned bank).

Double Tax Treaties (DTTs) can also be highly problematic. Cyprus has DTTs with 50 countries (these can be found by following this link: [http://www.mof.gov.cy/mof/mof.nsf/page26\\_en/page26\\_en?OpenDocument](http://www.mof.gov.cy/mof/mof.nsf/page26_en/page26_en?OpenDocument)), including the Russian Federation. For the purposes of the DTTs, the deposit levy amounts to a form of taxation on capital. That concept is broadly defined, for example in Article 2.2 of the DTT between Cyprus and the Russian Federation which provides that "There shall be regarded as taxes ... on capital all taxes imposed on .. total capital, or on elements of .. capital ..".

I would be happy to discuss with you the enormous problem that would arise under these DTT in the event of the imposition of a deposit levy, as well as the numerous other legal problems that the Republic of Cyprus would face in that event (Constitution, European Convention on Human Rights, Charter of Fundamental Rights of the EU).

Kind regards,

Constantinos Lycourgos

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*Dr. Constantinos Lycourgos*  
*Head, European Union Law Department*  
*Law Office of the Republic*  
*1 Apelli Street*  
*1403 Nicosia*  
*Tel: +357 22 889 182*  
*Fax: +357 22 889 230*  
*Mobile: +357 99 66 37 62*

**From:** Funke, Katja [<mailto:KFunke@imf.org>]  
**Sent:** Thursday, March 21, 2013 12:44 PM  
**To:** [clycourgos@eudep.law.gov.cy](mailto:clycourgos@eudep.law.gov.cy)  
**Cc:** Velculescu, Delia; Tamez, Mario  
**Subject:** FW: Information on levy and bilateral investment agreements

Dear Mr. Lycourgos,

As mentioned to Mr. Panteli, we would need to get more clarity on the legal obstacles related to applying a deposit levy to non-residents.

As far as we understand, the problem is stemming from bilateral investment agreements. We would appreciate if you could help us to get more clarity on this. In this regard, could you let us know (i) which countries Cyprus has such agreements with, (ii) whether the agreements are the same with all relevant countries, and (iii) what kind of "levies" would fall under such agreements, i.e., does it depend on the design of the "levy" whether it would fall under the agreement or not. Also, are there other bilateral or multilateral agreements that could affect the application of a deposit levy to non-residents?

I would be happy to provide additional information or to call you at your convenience.

Many thanks in advance for your help.

Kind regards,  
Katja Funke

+1 202 492 7647

**From:** George Panteli [<mailto:GPanteli@mof.gov.cy>]  
**Sent:** Thursday, March 21, 2013 12:20 PM  
**To:** Funke, Katja  
**Cc:** Velculescu, Delia; Tamez, Mario; Constantinos Lycourgos  
**Subject:** RE: Information on levy and bilateral investment agreements

Dear Katja,

I believe that the appropriate person to discuss the issue with is Mr. Constantinos Lycourgos of the Attorney General's Office. His email is [clycourgos@eudep.law.gov.cy](mailto:clycourgos@eudep.law.gov.cy).

Best

*George Panteli*  
*Senior Economic Officer*  
*Ministry of Finance*  
*Nicosia – Cyprus*  
*Telephone: +357 22 60 11 84*  
*Telefax: +357 22 60 27 46*  
*Email: [gpanteli@mof.gov.cy](mailto:gpanteli@mof.gov.cy)*

**From:** Funke, Katja [<mailto:KFunke@imf.org>]  
**Sent:** Thursday, March 21, 2013 11:53 AM

**To:** George Panteli  
**Cc:** Velculescu, Delia; Tamez, Mario  
**Subject:** Information on levy and bilateral investment agreements

Dear George,

The Attorney General mentioned some considerations with respect to the levy on nonresidents that are related to bilateral investment agreements. We would need to get clarity on what the possible issues are and how they affect the discussed options.

Could I call you on this?

Many thanks in advance,  
Katja