

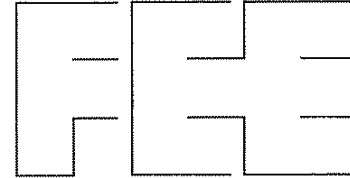
Date  
16 December 2004

Le Président

Fédération  
des Experts  
Comptables  
Européens  
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Dr. Alexander Schaub  
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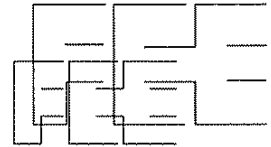
cc: Mr. Pierre Delsaux  
DG Markt G4

[Markt-COMPLAW@cec.eu.int](mailto:Markt-COMPLAW@cec.eu.int)

Dear Dr. Schaub,

Re: EC Consultation Document "Fostering an Appropriate Regime for Shareholders' Rights"

1. FEE (Fédération des Experts Comptables Européens, European Federation of Accountants) welcomes the consultation on shareholders' rights and underlines that improving the rights of shareholders of companies across the Member States is a priority as set in the 2003 Communication and we welcome the focus on modern technologies. We support a Framework Directive setting out the main principles. We appreciate the transparency in the development of such a Framework Directive by the EC publishing a consultation document. FEE recognises that the consultation paper poses some important questions relating to shareholders democracy and the implications for capital market transactions costs of the potential solutions. Others are better qualified than FEE to consider these issues. We have therefore restricted our comments to those issues that we believe have implications for the accountancy profession.
2. We agree that the scope of a proposed Directive should be limited to listed companies since the need for EC-wide rules is greater for listed companies whose shares tend to be more widely held by shareholders spread across the EC than is typically the case with non-listed companies. But non-listed companies should be encouraged to adopt provisions that are relevant to them on a voluntary basis. Certain provisions, such as the right to ask questions and to table resolutions could be considered to be extended to private companies. However in general the scope of the Framework Directive should be limited to listed companies.
3. The right of shareholders to ask questions at the general meeting differs from country to country. In some countries there is a right for shareholders to ask questions of the auditor; in others this is not permitted due to reasons of the auditor's obligation of confidentiality and professional secrecy and for the fact that the primary responsibility for the financial statements lies with management. Furthermore, in some countries an obligation for the auditor to provide information to any shareholder is excluded by law. As indicated in the proposed amendments to the Fourth and Seventh Directive, the board or management board (and supervisory board) are collectively responsible for the annual accounts and annual report and constitute the first line of defence. Therefore, it would not be appropriate for the auditor to respond to questions on the contents of the accounts. However, we acknowledge that the presence of the auditor at the general assembly may add in certain situations to the credibility of the financial statements and the confidence of the investors, by confirming the management position.



4. FEE sees a need to put general procedures in place on the rights of shareholders to ask questions of the management and how these questions are addressed. In situations where questions to the auditor are permitted FEE is of the opinion that the questions should initially be asked of the Chairman of the company. The Chairman, or in a two tier system the Chair of the supervisory board in coordination with the management, will then decide as to who - management or the auditor - should answer the question and to what extent the management wishes to waive the confidentiality to which the auditor is bound towards the company. It has to be ensured that the statutory audit requirements in respect of confidentiality and professional secrecy and the conditions of any waiver of such confidentiality remain unaffected. Auditor's confidentiality must be taken into account in order to guarantee that no conflicts are created as the auditor has to deal with issues on professional obligations and duties related to the client's confidentiality. Therefore, the auditor must not be obliged to answer questions unless the Chairman / management has specifically waived the auditor's duty of confidentiality. It is the responsibility of the Member States to stipulate which party shall have the authority to waive the auditor's duty of confidentiality. It is essential to ensure that when the Chairman / management decides that the auditor has to answer the question, this procedure does not result in any change to the current liability regimes which – due to different legal systems and traditions – should be a national rather than a European issue. The proposed Eighth Directive also envisages that Member States shall ensure confidentiality and professional secrecy on all information and documents in relation to the audit.
5. Auditors should be alert to the need to maintain their professional opinion as expressed in their formal report and any response to a question should be carefully worded so as not to give a separate (and possibly different) opinion on any separate part of the financial statements or annual report which was not previously agreed to be part of their engagement.
6. We would welcome if the proposed Directive could make clear in the preambles or explanatory memorandum the applicable law for investors. Shareholders are subject to the law where the company is incorporated, and the conduct of a general meeting should be subject to the applicable laws of the countries in which the company is incorporated, rather than being subject to the local laws applicable to the location in which a shareholder may happen to be based. It should be clear that the easier way to make use of shareholders' rights does not change the applicable law.

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

Yours sincerely,

David Devlin  
President