



Fédération des Experts  
Comptables Européens

# Press Release

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## Companies need more flexibility say European accountants

### **FEE proposes an alternative capital maintenance system based on a solvency test in the context of the EC simplification Communication**

**28 September 2007 – Brussels** – In a study published today, FEE (Fédération des Experts Comptables Européens) welcomes the initiative taken by the European Commission to examine the possibilities for introducing alternatives to the current capital maintenance system and making distribution to shareholders more flexible. The study proposes the introduction of an alternative to the current capital maintenance rules in the form of a solvency-based regime.

**Jacques Potdevin, FEE President**, outlines that "there is a need to consider how to provide more flexibility to companies in deciding whether to make distributions to their shareholders; such decisions should be determined by reference to the effect that distributions would have on a company's solvency and debt. We believe that a solvency-based regime should be introduced gradually and that Member States should have the option to offer the new system to companies next to the current regime."

**Erich Kandler, Chairman of FEE Company Law Working Party**, adds "We find that currently there are companies who are unduly inhibited from making distributions. The new solvency-based regime would provide more flexibility while protecting all stakeholders and preventing companies from becoming insolvent or over-indebted as a result of making distributions. The new system should require companies to take into account both their short and long term obligations, noting that the longer the time horizon of the estimates of future solvency, the greater the uncertainty as to their reliability. To this end, the study concludes that a reasonable alternative should involve both a "snapshot" test and a "forward looking" test".

**Olivier Boutellis-Taft, FEE CEO**, says "This study is timely as it will also provide a constructive contribution to the current debate on how to simplify company law. It will usefully complement the study commissioned by the European Commission to be released shortly and provides substantial input in the debate. FEE invites all stakeholders to discuss the findings of its study and welcome their feedback".

– ENDS –

The full study can be downloaded from [www.fee.be](http://www.fee.be)

For more information

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Notes for Editors:

1. **FEE, the European Federation of Accountants / Fédération des Experts Comptables Européens** is the representative organisation for the accountancy profession in Europe. Its membership consists of 44 institutes of professional accountants from 32 countries. This includes all 27 Member States of the European Union and three members of EFTA and comprises more than 500,000 accountants.
2. The current capital maintenance system in all EU Member States is based on the requirements of the Second Directive. This Directive, which applies to all kinds of public limited liability companies (listed and unlisted), contains minimum provisions on minimum share capital requirements, distributions to shareholders and increases and reductions in capital.

The practical implications of the existing capital maintenance rules have become more apparent since the introduction of IFRS (International Financial Reporting Standards). IFRS allows the more extensive use of fair value accounting and has a significant impact on the determination of whether profits are to be regarded as realised or unrealised, and thus on whether profits are available for distribution under the current rules.

In its 2003 Communication and Action Plan on Company Law and Corporate Governance the European Commission (EC) announced that it planned to carry out a study. A feasibility study was commissioned to look into possible alternatives to the existing capital maintenance regime and examine the implications of the EU's new accounting rules for companies' ability to distribute profits. This study, which is being undertaken by KPMG is expected to be published by the EC in the second half of 2007.

On 12 July 2007 the EC issued a Consultative Communication containing proposals for a simplified business environment for companies in the areas of company law, accounting and auditing. The Communication is examining options for simplifying European law in these areas and invites comments from stakeholders by mid-October. The Communication addresses the Second Directive and indicates that "at least a review of the capital maintenance system should be considered in order to give companies more flexibility in the field of distributions to their shareholders." Stakeholders are in particular invited to "give their views on whether the rules on the capital of public limited companies or at least the capital maintenance system of the Second Directive should be repealed entirely or in parts".