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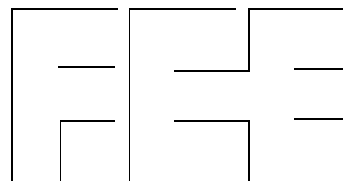

Mr Jaap Winter
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Dear Mr Winter,

Re: A Modern Regulatory Framework for Company Law in Europe: A Consultative Document of the High Level Group of Company Law Experts

FEE (Fédération des Experts Comptables Européens – European Federation of Accountants) is pleased to provide input to the consultation on A Modern Regulatory Framework for Company Law in Europe: A Consultative Document of the High Level Group of Company Law Experts. We appreciate that the Commission seeks the advice of experts before entering into a modernisation exercise of the Company Law Directives. As such we welcome the initiative to modernise the Company Law Directives. Below we first raise some general points followed by responses to the questions. We have only answered those questions where we believe our profession has expertise and experience in order to make a contribution to the debate at this early stage.

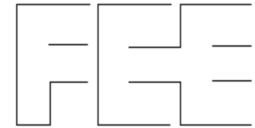
General

1. Given the importance of the subject of modernisation of the Company Law Directives we regret that the High Level Group has not been established so as to follow a more thorough due process. A hearing within two weeks after publication of the consultation paper and a commenting period of two months are very short for organisations like ours that have to respect their own due process. We are also concerned about the depth of discussion presented and are of the opinion that a further discussion should be developed on which to base conclusions.

   Moreover we regret that there is no further consultation about subjects included in the extension of the mandate: the role of non-executive directors and of supervisory boards; management remuneration; the responsibility of management for the preparation of financial information, particularly given the importance of these subjects. We therefore suggest that the conclusions on the subjects that form part of the extension of the mandate should be regarded as provisional in nature and are subject to a further consultation. Indeed it would be worthwhile consulting further on all the conclusions whether through exposure for written comment or a forum before they are conclusively finalised.

2. Company law needs to be exclusively relevant to companies so that, for example, topics of more general application such as combating fraud and terrorism should usually be dealt with outside the scope of company law.

3. Overly detailed and unnecessary legislation should be avoided. Regulations that are no longer necessary should be removed. A proper balance should be struck between the benefits of



regulations and the costs of complying with those regulations. No rules should be maintained unless they are clearly useful. Also harmless, irrelevant rules can create together a burden for companies.

4. Any modification of company law should avoid increasing the burden on SMEs and where possible liberate SMEs from constraints. Any new regulation should be examined to assess if it is really needed for SMEs.

5. The High Level Group should clearly state its objectives in relation to the creation of a modern regulatory framework for company law in Europe as well as the criteria for assessing existing laws and proposed modifications against those objectives. For example, the main objectives of the Treaty of Rome are the free movement of companies and the protection of creditors and shareholders. This perspective changed in the Treaty of Maastricht to an internal market focus. Another objective could be to facilitate "efficient and competitive operation of business across Europe". European companies should be enabled to be competitive in a global market rather than in a EU context only. Finally the objective of building a single capital market should be a key objective. This should give rise to questions such as "what features of company law would contribute to an effective single capital market in the EU".

   We would see several criteria that would need to be addressed within a single market focus:

   - modernisation and simplification
   - SMEs liberated from constraints
   - legislation should be easy to work with
   - stimulation of global competition
   - level of detail (principles-based)
   - timeliness and transparency
   - subsidiarity
   - extent of competition between different systems.

   We would see different possible ways to reach the objectives including:

   - more disclosure instead of substantive rules in order to allow best practice to develop through experience
   - only principles in law and any further details in codex or other form of guidance.

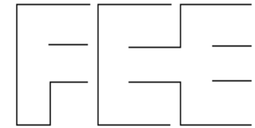
   In terms of a single capital market, criteria for particular items could include:

   - contribution to transparency of markets
   - whether detailed regulation is preferable to disclosure and impact of market reaction
   - degree of consistency with global trends and impact on mutual recognition with other capital markets
   - contribution to convergence through experience of acceptable alternatives as compared to initial regulatory choice.

<u>Extension of the mandate</u>

6. We acknowledge the extension of the mandate of the High Level Group following the Oviedo informal ECOFIN meeting. We welcome the oral invitation expressed in the Hearing of 13 May to provide input on these issues despite the fact that they are not addressed in the consultation document. Below we give an initial reaction on the issues and we will elaborate our input in a more detailed letter which we intend to send you in July.

7. *Responsibility of management for the preparation of financial information*: FEE believes that there is a need to strengthen corporate governance arrangements so that they are equally effective across Europe in providing financial information of the highest quality to the capital markets. This



requires a thorough debate on the responsibilities of all that have a role, or influence in financial reporting. The principal elements of this framework are:

- Preparation of true and fair financial information by an effective and well resourced company accounting function
- Internal audit
- Informed review by directors, audit committees or supervisory boards
- Proper approval procedures for financial information by the body responsible within the company
- External audit and external review subject to quality assurance systems that inspire public confidence
- Effective enforcement bodies
- Stock Exchanges with supportive listing agreements
- Sponsors, advisers and investment bankers committed to high quality financial reporting particularly in respect of complex transactions
- Investors, analysts, rating agencies and the financial press, all of which should have clear ethical obligations to raise issues of dubious financial reporting.

It is the responsibility of management and directors of the company to develop proper financial information. The auditor should not and cannot take the role of management as explained in the Commission Recommendation on Independence of the Statutory Auditor. An appropriate corporate governance structure needs to be in place. Following the IAS Regulation management and directors need to make themselves adequately informed and resourced about IAS.

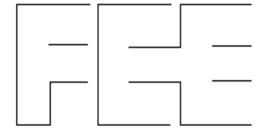
8. *Role of non-executive directors and supervisory boards*: There is a growing consensus that Audit Committees within the Boards of Directors or Supervisory Boards are a key element of corporate governance best practice, because of the role which they can play for example in helping to ensure high quality financial reporting and effective internal control. It is less evident, however, that there is full, widespread and consistent agreement on what their roles and responsibilities should be, or on which practices are most effective. National requirements diverge across Europe and the world, especially between one-tier and two-tier systems, and different business and governance cultures have varying impacts on their effectiveness.

   It is important to enhance the role of non-executive directors (whether they sit on unitary or supervisory boards) in order to restore the confidence in capital markets and enhance the influence on the performance of the company. In today's environment important issues to address are how to increase the pool of non-executive directors and how to enhance their quality. The non-executive directors have an important oversight role to fulfil. Non-executive directors can play a crucial role in improving company performance and accountability and therefore a central role in corporate governance.

   The unitary board or the Supervisory Board in a two-tier system should establish arrangements for considering how they should assess the application of financial reporting standards and internal control principles and for maintaining an appropriate relationship with the external auditors. The use of audit committees in this respect should be encouraged.

9. *Management Remuneration*: FEE favours, as a general principle, transparency. This also applies to management remuneration. FEE is concerned about short termism driving the remuneration of management with the risk of earnings management. Enhancement of the long-term nature of remuneration would be welcomed. Involvement of shareholders and/or remuneration committees in fixing the principles of remuneration including share-based payments and appropriate disclosure requirements are initiatives that deserve further examination.

10. *Auditing*: FEE supports the initiatives of the Commission in the auditing area and acknowledges fundamental and challenging reforms under way or planned. These reforms need to be implemented successfully as a first priority; further changes should be made only after they have been carefully considered and shown to be desirable and necessary. The task should be to implement successfully the current reforms and enforce all standards that exist. We would



especially like to refer to our proposals for all audits in the EU to be concluded in accordance with ISAs and that audit reports should be consistent across the EU and follow ISA standards. Also we would see no need for separate action in this respect proposed by the High Level Group of Company Law Experts, given the existing initiatives of the Commission in this area.

11. We are of the opinion that the extension of the mandate covers issues that are of crucial importance to restore confidence in the capital markets. Any suggested changes should be conducive to the single capital market programme. A common understanding of corporate governance is needed to demonstrate performance.

Responses to the questions

Chapter 2: General Themes

Question 1:
a) Do you agree that the European Union moving forward in the area of company law should primarily focus on establishing new and amending existing company law mechanisms with a view to facilitate the efficient and competitive operation of business across the Union?
b) If so, can you identify other areas of company law than those specifically dealt with in this consultative document where progress could and should be made as a matter of priority?

The question raised is a very large question with a great deal of complexity attached to it. As set out in our general comments objectives and criteria to assess possible initiatives in the field of company law against the objectives should be set. Modernisation of company law needs to be thoroughly discussed since it creates the regulatory framework for the coming years and should be sufficiently robust to accommodate the continuously changing environment of business.

Question 2:
a) Should the European Union in future initiatives in company law make use of alternatives as indicated to primary legislation in directives?
b) What areas of company law and which alternatives are particularly suited for such an alternative approach?

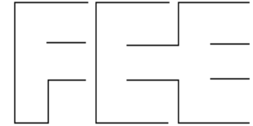
As indicated under our general remarks various alternatives could be considered instead of primary legislation. The Directive level should under each alternative be limited to principles with where possible a global focus.

Question 3:
a) Do you agree that disclosure requirements can sometimes provide a more efficient regulatory tool than substantive rules?
b) In what areas of company law should the emphasis be on disclosure requirements rather than substantive rules?

Disclosure requirements are one of the alternatives to primary legislation. Disclosure requirements can be helpful in getting a lighter regulatory regime. There is a fundamental trade-off between disclosures - aiming at transparency in the market and allowing different models to be applied in competition - and detailed rules whereby all market participants are aware of these rules. Disclosure requirements in law could be principles-based and the detail left to codes and the influence of market forces in developing best practice. The cost of additional disclosure requirements may need to be weighed against the alternative cost of applying detailed legislation.

Disclosure reporting could also take the form of reporting on divergences (exception reporting). This could help to increase the efficiency of information provision. Key principles would need to be identified for disclosure requirements including: level of detail; whether exception reporting is sufficient and timeliness. Disclosure requirements could also encompass more disclosure of risk.

Disclosure requirements can especially be an efficient tool in the area of corporate governance.



Question 4:
a) Should the European Union in devising new company law regulation and amending existing company law regulation distinguish more between listed companies, open companies and closed companies?
b) In which areas of company law is this distinction most relevant, and what, in general terms, should be the difference in regulatory approach there?

The recently adopted IAS Regulation introduces a new boundary between listed and unlisted companies. We would not favour the introduction of further boundaries not existing at present. If listed companies provide good information, market forces will force other “open” companies to provide the same type of information. Where possible the burden for SMEs, where they are unlisted, should be reduced. Areas for distinction could include corporate governance, protection of shareholders and disclosure of financial information.

Question 5:
Do you agree that company law should not be changed to include more compulsory rules, monitoring and enforcement regimes and procedures to achieve such regulatory objects as combating fraud and terrorism, but that such objects should be achieved by specific law enforcement instruments outside company law?

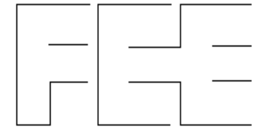
FEE shares the view that company law should not be changed to include more compulsory rules, monitoring and enforcement regimes and procedures to achieve regulatory objectives outside company law. As set out in our general remarks company law needs to be exclusively relevant to companies. Combating fraud and abuse of accepted legal forms should be achieved through specific law enforcement instruments outside company law and should not hinder the development of company law structures.

Question 6:
a) Taking into account the current and forthcoming Commission proposals in the field of securities legislation (e.g. prospectus, market abuse, periodic and ongoing reporting), should listed companies be required to maintain a specific section on their website as the single place where they publish all information they are required to file and publish, providing for two-way links with registers where such information should be filed and published, and to continuously update the information on this section of the website?
b) Should other companies be allowed to file and publish information on their website so long as they provide for two-way links with public registers where such information should be filed and published?
c) Should the European Union facilitate or provide for the co-ordination of public company registers in the Member States?
d) Beyond the current reflections at Community level on the establishment of a central electronic filing system for listed companies in each Member State, should the European Union, at some stage, promote the setting-up of a single European central electronic filing system for listed companies?

Company law should provide a framework allowing to meet the current and future standards of technology. Modern technology should not be the only means by which information is provided, since not all stakeholders may have a good knowledge of these technologies. Where companies choose to make information electronically available, stakeholders should have the right to obtain information in the form which is most useful to them, be it electronic or otherwise.

The security aspect of the information published needs special attention:

Audited information and the auditor’s opinion should be visibly separated from other information on the website. Unless full annual financial statements are published electronically, the auditor’s report should not be reproduced and reference should be made to whether the financial statements have been filed and whether they have been reported on without qualification by the auditor. This is in line with articles 49 and 38 of the Fourth and Seventh Directives (as amended in the Modernisation proposals) where it is stated: “If the annual accounts are not published in full, it must be indicated that the version published is abridged and reference must be made to the register in which the accounts have been filed in accordance with Article 47 (1). Where such filing has not yet been effected, the fact must be disclosed. The report of the person or persons responsible for auditing the annual accounts (hereinafter: “the



statutory auditors"), may not accompany this publication, but it must be disclosed whether the audit opinion was issued with or without qualification, or whether the statutory auditors were unable to express an audit opinion. It shall also be disclosed whether the report of the statutory auditors included a reference to any matters by way of emphasis to which the statutory auditors drew attention without qualifying the audit opinion." The same would apply to quarterly reporting if a review is carried out.

- Responsibility for publication should be made clear since it is the directors' responsibility to prepare, disseminate and sign financial statements.

- Electronic information needs to be safeguarded since it is open for manipulation. Directors should establish a routine system of checking that statutory or audited information has not been changed.

Chapter 3: Specific Topics

3.1 Corporate Governance

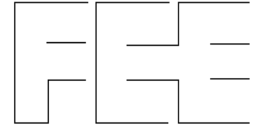
Question 7:
Are efforts to improve or strengthen corporate governance necessary and important for efficient business in the EU and for an integrated European securities market?

It is necessary to restore confidence in the capital markets in Europe by enhancing corporate governance. Efforts to improve and strengthen corporate governance are necessary and important for efficient business in the EU. An approach similar to the Lamfalussy recommendations may also be the appropriate way forward in the corporate governance area in that at EU level only framework legislation should be provided, covering common benchmarks and principles. A principles-based approach is desirable since business processes and technology change rapidly, any framework needs to be sufficiently flexible to accommodate these changes. It should however have sufficient common detail to avoid excessive variety across the single capital market, but allow for a substantial period of convergence through experience of best practice. A principles-based approach allows for evolution and convergence. Further guidance can be provided at national level in form of a codex or other forms of "soft law" setting out the corporate governance codes, meeting the different cultural, company law and other backgrounds. The right level needs to be found for the high level principles. A broad set of principles would apply both to a one-tier and two-tier system. The OECD principles are an example of harmonised principles. Principles need to take account of global trends and allow for experience in the market to force convergence of corporate governance.

A coordination mechanism, in the form of a forum or otherwise, to allow for use of similar terminology and understanding and exchange of best practice needs to be established. This would involve a coordination of the different national committees that work on the national corporate governance codes, regardless whether the principles are set out in company law or in listing requirements. Such a coordination mechanism will also facilitate convergence of national codes over time. We believe that the accounting profession with its relevant experience could play an important role in such a forum or coordination. Mutual recognition of the principles could be envisaged with the US.

Moreover the Comparative Study of Corporate Governance Codes Relevant to the European Union and its Member States as prepared by Weil, Gotshal and Manges on behalf of the Commission conclude that "the various codes emanating from the Member States appear to support a convergence of governance practices. This, taken together with the need for corporations to retain a degree of flexibility in governance so as to be able to continuously adjust to changing circumstances, lead us to conclude that the European Commission need not expend energy on the development of a detailed code applicable to companies in the European Union. Ideas about best practice as reflected in the codes should be allowed to develop over time by the business and investment communities, under the influence of market forces."

A difference should be made in respect of the size and the public interest value of the company. The same principles should not be applied since the objectives are different. Based on requirements for listed companies best practice will develop for other companies. The duties of the board of directors need also to be addressed for smaller less sophisticated entities. A distinction needs to be made



between administrative duties of the board and corporate governance of a high level complex board structure.

Question 8:
a) Should there be more disclosure on corporate governance structures and practices of companies in Europe?
b) If yes, should such a disclosure be given only by listed companies or by all "open“ companies or even by "closed" companies?
c) Should this disclosure include an indication whether a certain corporate governance code is followed and where and why the code is not complied with?
d) Should the remuneration of individual board members be disclosed, in particular if it is linked to the share price performance?
e) Should the shareholders have a role in fixing the principles and limits of board remuneration?

FEE supports more disclosure on corporate governance structures and practices, relying on market forces for enforcement. Disclosures aiming at increasing transparency are a useful means in restoring confidence in capital markets by demonstrating best practice. Deviation from national codes complying with principles and common benchmarks set out at European level should be explained (non-compliance). Disclosure of practices and exceptions to national codes is a first step in the movement towards a global corporate governance code.

Several studies and surveys have shown that transparency enhances the share prices of companies as well as that ethical companies out perform non-ethical companies because it increases the trust of capital markets.

Disclosure should only be required for listed companies. Disclosures of listed companies could then function as best practice guidance for other (open) companies. Disclosure requirements on corporate governances could be added to the listing particulars or in national company law.

As discussed in our response to question 3, disclosures could take the form of exception reporting. However the relevant corporate governance codes should be available to the public, at least in English but also where relevant in other languages.

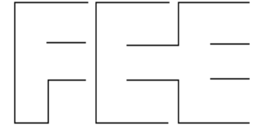
As a general principle, FEE is in favour of transparency also in the area of remuneration of management. There is evidence of a growing practice towards individual disclosures of salaries and share-based payments. We are not aware that there is consistency about the definition of remuneration in all aspects. Disclosures could be dealt with by law or corporate governance code. We note that remuneration disclosure is more often a matter of code than law. The effects of individual disclosures require further study.

Share-based payments is a topical issue and at present under discussion by the IASB. Disclosures may to a certain extent be separate from the accounting treatment.

FEE is concerned about short termism driving the remuneration of management with the risk of earnings management. Enhancement of the long-term nature of remuneration would be welcomed. Involvement of shareholders and/or remuneration committees in fixing the principles of remuneration including share-based payments and appropriate disclosure requirements are initiatives that deserve further examination.

Question 11:
a) Is there a need for a voluntary European corporate governance code in addition to or instead of the various national corporate governance codes?
b) If yes, please give examples of what rules and recommendations a European corporate governance code should contain.
c) Should the European Union facilitate the co-ordination of national codes in order to stimulate development of best practice and convergence?

As set out in our response to question 7, the various national codes should be coordinated in order to exchange best practice and to work towards convergence of national codes. At present we see no need



for a European code, other than setting out the framework of main principles and common benchmarks to facilitate a single European capital market.

The principles in Framework legislation should in our view at least cover:

- rights of shareholders
- equitable treatment of shareholders
- role of stakeholders in corporate governance
- disclosure and transparency
- responsibilities of the boards: including the role of non-executive directors, a definition of non-executive respective functions of executive and non-executive directors and the relations between them, remuneration, relationship between directors and the external auditor, arrangements to ensure quality and integrity of the board decision-making process and matters related to directors' accountability to shareholders.

We would especially welcome specifically addressing the role of non-executive directors in audit committees within the Boards of Directors or the role of Supervisory Boards in respect to financial reporting since there is a need for a further distantiation between the management and the statutory auditor. A good functioning audit committee or Supervisory Board facilitates and enhances the audit function. In our view the following aspects need to be addressed:

- role, tasks, due process
- membership of audit committee and independence
- skills and competence of individual members
- time, commitment of individual members
- appraisal of performance
- access to information by non-executive directors
- reporting obligations
- audit committee as a link between the management board and the external auditor
- audit committee should be engaged in selection and appointment of auditors and setting of audit fees
- audit committee should regularly meet with the external auditor, potentially with at least one meeting a year without management
- the auditor should present his audit approach to and discuss it with the audit committee in order to enhance the audit committees understanding of the responsibilities of the auditor and the implications of the auditor's findings for its own tasks.
- the auditor should report on independence including the provision of non-audit services to the audit committee (based on recently issued Commission Recommendation on Independence).

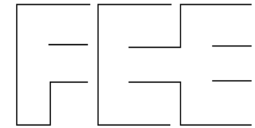
3.2 Shareholder Information, Communication and Decision Making

Question 12:
a) Should listed companies be required to establish on their websites devices (bulletin boards, chat rooms or similar devices) that allow for electronic communication between shareholders and the company and among shareholders prior to general meetings, including with respect to notices of general meetings, submissions of proposals and questions and solicitations of proxies ?
b) If listed companies are required to establish these or similar devices on their websites, should the shareholders then be required to communicate by electronic means and thus be compelled to abandon the use of traditional means of communication, or should electronic communication only be an alternative available to those interested?

Please refer to our response to Question 6.

3.3 Alternatives to Capital Formation and Maintenance Rules

Question 16:



a) Do you believe that legal capital serves all of the functions listed above?
b) Are there possibilities of reaching the same results by means of other techniques?
c) Do you consider that European companies are at a disadvantage as against companies in jurisdictions with a more flexible capital regime?

Legal capital does not serve all the functions referred to in the document. The trustworthiness of the company is of high importance. The compliance with IAS from 2005 onwards for listed companies in their consolidated accounts and the possible extension to individual accounts in certain countries may in particular – for example in relation to deferred taxes and pensions provisions – create difficulties for companies to pay dividends under the current legal capital requirements. Moreover the reported results will be more volatile since they follow more closely the economic reality. The impacts of the use of IAS should be distinguished in first time application issues as well as conceptual problems in future. We would therefore consider it useful to investigate other dividend bases. The interests in good financial reporting and prudent dividend distribution are not the same. A discussion needs to take place whether economic results could be the basis for dividend distribution. It needs to be clarified what is a "distribution". The debate should also cover solvency tests and solvency statements by directors. Changes to the current system need careful consideration and deep debate. See also our response to question 17.

No (additional) minimum capital requirements should be introduced for SMEs. Different techniques are in place such as guarantees required by banks, which make legal capital requirements less useful.

Question 17:
a) What is your general impression on the three approaches outlined here?
b) Which is the approach that you consider worth pursuing (if any)?

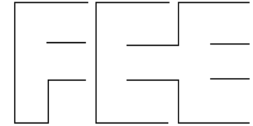
As set out in our response to question 16 we support further investigation of the advantages and disadvantages of the approaches lined out. Some radical changes from the current system are proposed including the removal of par values and the introduction of a solvency test. We welcome a further debate on the solvency test. A solvency test would remove the link between the Second Directive and the Fourth Directive as far as realised profit is concerned. The trend in IFRS is likely to place less emphasis on realised profit and move to more performance-based concepts of profit. This will make realised profit increasingly different from the accounting profit concept. As long as there is no serious doubt about the ability of a company to be able to pay its debts, there may be no reason not to pay a dividend. Restrictions of dividends could be based on solvency rather than on realised profits. Difficulties in complying with existing legal restrictions or dividends based on realised profits may arise even in the context of business that appear to be profitable and solvent.

A general solvency test based on liquidity, solvency and going concern of the company as basis for profit/reserves distribution would need to be introduced in the Second Directive. A point to be considered is whether legal restrictions on the payment of dividends should continue to apply at the company or should involve considerations at the group level. At present only companies can become insolvent.

A solvency test may have a different meaning from country to country. It needs to be discussed if such a test would apply to all sizes of companies. There are several possibilities to set up a solvency test: the company itself or its shareholders define the solvency concept or a more general but more sophisticated solvency test could be developed.

Another issue to be addressed in this respect is a solvency statement by management. IAS 1 on presentation of financial statements requires management to make an assessment of company's ability to continue as a going concern. More details can be found in our professional standard ISA 570 on Going Concern (copy attached).

Question 18:
a) Do you see the minimum capital requirement as an appropriate impediment to starting up a company?
b) Or would you abolish the minimum capital requirement or rather impose a stricter minimum capital requirement than the one presently in force?



c) Do you consider that "wrongful trading" is an effective instrument for creditor protection?
d) Do you consider that subordination is an effective and desirable way of enhancing creditor protection?
e) Are there any other possibilities worth considering?

We refer to our response to Questions 16 and 17 and underline that no (additional) minimum capital requirements should be introduced for SMEs. SMEs have other means such as personal guarantees, and furnishing information to debt collecting/insuring agencies.

Question 19:
a) Do you believe that other forms of consideration, such as services, should be allowed as valid forms of consideration for capital?
b) Do you think the prohibition of financial assistance for the acquisition of own shares should be eliminated or at least that financial assistance should be allowed if it complies with the general rules for distributions to shareholders?

Services, expost (i.e. recording of the receipt of services rather than the promise), could be allowed as valid forms of consideration for capital. However further examination would be needed for exante future services (recording of the promise of services). Consideration needs to be given to the valuation of these services and their inclusion in the financial statements. At present the IASB has a project on share based payment. The results of this project should be awaited for, before taking any decision on future services. A proper balance needs to be struck between protecting the minority shareholders and discouraging undue disruption or damage to the company. Shares should not be issued unless there is protection of the minority. Key principles need to address the protection of the minority interests and the equitable treatment of shareholders.

We would support the removal of the prohibition of financial assistance for the acquisition of own shares, and we would support that financial assistance would be allowed if it complies with the general rules for distributions to shareholders. The rules prohibiting financial assistance are disapplied frequently in practice in corporate transactions.

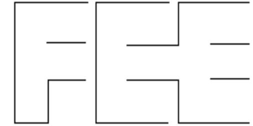
3.4 The Functioning of Groups of Companies

Question 21:
a) Should the 7th Company Law Directive on group accounts be supplemented by rules that require greater transparency of group relations and of possible risks arising from them both to the subsidiary and to the parent?
b) What should such enhanced transparency include?
c) If not in general, should such group transparency rules at least apply to listed companies?
d) Are special rules for banks and other financial institutions needed?

The Regulation on IAS requires all listed companies for their 2005 consolidated financial statements to apply IAS. This includes IAS 24 on related party transactions, which imposes extensive disclosure requirements. Please find a copy enclosed. Member States may allow/require other companies to use IAS. They may also allow/require the use of IAS for the individual accounts. All companies applying IAS will also apply IAS 24. It could be considered for companies not applying IAS to have similar disclosure requirements as in IAS 24.

In case it is especially information on group relations that is of concern, the disclosures in the individual accounts are more important, because the task of consolidated financial statements is to present the net assets, financial position and performance of the parent enterprise and its subsidiaries as they were a single entity; transactions between those enterprises have to be eliminated. Therefore any additional requirement may more appropriately be included in the Fourth Directive supplemented by national accounting standards.

Furthermore it is important that not only group relations are disclosed but also other related party disclosures are made as envisaged in IAS 24.



Listed banks and financial institutions will have to follow IAS 24 and IAS 30. It is believed that many countries will extend the IAS requirement to unlisted banks and financial institutions so that they will be automatically covered. IAS 30 on disclosures in the financial statements of banks and similar financial institutions is currently under revision by the IASB.

3.6 The European Private Company

Question 30:
a) Do you think there is a specific need for a new European legal form of company, complementary to the SE and national forms of private companies, the European Private Company as proposed?
b) If not, do you think a European model for regulation of private companies is a desirable and appropriate way to encourage Member States to adopt flexible regulation of private companies?

FEE supports providing the possibility to SMEs for a European private company statute. Companies should have the free choice to select such a structure, which may in particular be relevant for cross border issues. The European company statute as existing is not adapted to the needs of SMEs.

We would like to emphasise that in practice both the European company and European private company can only work when an appropriate tax environment is established.

Facilitation of cross border issues is an important element in the European private company. Standardisation of regulation in form of a European model may be helpful – in absence of a European private company – to facilitate cross border issues and to simplify legislation.

Question 31:
Do you think that it should be possible for a European Private Company to be set up by both individuals and legal entities and by one or more nationals of one Member State, as long as the European Private Company undertakes economic activities in two or more Member States?

Yes, see our response to Question 30. It is important that individuals and legal entities with different nationalities can be involved since the European private company is especially aimed at facilitating cross border activity.

Question 32:
a) Do you think that the European Private Company for the company law applicable to it could be exclusively governed by the provisions of the regulation and the provisions of its articles which are not inconsistent therewith, with autonomous interpretation ultimately by the European Court of Justice?
b) Or is it necessary to refer to the law applicable to private companies in the Member State of incorporation where a question is not answered in the regulation of the European Private Company or its articles of association?

A European Private Company Statute should work without reference to national laws.

We would be pleased to discuss any aspect of this letter you may wish to raise with us.

Yours sincerely,

Göran Tidström
President