



Mr Jeroen Hooijer
Head of Unit F2: Corporate governance,
social responsibility
DG Internal Market and Services
European Commission
B-1049 BRUXELLES

16 April 2013

Ref.: CLC/AKI/HBL/NRO/SRO

Dear Mr Hooijer,

Re: FEE Comments on the Main Initiatives of the Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies

FEE (the Federation of European Accountants) is pleased to provide you with its comments on the Main Initiatives as included in the Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies. FEE's ID number on the European Commission's Register of Interest Representatives is 4713568401-18¹.

FEE welcomes the European Commission's Action Plan and commends the European Commission's efforts to create a modern and efficient company law and corporate governance framework in the EU.

Please find attached in the Annex our more detailed comments on some of the main initiatives proposed in the European Commission's Action Plan. Overall, we also refer to the FEE response to:

1. The European Commission Green Paper on the EU Corporate Governance Framework;
2. The European Commission Public Consultation on Gender Imbalance in Corporate Board in the EU;
3. The European Commission Green Paper on Corporate Governance in Financial Institutions and Remuneration Policies;
4. The proposal for a Council Regulation on the Statute for a European Private Company;
5. The European Commission Consultation on the Future of European Company Law.

Enclosed below or referenced above, you will find the FEE responses to these European Commission initiatives, which demonstrate that FEE takes a very keen interest in these and other subject matters as included in your Action Plan. Corporate governance and also company law issues are of utmost importance as they are key factors in ensuring companies, capital markets and the economy as a whole function properly.

¹ FEE is the Fédération des Experts-comptables Européens (Federation of European Accountants). It represents 45 professional institutes of accountants and auditors from 33 European countries, including all of the 27 European Union (EU) Member States. In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 700.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent and sustainable European economy.

FEE has been active in the broader areas of corporate governance and company law for a number of years and has issued various papers in this respect.

Therefore, we believe it continues to be important for the European Commission to take into account the contributions FEE and the accountancy and auditing profession at large make in the areas of corporate governance and company law.

For further information on this FEE² letter, please contact Hilde Blomme on +32 2 285 40 77 or via e-mail at hilde.blomme@fee.be or Noémi Robert on +32 2 285 40 80 or via e-mail at noemi.robert@fee.be from the FEE Secretariat.

Yours sincerely,



André Killesse
President



Olivier Boutellis-Taft
Chief Executive

Encl.

1. FEE letter dated 22 July 2011 commenting on the European Commission Green Paper on the EU Corporate Governance Framework
2. FEE letter dated 24 May 2012 commenting on the European Commission Public Consultation on Gender Imbalance in Corporate Board in the EU
3. FEE letter dated 7 September 2010 commenting on the European Commission Green Paper on Corporate Governance in Financial Institutions and Remuneration Policies
4. FEE letter dated 18 September 2008 commenting on the proposal for a Council Regulation on the Statute for a European Private Company
5. FEE response to the EC Consultation on the Future of European Company Law dated 14 May 2012

² FEE's objectives are:

- To promote and advance the interests of the European accountancy profession in the broadest sense recognising the public interest in the work of the profession;
- To work towards the enhancement, harmonisation and liberalisation of the practice and regulation of accountancy, statutory audit and financial reporting in Europe in both the public and private sector, taking account of developments at a worldwide level and, where necessary, promoting and defending specific European interests;
- To promote co-operation among the professional accountancy bodies in Europe in relation to issues of common interest in both the public and private sector;
- To identify developments that may have an impact on the practice of accountancy, statutory audit and financial reporting at an early stage, to advise Member Bodies of such developments and, in conjunction with Member Bodies, to seek to influence the outcome;
- To be the sole representative and consultative organisation of the European accountancy profession in relation to the EU institutions;
- To represent the European accountancy profession at the international level.

1. European Commission Initiative on the disclosure of the board diversity policy and of risk management arrangements

According to FEE, the composition of boards should be based on the principle of “the best person for the job”, which is not compatible with any kind of quotas.

Boards should collectively have the competences needed to discharge their duties, which can be ensured by an appropriate composition that has sufficient diversity among the members. The diversity should be with regard to not only gender, but also professional background and experience, skills, age, ethnicity, etc.

A diversity policy, which sets out these principles, will form the basis for the reporting of performance against objectives, and thus should in turn lead to progress towards achieving board diversity.

We agree that a key part of corporate governance is effective risk management, and every board should commit to achieving this in a way which is aligned with the company’s risk profile and in line with the requirements of EU legislation.

While retaining the responsibility for the determination of the risk management arrangements, this monitoring process by the board can and should to some extent be based on the work done by its committees, especially the audit committee and the risk committee, if such committees have been established.

With regard to reporting, a significant amount of information on risk-related issues for companies is already available in the public domain, based on requirements in the Fourth Company Law Directive, and in IFRS, in particular in IAS 1 Presentation of Financial Statements and in IFRS 7 on Disclosures: Financial Instruments. Consideration should be given to the different needs of users of additional information on risk. If there is scope for additional reporting on risk for companies, given the needs of investors in particular, proportionality of its possible content, level of detail, length, etc. of the information should be addressed. Suitable criteria for this additional risk information would be a prerequisite for consistent, relevant and useful information. These considerations would be most relevant for industries with high risk business models, such as financial institutions and less, considering the information on risk already made available, for other companies.

2. European Commission Initiative on improving the quality of corporate governance reports

FEE strongly supports the “comply or explain” principle as we believe that this principle remains appropriate and remains one of the cornerstones for the implementation of good corporate governance.

However, some improvements as to how the principle is applied in practice could be introduced, especially with regard to the quality and content of the explanations. This could be done by setting clearer criteria in a reporting framework that is proportionate to the size and complexity of the entity.

3. European Commission Initiative on improving transparency on remuneration policies

The main objective should be to have the principles set out in a remuneration policy and to ensure that these remuneration policies are transparent to all shareholders in listed companies.

Annex: Specific Comments on Main Initiatives of the Action Plan

The disclosed information should lead to an understanding of how the long term goals of the strategy for the company are being achieved through the interaction between the remuneration policies for the individual executive and non-executive directors and the strategic goals for the company as a whole. In this context, active engagement of shareholders should be considered.

4. European Commission SPE proposal with a view to enhancing cross-border opportunities for SMEs

The European Company has merits, especially for companies operating cross-border. However, other company legal forms have so far attracted more companies across Europe. The distinction between public (SE) and private (SPE) companies at EU level have been introduced to mirror this distinction at national level through transposition of the 2nd Company Law Directive.

Further analysis could be carried out to see if there are merits in maintaining the distinction between “public” and “private” companies. One model for replacing this distinction could be through a model related to the size of the company and a distinction between listed and unlisted companies. Although private companies cannot have listed shares, it is possible for such companies under the financial services legislation to list bonds and thus be subject to (almost) the same requirements as a (public) company whose shares are listed on a regulated market. Therefore, if the EU legal form, either through reopening of the SPE debate or through amendments to the SE Statute is further pursued, the need for a distinction between “public” and “private” at EU level should be brought into the debate.

An alternative approach to separate EU legal forms of the SE and SPE, respectively, could be to merge the SPE into the SE statute. Some changes to the existing SE statute would be needed, especially to recognise different needs and obligations related to the size and complexity of the European company. Furthermore, to increase the attractiveness of the EU legal form company, the new SE/SPE statute could be simplified and made less restrictive, especially regarding references to national laws and regulations.

5. European Commission Initiative on the revision of the rules on cross-border mergers

Cross-border transfers of a company’s registered office should be facilitated as much as possible, and should in particular be tax neutral. Further debate on this is encouraged.

6. European Commission Initiative on improving the recognition of the concept of ‘group interest’

Some issues related to groups may merit initiatives at European level, such as the definition of a group, group tax regimes, and regulation of “group interests”.

Group structures that are relevant for the group as a whole and not for the individual company within the group could be addressed. Such issues could be intragroup loan arrangements and cash pooling, which are of interest to the group and not only to the individual company.