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*Human resource management and labour law implications of
strategic outsourcing:*

*“Protection and motivation of employees in the European labour
market”*

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Abstract

The aim of this research paper is to evaluate the business administration and labour law related issues arising from outsourcing. Through an analyses of the outsourcing concept and the different driving forces behind the decision making process, the current study has identified certain current and future trends both in terms of geographic direction of the transfer, as well as identified the most popular business areas subject to outsourcing.

The Human resource management issues arising from corporate restructurings were discussed and multiple factors affecting employee perception of the change in organisational structure are presented. In addition, the career concept and Hofstede's cultural dimensions will be introduced as tools for addressing the impact outsourcing can have on the employees of both organisations.

Labour law in Europe is discussed with the purpose of finding out how employees involved in an outsourcing arrangement are protected on the European Union level since transfer of business in the form of outsourcing usually takes place between two or more countries.

Finally, the empirical research will point out how employees of the service providing entity feel about the topics identified in the analysis of the secondary data as problematic for motivating employees.

1 Introduction

As separate topics, strategic outsourcing, human resource management and harmonization of regulations governing labour protection in the European internal market have been discussed extensively in contemporary literature. The benefits of outsourcing are extensive and overall most of the studies predict a bright future for further expanding outsourcing into new corporate functions that have traditionally belonged to the core internal operations of a business entity, such as accounting and finance. Geographically, the current trend on transferring non-core operations of companies from North-Western, to South-Eastern Europe has, in my opinion, created a pressure to increase employee protection inside the common market and demands new methods for motivating staff affected by outsourcing. As addressed in the famous “Supiot report”, further research into the new triangular employment relations created by outsourcing is welcome for maintaining this development within the scope of Labour law.¹ Having personally experienced the difficulties of reporting to more than one employer, as a former employee of an outsourcing arrangement, I have also had the chance to see the tremendous opportunities of outsourcing non core functions to a company specialised in that particular field of business. Not only are the opportunities there for the companies to exploit, but also employees are, in some forms of outsourcing, offered a unique possibility to create long lasting intercultural networks of people from two companies, the outsourcing one and the service provider. However, the benefits of outsourcing may be strongly undermined if the arrangement is only focused on reducing costs by employing the cheapest labour available in the market thereby ignoring other possible benefits of outsourcing. Therefore, finding the balance between the costs and the benefits requires a thorough research of the three topics: outsourcing, human resource management and European Union labour law.

An issue closely related to the general business concerns of outsourcing in Europe is social dumping and job loss of the developed economies with higher standard of living to the less developed regions of Europe. Many studies of, for example World Trade Organisation, claim that the concerns of the developed countries are disproportional and that in long term the benefits of re-locating jobs are bigger than the temporary negative impact experienced by the individual countries in short term. However, the rate of unemployment as a result of jobs moving abroad is 100 per cent for those individuals most dramatically affected. This development is nevertheless unavoidable in the current situation characterised with globalisation and lowering of trade barriers, for which

¹ Supiot, A. Et al., “Beyond employment: Changes in work and future of labour law in Europe”, Oxford University Press 2001, pg.22

reason the focus should not be on how to avoid outsourcing, but rather, how to do it better.² The existence of European Union may well have a role to play in shaping the future of outsourcing, among many other things.

Being one of the four freedoms of European Union, the free movement of persons and services cannot be impeded by restricting businesses' opportunities to consolidate their operations to a country where the task can be conducted in the most cost effective manner and by taking advantage of economies of scale. The trend of jobs moving from countries with strong welfare regimes to countries with weaker labour protection is a common trend global. While the creation of European Union (EU) has contributed to lowering the barriers of free movement inside the common market, EC legislation has also made efforts to harmonize labour protection among the member states, especially in the light of the recent enlargement of the Union to Eastern Europe. One of the latest efforts to ensure the protection of employees in an outsourcing arrangement is the introduction of the revised version of the Council Directive on Transfer of Undertakings.^{3 4}

While creating unique and new employment opportunities for young professionals in countries such as Spain and Slovakia, the frustration of employees dealing with the new counterparts and colleagues from the countries mentioned above can be high and motivating employees on both sides of the outsourcing deal becomes a challenging and central task of human resource management of the companies involved.

Addressing this complex subject matter, the business implications and challenges created by outsourcing, in the light of the rules governing European internal market will add value to the current knowledge of both, the businesses considering sourcing out some internal operations, as well as to the European Union institutions involved in drafting laws within the field of Labour Law. Both sides are concerned with managing and protecting of employees inside the enlarged European market.

1.1 Background of the research topic

The concept of employment relationship, the link between an employee and an employer, has greatly evolved throughout the past two decades due to organisational changes resulting from the rapid growth in corporate restructuring, which has been a direct response to external pressures of globalization and increased competition. At present, a workplace often consists of employees from

² World trade report 2005:

http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr05-3c_e.pdf

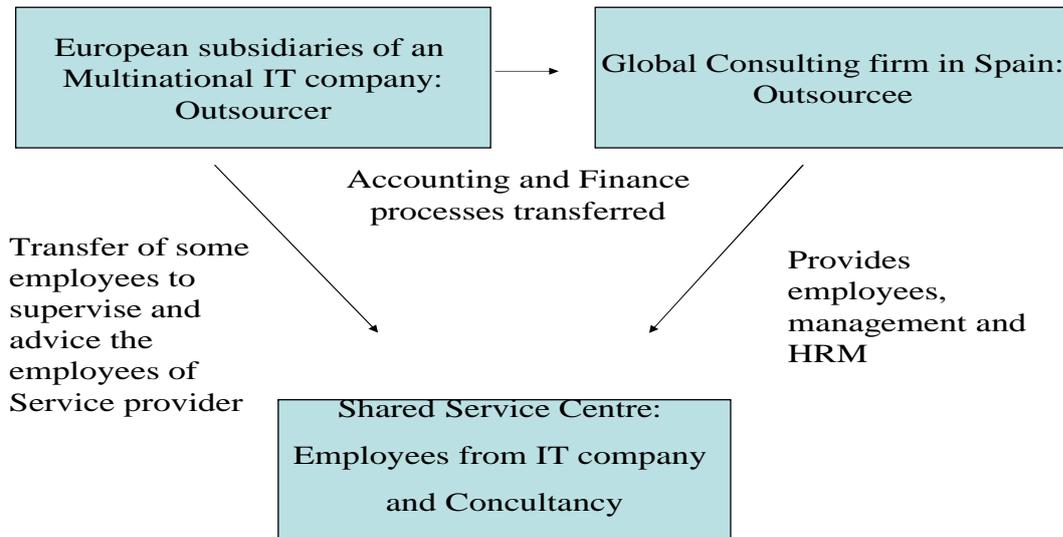
³ Council directive 2001/23/EC of 12 March 2001 on Transfer of Undertakings

⁴ Consolidated version of the Treaty establishing the European Community, Art.3, paragraph 1 c

multiple companies and a Triangular relationship between an employee and one or more employers as illustrated in Figure 1 below, has added to the complexity in defining the roles and responsibilities of the primary and secondary employer. An example of this type of triangular relationship is a situation where a person has been employed through a temporary personnel agency, such as Manpower or Adecco, to work for a project in a company. In the same project team there can also be employees hired directly by the company itself who enjoy some additional privileges as compared to the, so called, external employees. However, an even more complex relationship between an employee and multiple employers is an outsourcing of internal functions to an external company, who then employs workers to perform the job designed and controlled by the outsourcing party, on the outsourcer's premises. In some cases, the employees of the service purchasing party, the outsourcer, may be transferred to the service provider, the outsourcee.

As illustrated in Figure 1, the split of tasks between all three parties (Employees and Management from outsourcer and outsourcee) imposes completely new demands in terms employee protection in an outsourcing arrangement. Determining of the actual employer in contemporary labour market is no longer a straight forward task as it traditionally has been since the employer is not necessarily the party with real decision making power, even though the employment contract may be concluded with only one company. For example, in a Shared Service Centre (SSC) where the outsourced activities are conducted under a Triangular management structure illustrated in Figure 1, there are usually employees from both sides of the outsourcing deal, working mainly with the same tasks (or tasks closely related to each other) but who have employment contracts with different employers. These employees may not be nationals of the country where the job is actually located, due to the fact that transfer of business usually shifts jobs from one country to another to reduce cost of labour. As the empirical part of the current study demonstrates, in an SSC composed of employees from all over the world, the possibility of exploitation due to language problems and lack of knowledge of local labour regulations is higher than if the individuals would be from the country in question. To analyse the possible problems related to the prevailing differences in welfare regimes and labour protection among European countries, the current study will view outsourcing reality from the human resource management, as well as European labour law perspective.

Chart 1. Structure of a Shared Services Centre



From a company's strategic point of view, this setup of a workplace having company's own employees (employees of the IT company) and employees rented from a personnel service firm (Manpower) or employees from a company performing outsourced tasks (Consultancy) is very challenging from management point of view. How can similar working conditions and motivational factors be guaranteed for all the employees at the site even though the legal responsibility for ensuring the equality is not on the "host" company? Much research has already been devoted to analysing the impact of outsourcing on the employees of the outsourcing entity, while the service provider's employees have generally been ignored in the current literature. However, service quality and the relationship between those two groups of employees seem to be vital for a successful outsourcing arrangement.

1.2 Problem definition

By analysing the outsourcing phenomenon from business strategic, human resource management and legal point of view, the following research problem has been extracted as the focus of the analysis:

“ How are employees involved in an outsourcing arrangement motivated and protected in the European Union ? ”

1.3 Purpose

In answering the question formulated above, the current study will analyse the connection between the following three topics: Outsourcing, Human resource management (HRM) and Labour law in Europe. The general aim of the current study is to contribute to the existing knowledge of outsourcing from an interdisciplinary perspective. Out of the general aim and the research question presented above, the following issues related to the two disciplines will be addressed throughout the study:

- **Business administration:** To examine the role of human resource management in relation to motivation of employees of both outsourcing and service providing organisations in the event of strategic outsourcing.
- **Legal:** To evaluate the legal measures the European Union has taken in terms of increasing the employee protection and harmonization of labour law among its member states with regard to transfer of undertakings.

After presenting the current and future trends in outsourcing, the HRM section will introduce theories for addressing the employee motivation issues arising from the new forms of outsourcing leading to the Labour law chapter that concentrates on looking at the protection of the individuals affected by an outsourcing decision. In the last two chapters, an empirical research of the experiences of employees implementing an outsourcing arrangement is conducted and analysed due to the lack of information gathered from this group of stakeholders in the existing research.

1.4 Demarcations

Among the different types of outsourcing, the production outsourcing has been excluded from the scope of this study since the future trend in the outsourcing business is on sourcing out services. Also, a distinction here should be made between outsourcing the Human Resource (HRM) function of the company as opposed to analysing the role HRM has in facilitating an outsourcing arrangement. The first scenario will be mentioned even though the emphasis of the HRM chapter is on the latter concept.

In addition, an in depth analysis of temporary personnel services and tensions these employment relationships create in today's working environment will not be presented in the current study. Even though outsourcing and renting personnel seem to go hand in hand, the relationship is safeguarded with different legal measures and renting personnel and sourcing out tasks differ greatly also in their business reasoning. In an outsourcing deal the organizational change is more complex and

unclear than in the case of renting personnel. The analysis of temporary personnel services is therefore another research topic and would require a full study of its own.

From the labour law perspective it should be noted that the current study will focus on the generation of EC labour law based on Council framework Directives and communications. Therefore, an extensive comparative study between two or more European countries and their labour regimes will not be conducted. The approach is from a more general and descriptive perspective rather than being a precise analysis of how the level of employee protection differs between some specific countries.

1.5 Outline of the thesis

The study has been divided into four parts of outsourcing, human resource management, labour law and finally, the empirical case study. The first topic, outsourcing will begin the presentation of the concepts and trends related to the business strategy of outsourcing in Chapter three. Within the chapter three distinctive parts can be defined ranging from the analysis of the background of the concept to a presentation of the underlying concepts and reasoning behind adopting a strategy such as outsourcing. Finally, the future trends of outsourcing practice will be discussed.

The second part starting from chapter four, is related to the impact outsourcing has on human resource management and will follow the same structure as the previous chapter. In the first section, the business function called Human resource management will be introduced with an emphasis placed on the cultural differences in Europe related to HRM practice followed by an analysis of career concepts. The second section of HRM will focus on explaining the impact outsourcing has on employees and finally, in the third sub chapter, the role of HRM in managing an outsourcing deal will be discussed.

The third part starting from Chapter five is devoted on the labour law in Europe. This Chapter has been divided into four main sections: the first one presents the background of labour law dimension of the European Union which is followed by the second section focusing on the future changes in the employment protection policy of the Union. The third sub chapter will analyse the legal basis of regulating employment matters on European level leading to the fourth section in which the relevant piece of Community legislation related to outsourcing is presented and its application in outsourcing arrangements is analysed based on case law and Commission communications.

Finally, the last part starting from Chapter six will present the empirical case study and the results of a survey conducted. In the last Chapter, conclusions will be drawn based on the secondary and primary data collected and presented throughout the study.

2 Overview of methodology applied

The methodology applied in the current research has been narrowed down from the over arching approach to how material was chosen for the disciplines of business administration and law.

2.1 Over arching methodology

The underlying methodology of the current research can be defined as a deductive rather than an inductive one. The three sections of the study are all based on secondary data and the purpose of the literature review is to frame the research problem and thereby identify the relevant concepts and facts of each topic. Finally, drawing conclusions based on the secondary data and literature, the primary data collected will position the current study in the contemporary research by tackling a new, not so extensively documented issue of outsourcing, namely the experiences of the employees of the service providing organisation.⁵

2.2 Business administration methodology

In the business administration section covering outsourcing and its implications on Human resource management, the methodology will concentrate on literature reviews, analysis of past research papers and finally a case study of an actual outsourcing deal inside European Union will be conducted.

The empirical data collection in the form of a case study will be by conducting a survey on the former employees of a company delivering outsourced services to an outsourcer. The purpose of this research is to identify employee motivation related issues and not to investigate the areas of outsourcing, contract arrangements and the purpose of outsourcing, which is already covered by, for example, the survey published by Andrew and Nada Kakabadse of Cranfield School of Management.⁶ Even though the empirical study is heavily concentrated on the human resource and business strategy section of the research topic, there is a possibility that a connection between the case study and the concerns related to the future of European Community (EC) labour law will be

⁵ *Ghuri, P. & Gronhaug., K.*, "Research methods in business studies", Prentice Hall Europe, Second edition, 2002, Pg. 14-45

⁶ *Kakabadse A.*, "Smart sourcing : international best practice", Basingstoke : Palgrave, 2001

discovered. The need for collecting such information has been expressed in articles related to the application of the Transfer of Undertakings Directive by mentioning that an interdisciplinary approach of both business and law sides of the topic is welcome.⁷

2.2.1 Literature review of human resource management and outsourcing

The literature for both outsourcing and HRM section consists of books, articles and research papers. The main empirical research used in the outsourcing section is a survey published by Andrew and Nada Kakabadse from the Cranfield School of Management in 2001. Based on the book, two research articles have been published by the authors presenting the main results of the survey and will be referenced extensively throughout the current study. In addition, two books of outsourcing, one from Maurice F. Greaver and another one written by Simon Domberger, will be used as the main sources for defining concepts related to outsourcing.

In the human resource management and outsourcing section the main motivation behind choosing some of the articles has been the literature compendiums distributed during the Master of European Affairs mandatory courses related to International Strategic Human Resource Management and Strategy in the spring semester 2006. Other key research articles for HRM is the study of Irene Nikandrou et al from Athens University of Economics and Business related to clustering European countries for HRM purposes as well as the study conducted by Romie F. Littrell from Auckland University of Technology and Lapadus Nicolae Valentin from University of West Timisoara was used for presenting the cultural dimensions of Professor Geert Hofstede. Also online resources of European Union, World Trade Organisation and Wikipedia, among other providers, have been used in both sections.

2.2.2 Empirical data collection

The empirical data collection is based on a case study of an outsourcing arrangement between the European divisions of a large multinational IT company and the Spanish division of a global management consultancy. The setup of the outsourcing arrangement itself will be presented based on the experiences of the author of the current study, whereas the actual primary data collection will be conducted in a form of a survey distributed to the former employees who have worked on the

⁷ Fang L., Earnshaw J., et al., "For better and for worse: transfer of undertakings and the reshaping of employment relations", *International Journal of Human Resource Management*, Vol. 15(2), Pg.276-294, March 2004

Shared Service Centre. The choice of the target group is motivated by the fact that the current employees were not available for the research. In addition, many of the former employees of this particular outsourcing case are currently working for other outsourcing arrangements and therefore this group has extensive experience of being employed in such an environment.

2.2.3 Single or Multiple case studies

Due to the nature of the current study, the choice of a single case study, as opposed to a comparative research of multiple outsourcing arrangements, is justified. The aim of the study is not to compare the outsourcing practice of multiple enterprises but rather to identify what employee related issues an outsourcing arrangement may imply, both from HRM and European labour law perspective. The limitation of concentrating on a single case is naturally that generalisations are difficult to be made based on such a small sample of employees of one specific outsourcing deal. However, as mentioned before, the aim is not to give advice to companies planning to outsource their operations but to provoke discussion of the sustainability of the current methods of protecting and motivating employees in an outsourcing environment in Europe.

2.2.4 Choice of the specific Outsourcing case

The main motivation for choosing this particular case of outsourcing to be analysed in the empirical research of the study is the personal work experience the author has gathered from the two organisations. After working as an employee on the service provider's organisation, the author was also employed by the outsourcing party. In addition, based on the analysis of the literature reviewed, the specific outsourcing arrangement between the two companies selected was identified as the growth area of outsourcing both in terms of the business area chosen and in terms of the geographic location of the SSC. It therefore seems that this case as such represents the future of outsourcing and therefore enhances the relevancy of the case selection.

2.2.5 Qualitative or quantitative measures

For acquiring primary data on motivations and opinions of employees of an outsourcing service providers organisation, the quantitative data collection method has been applied. Due to time constraints and to maximise the number of responses received from the focus group, the survey mainly contains multiple choice questions with answers presented on a scale from one to five

ranging from very little to very much type of questions in the beginning of the survey to negative to positive style of options in the latter half of the questionnaire. The emphasis is on testing and verifying the concepts and assumptions made in other sections of the study regarding the career and work quality related motivations as well as on collecting general experiences of employees that have, or currently are, employed in an outsourcing arrangement.

The sample size is proportionate to the overall amount of employees in the investigated organisation which is approximately 150 people. The aim was to receive 30 responses from the target group. However, only 23 individuals responded to the survey due to time constraints. The seven non-respondents were not a special group that may have influenced the results of the survey. Most of the respondents are either team leaders or line employees of the service provider.

2.2.6 Data analysis

The data collected in the empirical research will be analysed using graphs to describe the distribution of responses on the scales of each question. In addition, to pie charts, also histograms and are created to display the frequency of, for example, how many correspondents regard the existence of a career path as a motivating factor in their work. The main emphasis is to summarize and organise the data in a meaningful manner to see the tendencies, or the lack of it, in the variables chosen for the measurement. A pattern such as the correlation of nationality with the degree of motivation brought by career diversity is not the focus of the data analysis. Such generalisations would require a larger sample size as well as more variety in the background of the surveyed population.

2.2.7 Source criticism

Generally, using research results of secondary sources as a basis for describing a phenomenon is challenging since the objectives of those studies may be quite different from the objectives of the current study. However, using the research problem as the starting point for collecting the secondary research results from existing literature, and not the other way around, may have mitigated this problem. Additionally, too heavy reliance on articles and online resources instead of books may have limited the scope of the current research. The primary data collected should be analysed with great cautionness and extensive generalisations cannot be made based only on the responses of employees from one outsourcing deal.

2.3 Labour law: overview of material selected

The literature selected will focus on examining the current Labour Law environment in which European companies operate – with a focus on EC directives and possible regulations relevant for the Outsourcing environment. Literature does not only include the legislative documentation but also books, reviews and reports from international organizations and academic publications analysing the development of labour law in Europe. Some legal definitions of employment contract and different ways of describing employment relations are also included in the analysis of the legal environment

2.3.1 General Literature on labour law

The famous “Supiot Report”, a book written by Alain Supiot et al., will be used as a starting point for introducing the history of labour law and the future challenges and developments facing contemporary labour law in Europe. The “Supiot Report” is the result of a very ambitious task assigned to a group of experts by the European Commission. The aim of the project was, according to the group of experts, “to conduct a prospective and constructive survey on the future of work and labour law within a community-wide, intercultural and interdisciplinary framework, culminating in a conference and subsequent report on the subject”.⁸ The report has been extensively referred to in memorandums of labour protection related directives and communication documents, as well as in the general debate of the contemporary function of employment law in Europe. The main topic of the debates related to this report has been how to protect employees in the new labour environment while simultaneously providing employers with sufficient flexibility to retain competitiveness globally, and specifically within European internal market.⁹

2.3.2 EC legislation

The main primary legislation used for the purposes of explaining the community labour law is the Treaty Establishing the European Community and Article 137, which is the legal basis of the framework directives and commission proposals related to the current study.¹⁰ Among the directives

⁸ Supiot, A. et al., “ Beyond employment: Changes in work and future of labour law in Europe”, Oxford University Press 2001, Preface

⁹ Editors of Socio-Economic review, “Labour law and the ‘new workplace’:a symposium”, Socio-Economic Review Vol 4,2006, Pg. 119–120

¹⁰ Kretz, J., Presentation “Community labour law”, http://www.eujapan.com/japan/presentation_Kretz.pdf

the current study will focus on a specific one which can be considered relevant for outsourcing and the change in European employment market in general: Council directive on Transfer of Undertakings¹¹. The analysis of this Directive will be based on information gathered from previous master's thesis regarding the application of this particular directive on outsourcing. In addition, the commission working documentation and memorandums collected from the institution's website will be used.¹²

2.3.3 ECJ cases related to Transfer of Undertakings directive

Currently there are 37 judgements rendered based on the directive of Transfer of Undertakings and further more 6 cases are still pending before the European Court of Justice. In addition, EFTA court has handed down five judgements on the same matter. To analyse the Council Directive on Transfer of Undertakings application in outsourcing environment. The case law has been selected based on a Commission memorandum¹³ as well as another students thesis written on the Directives application on Outsourcing.¹⁴

2.3.4 Source criticism

Using a master thesis for analysing the application of Transfer of Undertakings directive on Outsourcing may have limited the scope of research on the case law and thus increase the chance of missing some relevant cases. To address this limitation and possibly to identify more Case law related to the application of this particular directive on Outsourcing, the books of Catherine Barnard and Alain Supiot, as well as the Commission memorandum of the application of the Directive in general have been reviewed.¹⁵

¹¹ Council directive 2001/23/EC of 12 March 2001 on Transfer of Undertakings

¹² Kretz, J., Presentation "Community labour law", http://www.eujapan.com/japan/presentation_Kretz.pdf

¹³ Commission memorandum on rights of workers in cases of transfer of undertakings

¹⁴ *Thyssel, J.*, "Dina eller mina arbetstagare?- en studie av överlåtelsedirectivets tillämpning på outsourcing", Handelsrättslig skriftserie Nr. 17 "Företagsöverlåtelser – nya utmaningar för arbetsrätten", Pg. 98-113

¹⁵ *Barnard, C.*, "EC employment law", Second edition, Chichester : Wiley, 1996

3 Outsourcing

The business strategy of outsourcing presented in the current chapter will begin with an overview of the terminology and historical background behind the concept of outsourcing. After discussing the benefits sought by outsourcing and potential concerns related this strategy, the concept of core competence and different forms of outsourcing arrangement are presented. Towards the end of the chapter, the discussion will take the future of outsourcing in Europe into consideration. The main empirical research used is conducted by Andrew and Nada Kakabadse and published in the book “Smart sourcing : international best practice”.¹⁶

3.1 Background of Outsourcing

In order to analyse the current and future trends in outsourcing, and the benefits and concerns related to the adoption of this strategy, the basic terminology and historical background of strategic outsourcing will be introduced. Although the times have changed significantly from the early years of outsourcing practise, the basic reasoning behind has remained constant. Based on two industry examples, the emergence and early characteristics of outsourcing will provide a starting point for the subsequent analysis of the topic.

3.1.1 Terminology

To clarify the terminology surrounding the topic of Outsourcing, the first distinction should be made between outsourcing and one of its forms, offshoring. Outsourcing is a business strategy where “*some of the companies non-core operations are delegated to an external entity that specializes in that operation*”¹⁷ or “*the process of externalising tasks and services previously performed in-house, to outside vendors.*”¹⁸ Offshoring, on the other hand, refers to the same activity with the addition of the cross boarder element of transferring operations abroad. The term outsourcing was originally invented by the information systems trade press in the late 1980’s to describe the tendency of companies to source out their Information Technology (IT) related tasks to service providers. Other corporate strategies related to organisational restructuring include subcontracting and strategic partnership arrangements, both of which have a much longer history in

¹⁶ Kakabadse A., “Smart sourcing : international best practice”, Basingstoke : Palgrave, 2001

¹⁷ <http://en.wikipedia.org/wiki/Outsourcing>

¹⁸ Jenster, Per V. et al, “Outsourcing-facts or fiction”, Strategic Change 2000, Vol.9 pg. 147

the field of business strategy. Outsourcing differs from those two strategies since the operations transferred from the original company to the service provider are “internal” activities of the transferring entity.¹⁹ Also the temporal dimension distinguishes outsourcing from some other forms of corporate restructuring as outsourcing is characterised with a long term relationship that often leads to permanent arrangements, whereas subcontracting and contracting out can be seen as a rather short term contractual relationships between two or more companies.²⁰

To further clarify the difference between outsourcing and offshoring, based on the World Trade Report from 2005, outsourcing can be divided into four categories depending on the control and ownership between the outsourcing organisation and the service provider, and whether the operations are moved to abroad or remain in the same country. The current study focuses mainly on the outsourcing to non-affiliated firms locally or to abroad. It should be noted here that the concept of affiliation refers to the ownership relation the outsourcing organisation has with the service providing one.

Table 1: Types of Outsourcing²¹

		Located in home economy	Located abroad
Shifting intra-firm inputs/supplies to	Non-affiliated firm	local/domestic/ onshore outsourcing	offshore outsourcing = offshoring
	Affiliated firm	captive onshore outsourcing	captive offshore outsourcing = captive offshoring

Source: adapted from OECD (2005a).

3.1.2 Historical background

The articles written during the 1980’s have mostly been concentrated in analysing Information Technology outsourcing, and outsourcing of so called low value operations such as canteen or cleaning services. According to some authors, the foundation of the development of a strategy called outsourcing dates all the way back to the 1970’s when corporations were considered to be under-performing. In the 1980’s, the global recession further increased the need for companies to

¹⁹ Greaver, M.F., ” Strategic outsourcing : a structured approach to outsourcing decisions and initiatives”, AMACOM, 1999 Pg. 10

²⁰ Kakabadse A., & N, “Outsourcing Best Practice: Transformational and Transactional Considerations”, Knowledge and Process Management, Vol. 10(1), 2003, Pg. 60

²¹ World trade report 2005, Pg. 267: http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr05-3c_e.pdf

rationalise their organisational structures and therefore to explore new business strategies, among which sourcing out non core activities was strongly present. Companies were advised to adopt a more focused strategy of concentrating on their core business by vertically de-integrating the organisation.²²

The development in the car industry during the past century illustrates well the processes and driving forces behind outsourcing. This particular industry has been a fertile platform for developing new managerial innovations needed for combining the skills ranging from electronics to marketing while maintaining cost effectiveness. As a response, the car manufacturers have had to identify their core tasks, the strategically important knowledge that has to be maintained in-house, while the non core resources and competencies can be purchased from external suppliers.²³

One of the most known early outsourcing arrangements has been implemented by IBM, which decided in the early 1980's that their core competence is marketing of their products and not the production of components for PC's, which led to extensive component production outsourcing. Even though the results of this decision were not profitable for the company's market position in the long run, IBM was able to innovate completely new business functions through an outsourcing relationship of providing services to Eastman Kodak. This Outsourcing deal from Kodak to IBM resulted in the creation of a new business unit, IBM Global Service, which concentrated solely on operating the outsourced services for the clients.²⁴

The fact that outsourcing as such has existed for quite a while, from early 1980's until this very moment does not mean that outsourcing as a subject of research would already be fully covered. As mentioned in the article of Per V. Jenster, the concept of outsourcing has greatly changed during the past years: Companies are no longer focused on externalizing tasks that can be defined as "harmless" functions of a corporation, but the trend is moving towards sharing or completely moving certain vital operations of the company to third parties. The purpose of his article also underlines that so far most of the literature and research on the topic has been concentrated on the experiences of the company outsourcing and very little research has actually been devoted on the experiences of the party actually performing the outsourced operations.²⁵

²² Kakabadse A., & N, "Outsourcing Best Practice: Transformational and Transactional Considerations", Knowledge and Process Management, Vol. 10(1), 2003, Pg. 61

²³ World trade report 2005, Pg. 268: http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr05-3c_e.pdf

²⁴ Kakabadse A., & N, "Outsourcing Best Practice: Transformational and Transactional Considerations", Knowledge and Process Management, Vol. 10(1), 2003, Pg. 61

²⁵ Jenster, Per V. et al, "Outsourcing-facts or fiction", Strategic Change 2000, Vol.9 pg. 147

3.2 Outsourcing as a business strategy

The decision to outsource a certain internal operation to an external service provider is a challenging task for any enterprise and the possible negative results of the transfer are usually difficult to reverse. Not only operational activities are being sourced out, but also factors of production and decision making power. Therefore, the preparatory work and in depth analysis of the benefits sought and possible risks involved is crucial for achieving a successful outsourcing deal. The driving forces behind outsourcing range from external factors, such as changes in the industry specific requirements and increased intensity of competition, to the internal pressures related to increased focus on some activities at the expense of cutting down resources from another. Globalization, developments in IT and production technology, and volatile customer needs are also factors affecting the timing of an outsourcing decision as well as the choice of the functions to be outsourced.²⁶

To illustrate the magnitude of outsourcing arrangements, according to a study conducted by International Data Corporation, the size of the top 100 outsourcing deals concluded in 2000 fall between 100 to 249 million US Dollars. The enormity of the deals as such reflects the importance they have for the companies involved. The stakes are high and many challenges face both sides of the deal. To demonstrate the problems related to such a massive arrangement, the results of a Dataquest study from 1999 provides significant results indicating that up to 53 per cent of all outsourcing customers have had to renegotiate their contracts, some of which were completely terminated as a result of the renegotiations.²⁷ However, satisfaction with the outsourcing arrangement in general is reported to be predominantly positive by 58 per cent of correspondents of the survey conducted by Andrew and Nada Kakabadse from Cranfield School of Management.²⁸ One should keep in mind that the costs of bringing the functions back in house can be significant and therefore the preparatory work and efficient management of the deal are vital for avoiding possible failure and the costs related to it. The possibilities of failure are also recognised in a study focusing on the negative outcomes of outsourcing conducted by Deloitte Consulting LLP, which states that one in four participants actually recalled the outsourcing deal and brought the operations back to their company.²⁹

Once the significance and impact of implementing a strategy such as outsourcing have been presented, the attention of the organisation involved should focus on the internal assessment of identifying that the preconditions required for successful outsourcing are present. The capabilities

²⁶ Ibid. Pg.149

²⁷ Kakabadse A., & N, "Outsourcing Best Practice: Transformational and Transactional Considerations", Knowledge and Process Management, Vol. 10(1), 2003, Pg. 62

²⁸ Kakabadse A., "Smart sourcing : international best practice", Basingstoke : Palgrave, 2001, Pg. 47

²⁹ Anonymous, "Outsourcing falling from favour", CMA Management, Vol. 79(4), Pg.11-12

required from the organisation involved for achieving an effective outsourcing arrangement are identified in the Cranfield School of Management survey mentioned above. These five capabilities include:

1. Being ready for outsourcing,
2. Having management skills to integrate the outsourced operations to the tasks of remaining staff
3. Having enough resources to effectively manage the transactional arrangements which include quality controls
4. Capability to manage supplier relations with development of shared understanding, and
5. Understanding the importance of managing internal relations by motivating the staff.

Each capability requires organisational, financial, technical and human resources and the existence of the five capabilities listed above seems to distinguish the high and average performing companies from one another according to the survey.³⁰

In the current study, the human resource and cultural considerations that often emerge in a cross-boarder outsourcing arrangement, and are related to the fifth precondition mentioned above, will be analysed in further detail in the Chapter 4 . In the following sub chapters the discussion will move into more detail of the reasoning behind the outsourcing decision, the benefits sought as well as the possible negative effects a transfer of operations may have. In addition, the different outsourcing models and the significance of accurately identifying the core competencies will be presented. These variables have been chosen to be analysed in the current study due to the fact that the labour law and human resource management angle of the study will raise issues related to the concepts presented below.

3.2.2 Outsourcing reasons and concerns

In the extensive research conducted in the field of outsourcing, many studies identify different top five reasons for sourcing out tasks. The ranking of reasons to outsource depends on the position the person interviewed holds in the company in questions as well as on the industry the company operates in. Therefore, it should be emphasized here that generalisations and application of the outsourcing reasons of one organisation to another should be done with cautiousness. The reasons identified here are collected from various research articles and books and should be considered as

³⁰ *Kakabadse A., & N*, “Outsourcing Best Practice: Transformational and Transactional Considerations”, *Knowledge and Process Management*, Vol. 10(1), 2003, Pg. 65

indicative more than imperative concepts. Most importantly, the organisation itself has to truly understand their reasoning behind the decision and the benefits sought.³¹

The most common reason behind outsourcing presented in most of the literature written on the topic is related to the company's need to cut costs and thereby enhance their competitive position. Some research studies predict that up to 92% of outsourcing decisions are driven by cost concerns.³² Other surveys present slightly more moderate figures of 58,6% of the respondents reporting that cost discipline and control is the purpose for outsourcing as opposed to 60,2% referring to the aim to achieve best practice as the main motivation behind outsourcing. It should be noted that the respondents selected multiple options³³ Especially in the popular field of IT outsourcing, the companies aim at cost savings through quicker product development life cycle.³⁴ Within the cost saving focus the company usually intends to achieve economies of scale, save on overheads as well as to gain a cost-effective access to specialized knowledge. In addition, the motivation for applying discipline over costs resulting from growing global competition has also had an impact on the companies' need to improve product-to-market life cycles which reflects the requirement of flexibility within most industries.³⁵ The cost reduction achieved by outsourcing ancillary functions also leaves more resources to be allocated to acquiring and developing the core competences, thus increasing specialization.³⁶ In the global strategy literature, the need for achieving economies of scale is strongly linked to the homogenisation of consumer needs which has encouraged multinational corporations to pursue a more global strategy organised around more or less standardised products.³⁷ However, the standardisation argument needs to be assessed for each industry separately since the trends in consumer needs usually differ considerably in some product markets as opposed to others.³⁸

Another way to identify the reasons behind outsourcing from a theoretical perspective is to categorise them according to the driving force behind the decision: Organisationally driven, Improvement driven, Financially driven, Revenue driven, Cost-driven and Employee driven reasons. The organisationally driven reasons include, in addition to the flexibility and focusing on core activities already mentioned above, the aim of transforming the organisation to increase

³¹ Greaver, M.F., "Strategic outsourcing : a structured approach to outsourcing decisions and initiatives", AMACOM, 1999, Pg. 3-4

³² Clark R., "The Real Cost of Outsourcing", America's Network, Vol. 108(7), 2004, Pg. 34

³³ Kakabadse, A. & N, "Outsourcing: Current and future trends", Thunderbird Industrial Review, March-April 2005, Pg. 193

³⁴ Schwartz E., "Backshoring Development", InfoWorld, Vol. 28(7), 2006, Pg. 8

³⁵ Ibid. Pg. 185-187

³⁶ Greaver, M.F., "Strategic outsourcing : a structured approach to outsourcing decisions and initiatives", AMACOM, 1999, Pg. 10

³⁷ Zou, S., & Cavusgil, S. T., "Global strategy: A review and an integrated conceptual framework", European Journal of Marketing, Vol. 30(1), 1996, Pg. 53

³⁸ Figg, J., "Outsourcing: A runaway train", The Internal Auditor, Vol. 57(3), 2000, Pg. 49

product or service value and thereby customer satisfaction. Improvement focus of outsourcing refers to acquiring innovative ideas and expert skills to improve operational performance, improve management and control as well as improving credibility through associating with a superior provider. The financial reasons highlight the increase in the financial resources available for other corporate activities since they are no longer tied in non core assets. Also the cash flow generated if assets are transferred to the service provider is among the financially driven reasons for outsourcing. With regard to the revenue related driving forces, matters such as gaining market access and opportunities generated to expand sales and production, can be seen as a result of focusing both financial and human resources on the core activities. Turning fixed costs to variable ones and reduction of costs by utilizing the service providers lower cost structure are among the cost driven reasons to outsource. Finally, the employee driven reasons include offering employees of those non core activities a stronger career path thus increasing commitment and energy in the non core areas due to handing the tasks to a company specialised in them. The last benefit of course requires that the employees will be transferred to the new service provider.³⁹

These lists of reasons behind outsourcing are not exhaustive and sometimes the benefits sought are contradictory. To address both costs and service quality advantages while simultaneously improving employee satisfaction is a demanding, if not impossible task, in an outsourcing arrangement. The work of employees has to be reorganised and constant training is mandatory for managing complex outsourcing deals. The analysis of the negative effects of outsourcing is limited since the research is often conducted by strongly pro-outsourcing parties such as consultancies, coupled with the fact that companies are usually reluctant to admit or to report any negative results of their outsourcing strategies. However, negative experiences of an outsourcing arrangement can lead to reduced employee morale due to uncertainty of the future of their job, loss of intellectual property rights, bad quality of supplies or services received, interruptions in the supply chain, dependence on the service provider or supplier, and loss of core competencies.⁴⁰ Also the lack of a clearly formulated outsourcing strategy which is based on decisions of the company board of directors who do not have intimate knowledge of the daily operations, can lead to unpredictable outcomes in the outsourced operations. The approach to outsourcing has traditionally been strongly related to cutting costs even though a much more strategic focus should be adopted keeping in mind the strive for a competitive advantage in the market.⁴¹ Ironically, according to the study conducted

39 Greaver, M.F., " Strategic outsourcing : a structured approach to outsourcing decisions and initiatives", AMACOM, 1999, Pg. 4-5

40 Kakabadse A., & N, "Outsourcing Best Practice: Transformational and Transactional Considerations", Knowledge and Process Management, Vol. 10(1), 2003, Pg. 62

41 Jenster, Per V. et al, "Outsourcing-facts or fiction", Strategic Change 2000, Vol.9 pg. 152

by Andrew and Nada Kakabadse⁴², improving service quality has been identified only as the third most common purpose for outsourcing while, according to a study conducted by CM insight, the biggest risk of outsourcing identified is the decline in service quality. Another interesting concern mentioned in the same study presented in the fourth Offshore Customer Management International Conference, is the long-term impact outsourcing may have on the customers in case service or product quality is experienced to have deteriorated.⁴³ The relationship between the benefits and costs of outsourcing based on the six driving forces identified above is illustrated in Table 2. It is thus clear that a certain level of trade off between the benefits sought and possible costs of adopting the strategy of outsourcing remain.

Table 2: Benefits and costs of outsourcing related to the driving force behind the decision

Driving force	Benefit	Cost
Organisational	Flexibility, focus on core activities	Loss of intellectual property, increased training expenditures
Improvement	Acquire innovative ideas and skills, association with superior provider	Dependence on a single service provider or supplier
Financial	Releasing resources to be invested in core activities, Cash flow generated in case assets are transferred	Loss of core assets in case core competence analysis is conducted wrong
Revenue	Gain market access and opportunities	Interruptions in supply chain
Cost	Turn fixed costs to variable ones, utilize service providers lower cost structure	Deterioration of product or service quality,
Employee	Strong career path and increased employee commitment in non-core areas	Reduced morale and loyalty

Other problems related to outsourcing, especially to the offshore variation of it, are related to language and cultural differences, difficulties to perform effective quality controls, travel and transportation expenditures, possible production delays and backlogs, start-up costs of building factories abroad, costs of selecting and supervising an overseas vendor, costs related to laying off

⁴² Kakabadse, A. & N, "Outsourcing: Current and future trends", Thunderbird Industrial Review, March-April 2005, Pg. 193

⁴³ Commentary, "ANALYSIS: Outsourcing demands create new world order", Precision Marketing, London: Nov 18, 2005, Pg.11

employees back at the home offices, and possible piracy.⁴⁴ To support these concerns, the case of Kana Software has been selected as an example of how, based on some of the reasons listed above, the functions transferred abroad have been brought back in-house. Originally, Kana employed 350 software engineers in India and China. The decision to outsource was based on lower labour cost and achieving quicker product to market development. However, at the present moment, Kana has “backshored” the operations bringing the functions back to the company headquarters. Based on a recent interview of Kana’s CEO Michael Fields published in the InfoWorld journal, the matters resulting from the decision to reverse the offshoring decision were manifold. First, the company noticed that for every four or five offshore employees there was a manager in the headquarters to control their activities. Also, the duration of product development was in fact longer during the offshoring arrangement due to the problems related to product quality and need for rewritings of the software. The CEO also points out that too many companies base their outsourcing decision on comparing the cost of an offshore employee to the cost of an employee in the home country, thus ignoring the associative costs.⁴⁵ This over emphasis on costs is also mentioned in many other articles and the identification of hidden costs of outsourcing should always be analysed before taking the final decision.⁴⁶ The concerns related to loss of intellectual property were also identified as one of the major concerns of transferring operations to another company.⁴⁷

The impact of outsourcing on the employees will be analysed in detail in the Human resource management related Chapter four of the current study. However, in this context it is worth mentioning that according to the study of Cranfield School of Management, employee satisfaction in the outsourcing arrangement was identified as problematic for both high and average performing companies even though the managers surveyed reported that outsourcing has no detrimental effect on the management of people and that outsourcing minimally impacts the security of employment of the staff.^{48 49}

Another area of concern reported in the same survey was the quality of the relationship between the service purchaser and provider. The management skills of both organisations and, in particular the attitudes towards outsourcing and the service provider were seen as crucial factors for achieving a successful outsourcing deal for both organisations.⁵⁰

⁴⁴ James, G., “How companies court disaster in outsourcing deals”, Computerworld, Vol. 34(44), 2000, Pg.41

⁴⁵ Schwartz E., “Backshoring Development”, InfoWorld, Vol. 28(7), 2006, Pg. 8

⁴⁶ Clark R., “The Real Cost of Outsourcing”, America’s Network, Vol. 108(7), 2004, Pg. 35

⁴⁷ Schwartz E., “Backshoring Development”, InfoWorld, Vol. 28(7), 2006, Pg. 8

⁴⁸ Kakabadse A., & N., “Outsourcing Best Practice: Transformational and Transactional Considerations”, Knowledge and Process Management, Vol. 10(1), 2003, Pg. 70

⁴⁹ Kakabadse, A. & N., “Outsourcing: Current and future trends”, Thunderbird Industrial Review, March-April 2005, Pg. 199

⁵⁰ Kakabadse A., “Smart sourcing : international best practice”, Basingstoke : Palgrave, 2001, Pg. 48

Taken into account the complexity behind the decision to outsource, an objective opinion of, for example an audit firm, consultant and company lawyer, may be needed for identifying the benefits sought and possible threats. Also the experiences of companies that have moved the functions back in-house or renegotiated their contracts, are worth of reviewing even though due to the relatively short history of outsourcing, the actual long term impacts of outsourcing cannot yet be analysed.⁵¹

To begin with the process of outsourcing some of the corporate functions, the company needs to carefully identify the core competencies and possible threats of giving up some level of control of those functions previously performed in-house. Defining core competences has always been mandatory for the development of any successful business strategy of a company, be it choosing the product portfolio, services to be offered or for the selection of competent employees. In the outsourcing context, the goal of this definition is to choose what operations ought to be performed internally as opposed to those which may potentially be outsourced to third parties.⁵²

3.2.3 Identification of Core competencies

The identification of core competencies is a management philosophy related to defining the mission and underlying purpose of the enterprise in questions. The notion of “companies should concentrate on what they do best and hive off processes that are not central” is a common argument presented in the articles supporting outsourcing.⁵³ To identify those core competencies that provide a company the competitive advantage over its competitors requires an in depth analysis of their resources, both tangible and intangible. The decision of which business areas to outsource as well as choosing the most suitable outsourcing arrangement, are both strongly dependent on how the core-competencies have been identified. A differentiation between the core, non-core and non value adding functions is the basis for defining a strategy for what should remain as an in-house activity, what should be externalised to some extent and what could be eliminated completely.⁵⁴

The concept of core competence has received much attention in the academic literature and therefore also many attempts to define the concept exist. Core competencies have been defined as “The collective learning in the organisation, especially how to coordinate diverse production skills and integrate multiple streams of technologies” by Prahalad and Hamel, or “Those competencies that define a firm’s fundamental business” of Teece et al. and “ The things that some companies

⁵¹ Clark R., “The Real Cost of Outsourcing”, America's Network, Vol. 108(7), 2004, Pg. 35

⁵² Kakabadse, A. & N., “Outsourcing: Current and future trends”, Thunderbird Industrial Review, March-April 2005, Pg. 183

⁵³ Ibid. Pg. 34

⁵⁴ Greaver, M.F., ” Strategic outsourcing : a structured approach to outsourcing decisions and initiatives”, AMACOM, 1999, Pg. 89

know how to do uniquely well and that have the scope to provide them with better than average degree of success over the long term” as defined by Gallon et al.⁵⁵ The resources of the company can be assessed with the aim of dividing them to core and non-core, or by placing them within the range of core, essential, ancillary and superfluous. The further you move from the core towards superfluous, the more suitable the individual task, function, or process is for outsourcing. In addition, one should keep in mind that the classification of a function being in the core of the company’s operations is not stable and can shift over time from core to ancillary due to, for example, technological advancements or entrance of new competitors. Core competencies range from resources such as human, financial or technical assets, to processes of how those resources are turned into capabilities such as know-how and learning.^{56 57}

A broader approach to identify the resources core or non-core for the company is the analysis using a resource based view (RBV) which, as opposed to the identification of core competences based solely on internal variables, combines both the internal and external forces affecting the valuation of company’s resources. Using the models created based on the RBV theory, a company can classify its resources, financial, physical, human or organisational ones, according to their assessment based on Barney’s VRIO model or the five questions model developed by Collis and Montgomery.⁵⁸ In the first one, Barney’s VRIO model, four questions are asked regarding each resource analysed: Is the resource valuable, rare, inimitable and/or efficiently organised? In case all questions are answered affirmative, the resource provides the company with a sustainable competitive advantage and therefore should certainly not be considered for outsourcing. On the other hand, if for example the technological resources of a firm are not considered to contain any of the qualities mentioned above, the function should be sourced out since that particular resource is seen as contributing to a position of competitive disadvantage. If the resource is valuable but not rare, inimitable or efficiently organised, it is considered to provide competitive parity for the company in question and may possibly be an activity that could be outsourced. A resource contributing to a temporary competitive advantage of the company in the market is both valuable and rare but imitable. In the last case, a company should not immediately decide to outsource the function even though in the future the situation may change due to competitors’ imitation of that particular resource. Similarly, the model developed by Collis and Montgomery in which three value creative forces of scarcity, appropriability and demand are assessed by analysing each resource based on five questions similar to

⁵⁵ As referenced in: Jenster, Per V. et al, “Outsourcing-facts or fiction”, Strategic Change 2000, Vol.9 pg. 148

⁵⁶ Jenster, Per V. et al, “Outsourcing-facts or fiction”, Strategic Change 2000, Vol.9 pg. 150-151

⁵⁷ Greaver, M.F., ” Strategic outsourcing : a structured approach to outsourcing decisions and initiatives”, AMACOM, 1999, Pg. 92

⁵⁸ Barney, J., “Firm resources and sustained competitive advantage”, Journal of Management, Vol. 17 (1), 1991, Pg.99-117

the ones presented in the VRIO model.⁵⁹ Depending on the positive or negative answers, the company should built its strategy based on the resources classified as a core or essential for achieving the position of sustainable competitive advantage as opposed to other functions which may be potential candidates to be outsourced⁶⁰ The two models explained above are by no means the only models created for assessing the resources and capabilities of an organisation but provide a glimpse of analytical tools available in the strategy literature which do not appear in the Outsourcing literature reviewed in the current study.

In support for using the RBV models mentioned above for the purpose of identifying core competences, parallel concepts can be found in traditional literature written on outsourcing. For example, Maurice Greaver notes in his work that core competencies include knowledge, special skills, proprietary technologies, information, and unique operating methods. He also notes in the same context that if the competence is classified as quickly vanishing and easily imitated then the competence or resource is likely to be not core.⁶¹ Therefore, the similarities with the analysis based on, for example, the VRIO model explained above are evident. The supporters of the Resource Based View often criticise the concept Core competence as being too narrow and simple approach for identifying what resources are the most valuable ones for the company in terms of competitiveness in long term. The RBV based models may offer a solution for deciding what functions to outsource and for evaluating the outsource readiness of the diverse assets and capabilities of the organisation since it takes a more economics focus in the analysis of a company by combining external and internal factors.⁶² After all, the failures of outsourcing deals seem to be related to the lack of thorough analysis of what are the core and non core functions of the company which may lead to outsourcing a function with embedded core competency with the result of damaging the organization.⁶³

Finally, it should be noted that outsourcing is not a substitute for acquiring and developing core competencies but rather a supplementary management strategy to enable more focus and resources to be invested in those core functions.⁶⁴

⁵⁹ Collis, D.J. & Montgomery, C. A., "Competing of resources: strategy in the 1990's" Harvard Business Review, Vol. 73(4), 1995, Pg. 118-129

⁶⁰ Reimer R., "Competitive strategy", from "The financing of projects as competitive strategy", Master Thesis, School of Economics and Commercial Law, Göteborg University 1998, Pg. 53

⁶¹ Greaver, M.F., "Strategic outsourcing : a structured approach to outsourcing decisions and initiatives", AMACOM, 1999, Pg. 89

⁶² Collis, D.J. & Montgomery, C. A., "Competing of resources: strategy in the 1990's" Harvard Business Review, Vol. 73(4), 1995, Pg. 119

⁶³ Greaver, M.F., "Strategic outsourcing : a structured approach to outsourcing decisions and initiatives", AMACOM, 1999, Pg. 94

⁶⁴ Ibid. Pg. 93

3.2.4 Business areas subject to Outsourcing

After the identification of what resources or competencies are core for the company's success, and on the other hand, what functions represent potential business areas that could be performed more cost effectively and with better quality by external service provider, the following characteristics of a business function should be reviewed before taking the final decision of what to source out: Technical and institutional separability, extent of standardization, transactional and managerial costs, production costs, and size of the market. As an example of the separability, the handling of invoices which is part of the accounting tasks, requires collecting, manipulating and organising information which can be codified, digitized and separated from the rest of the accounting tasks such as booking of the expenses based on the information extracted from the invoice. The standardisation follows the separation potential of the processes within a function taking the matter one step further. If the task is easily separable and easily standardised or even automated, the function, or a part of it, can most likely be sourced out. Examples of business areas with high potential for separation and standardization are, for example, accounting, payroll, billing and booking. Managing and controlling a standardised task in an outsourcing arrangement is considerably cheaper than managing a task with low level of standardization. Therefore, the least standardised tasks are most likely remain in house and are usually also the core functions that require complete managerial control within the organization.

The traditional business area subject to outsourcing is production of components or parts of the final product. The production costs are assumed to remain constant if the outsourcing partner is located within the same country. If the function can be offshored, the gains resulting from lower production costs can be considerable. However, the managerial costs described above are likely to rise when transferring tasks abroad. Finally, the size of the market refers to the number of available service providers or producers in the market. If there is a large number of outsourcing partners to select from, the chances of finding a good provider that matches the needs of the company are also higher. Also, the size of the market the company operates in has to be large enough to support the existence of a large network of outside suppliers.⁶⁵

In order to go into further detail of what specific functions are currently being sourced out, the survey results of the study of Cranfield school of Management are mainly used in the analysis below. The business function which is most often mentioned in the current literature as an area to outsource is Information Technology (IT), which has also been one of the first areas outsourced

⁶⁵ World trade report 2005: http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr05-3c_e.pdf, Pg. 270-271

from the historical perspective.⁶⁶ According to a survey conducted by Hewitt Associates presented in the article “The real cost of outsourcing”, IT is one of the biggest areas of global outsourcing followed by customer relations (customer support centres) outsourcing, manufacturing and supply-chain process outsourcing.⁶⁷ Outsourcing of some Human resource management (HRM) functions is, according to the Hewitt Associates study, considered for outsourcing in 94 per cent of large enterprise, bringing HR outsourcing to the pole position as one of the most outsourced functions already at the present moment.⁶⁸ According to the results of the survey of Cranfield School of Management, currently the basic services, including canteen, facilities and office services, are ranked by 62,7 per cent of the companies to be the most common function outsourced. After the basic services come HR with 55,5 per cent and IT with 53,1 per cent of organizations surveyed giving the greatest attention to those functions in terms of outsourcing. The order of the top three functions is expected to change slightly in the future with reduction in HR and basic service outsourcing while outsourcing of IT functions seems to remain constant. Regarding other future expectations, the survey predicts strong growth in outsourcing business areas related to back office processing and purchasing.⁶⁹ Other articles also confirm that outsourcing areas in the future will include even more central operations of a company, such as accounting and human resource management.⁷⁰

3.2.5 Outsourcing arrangements

Depending on the function or process outsourced, the contractual arrangements available are used to facilitate the nature of the relationship between outsourcer and the outsourcee. For defining the categories of outsourcing arrangements one can look into the different levels of outsourcing in terms of the scope of functions transferred, the length of the contract concluded as well as the vendor responsibility required. First the following three activity levels subject to outsourcing can be identified: Individual, Functional and Process outsourcing. Depending on the corporate activity being transferred, the company can choose between these levels which all require different contractual arrangement and amount of management control and vendor responsibility. The first one, Individual outsourcing, refers to transferring a certain position out of the organisation, such as the management position of a badly performing business function. This could, for example, include

⁶⁶ *Kakabadse A., & N*, “Outsourcing Best Practice: Transformational and Transactional Considerations”, *Knowledge and Process Management*, Vol. 10(1), 2003, Pg. 62

⁶⁷ *Clark R.*, “The Real Cost of Outsourcing”, *America's Network*, Vol. 108(7), 2004, Pg. 35

⁶⁸ *Kornik J.*, “Time for some 'insourcing'?", *Training*, Vol. 42(10), 2005, Pg. 5

⁶⁹ *Kakabadse, A. & N*, “Outsourcing: Current and future trends”, *Thunderbird Industrial Review*, March-April 2005, Pg. 194

⁷⁰ *Clark R.*, “The Real Cost of Outsourcing”, *America's Network*, Vol. 108(7), 2004, Pg. 35

sourcing out the tasks of a payroll clerk to an external company with specific knowledge of handling payroll activities. The transfer thus would not include moving the entire accounting department to an external service provider, which would be the case if the second level, the functional outsourcing, would be adopted. An example of functional outsourcing is the basic service outsourcing mentioned in the previous chapter which would include purchasing the canteen or reception operations completely from a company specialised in providing such services. To move even deeper in the outsourcing levels, a company dissatisfied with the entire supporting administrative processes, such as human resource management, accounting and technology development, may decide to purchase all the processes from one or more external service providers specialised in offering administrative services with highly professional staff and latest technological resources to perform the tasks in an effective manner.⁷¹

In addition, among the most recent outsourcing innovations, the companies are offered the possibility to split the process of a certain function such as, for example, Indirect Procurement. Certain business processes within the function of Indirect Procurement, such as accounts payable or purchase order administration, may be transferred to a service provider even though the control of the entire function, supplier selection and approval of purchase orders, remain in the hands of the management of the outsourcing entity. This development is referred to as Business Process Outsourcing in the current literature of outsourcing and will be presented in further detail in the empirical research of the current study.⁷²

Another approach to the outsourcing arrangements available is to classify them according to the length and scope of the contract concluded. These arrangements range from short-term project based contracts that emphasize flexibility, to full ownership in the form of partnerships or strategic alliance agreements. The latter option of creating a long-term partnership arrangement requires a close level of interaction between the purchaser and service provider, which is seen essential in outsourcing activities such as accounting and finance which are functions at the heart of the contracting organisation. Currently, according to the survey of Cranfield School of Management, companies prefer to have a single contract with a preferred supplier with whom the company already has an established relationship. Also in the future, the reliance on a preferred and trusted supplier will remain in outsourcing arrangements. However, concluding partnership agreements, strategic alliances and performance-based contracts with that single supplier, which includes joint risks and liabilities, will be added to the traditional make-or-buy relationship.⁷³ As a result, the shift

⁷¹ Greaver, M.F., "Strategic outsourcing : a structured approach to outsourcing decisions and initiatives", AMACOM, 1999, Pg. 6-7

⁷² Schwartz, E., "The new Outsourcing", InfoWorld, Vol. 27(6), 2005, Pg. 10

⁷³ Kakabadse, A. & N, "Outsourcing: Current and future trends", Thunderbird Industrial Review, March-April 2005, Pg. 197

from pure contractual relationship inherent in the early IT and basic service outsourcing discussed above to risk-sharing arrangements will require developing new skills in outsourcing management combining the vertical competencies, such as competitive and efficient management control, with the lateral competencies like cooperation and team work.^{74 75}

Support for these findings of a shift in the outsourcing arrangements currently in use as opposed to the future possibilities can be found in research articles written on the topic of outsourcing, such as the one of Per V. Jensen: “Outsourcing-facts and fiction”. According to his findings, the relationship between buyers and sellers is seen to be under a change and the trend is in the reduction of supplier base and creation of more long-term relationship with fewer suppliers. A win-win situation is being developed through increased interaction and in depth partnership between the parties involved.⁷⁶ The fact that the two sides are coming together can also be seen in the increase of Business Process Outsourcing, which requires high cooperation and sharing of risks and benefits.⁷⁷

All the arrangements presented above, ranging for pure purchase of certain tasks from a service provider to the long-term partnership outsourcing where control and risks are shared between the parties involved, usually include some level of transferring employees from the outsourcer (Transferor) to the vendor (Transferee).⁷⁸ In the shared services form of business process outsourcing, the management and control is usually split between the organisations involved and even if no employees are transferred from one entity to another, the service may be provided on the site of the outsourcer. The legal and human resource considerations arising from such arrangements will be presented in Chapter four and five of the current study.

3.3 Outsourcing trends and direction in Europe

The future trends of outsourcing in terms of the areas subject to sourcing out, as well as in the nature of outsourcing arrangements between the service provider and the outsourcing organisation, have already been presented in the previous sub Chapter. Therefore, the last sub chapter of the outsourcing topic will focus on the trends in outsourcing from a geographic point of view focusing on the direction of job shift resulting from outsourcing within European Union member states supplemented with a view on outsourcing trends globally. On the world wide scale, outsourcing has raised contradictory concerns and expectations between developed countries with concerns related

⁷⁴ Larsson, L., et al, “International growth through cooperation: Brand-driven strategies, leadership, and career development in Sweden”, The Academy of Management Executive, Vol. 17(1), 2003, Pg. 8

⁷⁵ Kakabadse, A. & N, “Outsourcing: Current and future trends”, Thunderbird Industrial Review, March-April 2005, Pg. 197

⁷⁶ Jenster, Per V. et al, “Outsourcing-facts or fiction”, Strategic Change 2000, Vol.9 pg. 149

⁷⁷ Schwartz,E., “ The new Outsourcing”, InfoWorld, Vol. 27(6), 2005, Pg. 10

⁷⁸ Kakabadse A., “Smart sourcing : international best practice”, Basingstoke : Palgrave, 2001, Pg. 42

to job loss, and developing countries with high hopes of offshoring becoming the future engine of growth and job creation. From an economic perspective, shift of production and services abroad as a result of offshoring will increase the imports of the country transferring functions abroad and therefore contribute to the current account deficit of the balance of payments and thereby lead to some adjustments of the real exchange rate.⁷⁹ However, research focused on evaluating the impact of outsourcing on national economies suggests that the concerns of developed countries are disproportional and that in long term the benefits of re-locating jobs are bigger than the temporary negative factors experienced by individual countries.

Based on the reasoning behind sourcing out tasks for the purpose of achieving certain benefits, outsourcing abroad has contributed to the shift of jobs from more developed European countries to countries with lower employment costs which is closely linked to weaker social and economic conditions.⁸⁰ The phenomenon of shifting jobs as described above is thus inspired by differences in terms and conditions of employment and industrial relations within European Union and can therefore increase the threat of social dumping.⁸¹ As an example, based on the empirical case presentation of the current study, some business processes have been shifted from Northern Europe to the South where labour costs are considerably lower. However, as the costs of labour tend to rise as a result of increased employment in the region, combined with the impact of additional changes in the internal market brought by EU enlargement, the company involved has shifted outsourcing locations further to India or, as the latest development shows, to the Central and Eastern European (CEE) countries.^{82 83}

Globally, the direction of outsourcing corporate functions abroad has been to India, especially when IT is involved. According to a recent study conducted by India's National Association of Software and Service Companies (NASSCOM), India, where the salary of a knowledge worker is 10 to 20 per cent of an American employee⁸⁴, accounted for 65 per cent of the world's offshore IT services and 46 per cent of global Business Process Outsourcing industry. Currently these two industries provide direct employment for 700 000 people and strong growth is expected in the future. As also acknowledged in this NASSCOM-McKinsey Report, the future in IT offshoring brings with it growing difficulties due to political resistance in US and Europe of sending thousands of jobs to

⁷⁹ World trade report 2005: http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr05-3c_e.pdf, Pg. 269

⁸⁰ Ibid. Pg. 294

⁸¹ Harzing, A-W. & Ruysseveldt, J., "International human resource management : an integrated approach", Sage, 1995, Pg. 333

⁸² Kasteel, E., "The European Union: Land of new opportunity", Logistics today, 2003, Pg. 21

⁸³ Reinhardt, A., "Forget India, Let's Go to Bulgaria", Business Week, 2004, Pg. 93

⁸⁴ Fox, J., "Where your job is going", Fortune, Vol.148(11), 2003, Pg. 84-94

India.⁸⁵ As will be discussed below, also other factors supporting a shift in offshoring from India to Central and Eastern European countries are emerging in the wake of EU enlargement.

The most striking business advantage offered by outsourcing functions to CEE countries as opposed to India, is the relative proximity of this particular region to the rest of Europe. In addition to the location advantage, the new EU countries offer high technical and language skills as well as cultural similarities that are difficult to imitate by service providers outside Europe. Also the fact that outsourcing to India has been successful among US and British clients is strongly related to linguistic and interpersonal skills of the Indian counterparts, which is not necessarily achieved with French or German customers. For example, French companies may be more likely to consider Romania as an appealing alternative as an outsourcing location due to Latin language and historic links whereas German firms may be drawn towards Hungary and Czech Republic.⁸⁶ This notion is supported also in the World Trade Report from 2005 which argues that sourcing of services tend to take place more between countries with geographic and cultural proximity. For instance, large share of Spanish outsourcing tends to go to Latin America instead of India due to the reasons mentioned above.⁸⁷

Within a certain region, such as Central and Eastern Europe, large differences still exist between the individual countries. A difference has to be made between middle-developed countries and least developed ones since running the outsourced operations requires certain level of infrastructure and institutional quality. Large differences in, for example, the legal framework of the potential outsourcing partner countries, result into lower level of offshoring activity due to uncertainties and high costs of settling disputes. Comparing countries based on the level of infrastructure and institutional quality can, however, be misleading since in some cases the special business parks and zones offer excellent infrastructure compared to the level of development in the rest of the country. For example India offers software parks with latest high tech infrastructure and effective specially created systems for sorting out legal formalities. Other factors affecting the choice of destination country are related to the regulatory environment and stability in the country in general.⁸⁸

The future attention of outsourcing of European companies, in terms of geographical focus, seems therefore to be the Central and Eastern Europe and India. According to HSBC Group presentation in a conference, other future destinations for offshoring globally are Egypt, Mexico and Vietnam.⁸⁹ An interesting question arises based on the discussion above, namely, what will happen when the

⁸⁵ http://www.nasscom.org/artdisplay.asp?Art_id=5039

⁸⁶ Reinhardt, A., "Forget India, Let's Go to Bulgaria", Business Week, Pg. 93, 2004

⁸⁷ World trade report 2005: http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr05-3c_e.pdf, Pg. 273

⁸⁸ Ibid.

⁸⁹ Commentary, "ANALYSIS: Outsourcing demands create new world order", Precision Marketing, London: Nov 18, 2005, Pg.11

countries in Central and Eastern Europe will become more expensive as has been predicted in some research articles? ⁹⁰ It is in the essence of the economic theory that employment opportunities created in these countries due to shifting work from other parts of Europe will increase the overall welfare in the nations involved and therefore also increase the labour costs in the long-run.⁹¹

3.4 Conclusions

The concept of restructuring corporate operations through outsourcing has been developed globally throughout industries as a response to various changes in macro economic environment, industry specific requirements, technological advancements and focus of the management. Since the global recession in 1980's there has been an increased need for companies to rationalise their organisational structures and explore new business strategies such as outsourcing. The term "outsourcing" was originally used to describe the sourcing out of Information Technology related services in the 1980's, even though in the development of for example car industry, the production outsourcing has existed to some degree already since the 1920's. Since 1990's, a large number of multinational enterprises have shifted completely or partially some back office activities to countries where the task can be performed at lower cost. Outsourcing has increased exponentially ever since mostly due to technological advancements and cost reductions in broad bandwidth costs. The tasks outsourced do no longer include simple "harmless" functions but the move to ever more valuable and high skill jobs are being shifted abroad by companies of all sizes, not merely by large multinationals.⁹²

Currently, the value of outsourcing deals are enormous and the background analysis of core competencies for the identification of the specific functions with outsourcing potential, defining the benefits sought as well as considering the possible negative outcomes of the outsourcing deal, have to be analysed carefully.

The most common reason for outsourcing which is also mentioned in most studies is the need to cut costs by achieving economies of scale, save on overheads and gaining cost efficient access to specialised knowledge. Other reasons behind the outsourcing decision are to achieve flexibility by focusing on core operations, leaving more funds available for acquiring and developing those operations, and improving quality in the outsourced services through the service providers superior knowledge and technology in the specific functions outsourced. On the other hand, the possible

90 *Schwartz, E.*, "Backshoring Development", *InfoWorld*, Vol. 28(7), 2006, Pg. 8

91 *Kasteel, E.*, "The European Union: Land of new opportunity", *Logistics today*, 2003, Pg. 21

92 World trade report 2005: http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr05-3c_e.pdf, Pg. 265

negative impacts of adopting the strategy of outsourcing range from reduced employee morale to loss of intellectual property rights in case the core competencies are accidentally handed over to the supplier. The biggest risk identified is the decline in service quality leading to bad consumer experiences and therefore loss of the competitive position in the market. If engaged in offshoring activities, the risks involved are usually higher due to language and cultural differences, increased management expenditures, and possible piracy. Due to the findings that in up to 53 per cent of outsourcing arrangements the contract had to be renegotiated, which in one out of four cases led to the termination of the contract, the risks involved deserve strong attention of the parties involved.

The second topic analysed in this chapter was the identification of core competencies which contributes to the selection of those non core functions that can be considered for sourcing out to an external vendor. Due to the vagueness of core competence definitions, a more pragmatic tool for identifying these functions was sought from two the Resource Based View models of general business strategy literature. By assessing each resource, financial, physical, human or organisational one, based on its contribution to the competitive position of the company, the functions subject to outsourcing can be identified.

Thirdly, the current and future areas of business which are considered for outsourcing were presented mainly based on the survey conducted by the Cranfield School of Management. Among them, the currently most attractive functions considered for outsourcing are Basic services, Information Technology and Human Resource management processes with more or less same order of attractiveness reported also in the future. The biggest growth is predicted to be experienced in the field of Back office processing and Procurement outsourcing.

For analysing the outsourcing arrangements available, a distinction can be made between the different levels of outsourcing, or by classifying outsourcing arrangements based on the length and scope of the contracts concluded. The assessment of the most popular outsourcing arrangements in the future chosen by companies surveyed support the findings in the growth of business areas sourced out: due to the fact that the areas outsourced are shifting from traditional low value activities towards higher value functions such as back office processing of accounting, financing, and procurement related tasks, the contractual relationships are moving towards a more risk sharing partnership arrangements that require cooperation and team work between the outsourcer and the vendor.

Finally, the direction of outsourcing in Europe in geographic terms shows a shift of jobs towards the Central and Eastern Europe and globally, the current trend seems to continue to be offshoring functions to India. The reasons for strong interest in this region of Europe are based on the relative proximity of those countries to the rest of Europe, cultural and language similarities, and lower

costs of labour. Also the economic impact of this development on the countries where jobs are moved abroad has been briefly discussed and based on World Trade Organisation reports, among other research articles, the negative impacts of offshoring tasks from the developed countries seems to be over emphasized and disproportional to the overall economic gains achieved through outsourcing. However, the concern related to social dumping within European Union do exist and from labour relations perspective, the harmonisation of employee protection on the Community level seems to be necessary, as will be shown in Chapter five. Successful outsourcing can become the key to competitiveness in many industries in the European internal market.⁹³ As a final remark, it seems that further study is required to analyse the impact of outsourcing on the employees and management of both outsourcing and service providing organisation in order to address the most crucial concerns of outsourcing related to employee resistance, and problems of control and governance of the new cooperative relationship between the parties of an outsourcing deal.

⁹³ *Jenster, Per V. et al*, “Outsourcing-facts or fiction”, *Strategic Change* 2000, Vol.9 pg. 147

4 Implications of Outsourcing on human resource management

The negative effect outsourcing may have on the employees involved has been presented as one of the concerns related to outsourcing strategy presented in the previous chapter. Due to employee distress on both sides of the outsourcing arrangement, among other factors, the quality of products and services offered to the customers may deteriorate and therefore result to loss of market share and loyalty of both employees and customers. In addition, there seems to be a considerable gap between the legal protection needed and the experiences of insecurity and increased sources of stress at work resulting from corporate restructuring at least for the employees that are transferred from one entity to another.⁹⁴ In order to explore the employee related concerns and possible opportunities an outsourcing deal may offer to the employees of both organisations, the current chapter will explore the human resource practise in Europe and, more specifically, its role in an outsourcing arrangement.

The first part of this chapter will focus on three topics related to Human resource management in general. Firstly, the analysis based on previous studies will look into the level of convergence or divergence in the employment practises across Europe, which is important for the implementation of an offshoring shared services model of sourcing out high value activities and is the area of growth in outsourcing. The second topic is related to the impact of cultural differences on managing and controlling an offshore workplace. Thirdly, the career models will be presented as a possible tool to be used by the management of the transferring entity for differentiating those individuals in the organisation that most likely will enjoy being involved in this new form of work and appreciate the opportunities it offers, from the individuals that would possibly experience the highest level of stress and dissatisfaction if forced to take active part in an outsourcing arrangement. This knowledge may also be useful for improving the service provider's recruitment practise.

The second part of the chapter will move the discussion to human resource management specific issues related to outsourcing. The role of HRM in facilitating the implementation of an outsourcing deal will be analysed based on research articles and studies conducted on the topic. The empirical research conducted in the current study will widen the scope of the HRM issues by adding the experiences of the service provider's employees who have been working in an actual Business Process Outsourcing deal on a Shared Service Centre to the discussion of the impact of outsourcing on employees.

⁹⁴ Fang L., Earnshaw J., et al., "For better and for worse: transfer of undertakings and the reshaping of employment relations", *International Journal of Human Resource Management*, Vol. 15(2), March 2004, Pg. 277

4.1 Introduction to human resource management

Before moving into the detailed analysis of Human resource management in Europe, it should be noted that this section of the research does not concentrate on analysing the outsourcing of Human resource management functions and processes, which was mentioned in the previous chapter. The aim of this chapter is to present HRM in European context and to discuss its role in the process of outsourcing other corporate functions. However, as a current trend shaping the role of HRM in the organisation in general, the outsourcing of the HRM function will be mentioned in the chapter below.

Human resource management (HRM) can be seen as an academic theory and a business practise. The term “Human Resource Managements” presents an ambiguity as such since according to the basic notion of HRM, employees cannot be treated as basic business resources due to the fact that employees are human. From the business point of view, human resource management can be understood as the function representing the human aspect of the company by highlighting the strategic importance these particular “resources” have to the company's success.⁹⁵

From a strategic point of view, Human resource management, alongside with the corporate mission and strategy as well as the organisational structure, is a necessary core element for the company to function effectively. Through the HRM cycle consisting of selection, appraisal, rewards and development, and in some organisations even exist functions, the strategic human resource management touches upon all other corporate divisions and thus represents a link or an “umbrella” entity over the entire organisation.⁹⁶ The importance of HRM for implementing strategies, such as the one related to restructuring the organisation through outsourcing, is evident considering that transferring employees or retraining the employees of the entire entity to cope with the changes is strongly related to the human aspect mentioned above.

In addition to the tasks included in the traditional human resource management cycle, in an international environment the activities performed become more complex and new employee management related issues need to be addressed by the HRM department. Some matters distinguishing international HRM from the domestic one are the emergence of additional, more heterogeneous functions and increased involvement in the employees’ personal life due to the need of facilitating transfers of employees. In addition, a different emphasis in terms of understanding how cultural differences affect HRM functions needs to be adopted and more external influences such as trade unions and new groups of stakeholders add to the complexity of HRM in the

⁹⁵ http://en.wikipedia.org/wiki/Human_resource_management

⁹⁶ *Tichy, N.M, et al*, “Strategic Human Resource Management”, *Sloan Management Review*, Vol.23(2), 1982, Pg. 47-50

international context. Multiculturalism and geographic dispersion of activities does not change the basic functions of HRM but rather require changes in how those functions are operated.⁹⁷

Although the aim of the current study is not to analyse outsourcing of HRM functions and processes as was mentioned in the beginning of this chapter, it deserves to be mentioned as a future trend in human resource management. Many articles question the sustainability of outsourcing such a critical and sometimes even core function of a company. As mentioned in the outsourcing chapter of the current study, up to 94 per cent of large organisations have already begun to outsource some parts of the HR function, usually the transactional HR activities related to people administration.⁹⁸ It has also been argued that HR functions are going through a fundamental change not only in terms of increased outsourcing of HRM processes, but also the position HR has in the organisation has been shifted from personnel processing to supporting strategic business and financial goals. Based on the latest study of Hewitt Associates presented in various articles, managing change has become the primary goal of HR tasks, with supporting organisational effectiveness and attracting and retaining talent as the second most important tasks of human resource management. The goals of the CEO and HR manager are strongly aligned at present whereas in the past only few HR managers reported existence of such alignment.⁹⁹

Based on the overview of the future HR functions and its position in the organisation, it seems that due to the very same reasons presented in the context of driving forces behind outsourcing, Human resource management has had to concentrate on its core functions and the transaction related processes are themselves subject to outsourcing. Managing change mentioned above reflects that HRM has become more strategic for achieving the outsourcing goals related to cost reductions while at the same time focusing attention to the concerns of employee dissatisfaction and resistance that may reduce the benefits sought.

4.1.2 Human resource management in Europe

Since the geographic direction of outsourcing in European companies seems to be towards Central and Eastern Europe, the logical assumption is that the partners of an outsourcing arrangement are therefore both European. Furthermore, as the findings of the research of Andrew Kakabadse from Cranfield School of Management presents, the adoption of a mix of HR strategies is often used to address the employee related concerns of an outsourcing arrangement and interaction between the

⁹⁷ Harzing, A-W. & Ruysseveldt, J., "International human resource management : an integrated approach", Sage, 1995, Pg. 78

⁹⁸ Kornik J., "Time for some 'insourcing'?", Training, Vol. 42(10), 2005, Pg.5

⁹⁹ Anonymous, "Research and Results", Strategic HR Review, Vol. 6(3), 2006, Pg.15

HR departments of both organisations can be necessary.¹⁰⁰ Based on these possible future trends, knowledge of the differences and similarities between the European countries in terms of HRM practise may increase the successful implementation of an outsourcing arrangement. By acknowledging the HRM areas where the parties involved have similarities as well as mitigating the problems arising from the divergent practices and traditions can make the difference between a high performing outsourcing arrangement and a poorly performing one.

However, before engaging in the discussion of the patterns in HRM practice in Europe, some basic contextual factors affecting it should be presented. The condition of institutional duality in place in Europe is a result of the existence of both national and regional isomorphic pressures generated by the creation of the European Union, thus represents a unique operating environment for an organisation. The empirical evidence of convergence in the HRM practises in the United States, for example, cannot be transposed as such to the European business environment. Even though certain level of convergent policy pressure is provided by the European Commission by introducing a minimum level of harmonisation of employment conditions, as will be presented in Chapter five of the current study, the national differences reach much further than to the legal environment. The uniqueness of each society, according to the “societal effects” school, is a result of a complex interconnectedness of institutional systems such as education and training, and the industrial relations. These forces of divergence are generated by different national institutional systems, and the increased convergence coming from the European Commission and global competitive pressures, has more impact on some HRM functions than others.¹⁰¹

Even though there are fundamental cultural and societal differences within Europe, some level of convergence in the HRM practices can be observed among certain groups of countries. Convergence in this context argues that “differences in management systems have arisen as a result of the geographic isolation of businesses...which will be superseded by the logic of technology and market giving rise to universally applicable management techniques”.¹⁰² Many authors have identified the existence of HRM clusters within Europe based on analysis of how some specific HRM functions, such as recruitment or rewarding, are implemented across Europe. One of them has distinguished three clusters: a Latin, Central European and Nordic cluster. The first one, Latin cluster of Spain, Italy and France, is characterised with efforts to modernize HRM, strong reliance on oral culture and presence of subtle political structures. In the Central European cluster, the style of HRM includes lower authority of HR department with extensive involvement of line

¹⁰⁰ Kakabadse A., “Smart sourcing : international best practice”, Basingstoke : Palgrave, 2001, Pg. 42

¹⁰¹ Tregaskis, O., & Brewster C., ” Converging or diverging? A comparative analysis of trends in contingent employment practice in Europe over a decade”, Journal of International Business Studies, Vol.37(1), 2006, Pg. 112,115

¹⁰² Ibid. Pg.115, first paragraph

management in HR matters as well as legal support for collaboration with trade unions. The Nordic style of HRM includes visible authority of HR department and emphasis on written strategies and a collective orientation towards management and consultation. It has been argued that these clusters correspond to the socio-economic development of the regions identified and that there is a correlation between the economic success of the region and the seriousness afforded to the people issues in the management of the enterprises.¹⁰³ Other researchers have divided Europe into four models of HRM, instead of three groups, based on differences in HRM strategies, practices and its position in the organizations of various countries. The Central Southern cluster can be characterised with a management supportive model, Eastern cluster with management focused model, whereas Nordic cluster has an employee focus and Western is characterised with a professional focus. The clusters encompass both cultural similarities as well as socio-political regimes of countries within a group.¹⁰⁴

One of the most recent researches conducted on the trends of Human resource management in Europe is the study of Irene Nikandrou et al of Athens University of Economics and Business. In the study, the differences between HRM strategies are viewed from a longitudinal perspective by assessing the situation among the sample of 18 countries between 1995 and 1999. Based on the survey, European countries have been divided into two main clusters of North-West and South-East, and further into two sub-clusters of North and West. The country specific placements in the clusters are illustrated in the Table 3 below. Even within each cluster, some countries have more similarities in their HRM practise than others.¹⁰⁵

¹⁰³ Storey, J., "Human resource management", Routledge, 1995, Pg. 311

¹⁰⁴ Nikandrou, I., et al., "Changes in HRM in Europe: A longitudinal comparative study among 18 European countries" Journal of European Industrial Training, Vol. 29(7), 2005, Pg.543

¹⁰⁵ *Ibid.* Pg.547-548

Table 3. Two main HRM Clusters of 18 European countries and two Sub clusters: 1995 data

<p>North-West Cluster: 11 Countries</p>	<p>Northern sub-cluster: DK, NO → similar HRM FI All these countries cluster more with Germany, Spain and Italy in 1999</p>
<p>Western sub-cluster UK, SWE, CH → similar HRM NL, BE → similar HRM DE, FR, SP → similar HRM</p>	<p>South-East Cluster: 7 countries EAST-DE, CZ, IT → similar HRM Italy moved towards NW cluster by 1999 TUR, IRL, GR → similar HRM</p>

The main HRM related characteristics differentiating the North-Western from the South-Eastern cluster are that in the North-Western countries HRM is in higher position in the organisation, there are more formalised HR policies in place, less involvement of managers and more involvement of employees in HRM, stronger external labour market orientation, high emphasis on training and the existence of more employee flexibility. Among the questions surveyed were topics related to all areas of HRM ranging from the usage of career schemes, increase in internal or external training, existence of internal and external recruitment measures, and application of flexible working practices.¹⁰⁶ An interesting observation was made based on the two sets of data collected in 1995 and 1999 indicating that, in terms of the direction of change in HRM policies between these two clusters during 1995 and 1999, the dissimilarities mentioned above seem to be even stronger in the results of the second batch of data from 1999. Even though Italy has moved from South-Eastern cluster towards the North-Western one, the countries of the two clusters do not show signs of convergence in their HRM practice.¹⁰⁷

Apart from the studies concentrated on finding convergence or divergence in HRM practice between European countries, and thereby dividing them into clusters, one can also analyse Europe by looking into the general direction of change in subject matters such as developments in pay, flexible working patterns, equality of opportunity, training, and position of trade unions. Developments in pay include a general trend of decentralisation of bargaining structures in all European countries although the degree of decentralisation ranges from countries such as Denmark,

¹⁰⁶ *Ibid.* Pg.548

¹⁰⁷ *Ibid.* Pg. 558

Finland, Ireland, The Netherlands and Sweden where over 60 per cent of the employees bargain at industry or national level, to France and UK with greater decentralisation with only a minority of private sector organisations negotiating at national or industry level. Another area of pay where development in Europe shows similarities is the increase in variable, merit and performance related pay which has gained support across Europe. However, the tools used to implement this more flexible pay strategy, such as using incentive payments, differ in popularity among the European countries.¹⁰⁸

Within the flexible working practices, the trend in all European countries is towards increasing “Atypical” working patterns and contracts such as temporary, casual, home-based work and fixed contracts, a development which has been most eagerly adopted by countries where such arrangements were traditionally less used.¹⁰⁹ At European level, as the rate of employment has risen steadily, so has the number of employees with temporary employment contracts. According to the latest report of Eurostat, 14,9 per cent of employees in the enlarged Union comprised of 25 countries (EU-25) had a temporary contract in 2005. Although the trend is common to all countries, there is a considerable disparity among the individual countries ranging from Estonia, Malta and Ireland with less than 5 per cent, to Poland and Spain with 26,4 and 34,4 per cent of employees having temporary contracts.¹¹⁰

The equality of opportunity, equal treatment of men and women resulting in equal opportunities, practices and support for working women is one of the most divergent areas of employment policies in Europe.¹¹¹ The employment rate of women, according to the Eurostat data from 2005, differs greatly between the Nordic to the South-Eastern European countries ranging from 71,3 per cent of women being employed in Sweden to 46,4 per cent in Greece, while the employment rate of men in both countries is above 70 per cent.¹¹² However, regardless of the differences in the proportion of women in the workforce, the vertical and occupational segregation of women is featured in all European countries, even in the Northern Europe. However, employment matters related to equal opportunities extend beyond gender issues encompassing discrimination on the basis of race and ethnic background, and people with disabilities. Within EU, most countries do have a quota system and policies against discrimination, although the employer’s awareness and concerns related to race discrimination varies among the member states.¹¹³

¹⁰⁸ Storey, J., “Human resource management”, Routledge, 1995, Pg. 312-315

¹⁰⁹ *Ibid.* Pg. 316

¹¹⁰ Eurostat “Labour market latest trends- 3rd quarter 2005 Data”, Pg. 2

http://epp.eurostat.cec.eu.int/cache/ITY_OFFPUB/KS-NK-06-006/EN/KS-NK-06-006-EN.PDF

¹¹¹ Storey, J., “Human resource management”, Routledge, 1995, Pg. 320

¹¹² Eurostat “Labour market latest trends- 3rd quarter 2005 Data”, Pg. 4

¹¹³ Storey, J., “Human resource management”, Routledge, 1995, Pg.321

Training appears to be of concern in all European countries and increase in the investment on training at all levels, and specifically of management and staff, has been demonstrated in all member states. Education and training is seen by most of the organisations as an important factor for developing a long term strategy regarding, for example, manpower planning and human resource allocation.¹¹⁴ Within Europe, the organisations in North-Western Europe tend to provide more internal training and have a larger proportion of their employees participating in internal or external training programs, than in the organisations of South-Eastern Europe. Management tends to receive more training than other occupational groups, a trend which is experienced more in organisations of South-Eastern Europe than in the North-West.¹¹⁵ The public expenditure on education once more highlights a differences on the North-Southern axis of Europe with Denmark spending 8,51 per cent of gross domestic product on education compared to Greece, Spain or Italy spending approximately 4 per cent.¹¹⁶ Therefore, for instance, the high number of days spent by a Spanish employee on training can be explained by the low level of state education which is not sufficient for the organisational requirements.¹¹⁷

Finally, the trade union related issues and the relationship between the personnel department and unions, is still important in most European countries. The role of trade unions in communication and consultation is legally determined and in most countries, the trade unions see themselves in a role of a partner rather than an adversary, a concept also promoted by European Commission by referring to trade unions as “Social partners”. The subject of trade unions is linked to the communication to employees which is a central task of an HR department. European wide trend is to increase the communication with employees directly or through staff representatives reducing the value of the Union channel. Despite the deterioration of trade union importance in this aspect, there is little evidence of a move against them by employers at European level.¹¹⁸

Within each topic reviewed above, the trend in the development of a particular HRM related matter in Europe shows a similarity even though the specific tools used to achieve a certain practice are strongly influenced by cultural differences thus showing regional patterns supporting the clustering of European countries described in the beginning of the chapter. A terminology clarification should therefore be made between directional convergence and final convergence. The first one refers to similarities in the direction of some development while the latter refers to the similarities in

¹¹⁴ *Ibid.* Pg. 322

¹¹⁵ *Nikandrou, I., et al.*, “Changes in HRM in Europe: A longitudinal comparative study among 18 European countries” *Journal of European Industrial Training*, Vol. 29(7), 2005, Pg.553

¹¹⁶ Eurostat Yearbook 2005 “Europe in Figures”, Pg. 102

¹¹⁷ *Storey, J.*, “Human resource management”, Routledge, 1995, Pg. 322

¹¹⁸ *Ibid.* Pg. 324

practise.¹¹⁹ It seems that in general, at European level, employment and HRM related matters show strong directional convergence even though there seems not to be signs of final convergence. Within Europe, countries are more or less similar to each other and a division in HRM practice geographically appears to be between North-Western and South-Eastern countries, as defined in the cluster analysis of Irene Nikandrou et al. In order to reason this division, the following sub-chapter will present a theory based on which European countries can be culturally assessed and thereby organised according to their similarities. However, when generalising on developments of HRM practice in a region, one should bear in mind that the differences or similarities may also depend on organisational size and sector. In addition, within a country large regional differences may prevail.¹²⁰

4.1.3 Cultural dimension of Human Resource Management in Europe

Building on the analysis of the previous chapter, Europe as a trade region or internal market cannot be treated similarly than, for example, United States, in terms of corporate strategy development. The long history of Europe has contributed to a development of very distinct nation states¹²¹, all characterised with differences in culture, language and behaviour.¹²²

Based on surveys of the HRM practice applied in organisations across Europe, some authors have divided Europe into clusters of countries in order to provide knowledge for multinational enterprises planning to implement a European wide HRM strategy. Due to the fact that HR department mostly deals with humans, employees and management of a company, the cultural differences among the individuals presents a challenge for conducting HRM functions in an efficient standardised manner. Within European countries a wide variety of values and attitudes exist which usually originate from the national background of the individual, among other factors. The theory created by Professor Geert Hofstede may be used to explain how cultural differences affect the organisational structure and human resource practise in Europe and facilitate the clustering of countries presented in the previous chapter. Based on data collected by IBM between 1967 and 1973 from more than 70 countries, complemented with subsequent research adding more countries and different organisations to the original data, a model was developed by Professor Geert Hofstede identifying four dimensions used to assess individual cultures and countries. These

¹¹⁹ *Tregaskis, O., & Brewster C., "Converging or diverging? A comparative analysis of trends in contingent employment practice in Europe over a decade", Journal of International Business Studies, Vol.37(1), 2006, Pg. 112*

¹²⁰ *Brewster, C., "Towards a 'European' model of human resource management", Journal of International Business Studies, Vol. 26 (1), 1995, Pg. 2*

¹²¹ http://en.wikipedia.org/wiki/Nation_state

¹²² *Brewster, C., "Towards a 'European' model of human resource management", Journal of International Business Studies, Vol. 26 (1), 1995, Pg. 3*

dimensions are Power Distance (PDI), Individualism (IDV), Masculinity (MAS), and Uncertainty Avoidance (UAI). In addition, a fifth dimension called Long-Term orientation (LTO) was later added to the original four mentioned above due to the analysis of Chinese employees and managers. Each individual country has been assigned a different degree on each dimension depending on the responses received from the individuals of that country. The first one, power distance, refers to the degree of equality or inequality experienced by the people in a certain society. The notion of individualism is related to the level to which individual or collective achievement and relationships are reinforced in the society. Masculinity reflects the degree to which the society supports the traditional masculine work model of male achievement, control, and power. By the Uncertainty avoidance factor, the theory refers to the level of tolerance for uncertainty and ambiguity within a society and finally, Long-Term orientation which mostly applies to the Asian countries, explains the extent to which future oriented perspective rather than a conventional short term point of view is applied in the society.¹²³ Without going into extensive detail of how to interpret the differences along the various dimensions, the current study will concentrate on presenting how differently some European countries selected score along the dimensions and what it implies from HRM perspective.

The study conducted by Romie F. Littrell and Nicolae Valentin analysing the preferred leadership behaviour of three European countries of Germany, the UK and Romania illustrates how European countries score differently on Hofstede's dimensions which therefore reflects some profound differences in organisational and HRM matters of those countries. Different studies assign countries different scores on the dimensions and the ones selected in the analysis below are based on the combined results of the selected research article "Preferred leadership behaviours: exploratory results from Romania, Germany and the UK".¹²⁴ Firstly, Romania has been assigned low scores on individualism and masculinity, and high level of power distance (PDI) and uncertainty avoidance (UAI). It therefore seems that Romania can be characterised as a collectivist society with high degree of inequality, all characteristics of a less developed country. High power distance has implications from HRM perspective in determining the appraisal system since, due to the lack of openness and directness in communication, the usefulness of having an appraisal system is questionable. A respect for hierarchy resulting from high PDI and UAI, implies that a subordinate will wait for their superior's indirect or direct message on the objectives of a task before taking any action. In addition, high uncertainty avoidance implies a relaxed view on time and punctuality which may affect the design of working time and increase the need of management control and need

¹²³ <http://www.geert-hofstede.com>

¹²⁴ *Littrell, R. F., & Valentin, L.N.*, "Preferred leadership behaviours: exploratory results from Romania, Germany and the UK", *The Journal of Management Development*, Vol. 24 (5), 2005, Pg.426

for short and medium term planning. Low masculinity implies that Romanians prefer relationships and modesty, which is supported also by its long history of belonging to the communist “bloc culture”. From a career perspective, in a feminine society, having a career does not have the same symbolic value as in a masculine one and the general level of ambition is lower.¹²⁵

On the other hand, the UK scores high on individualism and masculinity, opposite to the low scores received by Romania. The first one, high individualism, implies that the relationship between the employer and employee can be characterised as a business relationship of mutual advantages in the UK, whereas in Romania the collectivist traditions include high employee protection by the employer in exchange of high loyalty. From HRM perspective, another difference between collectivist and an individualistic society is the role of family in a work situation. In the UK, employing members of the family is considered objectionable and there may even exist rules that forbid employment of close relatives whereas in Romania the employer has to be aware that behind every employee there is an extended family that may consider it unacceptable for one member to be rich as opposed to the others. Therefore, an employer in a collectivist society has a strong tendency to employ relatives which is considered even desirable by the society. With high masculinity, the British culture is performance oriented and places high value on career development. In the dimensions of power distance (PDI) and uncertainty avoidance (UAI) the two countries, the UK and Romania, also score opposite, with UK having low values of both PDI and UAI.¹²⁶ Low power distance differentiates UK from Romania in management behaviour since in Romania the relationship of an employee and an employer contains high loyalty, respect and devotion whereas in the UK such “paternalism” would be perceived as a negative connotation and power differences between management and subordinates is associated with power abuse. In an organisation operating in such a culture maintaining a system establishing a channel for handling complaints and concerns of subordinates is desirable while in Romania the power of the superior is more absolute and showing dissatisfaction towards a superior by complaining to a third party would be highly undesirable. In the UK, a system of appraising subordinate performance is an important part of leadership. Finally, due to low uncertainty avoidance present in the UK, written and unwritten rules exist although they are not considered to be as rigid as in a country such as Romania, where uncertainty avoidance is considered to be high. Also the organisational models that are in use in certain countries as opposed to others depend on the surrounding culture. In UK, with the combination of small power distance and uncertainty avoidance, the implicit models of organisation

¹²⁵ Hofstede, G., “ Cultural dimensions in management and planning”, Asia Pacific Journal of Management, January 1984, Pg. 89, 94 and 98

¹²⁶ Littrell, R. F., & Valentin, L.N., “ Preferred leadership behaviours: exploratory results from Romania, Germany and the UK”, The Journal of Management Development, Vol. 24 (5), 2005, Pg.426

would be a village market type with neither centralised nor very formalised structure when in Romania, the organisation would be characterised as a pyramid of people.¹²⁷

Germany and UK, despite the geographical and historical links, do not show much cultural similarity. However, according to the consensus estimate of the countries' scores on Hofstede's dimensions, Germany has only a moderate individualism which brings it closer to Romania, and on power distance, some sources consider Germany as a culture with low power distance whereas others assign it a PDI score closer to the Romanian high value. Masculinity of German society is clearly high which correlates with the UK results although uncertainty avoidance shows convergence with Romania.

Based only on Hofstede's dimensions, it seems that organisations from UK dealing with, for example, transfer of business by outsourcing functions to Romania, would need to adjust themselves to cultural differences in management and human relations more than a German company, for instance. Although, one has to keep in mind the limitations of such generalisations of cultural differences or similarities since many other variables have an impact on human resource management or management in general, of an outsourcing deal. However, strong arguments suggest that Hofstede's definitions and measurements of culture provide a basis for creating a cultural model explaining the impact of national cultures on employment systems.¹²⁸ As human resource management practice in Europe proves to contain national differences as described in the previous sub chapter, the argument of national cultures impact on human resource management seems unavoidable.

The dimensions created by Geert Hofstede have also been criticised for their extensive referencing in academic literature ranging from international management studies to marketing and sales. There are three main critical arguments from different authors first of which is related to the methodological grounds of the research. The generality of the findings has been criticised, as well as the subjectivity and method of data collected. The second set of criticism focuses on the theoretical grounds of the research related to the labelling of the dimensions as well as their construction in general. Also the validity of data collected such a long time ago has been a concern which, however, has been counter argued by Professor Hofstede claiming that cultural values are

¹²⁷ Hofstede, G., "Cultural dimensions in management and planning", *Asia Pacific Journal of Management*, January 1984, Pg. 87, 88, 96, 91, 93

¹²⁸ Black, B., "Comparative industrial relations theory: the role of national culture", *The International Journal of Human Resource Management*, Vol.16 (7), 2005, Pg. 1138

long lasting. The third line of criticism has focused on explaining that human behaviour does not only depend on the national culture, but is also affected by many other environmental factors.¹²⁹

Despite the criticism presented above, the cultural dimensions developed by Professor Hofstede provide the outsourcing entity with valuable information of the main cultural differences and similarities between the two parties involved in an outsourcing arrangement and may even influence the choice of destination country in the case of offshoring. From HRM perspective, in case joint management of the employees involved in the process of outsourcing is aimed at, this knowledge of cultural differences and their possible implications on HRM functions such as appraisal, career development and recruitment, can reduce chances of conflicts and prepare the organisations involved to take the prevalent differences into consideration already during the initial phase of the outsourcing arrangement. From the service providers perspective, knowing the cultural values of the customer will most likely increase the quality of services and reduce opportunities of miscommunications and conflicts. In addition to understanding cultural features, the following sub chapter will present the concept of career models as a tool for the HRM departments on both sides of the arrangement to increase employee satisfaction in terms of career expectations.

4.1.4 Career models

Based on a research conducted on the UK labour market analysing the employee experiences of the organisations' growing use of, for example, temporary employment agencies and outsourcing, has led to fragmentation of the traditional career path. Job ladders are being "delayed" having an impact on both the traditional vertical line of career progression, and the focus of training policies shifting from investment on technical skills to "Generic competencies". This delaying has been completed through dis-establishment of management and supervisory functions as well as by outsourcing tasks. As a result, job ladders are horizontal rather than vertical, and the opportunities for internal career progression have become limited.¹³⁰ Although these developments affect all employees involved, there seem to exist a difference in the level of stress and dissatisfaction experienced by individual employees as a result of the changes in career prospects. Therefore, a theory presenting four career concepts differing in terms of the direction and frequency of movement within and across different job functions over time is introduced as a tool, along side

¹²⁹ Black, B., "Comparative industrial relations theory: the role of national culture", *The International Journal of Human Resource Management*, Vol.16 (7), 2005, Pg. 1147

¹³⁰ Grimshaw, D., *et al.*, "Organisations and the Transformation of the Internal Labour Market", *Work, employment and society*, Vol. 15 (1), 2001, Pg. 25-26, 50

with understanding cultural dissimilarities, for HRM to assess the needs and concerns of individuals affected by the outsourcing and offshoring arrangements.¹³¹

The four career concepts, Linear, Expert, Spiral and Transitory, all support different strategic direction of an organisation ranging from growth and maintenance of market position to the need for new market creation. From the employee perspective, each model contains different career related motives and associative behavioural competencies. Individuals with a linear career concept are motivated by a possibility to have an upward direction in their career development with progressive ladders provided to reach a position in the organisation with increased level of authority and responsibility. Such an individual provides the organisation with leadership and efficiency, as well as profit orientation. The motivating factors are related to power and achievement and the ideal duration of a job in one field is variable.

On the contrary, a person characterised with an expert career model would prefer a traditional life long career in one organisation and function. The individual focuses on further developing and refining the skills required in that particular field of business and the upward movement is not seen as an especially motivating factor. The direction of development is seen more as an in-depth understanding of a specific field. Motivating values are job security and expertise. In addition, work constitutes an integral part of the person's identity. As opposed to the linear type, an expert career may be disturbed by a quick linear promotion in the organisation and the competencies offered to the organisation include strong commitment and reliability supplemented with high quality and technical competence.¹³²

The remaining concepts of spiral and transitory careers reflect more the changing world of employment than the more traditional career models presented above. It has been argued that in, for example, an event of a merge or acquisition, individuals characterised with these two career concepts are likely to react more positively at the event of change and therefore are more probable to experience the restructuring as a career opportunity rather than a disruption of their career path.¹³³ The spiral career concept is characterised with lateral direction of career development ideally occurring every seven to ten years. The move is usually from one area to another allied field of business where the experiences and knowledge acquired in the previous job can be used for developing new skills. The main motivating qualities are creativity and personal development and

¹³¹ Brousseau, K., et al, "Career pandemonium: Realigning organizations and individuals", *Academy of Management Executive*, Vol. 10 (4), 1996, Pg. 56

¹³² Brousseau, K., et al, "Career pandemonium: Realigning organizations and individuals", *Academy of Management Executive*, Vol. 10 (4), 1996, Pg. 56-59

¹³³ Larsson, R., et al, "Career Dis-integration and Re-integration in Mergers and Acquisitions: - Managing Competence and Motivational Intangibles", *European Management Journal*, Vol. 19 (6), 2001, Pg. 61

the competencies offered by a person with a spiral career concept are skill diversity and team work capabilities.

A person with a transitory career concept is the least traditional one and individuals characterised with this career type are often perceived as inconsistent due to the fact that the ideal duration in one position is between three to five years. The direction of movement is usually lateral to a related or completely different field or job. Motivation originates from variety and independence which provides the organisations with capabilities such as strong adaptiveness, speed and networking skills.¹³⁴

By employing individuals with the different career concepts described above, the organisation is more prepared to implement changes while still retaining enough stability and expertise of having long term employees in certain areas of the company. The adaptability, flexibility and team work skills brought in by the Spiral and Transitory employees can thus complement the commitment, reliability, technical competence and profit orientation of Linear and Expert employees. A distinction should however be made between an organisation applying the pluralistic career concepts described above and a company implementing conflicting philosophies where employees perceive the organisation as valuing expert structure and qualities but rewarding in a linear manner through upward movement linked to pay increase.

There are several ways in which an organisation can implement the pluralistic career culture. Blending of the different qualities offered by individuals characterised with each model can be done through training and counselling, tailoring of formal and informal contracts or by utilising so called cafeteria methods. Training and counselling is relatively simple to implement by offering, for example, career assessment to employees who thereby can learn about the different concepts and receive feedback on what their personal motives and concepts are which encourages them to choose a career track in the organisation that suits their profile as well as utilizes the organisational opportunities. Implementation of career pluralism by contracts is achieved by tailoring individual contracts for employees or groups of employees that support their career concepts and motivating factors while providing the organisation with the correct qualities required in a certain task. The cafeteria method presents one of the latest innovations of promoting career pluralism and is also the most complex one. By offering a mix of career options, training opportunities, performance evaluation schemes, and reward systems all employees will have a career experience that fits best

¹³⁴ Brousseau, K., *et al.*, "Career pandemonium: Realigning organizations and individuals", *Academy of Management Executive*, Vol. 10 (4), 1996, Pg. 57-59

with their concept of an ideal career while at the same time providing the organisation with the necessary flexibility to react to internal and external change pressures.¹³⁵

The concepts may also be found extremely useful for organisations engaged in providing services in an outsourcing arrangement. The motivation of offshore service agents directly affects the quality and satisfaction of the service provided, as will be presented in the following sub-chapters. Due to the fact that the working environment and tasks of the agents are under constant adaptation to the needs and requirements of the outsourcing organisation, the employees selected should mostly be individuals with motivating factors and competencies attached to the Spiral and Transitory career models. This, however, is not to say that qualities offered by employees with expert and linear career concepts should be excluded from recruitment, but that they should possibly be hired for different tasks than the functions requiring flexible personnel. Career fragmentation is therefore not necessarily a negative factor for employees as a whole, even though individuals appreciating the traditional motives and working values may experience the use of temporary contracts, creation of partnerships and joint projects with external organisations and outsourcing, as a source of stress and dissatisfaction. The impact of outsourcing on employees in terms of career disruption presented below may thus be mitigated with the knowledge of career concepts and underlying cultural differences related to transfer of undertakings.

4.2 Impact of outsourcing on employees

Some of the common concerns related to outsourcing were presented in chapter three of the current study. Among those negative issues was the employee related, so called “human factors” of outsourcing, as well as the unavoidably linked issues of poor service quality and overall change resistance deferring the realisation of the benefits sought. The common questions and concerns of the outsourcing organisation are that due to outsourcing, the company may fail the corporate responsibility to preserve jobs, employee loyalty could be undermined, the company’s commitment to the community will deteriorate and that outsourcing may damage the morale of not only outsourced employees, but spill over to all employees in general.¹³⁶ Mainly based on a research of UK based companies conducted by Damian Grimshaw and Kevin G. Ward et al., the following

¹³⁵ *Ibid.* Pg.58

¹³⁶ *Greaver, M.F.*, ” Strategic outsourcing : a structured approach to outsourcing decisions and initiatives”, AMACOM, 1999, Appendix 2

discussion will identify some key areas of concern for the HR department, and management in general, when involved in corporate restructuring.¹³⁷

The authors have identified employee concerns related to six areas of human resource management: trade union recognition, recruitment to permanent job, career progression, pay structures, protection against lay-offs, and on the job training. Even though the research is not concentrated on the impact of outsourcing, which is only one form of restructuring, the concerns are related to similar changes and can therefore be used here as an indication of how outsourcing itself may affect employees and HRM functions. The first area, trade Union recognition is not an area useful to discuss in detail due to the large national differences in Europe which was already discussed in this chapter. However, the decline in the recruitment to a permanent job and use of employment agencies has resulted in the increased use of temporary staff which, according to the management interviewed, has decreased employee loyalty and increased turn over. Also the feeling of job insecurity has grown among both permanent and temporary staff and created frustration among employees. Some of the interviewees reported feelings of wasted investment in training of temporary staff due to the high turnover and low commitment of agency employees. Drawing the parallel to outsourcing, the next logical step to increase flexibility of the organisation after increasing the amount of temporary employees can be to shift the jobs outside the organisation. As a result, the loyalty and morale of the remaining employees may be reduced and the attractiveness of the organisation as an employer may suffer, as was reported to be the case in some organisation selected for the study. However, as presented above in the chapter of career concepts, the increase of temporary contracts is not perceived equally negative by all employees due to motivational differences.^{138 139}

The steadiness of career progression was also identified as one of the HR areas affected by the restructurings and having an impact on employees. In the career concepts presented in the previous sub chapter, the impact of the delayering of an organisation was mentioned as a source of stress for certain individuals, while at the same time, others may see it as a great opportunity. An example of the negative effect of delayering, and outsourcing of certain functions which traditionally presented the next logical step on the way toward a higher position, are the experiences of low skilled employees that see the missing of an incremental career path as presenting a “quantum leap” between one level of the organisation and another, as acknowledged by a number of management interviewed. The adverse impact of flat organisational structure was seen to have increased frustration of employees since only few felt capable of receiving a promotion due to the large

¹³⁷ *Grimshaw, D., et al.*, “Organisations and the Transformation of the Internal Labour Market”, *Work, employment and society*, Vol. 15 (1), 2001, Pg. 025-054

¹³⁸ *Ibid.* Pg. 32-35

¹³⁹ *Figg, J.*, “Outsourcing: A runaway train”, *The Internal Auditor*, Vol. 57(3), 2000, Pg. 49

distances in the organisational structure. To provide the employees with reasonable opportunities for career progression and to overcome retention problems, the horizontal internal positions as well as the external ones of moving to, for example, the service providers organisation, were identified as solutions by some managers interviewed. Process standardisation and automation leading to outsourcing has also reduced the variety in daily tasks generating low morale and high turnover.¹⁴⁰

The changes in pay structures towards more variable pay system is closely related to the decline in collective bargaining in some countries, increase in the use of temporary personnel and thereby reduced the recruitment to permanent job. Changes in pay levels are difficult to manage and implement in an organisation due to the strong attachment to the current level of pay. Some of the managers interviewed confirmed that the payment policy is linked to different types of employment contracts where temporary staff is generally paid less than the permanent ones which reinforced the problems of morale and motivation of temporary staff. On the other hand, some companies have decided to offer similar hourly wage rates to all employees combined with other forms of compensation packages and incentives to avoid the high turnover resulting from having no pay increase to strive for.¹⁴¹

To avoid lay-offs after the identification that corporate restructuring is required, all the companies involved reported to have adopted new forms of managing staffing levels through manipulating the headcount figures by hiring agency workers, sourcing out staff, and dis-establishing positions across the organisation by offering early retirement plans or redeployment within the organisation. All the methods listed above may increase segmentation among the workforce between permanent and temporary staff. In addition, the organisations may experience difficulties in the recruitment and retention of committed employees in the long run and managing the changes will require strong investment in training policies. As a result of all the changes described above, the opportunities for on-the-job training which includes learning through formal or informal practices and increases the firm specific knowledge of the employee and therefore creates strong dependency on the organisation, has deteriorated. As mentioned in the career concept discussion above, the interest towards individual career development and innovative training policies has increased which can be seen as a positive development for certain employee type.¹⁴²

The studies devoted to analysing the impact of outsourcing, which is one form of corporate restructuring, on employees have traditionally concentrated on the changes in the contractual employment relationship between the parties involved, the deterioration of terms and conditions of

¹⁴⁰ *Grimshaw, D., et al.*, "Organisations and the Transformation of the Internal Labour Market", *Work, employment and society*, Vol. 15 (1), 2001, 38-42

¹⁴¹ *Ibid.* Pg. 42-45

¹⁴² *Ibid.* Pg. 48-50

employment and the negative and potentially destabilising effects that may lead to the creation of precarious employment. However, the impacts are more complex in terms of changes in Human resource management issues such as pay, career path, job security and on the job training possibilities as described above. Among the positive experiences identified in the research article of Ian Kessler et al., as opposed to the career fragmentation, the career and training opportunities for both, employees remaining in the outsourcing company, and for those being transferred to the service providers organisation, may actually be enhanced. In some cases, instead of contributing to the generation of dangerous forms of employment, outsourcing can also provide greater stability and predictability. The positive effects are, as presented in the career concept related section of the current study, dependent on the personalities of the individuals involved. As an example of the stability and predictability, the experiences of employees of in-house departments of public organisations that do not enjoy the economies of scale and flexibility of private companies bidding for, for instance, cleaning service contracts, may have supported employee spin offs to provide the service on outsource basis.¹⁴³ In general, the impact of outsourcing on employees is commonly more dramatic in a transfer from public to private company than in transfers between two private companies.¹⁴⁴

Three factors have been identified to influence employee response to the change of employer in a case study of a local authority outsourcing functions to a private company, conducted by Ian Kessler et al. The first factor relates to how the employees feel they are treated by their current employer, second is the attractiveness of employment in the new organisation, and third is the reality felt by the employees following the change to the new employer. In general, if the transferor is a small organisation or a public authority like in this case, and the service provider on the other hand, is a large multinational company (MNC) operating in a range of sectors, the employee reactions seem to be more positive than in the opposite case of moving from a large MNC to a small service provider. Consequently, in the first case, an increase in career possibilities both vertically as well as horizontally, and the increased access to training have been perceived as positive results of outsourcing. However, the shift also included extension in working hours and increased stress related to learning new technical and organisational processes as well as reduced communication with management as compared to the employment in the original smaller organisation. The authors concluded that employee perception of their treatment has a significant impact on their attitudes and behaviour in an event of outsourcing. The study suggests that for analysing the impact of an

¹⁴³ Kessler I., et al., "Outsourcing and the employee perspective", Human Resource Management Journal, Vol. 9 (2), 1999, Pg. 5-6

¹⁴⁴ Domberger, S., "The Contracting Organization: A Strategic Guide to Outsourcing", Oxford University Press, 1998, Pg. 134

outsourcing arrangement on the employees, those three stages of treatment related to past, present and future should be differentiated, and each stage requires different methods to be adopted for mitigating the negative feelings and to highlight the positive impacts. However, trade-offs will remain and the management should be aware of the nature of them as well as their likely consequences.¹⁴⁵

Very little research has so far been conducted on the motivational issues of employees recruited for working in a shared service centre providing services for a customer. It has been mentioned in the literature that providing the agents with a career path is important for recruiting and retaining staff especially in the offshore centres where attrition is a huge problem. As mentioned by Rob Muth from HSBC group, transferring high value tasks to offshore locations has been implemented also because of the need to offer future challenges and promotion possibilities to those employees.¹⁴⁶

4.3 Role of Human resource department in managing the process of outsourcing

Managing organisational change resulting from contracting out demands the employees involved to let go some of the traditional ways of work before the service providing organisation can begin to deliver the benefits agreed upon. The role of HRM together with the management is therefore to prepare people for the changes ahead, as well as to monitor their feelings during the process of outsourcing. Many organisations have failed to yield the results and benefits expected from outsourcing due to neglecting the organisational and staff issues. The mentality of employees of the outsourcing organisation has to be shifted towards the future benefits. As Wayne Gretzky said: “I skate to where the puck is going to, not where it has been”.¹⁴⁷ Similarly, Human resource management and the management involved on both sides of the arrangement need to take some initial preparatory steps before the transition, supporting steps during the transition as well as facilitating steps during the process once the change has been implemented, to shift the focus of employees to the future. Depending on whether or not employees are being transferred in the arrangement, the steps necessary differ.¹⁴⁸ The issues mentioned below are related to a case where employees are being moved. However, many of the communication requirements apply also when employees are not transferred since for the purpose of performance monitoring and cooperation, some employees will be more directly affected by the outsourcing deal than others.

¹⁴⁵ Kessler I., *et al.*, “Outsourcing and the employee perspective”, Human Resource Management Journal, Vol. 9 (2), 1999, Pg. 14-18

¹⁴⁶ *Commentary*, “ANALYSIS: Outsourcing demands create new world order”, Precision Marketing, London: Nov 18, 2005, Pg.11

¹⁴⁷ <http://www.nsd.org/library/words.cfm>

¹⁴⁸ Domberger, S., “The Contracting Organization: A Strategic Guide to Outsourcing”, Oxford University Press, 1998, Pg. 8

Before the official release of the outsourcing contract, the HR department and the management involved from both organisations have to identify the individuals that will mostly be affected by the change. From the sourcing organisation's side, the key individuals the organisation wants to retain and possibly utilise in the creation of a relationship management team, need to be identified before any information of the arrangement has been released. On the other hand, the service provider will also locate those employees they want to make an immediate offer of employment to as well as those the provider will possibly want to hire and those they definitely do not want to hire. Obviously the two sides of the arrangement, HR of the outsourcing and service providing organisation, need to inform each other of their intentions and once agreement between the two parties has been reached in terms of identifying which employees will be key for both sides, the HR department of the outsourcer has to commit themselves to facilitating the successful transfer of certain individuals to the service provider.¹⁴⁹

Following the announcement of the outsourcing contract, all affected employees of the outsourcing organisation have to be approached in written format with information of the financial and operational implications of the change. The individuals identified in the preparatory analysis of the workforce will be approached preferably at the same time of the announcement with written proposals of future changes in the employment relationship. In case the employees would decline the offer of the outsourcing organisation, they may be considered by the service provider as potential employees, or in case no offer will be provided by the receiving organisation, these employees need to be provided with the same severance package as the employees whose contracts will be terminated. Also the provider should approach the individuals they would like to interview within 24 hours after the announcement and to reduce the uncertainty, the decision on their offer for employment should be communicated to them as soon as possible after the interviews. The reason for timing all the initial steps so tightly is to minimise the feeling of discomfort and insecurity among the affected employees which will have a crucial impact on the successfulness of the outsourcing process.¹⁵⁰

Commonly, to facilitate the transition from one employer to another, a relationship team will be created. Their efforts to coordinate the transition should be supported by the HR department through counselling employees and answering their questions related to pay, benefit and career changes. The purpose of the counselling is to encourage those employees subject to move to the provider to accept the offer by highlighting the positive results of the change. The positive factors may include arguments such as the provider is specialised in the same core competencies and skills

¹⁴⁹ Greaver, M.F., "Strategic outsourcing : a structured approach to outsourcing decisions and initiatives", AMACOM, 1999, Pg. 258

¹⁵⁰ Ibid. Pg. 259

the employee has which therefore offers them a more accurate career path and training possibilities than their old employer could have offered. The service provider's entire business may depend on those specialist skills which may increase the opportunities for personal growth and promotions.¹⁵¹

Transitional issues related to the implementation of an outsourcing arrangement are whether to transfer the internal unit in one movement or as a gradual transition over time. Single implementation is preferred usually since delays may have a negative impact on the outsourcing initiative and speed is important for the process. However, the gradual process may be appropriate when there is strong support for the initiative and the change is not critical. Problems of not implementing the change in one event are that the employees may be caught between two employers for a certain time period, any opinions against outsourcing have more time to impede the implementation of the process and the benefits sought may be delayed.¹⁵²

Once the transition has been implemented and the employees have settled in their new position, the HR department, or the relationship manager and account manager from the supplier's side, should arrange a meeting with the transferred employees to find out of their knowledge, issues and remaining concerns that need to be addressed. In addition, the customer's of the internal unit transferred are usually other internal units that have been identified as the most vocal ones in the event of transition problems. Their daily tasks are directly burdened in case the transition goes wrong. The feedback from the internal employees receiving the service of the outsourced team and even customers in case the outsourced function touches upon them, ought to be collected and analysed to know what possible changes need to be made to improve the functioning of the outsourcing arrangement. HR department plays a role in monitoring the remaining employees concerns and, on the other hand, identifying possible individuals interested in participating the outsourcing project more closely. Many corporate functions, such as controllership, internal audit and information systems, may be affected by the move of tasks to an external vendor which can raise important questions of information access and security, internal controls and performance auditing.¹⁵³

Performance monitoring is one of the maintenance tasks in the outsourcing process. To be able to implement a close oversight of, and to have the final approval over changes in the service provider's key personnel, any changes in technology used or in the provider's processes and output, the outsourcing organisation must have developed close cooperation with the vendor and its personnel. Also, from the vendor's perspective, a well functioning relationship is necessary since

¹⁵¹ Greaver, M.F., " Strategic outsourcing : a structured approach to outsourcing decisions and initiatives", AMACOM, 1999, Pg. 258-260

¹⁵² Ibid. Pg. 261-263

¹⁵³ Ibid. Pg. 262-263

the performance can suffer if obtaining answers from the outsourcer is difficult and time consuming, or their suggestions for organisational improvement necessary for their performance are not implemented. The difficulties in obtaining answers may lead to delays and unnecessary assumptions made by the employees who, due to the inferior relationship between the parties, intend to avoid those delays by making decisions that actually would have required feedback from the customer.¹⁵⁴

Good communication and thorough planning of the implementation of an outsourcing arrangement will ease the transition, but will not change the fundamental fact that in-house functions are transferred to an external service provider. The initial reaction of employees, characterised by fear and uncertainty brought by a change, will remain. The question is therefore not how to avoid any negative feelings but rather how to mitigate them and highlight the positive factors. The employees affected by outsourcing have persistently reported that the lack of proper communication of the process, how it will affect individual employees and what options they have, enhances the negative feelings described above. Even though economists may regard change related problems as nothing more than friction in the system, management theorists have identified change as one of the biggest challenges facing businesses continuously. Managing a change is costly both in terms of management time and effort, and this cost is hardly ever correctly estimated. Therefore, HR department, among other functions, should be consulted already from the initial phase of engaging in the outsourcing business, until the management of such arrangement.¹⁵⁵

4.4 Conclusions

In the analysis of future trends of outsourcing in Europe conducted in the third chapter of the current study, the concerns related to employee satisfaction in the outsourcing process were identified as one of the most persistent factors affecting both the quality of service as well as the overall successfulness of the outsourcing arrangement. Therefore, the chapter of the implications outsourcing has on Human resource management was introduced in the current study. The aim of the analysis is to investigate how HRM can, and has to, support the process of outsourcing, as well as to introduce some HRM tools useful in the context of managing an outsourcing arrangement or an organisational change in general.

In the first part of the chapter HRM has been briefly introduced by defining the role it has in the organisation and what functions are in the core of this particular business function. The

¹⁵⁴ Ibid. Pg. 269

¹⁵⁵ Domberger, S., "The Contracting Organization: A Strategic Guide to Outsourcing", Oxford University Press, 1998, Pg. 137-151

characteristics of international HRM were also mentioned since the current trend in outsourcing is to transfer activities to abroad which unavoidably bring in the cross border element to the discussion of HRM functions. The future trend in HRM includes outsourcing some of the transactional employee management functions, which also has an impact on the position of HRM in the company: HRM has become more strategic and change management was identified as one of the new core functions of Human resource department.

After establishing the concept and functions of HRM, the differences in HRM practice across Europe were presented with the purpose of highlighting the fact that the underlying differences are dependent on multiple cultural and institutional specificities present among EU countries. Despite the pressure for harmonisation of employment matters generated by the directives and regulations issued by the European Union institutions, which will be presented in more detail in the following chapter, implementing a European wide HRM strategy as such does not seem feasible based on multiple studies conducted in the field of European HRM. However, some degree of standardisation is seen to be applicable among certain regions of countries. The study of Irene Nikandrou et al implies that, within European countries two main clusters, North-West and South-East, within which there are two sub clusters of North and West, can be distinguished from HRM perspective. The main conclusion of the study was that the two sides of Europe have not shown significant convergence in their distinctive HRM practice between 1995 and 1999. In addition, or supporting those clustering, a more general analysis of HRM trends in Europe confirmed that even though a strong directional convergence exists, little signs are shown in support for final convergence of HRM practice in Europe.

To further analyse the source of these differences, the theory of Professor Geert Hofstede which has identified four cultural dimensions of Power Distance, Individualism, Masculinity, and Uncertainty Avoidance was introduced. Based on the national scores received by Romania, the UK and Germany on the four dimensions, the differences in management practice implied by these results were analysed with a focus on HRM related matters. The largest differences in management practice and in some HRM aspects seemed to appear between Romania and UK which received opposite scores on the dimensions. The results therefore imply that, from Outsourcing perspective, the more HRM and general management difficulties would exist if a UK company decided to transfer operations to Romania as opposed to a German company shifting tasks to, for example, shared service centre in Romania. The knowledge of the cultural traits of a country may guide the outsourcing party in deciding where to shift tasks as well as increase the successfulness of such move. However, it should be kept in mind that many other factors affect the positive outcome of outsourcing and that within a country large regional differences prevail.

In addition to understanding the culture and HRM practise of the Outsourcing partner country, the issues related to the impact of corporate restructurings on employees have also been discussed. The four career concepts of expert, linear, spiral and transitory careers has been explained with the aim of providing both parties, the outsourcer and service provider, with additional knowledge of how individuals with different career motives and competencies can be assigned a different role in facilitating the change. Also, from the service provider's point of view, the identification of the different styles will assist the organisation to select employees that are most likely to be motivated by the fast changing environment requiring great flexibility. The individuals with spiral and transitory career models seem to be the ones that will resist the changes the least while expert and linear types are required for other, maybe less change affected areas of the company.

Finally, the focus of the last two sub chapters of the current study was to identify the main sources of stress outsourcing, or any change in corporate structure in general, creates for the employees. The uncertainties of employees, both transferred and remaining ones, need to be addressed by the management with the assistance of the HRM department. Various recommendations for improving and streamlining communication between the employees and the companies involved, as well as between the two companies, exist in the current literature. Based on the literature reviewed, HRM seems to have a function in the process of outsourcing starting from the initial identification and analysis of which employees will be mostly affected and key for the successful change management as well as in maintaining a good relationship between the two companies involved by monitoring the feelings of employees in of the entire organisation. The persistent concern mentioned by the employees involved in outsourcing has been the lack of proper communication of the process, how it will affect individual employees and what options they have. In the current literature, very little has been mentioned about how the employees of the service provider feel when delivering the service to a customer in a tight relationship such as the one needed for implementing a Business Process Outsourcing or working on a shared service centre. This matter will be approach in the empirical part of the current study. In addition, the contractual and legal restrictions surrounding transfer of business in Europe and the changes in the labour market from the legal perspective will be presented in the following chapter five.

5 Labour law in Europe

This chapter presenting European labour law will strongly focus on those pieces of European Community (EC) secondary legislation that are most relevant for the topic of Outsourcing and employee protection in a shared services environment where employees have been transferred from one entity to another. However, the first three sub chapters are devoted to establishing the legal basis for regulating labour market, to some extent, on the European Union (EU) level, and to the reasoning why community wide action may be needed in the field of labour law. Also some concepts related to the changes in the future of employment law in Europe will be introduced before going into further detail of the Council directive chosen for the legal analysis of the Outsourcing situation. One should bear in mind that the legal section considers a certain form of Outsourcing that includes transferring employees, a situation which is not present in the actual case study conducted in the empirical research of the current study. However, in general it is common to transfer at least some employees from the outsourcer to the service provider, as was discussed in chapter three and four of the current study, therefore supporting the choice of this particular Council directive on Transfer of Undertakings.

5.1 Development of the social dimension of European Union

The development of the social policy, which includes the concept of employment, in European Community level has been a long process with pressures both for and against of including such a dimension to the competencies of the European Union. The most evident change in the emphasis of the aim of the community, however, took place in the introduction of the Amsterdam Treaty in 1992.

The history of having a labour, or social policy, as a body of EC law has its roots in the Treaty of Rome concluded in 1957. The Treaty already contained a title devoted to the Social Policy, even though the rights conferred to the Community by the treaty articles were limited. The articles contained phrases such as the one in Article 117 (Art. 136 EC) providing the “ Member states agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained”. Similar social policy consideration was contained in Article 118 (Art.140 EC) which gave the commission the task of promoting “close co-operation between Member States and facilitate the coordination of their action in all social policy fields”. These Treaty provisions

nevertheless failed to provide any legally enforceable rights to the European Community in the field of employment policy. The reasons for why the ambition of the Title of the social matters was so limited lie, to some extent, in the original objective of the European Economic Community which was to create a common market with its free movement dimensions. The underlying philosophy behind the Economic Community was based on the Neo-liberal market tradition which assumes that the high social standards were the rewards for efficiency of the market, which would merely be disturbed by imposing strict rules on the field of social and employment policy.¹⁵⁶ The competition between European countries would, according to the theory, produce most efficient results and welfare for all the members. The generation of the Treaty articles mentioned above that address the issues of harmonization of the conditions for employment in the Community was a compromise taking the opposite opinions of both France and Germany into account, therefore leaving the text legally shallow.¹⁵⁷

However, in the wake of the social unrest in Europe in 1968, the Community's non-intervention in the Social field became questionable. In the communiqué released by the heads of government in 1973 it was noted that the social sphere was as important to the Member States as achieving Economic and Monetary Union. This change in the aim of the Economic Community was a response to the negative consequences experienced by some individuals and companies within the Community. As a result of an action program issued by the Commission, a remarkable increase in legislative activity in the field of social policy was experienced in the Community. Some examples of directives and cases addressing the social dimension of the Community are the introduction of a directive in the field of sex discrimination¹⁵⁸, Defrenne case which raised the issue of sex equality¹⁵⁹, and directives adopted in the field of health and safety and measures taken to ease the impact of mass redundancies.¹⁶⁰ In addition, the initial secondary legislation related to Transfer of Undertakings¹⁶¹ was initiated in the wake of rising unemployment. In addition, the European Regional Development Fund¹⁶² was created to combat the problems created by European Economic Community in the peripherals of the Community.¹⁶³

Yet another force emerged in the beginning of the 1980's in the field of social policy regulation in the Community when the conservative British government led by Margaret Thatcher required strict limits on the development of Community social policy. Since all social policy measures at that

¹⁵⁶ <http://en.wikipedia.org/wiki/Neoliberalism>

¹⁵⁷ Barnard, C., "EC employment law", Second edition, 1996, Pg.1-3

¹⁵⁸ Council Directive 75/117/EEC, Directive 75/207/EEC, Directive 79/7/EEC

¹⁵⁹ Case 80/70 *Defrenne*

¹⁶⁰ Council Directive 75/129/EEC of 17 February 1975

¹⁶¹ Council Directive 77/187/EEC of 14 February 1977

¹⁶² Council Regulation (EEC) No. 724/75 of 18 March 1975

¹⁶³ Barnard, C., "EC employment law", Second edition, 1996, Pg.6-7

time required unanimity in the Council, UK was able to veto proposals and thereby create stagnation in this field of Community policy creation and brought the legislative process of social policy almost to halt. A change finally occurred when Jacques Delors became the president of the Commission and the Single European Act (SEA) was introduced in 1986 which was the first revision of the Treaty of Rome.¹⁶⁴ Through SEA the Community adopted measures to increase social cohesion with the aim of reducing disparities in the level of development across regions and institutionalizing the social dialogue by introducing Treaty Article 118b EEC (Art. 139 EC). The most important contribution of the SEA in the field of Social Policy was the adoption of qualified majority voting when deciding on matters related to health and safety under Article 118a EEC (Art. 137 EC). However, the matters related to the rights and interests of employed persons still required unanimous agreement in the Council. The most significant legislative acts adopted under Article 118a was the Directive on working time¹⁶⁵, the Pregnant Workers' Directive¹⁶⁶ and the Young Workers' Directive¹⁶⁷. In addition, the social dimension was further enhanced by the signing of a political declaration of the Community Charter of Fundamental Social Rights (1989) which unfortunately had no legal effect, although it was an important indication of the political commitment to the social dimension of the Community.¹⁶⁸

As a response to some major changes in the economic and industrial relations taking place in the beginning of 1990's, the Community signed the Treaty of European Union (TEU) in 1992 which imposed significant amendments to the Treaty of Rome. In the background of this enactment was the structural transformation of the economy, internationalisation, and shift of labour from agriculture to services and major recession that finally led to change in the political climate reflected as a shift to the right in the national government policy-making in 1980's. The Social Policy section of the Treaty was modified to cover more activities and, as a result, was renamed as the "social policy, education, vocational training and youth". Another key development of TEU was the introduction of the "Citizenship of the Union". One of the most difficult and debated aspects of the amendments introduced in the draft Treaty were the changes proposed to Articles 117-122 EEC which would have expanded the Community's social competence. As a result of strong resistance from UK, these changes were removed from the body of the Treaty and were placed in a separate Protocol and Agreement (Social Policy Agreement, SPA, signed by the member states in December 1991)¹⁶⁹ and a Social Chapter, of which UK opted out. The legal status of the opt out was later

¹⁶⁴ http://en.wikipedia.org/wiki/Single_European_Act_1986

¹⁶⁵ Council Directive 93/104/EC of 23 November 1993

¹⁶⁶ Council Directive 92/85/EEC of 19 October 1992

¹⁶⁷ Council Directive 94/33/EC of 22 June 1994

¹⁶⁸ Barnard, C., " EC employment law ", Second edition, 1996, Pg.8-12

¹⁶⁹ http://europa.eu.int/scadplus/glossary/social_policy_agreement_en.htm

challenged and the debate was effectively settled by the ECJ ruling in the UEAPME case¹⁷⁰ in favour of the Social Chapter being part of Community Law. The SPA included new topics into the sphere of qualified majority voting as part of the co-operation procedure which strengthened the Community's competence to legislate matters related to, for example, working conditions and equality between men and women. As a new feature in the field of Community Social Policy, SPA included the private agents into the making of Social Policy of European Community by consulting representatives of both management and labour on the content and action of a proposal.¹⁷¹

An increased emphasis was placed on the Community Social Policy when the Commission issued a white paper on Growth, Competitiveness and Employment in December 1993¹⁷², as well as a white paper on Social Policy in July 1994¹⁷³. A change in the UK's political environment as a result of a new government elected in 1997 also led to UK opting back into the Social Chapter of the Union and a single legal framework in the Union Social Policy was finally achieved. The social provisions, both the amended versions of Articles 117-122 EEC and the SPA were incorporated to the Amsterdam Treaty, signed on second of October 1997, under the section of "The Union and the Citizen".¹⁷⁴ As mentioned in the paragraph 26 of the ECJ judgement in the *Sloman-case*¹⁷⁵, the aim of Article 117 EEC (Art.136 EC) was seen as an important aid for the interpretation of some provisions of the Treaty and secondary legislation within the field of Social Policy.¹⁷⁶ However, some matters present in the Charters (European Social Charter from 1961 and Charter of the Fundamental Social Rights for Workers from 1989) such as the right of association and the right to strike, are still excluded from the body of the Treaty. Other Treaty Articles that were significantly modified by the Amsterdam Treaty are Article 118 EEC (Art. 137 EC) under which the co-operation procedure was replaced by the co-decision one and the extension of the decision making procedure defined in Article 251 EC (Art. 189b EEC) to enable the Council to adopt measures and encourage member states to increase co-operation in social matters and to combat social exclusion. In addition, the importance of the equality between men and women in matters such as equal pay and equal employment opportunities, has been reinforced in many Articles of the Treaty. During the five years when UK was not part of the Social Charter and UK government did not take part in negotiating legislation in the social policy matters, the UK companies with operations in continental Europe still had to comply with the Directives such as the European Works Councils directive.¹⁷⁷

¹⁷⁰ Case T-135/96, *UEAPME vs Council of the European Union* [1998] ECR II-2335

¹⁷¹ *Barnard, C.*, " EC employment law ", Second edition, 1996, Pg. 12-16

¹⁷² COM(93) 700 final on growth, competitiveness, and employment:

The challenges and ways forward into the 21st century

¹⁷³ COM(94) 333 European Social Policy - A Way Forward for the Union - A White Paper

¹⁷⁴ <http://europa.eu.int/scadplus/leg/en/s50000.htm>

¹⁷⁵ Joined cases C-72 and C-73/91 *Sloman Neptun v. Bodo Ziesemer* [1993] ECR I-887, para.26

¹⁷⁶ http://en.wikipedia.org/wiki/Amsterdam_Treaty

¹⁷⁷ Council Directive 94/45/EC of 22 September 1994

Also, the introduction of the Employment Title to the Treaty represented a shift from protecting the employed individuals in the European labour market to address the needs of the vast growing population on unemployed citizens in Europe.¹⁷⁸ Based on the new Treaty title, in the Luxemburg Jobs Summit 1997 (also known as the “Luxemburg Process”) an European Employment Strategy was launched and in its evaluation in 2002 the need for further alignment of the strategy with the Lisbon goals of sustainable economic development, more and better jobs and increased social cohesion was recognized.¹⁷⁹

At present, the attempts taken by the Union for creating a connection between the economic aspect of the Treaty and the Social dimension of the European Union, presents a clear step towards the creation of a European civil society. To include the human factor of economic integration to the agenda of European Union can be seen in the multiple declarations and strategy programs EU has devoted itself to. They include topics that reach beyond employment and extent the Union involvement to the early in the process of becoming a member of the labour force. To achieve this level of involvement, such topics as improving education and vocational training, as well as providing equal employment opportunities for the citizens of Europe have been added to the current focus of the Union. The Luxemburg process and the goals established by the Lisbon Strategy have set employment as the priority of the European Union.^{180 181}

5.2 Future of Labour Law in Europe

Since the second industrial revolution, the conditions under which contemporary labour law has been developed have changed: sometimes gradually and during the past two decades with increasing pace. The technological advancements, competitive pressure brought by globalisation as well as economic integration of European countries through the European Union has had an impact on all levels of our society. More specifically, the dialogue and relationship between social partners in Europe has evolved and had an impact on the contemporary labour law.¹⁸² In labour law, the concepts of employment contract and subordination have been developed during the industrial era characterised with a “Fordist” industrial relations model. The model has been dominant throughout Europe even though the implementation has taken different forms ranging from Nordic model with welfare services offered by the state to all citizens independent of their employment situation, to the

¹⁷⁸ *Barnard, C.*, “ EC employment law ”, Second edition, 1996, Pg. 17-20

¹⁷⁹ http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm

¹⁸⁰ <http://europa.eu.int/scadplus/leg/en/cha/c00002.htm>

¹⁸¹ *Barnard, C.*, “ EC employment law ”, Second edition, 1996, Pg. 66

¹⁸² *Morin, M-L.*, “Labour law and new forms of corporate organization”, *International Labour Law review*,2005, Vol.144 (1) pages 5-30

Southern European approach concentrating on self employment. The overriding similarity among the different relations described above is that all European countries have traditionally relied on a standard full-time non-temporary employment contracts in the employment relations.

The employment contract has long been characterised as “the bond of subordination it establishes between the worker and the party to whom his services are delivered”¹⁸³ or as “bilateral agreement between employers and employees that involve reciprocal expectations and behaviours”¹⁸⁴. The notion of subordination has long been a straight forward concept related to traditional hierarchical organisational model with clear division of tasks and responsibilities within an enterprise. In addition, the definition of an enterprise, which normally is the counterpart of the employment contract, has traditionally followed the Fordian type of characterization of an economic and social organization functioning under single management.¹⁸⁵

The world of employment has changed dramatically since the times described above. The traditional concepts surrounding the relationship between two or more parties involved have changed and impose new challenges for defining the contract of employment itself. For example, the concept of an employment contract has been extended to include a full set of relationships involved in employment, which means also non-contractual elements.¹⁸⁶ Today’s economy is driven by competitiveness and flexibility which has an impact not only to the strategic choices of enterprises in terms of what to produce and where to market their goods but on the way businesses themselves are organized. These changes related to opening up of global economies, creation on networks of companies, outsourcing and relocation have had a crucial impact also on the contemporary labour law. The human aspect of the restructurings mentioned above can be taken into account by demanding more corporate social responsibility and in the more formal side, by updating the rules governing employee protection not only nationally but also in the international arena.¹⁸⁷

The traditional trade-off between stable life long employment and subordination has been replaced by completely new concepts of flexible organization of work and result based remuneration. The changes in the workplace have been experienced most strongly by those employees who began their careers in the era characterised with life long employment relationship and who now are required to

¹⁸³ *Supiot, A. et al.*, “Beyond employment: Changes in work and future of labour law in Europe”, Oxford University Press 2001, Page 1

¹⁸⁴ *Fang L. & Earnshaw J., et al.*, “For better and for worse: transfer of undertakings and the reshaping of employment relations”, *International Journal of Human Resource Management*, Vol. 15(2), Pg. 280, March 2004

¹⁸⁵ *Morin, M-L.*, “Labour law and new forms of corporate organization”, *International Labour Law review*, 2005, Vol.144 (1) pages 5-30

¹⁸⁶ *Fang L. & Earnshaw J., et al.*, “For better and for worse: transfer of undertakings and the reshaping of employment relations”, *International Journal of Human Resource Management*, Vol. 15(2), Pg.276-294, March 2004

¹⁸⁷ *Ibid*

adapt to rapid changes, organizational restructuring and even moving to a completely new employer to perform more or less the same tasks as before. However, the new entrants in the labour market, from the beginning of the 1980's to the present moment, have never had the luxury of experiencing the beginning and end of a change. On the contrary, they have been grown into working under constant change and permanent state of transition.¹⁸⁸

These changes have occurred in different forms and phases among European countries even though they all derive from the same global process of transformation. The fact that there is no single pattern in the development of work relationships in Europe demands a wide variety of legal approaches to respond to it and to modernise the labour law that protects employees under the constant corporate reorganisation. Simultaneously, the functioning and competitiveness of the internal market requires flexibility that cannot be disturbed by creating too complex regulatory environment.¹⁸⁹

From the legal point of view, the "Supiot Report" has identified three main challenges facing labour law in Europe based on the very changes in the employment relationships described above. The first one is related to the concept of self-employment, the second on the evolution of subordination and the third on outsourcing and subcontracting of labour. For the purposes of the current study, only the two last ones will be presented in detail to create a basic understanding from legal point of view of the new type on contractual relationships in the labour market.¹⁹⁰

5.2.1 Concept of subordination

The way power has been distributed in companies has changed rapidly to respond to the growing need for flexible organisational structure, rapid international expansion and increased competition. To become more cost efficient and responsive to environmental fluctuations, the creation of lean organisational structure with very few levels of hierarchy has created a working environment where employees are perceived more as sub-contracted entrepreneurs than subordinates of a certain manager. This trend can be observed throughout Europe and especially the employment relationships offered to young professionals in the form of temporary and fixed term contracts, has further deteriorated the traditional understanding of subordination, as was described in chapter four of the current study. The power vested on the hands of the employer through these types of

¹⁸⁸ Sparrow, P.R., "New employee behaviours, work designs and forms of work organization What is in store for the future of work?", *Journal of Managerial Psychology*, Vol. 15 (3), pg. 202, 2000

¹⁸⁹ Supiot, A. et al., "Beyond employment: Changes in work and future of labour law in Europe", Oxford University Press 2001, Pg.3

¹⁹⁰ Ibid.

contracts can be used to influence worker behaviour due to the uncertainty of the continuation of the employment relationship. Inevitably, the employees contracted under these terms are less likely to join unions, participate in strikes and are more willing to accept extra work to demonstrate their value to the organization and thereby ensure future employment. Other factors strengthening the power of employer in the current labour market is high unemployment and the shift of jobs from large to Small and medium size (SME) companies. The latter scenario is especially important for European level harmonization of labour law since regulating the SME sector is limited due to employee thresholds of the current regulations and the sociological ineffectiveness of applying such restrictions on small enterprises.¹⁹¹

To broaden the scope of the concept of legal subordination is necessary in order to redefine the concept of employee and what constitutes an employment contract in lean organisations. While the employees are given more autonomy in performing their daily tasks, other indicators of subordinations have to be sought to establish the relationship between the enterprise and its employees. These indicators differ between European countries but the general principle of “clustering indicators” is applied throughout the member states. Some examples of such indicators that are in use currently are “the work is undertaken personally”, “the work is remunerated” and “the means to perform the tasks are furnished by the other party”.¹⁹²

The tendency of defining the scope of labour law in Europe has taken two directions: the first one is to return to the traditional strict interpretation of concept of subordination already described above. The second direction, on the contrary, is to broaden the scope of labour law by acknowledging the features of the new forms of employment contracts by adding more criteria in recognizing the employment relationship than merely the traditional concept of subordination. The aim of this latter approach is to match the scope of labour law to the actual need for protection. In the “Supiot report” the criteria identified as indicating legal subordination includes financial dependency and integration to someone else’s company. The first indicator of financial dependency has already existed in labour and social security law in many European countries. In the current work environment a new generation of home office employees has established itself by utilizing the developments in information and communication technologies and the high autonomy offered to employees in performing their daily tasks. These employees are despite the lack of subordination very strongly dependent on the employer at least in financial terms since they perform tasks for a single employer without investing their own capital and are usually part of the employer’s

¹⁹¹ *Supiot, A. et al.*, “Beyond employment: Changes in work and future of labour law in Europe”, Oxford University Press 2001, Pg. 10-11

¹⁹² *Supiot, A. et al.*, “Beyond employment: Changes in work and future of labour law in Europe”, Oxford University Press 2001, Pg. 12

organizational scheme. The second concept of integration to someone else's company includes an essential notion that the forms in which the supervision, control and co-ordination is applied in the relationship between the person conducting the work for a another party, who essentially pays for the work performed and also markets the results, is not relevant for establishing an employment status. This approach has been strongly criticised since it covers workers who are currently not considered as employees of an enterprise, such as freelancers. This definition may however be essential for extending the scope of labour law to cover the new forms of network organizations with low level of subordination.¹⁹³

5.2.2 Outsourcing and subcontracting of labour

Labour law has been developed based on the organisational structure of a "Fordist model" according to which a company performs all business functions within one organization, be it core or non-core to the company in question. Currently this description of a company is no longer as valid as it used to be. By creating a flexible organization that utilizes the resources available in the most efficient and effective manner, and focuses on core business operations, companies aim at building sustainable competitive advantage within their field of business. As was discussed in chapter three of the current study, to remain competitive in the long run the companies in Europe have had to cut costs which has led to outsourcing and subcontracting of so called low value activities - a tendency that has already changed to include also high value operations in the core of the everyday functioning of the company. This development has its origins in the advancements of new technologies needed for the implementation an outsourcing project as well as in the new contracting techniques available.

The pressures generated by the changes in organizational structure on labour law can be divided into the one establishing a possibility of a labour fraud and another related to the genuine outsourcing and subcontracting. The first one, labour fraud, is related to the threat that an outsourcing arrangement between two companies is actually an attempt to add a so called "front company" between the employee and the actual employer. The risk of this development is especially high in an arrangement where supply of labour is the main or only service provided to the company outsourcing its operations and is closely related to trafficking of labour. National legislation against labour trafficking cannot efficiently tackle this particular problem which is in the core of the fair functioning of labour market. Instead the issue should be addressed in the

¹⁹³ *Supiot, A. et al.*, "Beyond employment: Changes in work and future of labour law in Europe", Oxford University Press 2001, Pg. 13-17

community level which has already been set in motion with the Directive on the delivery of services in the European Union.¹⁹⁴

The second pressure on labour law is related to the genuine outsourcing practice and is still poorly handled by the European Union. The risk that the transferee (the company performing the outsourced operations) becomes technologically or financially dependent on the principle shifts power to the hands of the transferor and may therefore threaten the working conditions of employees involved in the outsourcing contract. The legal problems of corporate restructuring include the consequences the re-organization has on the employees of both organisations when their working conditions change and the traditional employment relationship between two parties may be replaced by a complex triangular employment relationship.¹⁹⁵ So far, on the Community level, these issues have only been addressed in the Transfer of Undertakings Directive that only applies to the situation where there has been a transfer of employees.¹⁹⁶ As discussed earlier in the current study, the transfer of employees is included in just some forms of outsourcing and therefore many current forms of organising the outsourcing deal are completely out of scope of Community legislation even though the same triangular relationship can be observed in a deal where employees are not necessary transferred. There is legally no contract of employment between the one company (the transferor) and the employees of another company (the transferee) even though those employees may strongly depend on the decisions of the principle. In some implementations of outsourcing deals the employees may even work on the premises of the principle and have no representation, negotiation or bargaining structures providing access to the principle. An attempt to regulate this type of activity of performing work on the user company's premises on community level is the introduction of the Council directive on Temporary or Mobile worksites.¹⁹⁷ The directive, however, seems to mainly addresses the situation where construction workers perform tasks on the client's premises temporarily, and not the situation where employees are permanently placed on another company's premises in a shared services centre.¹⁹⁸

¹⁹⁴ *Supiot, A. et al.*, "Beyond employment: Changes in work and future of labour law in Europe", Oxford University Press 2001, Pg. 17-20

¹⁹⁵ *Morin, M-L.*, "Labour law and new forms of corporate organization", *International Labour Law review*, 2005, Vol.144 (1), Pg. 22

¹⁹⁶ Council directive 2001/23/EC of 12 March 2001 on Transfer of Undertakings

¹⁹⁷ Council directive 92/57/EEC of 27 June 1992 on Temporary and Mobile worksites

¹⁹⁸ *Supiot, A. et al.*, "Beyond employment: Changes in work and future of labour law in Europe", Oxford University Press 2001, Pg. 20-21

5.2.3 Managing the change on European Union level

Given the changes described above, an interesting question of how to manage these changes from the European Union perspective arises. Capital has become more and more flexible and thus opened up possibilities for mass delocation and relocation of corporate activities. In addition, as can be seen in the human resource management section of this research paper, the labour has changed as well. Not only has the demand for flexible, change oriented individuals grown, but also the expectations of employees have changed in a way that the traditional life long career in one single company is no longer attractive for all individuals.¹⁹⁹ The types of jobs available in the labour market have developed from basic manufacturing jobs to more service relationship oriented tasks. In addition, technical revolution has affected the composition and heterogeneity of employees in the labour market and organization and coordination of work has gained new dimensions.²⁰⁰

The need for seeking new institutional ways to protect these employees is strongly present and the employment law and social partners in the market are therefore required to make a strategic choice between either resisting the change or defending the traditional employment relationship, or to adapt to the new forms of corporate organization. The latter option demands the labour unions to become more cooperative and less confrontational in the way they operate, which may remain as an optimistic hope for many of the European countries with strong labour unions. The legal structure of industrial relations has a common core in Europe when it comes down to collective agreements. However, in terms of industrial action, right to strike and employee participation in plants and enterprises, a strong variance within Europe exists.²⁰¹ In both cases the employment relationship needs to be protected but in the latter one this protection would be coupled with trade unions offering services for managing flexibility and human resources. Both the resistance and adaptation are capable of dividing the society into two and especially the first option of resisting the change may lead to protection of the lucky ones who have jobs and, on the other hand, to the exclusion of the majority of employees from receiving employment in the first place.²⁰²

A third alternative is to actively adapt to the changes in the environment surrounding the labour market by creating rules and negotiation forums for those rules so that the *collectives involved* can intervene effectively in applying the new adapted rules. The status of employees in which the security of a job has been closely linked to subordination should be revised to reflect the new status

199 Brousseau, K., et al., "Career pandemonium: Realigning organizations and individuals", Academy of Management Executive, Vol. 10 (4), 1996, Pg. 52-67

200 Supiot, A. et al., "Beyond employment: Changes in work and future of labour law in Europe", Oxford University Press 2001, Pg. 51

201 Rebhahn, R., "Collective Labour Law in Europe in a Comparative Perspective (Part II)", The international journal of comparative labour law and industrial relations", Vol. 20(1),2004, Pg.107-132

202 Supiot, A. et al., "Beyond employment: Changes in work and future of labour law in Europe", Oxford University Press 2001, Pg. 51

which combines the need for freedom and for security - which is already being done from the human resource management point of view by distinguishing different career models of individuals and thereby offering different positions and types of employment contracts for employees with different career expectations and motivating factors.^{203 204}

On the Community level finding a solution to address the changed employment relationships in Europe is very difficult due to the strong diversity among the labour law practice applied in Europe and the national sovereignty and dependence on the political choices of the member states in the field of Social Policy.²⁰⁵ However, the European Commission defines the concept of competitiveness as "the ability of the economy to provide its population with high and rising standards of living and high rates of employment on a sustainable basis".²⁰⁶ The definition thus highlights the need for a sustainable focus when obtaining competitiveness, indicating that the aim should not be merely to cut costs by shifting employment from the countries with high standard of living to those with less developed employee protection and therefore lower costs of labour. The matter seems to have a community dimension and therefore community level action can be seen necessary in harmonizing labour law among European Union member states, as will be described below.

5.3 Legal basis for harmonization Labour law

Since the national labour law, and social policies among EU member states, are strongly divergent, the law making in this field of EU's competence is particularly challenging. As described above, the development on the Social dimension of the Union has been a politically very sensitive process with opinions shifting according to the economic situation at hand, and more specifically, according to the level of unemployment and social unrest brought by it. However, currently it seems that employment issues are at the very core of the European Union's priorities and goals.

As stated in the Article 5 EC of the Consolidated version of the Treaty Establishing the European Community, "*The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of*

²⁰³ Brousseau, K., et al., "Career pandemonium: Realigning organizations and individuals", Academy of Management Executive, Vol. 10 (4), 1996, Pg. 52-67

²⁰⁴ Supiot, A. et al., "Beyond employment: Changes in work and future of labour law in Europe", Oxford University Press 2001, Pg. 52

²⁰⁵ Kretz, J., Presentation "Community labour law", http://www.eujapan.com/japan/presentation_Kretz.pdf

²⁰⁶ "Opinion of the European Economic and Social Committee on the scope and effects of company relocations", Official Journal C 294 from 25.11.2005, Pg. 0045-0053, Section 1.3

subsidiarity...”²⁰⁷. The definition of what is within the Community’s exclusive competence is not clear, even though the Commission has claimed matters related to the creation of the common market to be part of this exclusive competence. Social policy, and therefore labour law matters, is not part of the list defined by the Commission.²⁰⁸

Therefore, the secondary legislation in the field of Labour law includes only Directives and mainly only framework ones which establish minimum requirements in the area regulated.²⁰⁹ The level of Community competence within the Policy areas in general varies greatly and, for example in the field of public health (Art. 152 EC), Community action can be seen as more complementing than replacing national activity. It should also be noted that the new chapter on Employment (Art. 125-130 EC) introduced in the Treaty of Amsterdam (ToA) has been placed between the chapters of monetary union and common commercial policy, rather than next to the social policy, to emphasize the economic management perspective of employment policies adopted under the Treaty articles mentioned above.²¹⁰

The legal basis of the Directive chosen for further analysis in the current study, The Council Directive on Transfer of Undertakings²¹¹, is drawn from Article 137 EC. The directives adopted under the Treaty article 137(1) and (2) have to follow the co-decision procedure (Article 251 EC)²¹² and qualified majority voting (Article 205 EC)²¹³ in the Council. In matters related to paragraphs 1 c to g of Article 137, the Council has to act unanimously, after consultation with the European Parliament, the Economic and Social Committee and the Committee of Regions. With regard to provisions including topics such as pay, right of association, right to strike and right to impose lock-outs, the Treaty article 137 (5) does not confer legislative competence to the Council. Within Community labour law there are three main regulatory subjects of information and consultation, equal treatment and non-discrimination, and working time. The Directive chosen for analysing the legal protection of employees in Outsourcing arrangements for the purposes of this study falls within the regulatory subject of information and consultation as well as equal treatment. The following chapter 5.4 will move into further detail regarding the directive selected and discuss its application in the Outsourcing environment.²¹⁴

²⁰⁷ Article 5 EC, Consolidated version of the treaty establishing the european community

²⁰⁸ Steiner, J., & Woods, L., “Textbook on EC Law”, 8th Edition, Oxford University Press, 2003, Pg. 48

²⁰⁹ Kretz, J., Presentation “Community labour law”, http://www.eujapan.com/japan/presentation_Kretz.pdf

²¹⁰ Steiner, J., & Woods, L., “Textbook on EC Law”, 8th Edition, Oxford University Press, 2003, Pg. 43-44

²¹¹ Council directive 2001/23/EC of 12 March 2001 on Transfer of Undertakings

²¹² http://europa.eu.int/scadplus/glossary/codecision_procedure_en.htm

²¹³ http://europa.eu.int/scadplus/glossary/qualified_majority_en.htm

²¹⁴ Kretz, J., Presentation “Community labour law”, http://www.eujapan.com/japan/presentation_Kretz.pdf

5.4 Directive on protection of employees in Transfer of Undertakings

As mentioned in the previous chapters, the changes in the ways businesses are organised have been adopted to respond to the pressures such as market responsiveness, internationalisation and increased competition brought by it. One of the most fashionable strategic choices for companies to cut costs, but also to acquire superior knowledge to enhance and maintain their competitive position in the market, is to outsource or subcontract some non-core operations. To address this restructuring from the perspective of labour law, the European Union has introduced secondary legislation in the form of a Council Directive on Transfer of Undertakings²¹⁵. This particular directive will be analysed in the following chapters first from a general and historical perspective after which the Directive's application on an outsourcing arrangement will be discussed based on case law, articles and previous studies conducted on the topic.

5.4.1 Presentation of the Council Directive on Transfer of Undertakings

As part of the Social Action program, three important directives were adopted by the Council in the field of employee protection in the event of restructuring of enterprises. One of them is the Council Directive on Transfer of Undertakings²¹⁶, which will be analysed in more detail in the current chapter. The other two were the Council Directive on collective redundancies²¹⁷ and Council Directive on insolvency²¹⁸. The original aim of all the directives mentioned above was to assist European enterprises in the process of restructuring and address and mitigate its social consequences.²¹⁹

To establish the link between consecutive jobs held with different employers, which is necessary in order to protect employees when the management of their job is being transferred to another party, the Community has introduced the Transfer of Undertakings Directive. The aim of the Directive is "to provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded".²²⁰ To achieve this aim, the directive lays down three pillars on employee protection: First, the Directive provides the automatic transfer of the employment relationship with all its rights and obligations from the transferor to the transferee existing on the date of the transfer in Article 3 (1) of the Directive. Secondly, the Directive states in Article 4 (1) that the transfer as such is not a valid justification for dismissal by the transferor or transferee, thus

215 Council directive 2001/23/EC of 12 March 2001

216 Council Directive 77/187/EEC of 14 February 1977

217 Council Directive 75/129/EEC of 17 February 1975

218 Council Directive 80/987/EEC of 20 October 1980

219 Barnard, C., "EC employment law", Second edition, Chichester Wiley, 2000, pg. 449

220 Council directive 2001/23/EC of 12 March 2001, Preamble, Third recital

providing the employees a protection against job loss. Thirdly, the transferor and transferee are required to inform and consult the workers' representatives with time limits defined in Article 7(1) of the Directive.²²¹ The Council Directive 2001/23/EC codifies the former Council Directives 77/187/EEC as amended by Council Directive 98/50/EC^{222, 223}.

The three pillars of the directive represent minimum requirements and only aim at a partial harmonisation without intention to establish a uniform level of protection of the employees throughout Europe in the event of transfer of business. This limitation was acknowledged by the European Court of Justice (ECJ) in the ruling of the case *Danmols Inventar*.²²⁴ The description of an "employment contract" (Article 2 (2)) and the "employee" (Article 2 (1d)) are therefore left to be defined by the National courts. The directive confers rights on both the individual employees, concept which may be defined by national courts, affected by the transfer, and on the employees' representatives (Article 2 (1c). Some restrictions related to the nature of contracts of employment which should not be excluded from the scope of the Directive by the national courts are laid down in Article 2 (2 a-c). In addition, more details on what type of employment relationship which may or may not be within the scope of the Directive are defined in ECJ cases such as *Botzen, Schmidt*²²⁵ and *Wendelboe*²²⁶. The first two cases mentioned above have clarified the concept of employment relationship by highlighting the importance of the characteristics of the link existing between the employee and the part of Undertaking being transferred. In the last case mentioned above, the fact the employees must be employed by the transferring company at the event of the transfer is emphasised.²²⁷

From the geographic perspective, the Directive covers any transfer of undertakings taking place within the territorial scope of the Treaty and the types of Undertakings referred to in the Directive include both private and public organizations operating for a gain with two exceptions: the administrative reorganization of public authorities as well as the transfer of administrative functions between public administrative authorities defined in the Article 1 (1c) are excluded from the scope of the Directive.²²⁸

What constitutes a Transfer of an Undertaking in the meaning of the Directive is defined in Article 1 (1b) of the Directive which states that "there is a transfer within the meaning of the Directive

²²¹ Article 7(1) of Council directive 2001/23/EC of 12 March 2001

²²² Council Directive 98/50/EC of 29 June 1998

²²³ http://europa.eu.int/comm/employment_social/labour_law/docs/transfer_memorandum_2004_en.pdf

²²⁴ Case 105/84 *Danmols Inventar* [1985] ECR 2689

²²⁵ Case 186/83 *Botzen* [1985] ECR 519 and Case C-392/92 *Schmidt* [1994] ECR I-1311

²²⁶ Case 19/83 *Wendelboe* [1985] ECR 457

²²⁷ *Barnard, C., " EC employment law ", Second edition, Chichester Wiley, 2000, pg. 450-452*

²²⁸ Article 1 (1c) of Council directive 2001/23/EC of 12 March 2001

where there is a transfer of an economic entity which retains its identity...”²²⁹. In order for the business activity to constitute a Transfer of Undertaking it must fulfil two prerequisites: there must be a change of employer and the transferred entity must “retain its identity”. The first concept of changing employer was clarified in ECJ judgement in the case *Spijkers*²³⁰ by highlighting the fact that if the employer’s legal personality remains the same, no transfer of undertaking has taken place. Therefore, there has to be a change in the contractual relations of natural or legal person responsible for carrying on the business and obligations of an employer towards the employees of the entity. The case mentioned above has also clarified the concept of the maintenance of identity by defining seven criteria to be fulfilled, which are characterised with both the job continuation by the new employer, the similarity of activities performed and the continuity of the workforce.²³¹ Determining whether a transfer of undertaking in the meaning of the Directive has taken place is up to the national courts to decide, based on the seven conditions defined by the Court in the *Spijkers* case.²³²

Regarding the issues related to cross-boarder transfers of undertakings, conflicts between the laws of different member states may occur. The Transfer of Undertakings Directive does not provide for a solution even though the operation as such is within the scope of the Directive. The business reasoning behind the transfer of corporate functions in the form of Outsourcing was discussed in the chapter 3 which highlighted that the motivations are strongly centred on cost reductions and transfer usually takes place from a Northern or Central European country with high labour costs to a country in the South-Eastern Europe where wage costs are considerably lower.²³³ Therefore, a cross-boarder element is usually present in a Transfer of Undertaking. To take into account these developments, the Commission intends to carry out a detailed analysis of the issue to further clarify the topic.²³⁴

5.4.2 Outsourcing as Transfer of Undertakings

The following chapter will move the discussion of Transfer of Undertakings Directive²³⁵ to its application in a case where the transfer takes place in the form of an outsourcing arrangement. As opposed to a traditional merge or acquisition, Outsourcing involves moving a company’s internal operations to a service provider. Different models of Outsourcing as well as the strategic reasoning behind the decision of what to source out and to where, has already been explained in chapter 3 of

²²⁹ Article 1 (1b) of Council directive 2001/23/EC of 12 March 2001

²³⁰ Case 24/85 *Spijkers* [1986] ECR 1119

²³¹ Commission memorandum on rights of workers in cases of transfer of undertakings, Section 2.4.2

²³² Commission memorandum on rights of workers in cases of transfer of undertakings

²³³ *Kasteel, E.*, ” The European Union: Land of new Opportunity”, Logistics today, December 2003, Pg.20

²³⁴ *Ibid*

²³⁵ Council directive 2001/23/EC of 12 March 2001

the current study. Therefore, in the discussion here the focus will be on presenting relevant case law of ECJ to draw the conclusion of Transfer of Undertaking Directive's application on Outsourcing. The choice of cases in this section of the research is motivated mainly by the cases selected for another master's thesis written on the same topic.²³⁶

To define the boundaries of the directive's application in a case where a part of an Undertaking is subject to outsourcing, as defined in the Article 1 (1a) of the Directive, the ECJ has indicated in its ruling of the *Rask*²³⁷ case that the fact that the function transferred to another company is only an *ancillary activity* for the transferor, does not exclude the transfer from being within the material scope of the Directive.²³⁸

Anne Watson Rask and Kristin Christensen were employees of Phillips working in one of the four canteens on the business site. After a contract was concluded between Phillips and ISS Kantine service regarding outsourcing the canteen operations, ISS took over the management of the canteens, which also included taking over the permanent canteen staff, including the plaintiffs Rask and Christensen.

From a business perspective, the activities outsourced often include precisely the ancillary activities which are referred to as the company's non-core operations, a concept that was already presented in the current study. In addition, the Court clarifies in the paragraph 17 of the judgement mentioned above that the fact that the transfer relates to a "*provision of services exclusively for the benefit of the transferor in return for a fee.*", which refers to the fact that the outsourcer's loss of control of the activity formerly performed in house as well as of the personnel transferred to the service provider, does not preclude the applicability of the Directive. It therefore seems that the different models of outsourcing and different contractual relationships related to them, do not as such result in the exclusion of the transfer from the scope of the Directive, once the change of employer and maintenance of identity have been established.²³⁹

A restriction on what kind of transfer of undertakings can be considered as outsourcing was further clarified in the case *Süzen*.²⁴⁰

Ayşe Süzen was employed by a cleaning firm Zehnacker and was working in facilities maintenance of a secondary school Aloisiuskolleg. After the school

²³⁶ *Thysell, J.*, "Dina eller mina arbetstagare?- en studie av överlåtelsedirektivets tillämpning på outsourcing", Handelsrättslig skriftserie Nr. 17 " Företagsöverlåtelser – nya utmaningar för arbetsrätten", Pg. 98-113

²³⁷ Case C-209/91 *Anne Watson Rask and Kirsten Christensen v Iss Kantineservice A/S* [1992] ECR I-5755

²³⁸ *Ibid.* Paragraph 17

²³⁹ Commission memorandum on rights of workers in cases of transfer of undertakings, Section 2.4

²⁴⁰ Case C-13/95 *Ayşe Süzen v Zehnacker Gebäudereinigung GmbH Krankenhausservice* [1997] ECR I-1259

terminated its contract with the cleaning firm, all seven employees working at the school were laid off. Afterwards the school concluded a new agreement with another firm, Lefarth GmbH, to conduct the cleaning activities.

The Court ruled that there was no transfer of undertakings in the meaning of the Directive due to the fact that no material or immaterial assets were transferred to the new company, even though the activities performed remained the same. The requirement that the identity of the transferred undertaking remains the same, a condition which should be assessed by the National courts based on the seven requirements laid down in *Spijkers*,²⁴¹ include more factors such as workforce and management staff than just the similarity of activities.²⁴² However, although the transfer of assets mentioned above is one of criteria used to evaluate if a transfer of undertaking has taken place, as established in cases such as *Schmidt*²⁴³ and *Merckx*²⁴⁴, the “absence of such assets does not necessarily preclude the existence of such a transfer”.²⁴⁵ Considering that in outsourcing the contractual details differ greatly depending on the business reasons behind the transfer, the contract may not include transfer of assets as such but only the business activities and for example some part of management staff and employees. Based on the cases mentioned above, it seems that the assessment of whether or not outsourcing falls within the scope of the Directive has to be done in the business context and the reasons behind the transfer need to be analysed. Different benefits sought motivate the choice of the form of outsourcing which may require either outsourcing of complete activities including the assets necessary for performing the tasks or outsourcing of partial functions and business processes where the close relationship between the parties and sharing of knowledge is necessary.

The situations depicted above are related to organisational restructuring where both parties, transferor and transferee, have been satisfied with the contract and its outcomes. However, as has been described earlier in the current study, up to 53% of all outsourcing customers have had to renegotiate their contracts and in nearly one quarter of the negotiations the contract was terminated.²⁴⁶ The ECJ case *Vidal*²⁴⁷ presents such a situation.

Prudencia Gómez Pérez and María Gómez Pérez had been employed by a cleaning firm and assigned to clean the premises of a company Hernández Vidal. The contract between Vidal and the cleaning firm was terminated and the cleaning tasks

²⁴¹ Case 24/85 *Spijkers* [1986] ECR 1119

²⁴² Case C-13/95 Para. 15

²⁴³ Case C-392/92 *Schmidt* [1994] ECR I-1311

²⁴⁴ Case C-171/94 *Merckx* [1996] ECR I-1253

²⁴⁵ Case C-13/95. Para. 17

²⁴⁶ *Kakabadse A., & N.*, “Outsourcing Best Practice: Transformational and Transactional Considerations”, *Knowledge and Process Management*, Vol. 10(1), 2003, Pg. 62

²⁴⁷ Case C-127/96 *Francisco Hernández Vidal* [1998] ECR I-8179

were to be conducted as an inhouse activity. Neither one of the companies wanted to continue the employment relationship with the two plaintiffs. The national court took the view that a transfer had taken place and ordered Vidal to re-employ the two women involved.

The Court confirms in the judgement that the Directive also applies when the operations are transferred back to the transferor, “*provided that the operation is accompanied by the transfer of an economic entity between the two undertakings*” as defined in paragraph 35 of the judgement. In paragraph 31, the court further clarifies that “*The national court, in assessing the facts characterising the transaction in question, must take into account among other things the type of undertaking or business concerned*”. In service industry the most important and valuable asset of the firm can be its personnel which therefore can constitute an economic entity. In assessing whether the identity of the economic entity has been maintained in the transfer based on the conditions laid down in *Spijkers*, “*it is necessary to consider all the facts characterising the transaction in question*”. Therefore, it is concluded that the mere fact that the work carried out first by the service provider and then by the outsourcing entity itself is similar, does not as such justify the conclusion that a transfer of an economic entity has taken place.²⁴⁸ Thus, in case the main economic entity, which in this case was identified to be the employees, has not been transferred, the protection against dismissal by the transferor or transferee, provided by the directive, would not apply.

Related to the topic of renegotiating the contracts in a Outsourcing, a change of outsourcing partner presents challenges for determining the applicability of the Directive. In *Daddy’s Dance Hall*²⁴⁹, the ECJ ruled that the Directive applies even though the transfer takes place in two steps, if the conditions related to maintaining the identity are fulfilled.²⁵⁰

Mr. Tellerup was employed as a restaurant manager by a catering company operating on the premises of A/S Palads Teatret. When the lease contract between the Palads Teatret and the catering company was terminated and a new company, Daddy’s Dance Hall A/S, took over the operations of the restaurant, all the old employees were re-employed by Daddy’s Dance Hall, although some employment conditions were changed. Mr. Tellerup was subsequently dismissed based on the new conditions he had agreed upon with the new employer.

²⁴⁸ Ibid. Para. 29 and 30

²⁴⁹ Case 324/86 *Foreningen af Arbejdsledere i Danmark v Daddy’s Dance Hall A/S* [1988] ECR 739

²⁵⁰ Ibid. Para.10

The Court held that the rights conferred by the provisions of the Directive upon the employee cannot be waived by them and these rights cannot be restricted even with the employees consent.²⁵¹

The issues related to the change of an Outsourcing partner have been further clarified by the Court in the *Bork*²⁵² case. The Court establishes the Directive's applicability in a case where after resigning the outsourcing contract with the service provider, the transferor retakes the operations for a certain time period and then sources the tasks out to a new service provider, even though the third party only obtains half of the original employees. Once again, the maintenance of the identity criteria laid down in *Spijkers* needs to be evaluated in the context of the transaction in question and the nature of the business at hand.²⁵³ In addition, as established by the Court in *Ny Mølle Kro*²⁵⁴, the fact that the business operations are completely stalled for a certain time period between the transfers and no employees therefore are employed on the site for a certain time period has to be taken into account when assessing whether a transfer of undertakings has taken place. "*However, the temporary closure of an undertaking and the resulting absence of staff at the time of the transfer do not of themselves preclude the possibility that there has been a transfer of an undertaking within the meaning of article 1 (1) of the directive.*"²⁵⁵ The directive therefore is applicable also in a case where the owner of a leased undertaking takes over its operation following a breach of the lease by the lessee.²⁵⁶ This is especially true in the case when the business at hand is seasonal, as mentioned in paragraph 20 of the judgement, and the national courts need to take the *all the factual circumstances surrounding the transaction in question.*²⁵⁷ It was also confirmed in this case that even though the directive intends to preserve the observance of the transferee of the terms and conditions of employment such as a collective agreement, it is only applicable on workers already employed by the company at the event of the transfer.²⁵⁸

In the *Temco*²⁵⁹ case, the Court came to the conclusion that a Transfer of Undertakings occurred even though the Advocate General Mr. Geelhoed arrived to an opposite conclusion.

Company A concluded a contract with company B which further outsourced the services to be performed by company C. When the contract between A and B was terminated, company C laid off all but four of its employees, some of which were subsequently hired by a new company D who was awarded with a contract with

²⁵¹ Ibid. Para.15

²⁵² Case 101/87 *P. Bork International A/S, in liquidation v Foreningen af Arbejdsledere I Danmark* [1988] ECR 3057

²⁵³ Ibid. Para. 14

²⁵⁴ Case 287/86 *Landsorganisationen i Danmark for Tjenerforbundet i Danmark v Ny Mølle Kro* [1987] ECR 5465, Para. 19

²⁵⁵ Ibid. Para. 19 and 21

²⁵⁶ Commission memorandum on rights of workers in cases of transfer of undertakings, Section 2.4.3

²⁵⁷ Case 287/86, para. 22

²⁵⁸ Ibid. para. 27

²⁵⁹ Case C-51/00 *Temco Service Industries SA* [2002] ECR I -969

company A. The employees hired by company D was done as a result of a collective agreement in the industry.

In paragraph 66 of the AG's opinion a very interesting issue is raised related to the possible paradoxical results of applying the Directive in a situation where a collective agreement obliges the new company to employ the employees of the old outsourcing partner. The application of the Directive in the situation described above would endanger the dynamic economic situation where companies change service provider due to inferior quality of the service and conclude a contract with another firm that is considered to offer better service. If the new company would be automatically obliged to hire the old employees, especially in a service industry, then the anticipated improvement of the quality of service expected by the transferor would not be achieved.²⁶⁰ Despite this reasoning, the ECJ came to the opposite conclusion and ruled the Directive to be applicable even in such a complex case as the one described above. Based on previous rulings, the Court once again highlighted that *"the absence of a contractual link between the transferor and transferee cannot preclude a transfer within the meaning of the directive."*²⁶¹

Finally, the ECJ has confirmed the directive's applicability to a partial outsourcing agreement of ancillary activities in the *Schmidt case*. The only addition to the definitions and concepts mentioned above is that even if the transfer involved only one person the application of the protection for employees provided by the Directive is applicable.²⁶²

5.5 Conclusions of the law part

The development and inclusion of Social Policy in the competences of European Union has been a gradual process strongly affected by the general macro economic developments, technological innovations and most importantly shifts in political climate of the member states. Currently, however, it seems clear that the Social dimension has come to stay as one of the priorities of the European Union, as defined in the Lisbon strategy. Under the strategy, the underlying assumption is that a stronger economy will drive job creation and ensure sustainable development and social inclusion.²⁶³

The future forces in the field of European labour law require redefinition of certain main concepts surrounding the legal definition of an "employment contract". Among the considerations presented in the "Supiot Report" discussed in the current study, is the need for understanding the changes in

²⁶⁰ AG opinion, Para. 67, Case C-51/00 *Temco Service Industries SA* [2002] ECR I -969

²⁶¹ Case C-51/00, Para. 31

²⁶² Case C-392/92 *Christel Schmidt* [1994] ECR I-1311, Para. 15

²⁶³ http://en.wikipedia.org/wiki/Lisbon_Strategy

the concept of subordination and the effects of outsourcing and subcontracting of labour on the contemporary labour law. For addressing the labour protection issues originating from outsourcing, the Council has only introduced two Directives, the Transfer of Undertakings and Temporary and Mobile Worksites Directive, which however do not cover cross border elements or new forms of outsourcing. In the Commission memorandum on the application of the Directive, one of the future tasks of the Commission is to address this particular limitation of the Council Directive on Transfer of Undertakings.²⁶⁴ As mentioned in the “Supiot Report”, further studies of the impact of corporate restructuring and creation of network organisations on the status of a worker from the labour law perspective is necessary. More precisely, labour law would need to be made more effective in this context of triangular relationship between the outsourcer, dependent service providers and their employees. The historical function of labour law is to ensure social cohesion which will only be fulfilled if the new developments in the way work is organised will be accommodated.²⁶⁵

The application of the Transfer of Undertakings Directive in the Outsourcing environment is strongly dependent on the industry being analysed, the reasoning and purpose of the outsourcing arrangement itself, as well as on the outsourcing model and contractual terms adopted by the parties involved. It seems that the case law related to the Directive is concentrated on the traditional forms of outsourcing, for example, cleaning or canteen services and not so much on the modern outsourcing situations. The requirements defining whether or not a transfer has taken place, such as change of employer and maintenance of identity, are defined in the case law and therefore the scope on the Directive has been clarified during its existence since 1977. Also the transfer taking place in multiple steps is clearly within the scope of the Directive as was confirmed in the cases *Vidal*, *Bork*, *Daddy’s dance hall* and *Temco*. However, the national court assessing the applicability of the Directive has to take all the factual circumstances surrounding the case, such as the seasonal nature of the business in to account, as was the conclusion in the Case *Ny Mølle Kro*.²⁶⁶ Also, the maintenance of the identity of an economic entity depends on the business analysed since in service industry, the employees may infact constitute the main economic entity which indentity needs to be maintained for a transfer of undertakings to have taken place. This was confirmed in the case *Vidal*.²⁶⁷ All and all, the seven requirements laid down in *Spijkers*²⁶⁸ as guidelines for national courts to assess whether the identity of the economic entity has been maintained in the transfer are merely single factors which do not exclude the necessity of an overall assesment required. The factors

²⁶⁴ Commission memorandum on rights of workers in cases of transfer of undertakings, Section 6

²⁶⁵ *Supiot, A. et al.*, “Beyond employment: Changes in work and future of labour law in Europe”, Oxford University Press 2001, Pg.22-23

²⁶⁶ Case 287/86 *Landsorganisationen i Danmark for Tjenerforbundet i Danmark v Ny Mølle Kro*

²⁶⁷ Case C-127/96 *Francisco Hernández Vidal* [1998] ECR I-8179

²⁶⁸ Case 24/85 *Spijkers* [1986] ECR 1119

cannot be considered in isolation and as mentioned in paragraph 30 of the judgement of *Vidal*²⁶⁹, “*it is necessary to consider all the facts characterising the transaction in question*”. For addressing the more complicated Outsourcing issues such as the triangular relationship described in the current study, the Directive seems not to offer a solution.

²⁶⁹ Case C-127/96 *Francisco Hernández Vidal*, Para. 30

6 Empirical case study

The empirical case study presented in this section of the current study aims at reflecting the observations of the secondary data analysis regarding career expectations, cultural differences and general work experiences of the former employees of the company selected as an example of Business Process Outsourcing. It should be noted that instead of referring to the real company names, the analysis below will refer to a “Large multinational IT firm (ITCOMP)” and a “Global management consultancy (GMCON)” as the two parties of the outsourcing arrangement.

6.1 Case presentation

The choice of the outsourcing arrangement for the empirical research is strongly motivated by the authors personal experiences of working for both of the companies involved in the arrangement. The type of outsourcing arrangement adopted between the large multinational IT company (ITCOMP) and a Global management consultancy (GMCON) is the Business Process Outsourcing one where the outsourcer, ITCOMP, has decided to transfer back office processing of some of its accounting and internal procurement functions to a company specialised in providing such services located in Spain (GMCON). The services of GMCON are provided on the customer’s (ITCOMP) premises in Spain through a creation of a Shared Service Centre (SSC). The management of the services provided by approximately 150 employees of the service provider (GMCON) is conducted in cooperation with experts and managers of the outsourcer (ITCOMP). The employees are hired from all European countries due to the language requirements of the service offered and the contract of employment is created solely with the outsourcee (GMCON). The employees classified as “Agents” are only allowed to be in official contact with their Team leader’s who may further contact an expert of accounting or purchasing from the outsourcing organisation in case any clarification is needed for conducting the daily tasks. These tasks include handling invoices, indirect procurement and account’s payable processes of ITCOMP as well as providing telephone service to third parties (vendors) waiting for either a purchase order or money from the outsourcer. The processes in each field have been split so that GMCON employees only handle transaction type tasks while ITCOMP retains the responsibility of managing and supervising both the accounting and purchasing related issues.

The employees of GMCON generally have a university degree in the relevant field of business and are between 22 and 30 years old. Each team provides services for a certain European subsidiary of ITCOMP and groups of teams, such as Finland, Sweden, Norway and Denmark work under the supervision of a Spanish team leader. In the organisational hierarchy of GMCON, a one supervisor

is in charge of the group team leaders of either accounting, purchasing or customer support departments. A business centre manager of GMCON is in charge of the entire Business Process Outsourcing arrangement (BPO). The team leaders and supervisors report to the ITCOMP's, experts and the management of all the services offered by their employees in the entire Shared Service Centre. In addition to the Shared Service Centre, the business site of ITCOMP also includes other ITCOMP's business departments which have nothing to do with the BPO. In total, approximately 1000 employees work on the site. The employees of GMCON only have a limited access to the facilities, especially to the recreational ones, and the canteen service is provided for them in a higher price than to ITCOMP employees.

6.2 Analysis of the survey results

The survey was distributed to approximately 30 former employees of GMCON and it was answered by 23 individuals. In the survey, the questions range from career related matters to work organisation and cultural differences. In addition, general questions were asked about the positive and negative matters related to working on a Shared Service Centre under a Triangular management of having both GMCON team leaders and ITCOMP experts affecting the job design and daily operations. It should be noted that even though the sample is fairly small, it encompasses experiences of individuals from nine European countries and among the employees there are both former team leaders as well as agents. The age of the respondents range from 27 to 35 and the nationalities covered by the survey are Finnish, Swedish, Danish, Dutch, Austrian, German, French, Portuguese, Brazilian and Spanish. The gender distribution is 35 per cent female and 65 per cent male and all but two of the correspondents had previous work experience. In total seventeen questions were asked from the surveyed population out of which the most significant ones, in the light of the employee related issues mentioned in secondary literature are presented in detail below. Another limitation of the surveyed population is that due to the fact that these individuals have all left the company, the results may be biased as opposed to the experiences of current employees.

As mentioned by Rob Muth from HSBC group, providing the agents with a career path is important for recruiting and retaining staff especially in the offshore centres where attrition is a serious problem. Accordingly, transferring high value tasks to offshore locations has been implemented by HSBC because of the need to offer future challenges and promotion possibilities for those employees.²⁷⁰ Therefore, one part of the questionnaire has been devoted on analysing the existence

270 Commentary, "ANALYSIS: Outsourcing demands create new world order", Precision Marketing, London: Nov 18, 2005, Pg.11

of a career based on the experiences of the former employees of an outsourcing arrangement. As can be seen in the Chart 2 below, 78 per cent of the correspondents experienced that little or very little career path was offered to them by their employer, the service provider GMCON. In addition, supporting the commentary of Rob Muth mentioned above, based on the results of the survey, the majority of the correspondents reported that the existence of career prospects does affect their work motivation and loyalty towards their employee (Chart 3).

Chart 2: Question 3: Do you feel that there is a career path offered to you by your employer ?

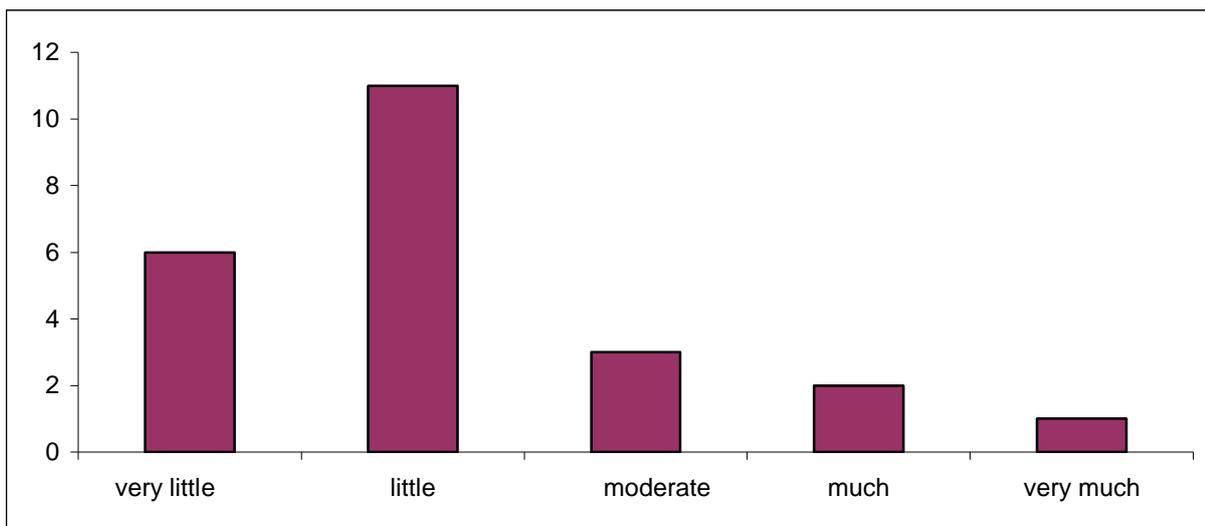
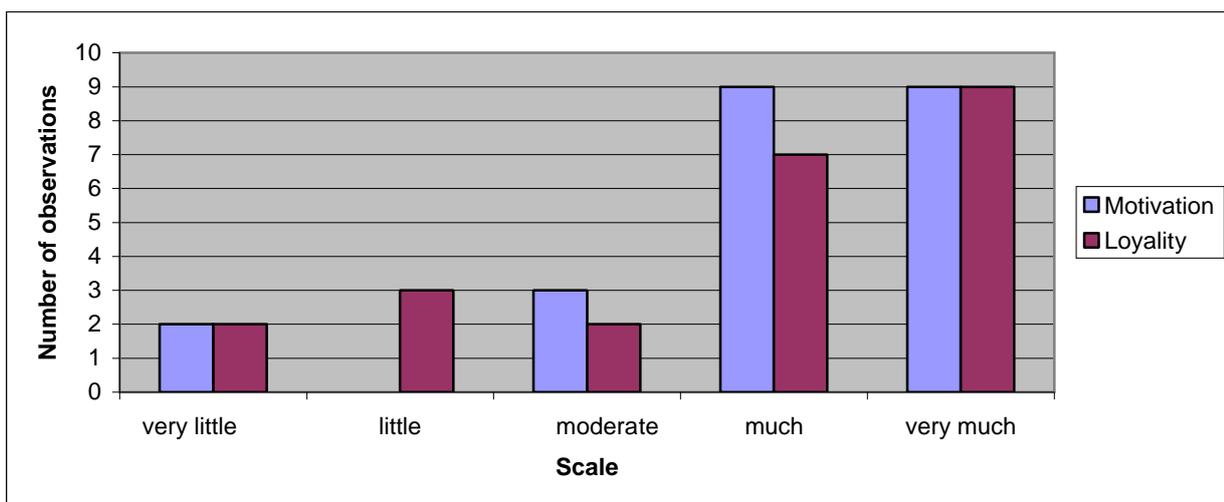


Chart 3: Combined questions 4 and 5: Does the existence of a career path have an impact on your work motivation and loyalty towards your employer?

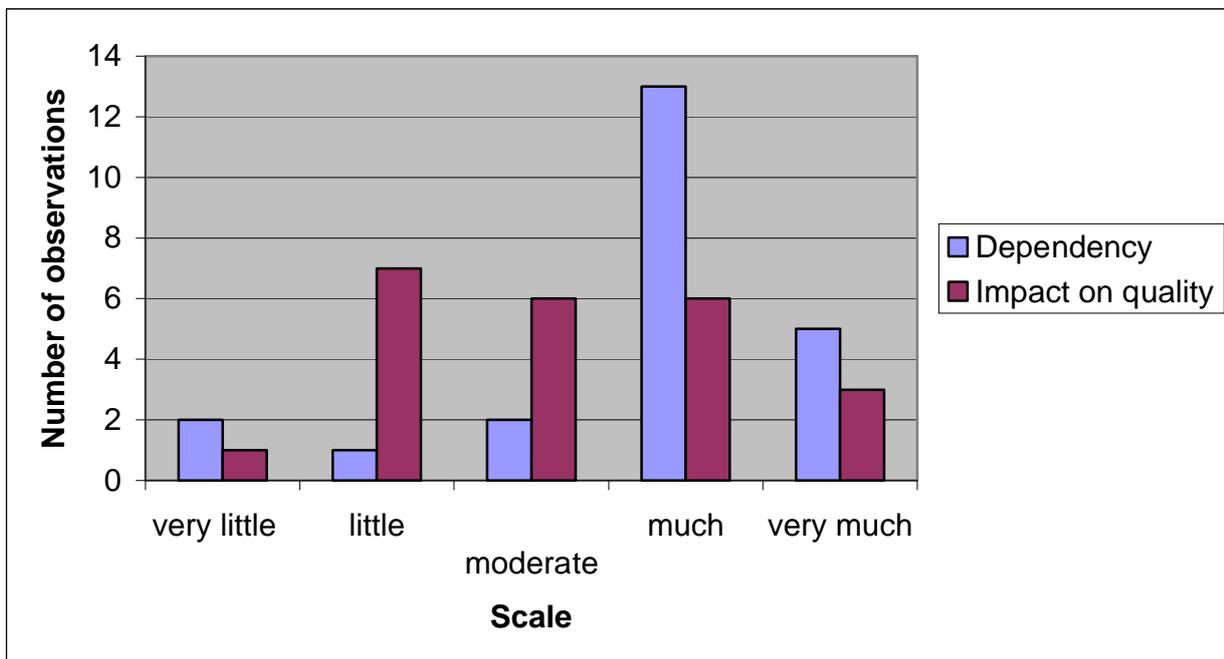


The ideal duration of employment in an outsourcing centre was identified as being below two years by the majority of the correspondents (73 per cent) indicating that a rather transitory concept of an

ideal career in an outsourcing environment is envisaged by the correspondents and no one chose more than four years to be an ideal duration of employment in an such an arrangement (Question 6). In addition to the ideal career duration, the responses related to the ideal career prospects of the individuals showed large variation in the replies of the surveyed population and no far reaching conclusion can therefore be drawn based on the seventh question. Similarly, the career motivations presented in question eight do not indicate any clear pattern of the former employees being individuals with similar career concept. It therefore seems that the individuals hired for working in the Shared Service Centre have widely spread career concepts instead of them being of the ideal “outsourcing employee” type of having a spiral or transitory career model, as was identified in chapter four of the current study. Regarding the same topic, the following comment underlines the fact that the employees consider the work in an outsourcing environment as a temporary step towards another job: *“Working in a shared service centre may teach you how to work in a hierarchical structure, but in my opinion, it is only a way to get experience and can be useful for applying to another job (best paid and with more responsibilities)”*.

On the contrary, the question nine which aimed at finding out if job security is seen as being dependent on the Outsourcer’s business decisions, a concept which was mentioned in the labour law section of the current study, received quite clear positive responses. In Chart 4, it can be seen that job security was seen as being dependent on the customer (ITCOMP) decisions although the impact of such insecurity on the quality of work was not significant. In addition, 18 out of the 23 correspondents had either moderate or little expectations of their employer to provide them with future job opportunities if the customer would have decided to terminate the outsourcing contract (Question 10). In the comments received from the correspondents it was mentioned that *“Negative outcome of working in an SSC is that you don't feel really useful in your workplace, nor respected or committed to by any of the sides”*, which strongly expresses the importance of being recognised by at least some of the employing parties.

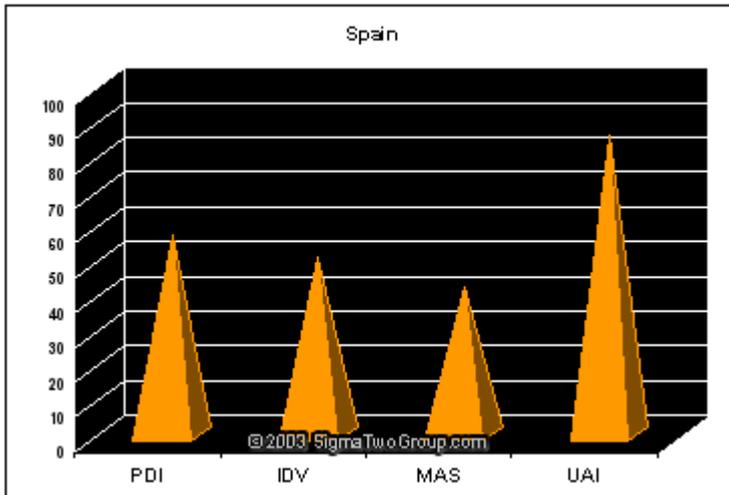
Chart 4: Questions 9 & 11: To what degree did you feel that the future of your job in the SSC was dependent on the customer’s business decisions and how does the job insecurity affect the quality of your work?



Regarding the questions fourteen and fifteen which aimed at analysing the significance of the triangular relationship present in and SSC and the experiences of working on customer’s premises, the answers did not show any significant pattern. However, in the free comments field, one correspondent reported that *“The fact that you had to act like you were an ITCOMP employee but weren’t treated in the same way (by colleagues, by access to facilities, higher prices for lunches etc.) was really ridiculous”* which clearly illustrates some of the possible matters affecting the satisfaction and motivation of the employees working on the customer’s premises. Considering the role of HRM in an outsourcing arrangement it can be argued that these kinds of negative feelings could easily be eliminated by increasing cooperation with the outsourcer in order to create a working atmosphere that does not separate “our” and “your” employees. Another comment related to the Triangular management and control relationship in place between the two parties of the Shared Service centre states that *“Working as outsourced workforce brings with it the need to always make things look good for the client even if it means working inefficiently. The dual relationship requires sensitivity from the management in order to motivate the outsourced workforce”*. On the other hand, working on customer’s site has offered some employees valuable experiences that have been found useful in their new tasks: *“The experience of working that close with your leaders and the customer, as we did in GMCON, has no doubt helped me in my new job, which is very much being at the customer site installing, implementing the program, and instructing the personel.”*

On top of the impact the arrangement itself may have on the employees, also profound cultural differences are assumed to exist between the employees from Northern Europe and the management practice in Spain which can be characterised with hierarchy and strong management control due to high Uncertainty avoidance and relatively high power distance as shown on the Hofstede's dimensions illustrated in Chart 5 below.

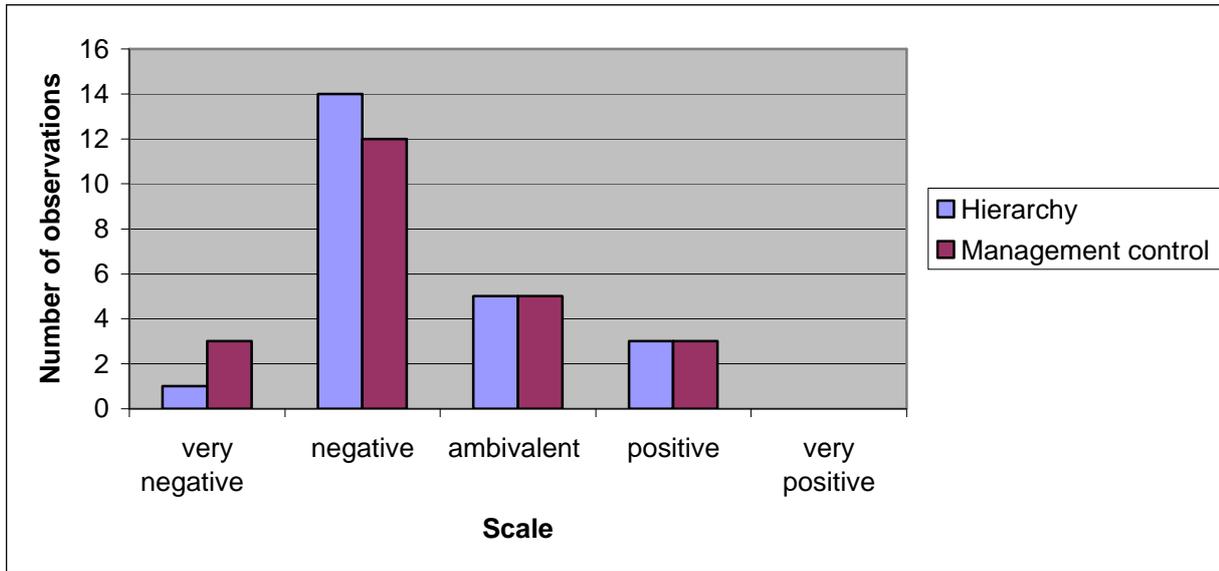
Chart 5: Spain on Hofstede's dimensions²⁷¹



The survey results related to questions 12 and 13 regarding the hierarchy and strong management control in place in the SSC are presented in Chart 6. Even though the majority of the correspondents indicated that both hierarchy and control are experienced negatively, some individuals from Spain, France and Sweden regard those organisational and management characteristics to have a positive impact on their work performance.

²⁷¹ Data Source: http://www.geert-hofstede.com/hofstede_spain.shtml

Chart 6: Questions 12 & 13: How do you experience a hierarchical organisational structure and what impact does strong management supervision and control have on your work performance?



Further more, the combination of the cultural traits that indicate strong management control and supervision, and the performance monitoring necessary for the functioning of this type of an outsourcing arrangement where processes are split between two organisations, could, according to one correspondent, be conducted in a more efficient manner. *“Sharing ideas and projects with other departments can be enriching. For the Client (ITCOMP in my case) it would be wise to involve GMCON more in taking the decisions for approving their processes and procedures. Moreover over-control like ITCOMP does, is not very positive for employees working at ITCOMP. Also in the Outsourced Operations world things like feeling yourself heard, respected and being awarded for a job well-done are important aspects in the day-to-day functioning.”* In the discussion related to performance monitoring presented in Chapter 4.3 on page 60 of the current study, the importance of a well functioning relationship between the two companies was mentioned and especially from the service provider’s side, their suggestions for organisational improvements necessary for enhancing their performance should be better heard by the outsourcing party as noted in the comment above.

All and all, the majority of the correspondents, 66 per cent, reported in question sixteen that working in the Shared Service Centre has had a positive impact on their future careers.

7 Analysis of the case study and literature review

The following chapters will summarise the literature reviewed in the current study based on which the empirical research has been conducted. The case study and the results of the primary data collected from former employees of an outsourcing arrangement will add a new aspect to secondary data analysis and increase the general understanding of how the employees of the service providing organisation experience the cultural differences and organisational specificities of working on a Shared Service Centre.

7.1 Literature reviewed

The driving forces behind the adoption of an outsourcing strategy define the benefits sought, although it seems that certain level of trade off between those benefits and possible negative outcomes connected to them is inevitable. The question that should be raised by the organisation involved in the decision making process is therefore not how to avoid the possible costs of outsourcing but rather, how to minimise them while at the same time receiving the benefits agreed upon with the service provider. The underlying motivation behind outsourcing, according to most studies, is to achieve cost reductions in some areas of the company's operations, mainly in the so called non core functions of the company. Striving for a flexible organisational structure can be achieved through many different arrangements, most of them related to personnel and asset re-allocation. The trend to focus on those corporate activities that bring in most of the profits has been on the agenda of managers since early 1980's, even though in some industries the trend, especially in production outsourcing, has existed since 1920's. The most striking developments in the field were experienced when Information Technology development boomed in the 1980's and many companies found out the outsourcing of IT related tasks to be the most cost efficient and high quality strategy for keeping the company at the edge of technological advancements. In addition to the cost related reasons inherent in the early and current outsourcing practice, the companies engage themselves in outsourcing in order to take advantage of the service provider's superior knowledge, skills and technology in a specific area of business. The most commonly mentioned concern of outsourcing is related to the possible deterioration of product or service quality, while ironically, improvement in service quality has been identified as one of the top three reasons to source out non core activities. Employee dissatisfaction and the relationship between the service purchaser and provider have also been identified as the areas of continuing concern related to outsourcing. In addition, the threat of outsourcing a corporate function classified as non core in the preparatory analysis, but which after the implementation proves to contain embedded core competencies of the

organisation can, in the worst case, lead to loss of intellectual property and, as a result, loss of competitive position in the market.

Therefore, the correct identification of what actually constitutes the most valuable, rare, inimitable and efficiently organised resource of the company becomes extremely important for the implementation of an outsourcing arrangement. For that purpose, theories of Resource Based View have been introduced in the current study and are recommended for the companies to be used in their analysis of what financial, physical, human or organisational resources contribute to achieving the sustainable competitive advantage in the market and which functions, on the other hand, are the main candidates subject to outsourcing. The most common areas considered by the companies for outsourcing are the basic functions, Human resource management and IT related tasks and processes, in the order of popularity. The biggest growth areas subject to sourcing out, on the other hand, are back office processing of financing and accounting related tasks, and purchasing, all of which fall within the scope of Business Process Outsourcing (BPO). The outsourcing arrangements have gone through a transformation from a basic make-or-buy decision to an extensive co operational relationship between the outsourcer and service provider, responding to the need of facilitating the transfer of high value operations such as accounting and financing mentioned above. Implementing a close relationship demanded by the new forms of BPO will require developing new skills in outsourcing management combining the vertical competencies, such as competitive and efficient management control, with the lateral competencies like cooperation and team work. Some of these agreements may involve some level of transfer of employees although mainly management level jobs are transferred for performance monitoring purposes. In the offshore version of outsourcing, the cultural differences add to the complexity of the partnership and therefore require special attention in many aspects related to organisational structure and management. Geographically, in Europe the trend of offshoring is strongly motivated by lower costs of employment which is closely linked to weaker social and economic conditions. The direction is therefore from the North-Western Europe to South-Eastern countries. Outside Europe, India remains as the global destination for business process and IT service outsourcing. However, due to high technical and language skills as well as cultural similarities difficult to imitate by service providers outside Europe, Central and Eastern European countries have stolen the attention of outsourcing professionals from far away places such as India, towards the corners of Europe. The concern related to this development is social dumping within the European Union which already exists and from labour relations perspective, the harmonisation of employee protection on the Community level seems to be necessary.

The Human resource management issues raised by organisational restructurings have elevated the position of this function in companies from transactions processing of personnel details to an ever growing strategic position closely linked with change management and the goals of the CEO. HRM has become more strategic for achieving the outsourcing goals and benefits, since attention is currently focused on the concerns related to employee dissatisfaction and change resistance that may actually reduce or delay the realisation of the benefits sought. Additionally, for implementing a close relationship required by the BPO model of outsourcing as mentioned above, the HRM departments of both sides need to be aware of matters of conflict and stress related to offshoring and underlying cultural differences of the organisations. While considerably similar trends exist in employment related matters such as in the usage of temporary employment contracts and equality of opportunity, HRM related matters in general do not show signs of final convergence within Europe. It is, however, possible to distinguish clusters of countries within Europe mainly on the North-Western, South-Eastern axes, although within each cluster certain countries appear to be further from one another in their implementation of HRM functions. To support this divide and to demonstrate the underlying organisational and management differences of European countries, the comparative analysis based on differences in the national scores received by the UK, Romania and Germany on Hofstede's dimensions, the current study indicates that an offshoring of Business Processes that require some level of joint management is more likely to succeed between Romania and Germany rather than Romania and the UK. Matters such as large power distance and high uncertainty avoidance have relatively strong implications on the organisational structure as well as on the valuation of career and appraisal system. In the UK personal achievement and power, as well as the importance of having a career and flat organisational structure are mentioned as characteristics of a society with High Individualism and Masculinity. On the contrary, the Romanian society supports collectivism and hierarchy, and individual career does not have the same emphasis as in the UK.

As career fragmentation was also identified as one of the main concerns of employees subject to organisational change, the career concepts were introduced as a management tool for both outsourcing and service providing organisation. By employing individuals with the different career concepts and motives, the organisation is more prepared to implement changes while still retaining enough stability and expertise of having long term employees in certain areas of the company. The adaptability, flexibility and team work skills brought in by the Spiral and Transitory employees can complement the commitment, reliability, technical competence and long term orientation of Linear and Expert employees. In an event of outsourcing, some individuals, most likely those with Spiral and Transitory career concept would be more likely to adopt the change in a positive manner as opposed to the stress and uncertainty experienced to some extent by the Linear and Expert ones. It

seems that the impact of outsourcing on employees in terms of career disruption mentioned above may thus be mitigated with the knowledge of the individual career concepts. For the service providing organisation, the employment of individuals motivated by change and constant learning, and not so much by upward movement and long term expertise would increase the quality of the service provided and improve the commitment and satisfaction of the employees involved. This is not to say that individuals with expert and linear concepts should be excluded from an outsourcing arrangement but that they should be allocated to the tasks that most suit their career expectations and motivating factors.

In the event of transferring employees from one organisation to another, the negative factors may be experienced either very strongly by the transferred employees in case the employment conditions are experienced to have deteriorated while, especially if the transfer is from a small public body to a multinational enterprise, the transfer may actually result in multiple positive career and promotional opportunities. Human resource management and labour law both have a central role to play in such an arrangement even though the need for protection and motivation is also required in other forms of outsourcing, such as in the one of the empirical case study. However, in an employee transfer scenario, HRM has very specific tasks to perform in all the stages of preparatory, transition and stabilisation phases of outsourcing. The role of HRM ranges from counselling and supporting the transfer of those employees mostly affected by the restructuring, to the monitoring and evaluating of the feelings and concerns of the employees of the entire organisation. The smooth transition facilitated by the HRM and general management of the organisation will most likely reduce the unavoidable negative feelings and change resistance, while creating a relationship between the management and staff of both organisations. After all, managing the relationship was identified as one of the key concerns of the outsourcing parties and in general, managing a change is costly both in terms of management time and effort which is hardly ever correctly estimated.

Labour law presents the other end of employee concerns described above traditionally concentrating on the physical contract established between the employee and employer. Wide national differences exist in the employment practise in Europe envisaging pay, flexible working patterns, equality of opportunity, training, and position of trade unions as areas with convergent trend even though little final convergence can be seen to exist among the countries. Therefore, regulating employment matters within the European Social policy field has been relatively difficult and slow historically, although since the signing of the Amsterdam Treaty in October 1997, the social provisions of Articles 117-122 EEC and the Social Policy Agreement were finally incorporated to the body of the Consolidated version of the Treaty establishing the European Community under Title XI "Social policy, education, vocational training and youth" covering Articles 136-145 EC and employment

Title VIII of the Treaty. Throughout the development of the social dimension of Europe, multiple Directives have been issued by the European Council to increase harmonisation of, for instance, employee protection in the event of transfer of undertakings. In general, the European Union has set employment as one of its priorities in the Luxemburg process and in the goals established by the Lisbon Strategy.

The “Supiot Report”²⁷², which has been one of the working documents of the European Commission used for analysing the future of work and labour law in Europe, has taken the pressures generated by the opening up of global economies, creation on networks of companies, outsourcing and relocation into account when evaluating the accurateness of current labour legislation on the EU level. The labour law concepts of employment contract and subordination have been identified in the report as being the ones most significantly affected by the corporate restructurings. The two concepts have been developed during the “Fordist” industrial era, which has been dominant throughout Europe, even though the implementation has taken different forms ranging from Nordic model with welfare services offered by the state to all citizens independent of their employment situation, to the Southern European approach concentrating on self employment. The main findings of the report are therefore closely related to the outsourcing and human resource future trends since the pressures described above drive the development of outsourcing which also has an impact on what is required from HRM in terms of employee motivation, and on the other hand, from labour law perspective for the protection of employees on the community level. Due to the fact that the trend in outsourcing is to shift corporate functions and processes from one country to another where the labour costs are significantly lower, the matter seems to have a Community dimension. In addition, since the national legislation aimed at protecting employees cannot effectively address the cross boarder element related to outsourcing and definitely cannot interfere with the legal protection of employees of another sovereign country, regulating on the Community level seems necessary. In addition, as described in the HRM section of the current study, the cultural differences are biggest between the job exporting country and the service providing ones, if the geographic direction of offshoring will continue to follow the trend from North-West to South-Eastern countries of Europe.

The Council Directive on the Transfer of Undertakings provides protection for employees affected by a certain form of outsourcing, namely the one where employees are transferred from one company to another. From outsourcing perspective, this type of transfer is closely related to the basic service outsourcing which currently is the most popular one considered by companies to be sourced out. Also the ECJ case law related to this Directive is mainly related to events where

²⁷² http://ec.europa.eu/comm/employment_social/labour_law/docs/supiotreport_en.pdf

canteen and cleaning services are subject to a transfer within one country from one company to another. Even though within that specific form of outsourcing the employees are very extensively protected against deterioration of employment terms and conditions as well as against potential unemployment, the Directive does not touch upon the other forms of outsourcing presented in the current study. Basic service outsourcing is closely followed by HRM and IT service outsourcing where the transfer of employees is not the aim of the arrangement and geographically, the transfer is most likely to take place from the home country to abroad. Furthermore, the biggest growth area in corporate functions being outsourced are back office processing of accounting and financing related processes as well as sourcing out the purchasing functions, as mentioned above. The insufficiency of Community legislation directed towards protecting employees with the Transfer of Undertakings Directive has been mentioned in both the “Supiot report” and in the Commission memorandum on the application of the Directive.

7.2 Analysis of the case study

Based on the in depth analysis of existing literature of outsourcing, HRM and labour law, one aspect related to employee motivation appears in the text very seldom: the motivation and need for protection experienced by the employees of the service providing organisation, especially in the case of Shared Service environment. These individuals are in constant contact with both the management and employees of both organisation involved in an outsourcing arrangement and their main task is to deliver those benefits aimed at and agreed upon in the outsourcing contract. This point of view has not been presented in almost any of the research articles analysed in the current study.

It is clear that no contractual relationship exists between the employees of the service provider and the outsourcing entity, although the job security of these employees seems to be strongly dependent on the outsourcer’s business decisions and the real decision making power in work related matters is in the hands of the outsourcing entity. The results of the survey conducted on the former employees of an outsourcing arrangement, some of whom are currently employed in other outsourcing projects, indicate both that their job security was experienced to be strongly dependent on the decisions of the outsourcing organisation and most of the respondents also indicated that the expectation of their own employer to offer future employment in case the outsourcing contract would be terminated was generally low. Other significant findings were that hierarchy and strong management control were experienced as having a negative impact on the work of the correspondents. Majority of the sample population also felt that the work in the Shared Service

Centre was temporary and that very little or no career path was provided by the employer. The lack of career prospects was reported to have a much or very much impact on their job motivation and loyalty towards the employer. However, the work experience gathered from the outsourcing arrangement was considered to have had a positive impact on the future careers of the sample population. It should be kept in mind that the sample size was fairly small and the Northern Europeans, Finns and Swedes, were more heavily represented in the sample population than the other nationalities. In order to make far reaching generalisations, the sample of employees of an outsourcing service provider should be considerably more heterogeneous in terms of nationalities represented and the professional background should range from agents to team leaders and supervisors of multiple outsourcing samples. All and all, these results give indication of how working in a shared service centre may be perceived by the employees as well as confirm the existence of some of the concerns presented in the secondary literature.

8 Conclusions

The extensive analysis conducted in each of the three sections, outsourcing, human resource management and labour law in Europe, offers a unique opportunity to assess both how and why outsourcing has an impact on employee motivation and protection in Europe. Being one of the most popular business strategies related to corporate restructuring, outsourcing is widely discussed both in academic literature and in business publications in general. Based on previous research conducted on each field discussed in the current study, supported by the primary data collected in a form of a survey, the following conclusions can be drawn with the aim of answering the question: “How are employees involved in an outsourcing arrangement motivated and protected in the European Union?”

In order to reduce the possible negative impacts outsourcing can have on the organisation and its employees while at the same time ensuring that the benefits sought are utilised to their full potential, the preparatory analysis of the company in question becomes imperative. In terms of mitigating the employee resistance and feelings of uncertainty arising from outsourcing, the timing and format of the communications related to the announcement of the outsourcing contract seems to be important. In addition, the follow up counselling related to the impact of the restructuring on HRM matters such as pay and career development has to be provided for all employees, but most importantly to the ones directly affected. Since the transfer of business currently has a focus on offshoring functions abroad, understanding the cultural and organisational differences in Europe can repress the potential conflicts and smoothen the process of outsourcing. Based on the analysis on the future of outsourcing in Europe, the movement of high value activities in the form of Business Process Outsourcing (BPO) to Eastern and Central European countries is supported both with the cultural similarities and geographic proximity of those countries to the rest of Europe as opposed to offshoring to India, for instance. The implementation of a BPO arrangement requires a close relationship aimed at creating high level of cooperation and sharing of risks and benefits among the companies involved. This has to be supported by the HRM departments on both sides by monitoring employee experiences and identifying individuals with a career profile suitable for the requirements of working in such an arrangement. In legal terms, the European Community labour law appears to be well equipped for protecting employees against the deterioration of employment terms and conditions as well as unemployment in the case were employees are transferred within a country from one entity to another to perform basic services. However, as will be described below, basic service outsourcing represents only one of the many areas currently subject to outsourcing

which indicates that the current EC labour law is not up to date to combat the current issues of labour law in Europe. The Eastern enlargement of the European Union has brought with it enormous benefits for both the job exporting countries and service providing ones where outsourcing has contributed to the generation of employment opportunities for young professionals. However, social dumping within Europe remains a concern and harmonisation of labour law among the member states is within the sphere of Community Social Policy. This is needed to ensure adequate protection of employees all over Europe while promoting welfare generation and employment in all the member states. As the case study indicates, the employees working on a shared service centre are very dependent on the outsourcer, with whom the individuals do not have any contractual relationship even though their job security and motivation is closely linked to the decisions of the outsourcing organisation. The importance of career prospects does appear in the responses of the surveyed population and especially the relationship of the service providing organisation and outsourcer was seen as deserving special attention since the working environment and the quality of the service provided can be strongly affected by an inferior relationship.

The current study has gone through an extensive analysis of the reasons, benefits and future concerns surrounding the management strategy called outsourcing. However, one final question arises in relation to the geographic direction of outsourcing: What will happen when the countries in Central and Eastern Europe become more expensive due to, among other things, the harmonisation of labour conditions in Europe? This question is strongly related to the strategic goal set for Europe at the Lisbon European Council in March 2000, which is *“to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”*.²⁷³ Future research is necessary to be conducted in the field of outsourcing to assess the long term impact the adoption of this business strategy has to the sustainable development of the companies, as well as on European economies in general.

²⁷³ http://ec.europa.eu/employment_social/knowledge_society/index_en.htm

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