Date

4 April 2006

Le Président

Fédération des Experts Comptables Européens AISBL

Avenue d'Auderghem 22-28
1040 Bruxelles
Tél. 32 (0) 2 285 40 85
Fax: 32 (0) 2 231 11 12
E-mail: secretariat@fee.be

Mr. Charlie McCreevy
Commissioner
European Commission
Rue de la Loi 200
B-1049 Brussels

Markt-COMPLAW@cec.eu.int

Dear Commissioner,

Re: EC Consultation on Future Priorities for the Action Plan on Modernising Company Law and Enhancing Corporate Governance in the European Union

1. FEE (Fédération des Experts Comptables Européens, European Federation of Accountants) welcomes the consultation on priorities for the Action Plan on "Modernising Company Law and Enhancing Corporate Governance in the EU" of May 2003 and the recognition that today's context is different from the one in which the Action Plan was developed. We commend the Commission for succeeding with most of the short-term measures announced in the 2003 Action Plan. We appreciate the assessment of the continued relevance of the remaining medium and long-term measures in the light of the Lisbon agenda and the Better Regulation initiative.

General Observations

2. In addition to this change of emphasis, we believe that it is critical to maintain a clear focus on the initiatives to improve corporate governance principles and practices. We are of the opinion that it is appropriate to monitor and develop best practice solutions, before promoting further developments in the area of soft law (such as codes and recommendations). The challenge is to keep up and sustain adequate application of soft law in the longer term minimizing the need for further legislation when crises may arise in more difficult times.

   Ensuring effective implementation into national legislation and soft law and effective enforcement with continuous expert evaluation are cornerstones of such an implementation process. There is a clear need for a monitoring system as implementation for the various measures and the actual impact of these measures needs to be assessed.

3. We have responded only to those questions to which we have specific observations to make. Our answers are set out below.

4. **Question 1: Does the Action Plan address the relevant issues and identify the appropriate tools to enhance the competitiveness of European business? If not, please give your reasons and indicate which measures are not appropriate and/or would be desirable. What are your views on the balance of legislative/non-legislative measures proposed?**

   Are you facing particular obstacles in the conduct of cross-border activities to which, in your opinion, the Action Plan does not provide any satisfactory remedy? Please give your reasons.

We fully support the change of focus envisaged towards encouragement of entrepreneurship. Competitiveness should not be hindered by over-regulation. Competitiveness should be assessed in a broad sense: not only within Europe but also by comparison to countries outside Europe including the US. Competitiveness measures should not largely focus only on large and listed companies but also aim to provide a level playing field for the smaller companies. Better regulation and simplification of regulation efforts should cover both larger and smaller companies.

A proper balance between legislative and non-legislative measures is needed, whereby non-legislative measures play an important role in achieving transparency through disclosure.

5. We recall the letter we submitted on 10 February 2004 in relation to capital maintenance and the EC Communication on company law and corporate governance (copy attached). Both in this letter and our earlier letter of 31 July 2003 FEE called for an acceleration of the feasibility study of a possible alternative to the existing capital maintenance regime mentioning several reasons including that with the wide use of IFRS, the existing capital maintenance regimes may lead to restrictions on dividends for several companies. We welcome the fact that a second call for tender for the feasibility study has just been launched.

6. Question 2: Do you have comments on the proposed application of better regulation principles in the area of corporate governance and company law? Are there other ways in which, in your view, the Commission should be seeking to improve its actions in this field?

We welcome the increased consultation the Commission now applies at all levels of regulation – including regulation that is not covered by the Lamfalussy Process – since this is in our view a condition for a transparent and open process. Transparent and open procedures are important for the technical quality of proposals as well as for their political legitimacy. Market participants also need sufficient time to consult with their constituencies, this is a question of both time and availability of specialist resources.

7. Especially in the area of corporate governance and company law there is a very wide range of relevant stakeholders who should be given the possibility to react at various stages in the consultation process. Consultation should not be limited to a restricted group of representative organisations. It is important that a level playing field is respected between all organisations concerned. We welcome the use of feedback statements from the Commission as a tool of enhanced transparency and communication.

8. We welcome the intention to have a comprehensive impact assessment for any new piece of legislation to assess and quantify the burden imposed on companies evaluated against the overall public interest.

9. Question 3: What would be the added value of addressing the issue at EU level?

What would be the appropriate form for any EU instrument? Please give your reasons.

Are there, in your view, specific elements which any such instrument should cover?

Cultural differences may not allow for a harmonised system, it is however important that the market is provided with good information. Transparent disclosure is of crucial importance where there are different shareholder voting systems so that investors are made fully aware of the restrictions on voting rights on their particular financial 'instrument'. There are, in addition to the standard equity share, other types of financial instrument that can be used by investors. Such instruments may or may not attract voting rights – for example, non-voting preference shares. If there is full transparency of all the voting rights on all of the financial instruments used by a company, then investors will be aware of distorting or disproportionate voting structures and then they may act accordingly. All shareholders should have similar access to financial information.

10. **Question 4: What would be the added value of addressing these questions at EU level? Please give your reasons.**

    Which instrument would be best designed to deal with these matters? Please give your reasons.

    Are there, in your view, specific elements which any instrument should cover?

    One of the rights that could be usefully addressed at European level by soft legislation is the right to ask questions at the shareholders meeting and the right to obtain appropriate financial information in order to create a level playing field between shareholders in the various countries. The principles could be developed at European level, on basis of which best practice guidance could develop. The right to ask questions differs from country to country. We refer to our response to the EC Consultation Document "Fostering and Appropriate Regime for Shareholders Rights", paragraph 4 of 19 July 2005 (copy enclosed).

11. **Question 5: Is there a need for this issue to be addressed at EU level? What would be the added value of addressing the issue at EU level? Please give reasons for your reply.**

    What would be the appropriate form of any EU instrument? Please give your reasons.

    Are there, in your view, specific elements which any such instrument should cover?

    We have no comment other than it is important, in fulfilling their responsibilities, for investment institutions to not only engage with companies but also with the relevant ultimate shareholders where the institution acts as their agent.

12. **Question 8: Should the question of the choice of board structure be addressed at EU level? Please give your reasons.**

    Which instrument would be best designed to deal with this matter? Please give your reasons.

    Are there, in your view, specific elements which any such instrument should cover?

    The question of the choice of board structure is largely driven by national culture and tradition and should not to be considered at EU level as long as principles are sufficiently broad to embrace both systems.

13. **Question 9: Do you think that a squeeze out and a sell out right should be introduced at EU-level? Please give your reasons.**

    If so, should these rights be limited to companies which shares are traded on a regulated market ("listed companies")? Please give your reasons.

    Which instrument would be best designed to deal with this matter? Please give your reasons.

    If squeeze out and sell out rights are introduced at EU level, they should be introduced as a joint package.

14. **Question 11: How useful do you judge the ECS to be in practice? Do you consider any modifications are appropriate and desirable? Please give your reasons.**

We appreciate that the ECS has led to some harmonisation but our impression is that there are still 25 somewhat different legal concepts of a company as a legal entity. We appreciate however that the ECS is the maximum that could be achieved.

15. **Question 12: Do you see value in developing an EPC Statute in addition to the existing European (e.g. Societas Europaea, European Interest Grouping) and national legal forms? Please give your reasons.**

    If so, are there, in your view, specific elements which any such statute should cover?

    The Societas Europaea (SE) adopted in October 2001 may not meet all expectations of the SMEs and is to our knowledge not largely used. For smaller entities especially those that are increasingly involved in cross border activities, it may be helpful to have the legal form of EPC available, in particular if the IASB were able to develop an IFRS for SMEs to be used as common financial reporting standard.

16. **Question 14: Do you agree that there would be added value in modernising and simplifying European Company Law? Please give your reasons.**

    Are there, in your view, areas of actual or potential overlap between the Action Plan and other initiatives or measures in related sectors? What, if anything, should be done in order to ensure coherence between the various fields of action? Please give your reasons.

    What should the extent of simplification in the interests of improving the regulatory environment and rendering the text more user-friendly? Please give your reasons.

    We appreciate the reasons for considering an initiative of codification of all existing regulation in the company law and corporate governance area so that it does not contain redundant or obsolete material but wish to underline the difficulties and risks of keeping a CODEX up to date:

    - Company law does not necessarily remain fixed – and a constant and perhaps difficult updating exercise might thus need to be undertaken. This may require permanent resource.

    - Interpretations of the existing law have now been in practice for several years. Changes to eliminate perceived inconsistencies and/or redrafting substantive provisions could upset the delicate balance that has already been achieved requiring extreme caution.

    - Many provisions in the Directives were the result of careful (sometimes last minute) negotiation, which has lead to some inconsistencies where slightly different agreement has been reached on similar issues. In trying to resolve such inconsistencies today, this may open up carefully crafted agreements to change.

    - There have been several new EU measures concerning national company law in recent years, such as the Prospectus and Transparency Directives, the revised Eighth Directive and changes to the Fourth and Seventh Directives; these have largely not yet been transferred into national law.

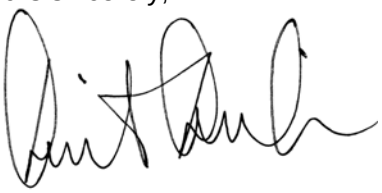
    - During any updating exercise, there is a danger of inadvertently changing a meaning and potentially creating a problem out of something that was not a practical problem in the past. Such alterations could add costs without any real benefits. Costs would also potentially be incurred in Member States to amend existing legislation.

17. For all these reasons, we are concerned about a proposal to codify, simplify and consolidate the current EU Company Law Directives, especially as the work involved would be very extensive and the risk of many areas of policy being re-opened for debate must be quite high, while the benefits are not equivalent in our view.

18. It should however be avoided as far as possible, that the regulation is strictly seen as minimum legislation to which Member States can add additional requirements. “Gold plating” by Member States should be avoided. Adding layers of regulatory additions beyond the Directives themselves by Member States should be kept at a minimum. It needs to be recognised that at least in some areas there are still significant unavoidable differences in the economic and legal environment of the Member States which will have consequences for the interpretation and implementation of European principles laid down. This is especially true for the area of company law. This can be dealt with by the use of recommendations or directives, when needed which gives the Member States the opportunity to address the distinctive national features in an adequate way. A Framework approach as envisaged under the Lamfalussy approach could be carefully considered; some elements could be usefully applied in the company law area as long as the particularities and cultural differences between countries are recognised. Market participants together with regulators and governments have an important role in this process whereby additional regulation should preferably be avoided. See also our general observations in paragraph 2 above.

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

Yours sincerely,



David Devlin
FEE President

Encl.

- Letter of 19 July, 2005 to Dr. Schaub
- Letter of 10 February, 2004 to Mr. Campogrande