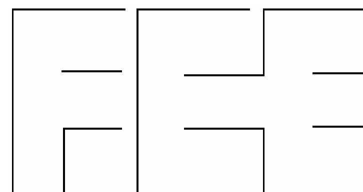
Date

19 October 2007

Le Président

Fédération des Experts Comptables Européens AISBL

Avenue d'Auderghem 22-28/8
1040 Bruxelles
Tél. 32 (0) 2 285 40 85
Fax: 32 (0) 2 231 11 12
E-mail: secretariat@fee.be



Commissioner Charlie McCreevy
DG – Internal Market
European Commission
rue de la Loi 200
1049 BRUSSELS

Dear Commissioner,

Re: Communication from the Commission on a Simplified Business Environment for Companies in the Areas of Company Law, Accounting and Auditing

1. FEE (Fédération des Experts Comptables Européens – European Federation of Accountants) is pleased to provide its views on the Consultative Communication on Simplification of 10 July. FEE welcomes the EC initiatives aiming at better regulation and reduction of administrative burdens with as aim boosting Europe's economy with a special focus on the benefits such a reduction of administrative burdens can bring for SMEs

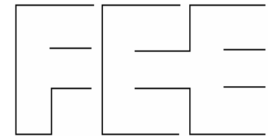
2. We first wish to share some general observations with you concerning simplification, better regulation and reduction of administrative burdens, followed by a detailed discussion of the company law proposals and the proposals in the areas of accounting and auditing. On 17 April 2007 and 21 March 2007, FEE already published its preliminary position on the EC Simplification Project with a focus on the financial reporting and auditing aspects (copy enclosed).

General

3. Better regulation and simplification has to be pursued in a targeted way to achieve real benefits for enterprises and have also to be balanced with other public policy goals. As practical experience demonstrates, unregulated markets may lead to a situation in which insufficient and unreliable information is provided which undermines the optimal functioning of the market. The accountancy and audit profession plays a key role in providing the transparency required by market participants, which reduces the costs of capital, helps markets work better and safeguards the public interest.

4. Policy initiatives in the company law, financial reporting and auditing sphere will have a significant impact on the EU economy: for this reason they must be pursued with great care on the basis of a thorough impact assessment. The costs and the benefits of both the current requirements and the envisaged simplifications have to be assessed and all the consequences of policy initiatives carefully weighed to arrive at net costs or net benefits.

Association Internationale reconnue par Arrêté Royal en date du 30 décembre 1986



5. We doubt whether the changes proposed in the company law, accounting and auditing areas will be those where the burdens perceived outweigh the benefits such as reduction of cost of capital and easier access to finance. In our experience the main burdens imposed on companies are not in the financial reporting and company law area but rather in other areas such as:

- Statistical requirements
- Corporate tax and other tax requirements, including property tax, VAT and other indirect tax requirements
- Multiple, overlapping filings for different regulatory purposes and insufficient use of electronic reporting to avoid double reporting
- Frequency of reporting requirements in certain countries
- Employment legislation and returns
- Legal requirements for incorporating new companies
- Health and safety legislation and returns
- Administration (calculation, payment and statistical reporting to authorities) of miscellaneous social security programs.

6. We agree that the Company Law Directives, including the Accounting Directives could benefit from a review more fundamental in nature than the rather ad-hoc amendments carried out so far to adapt them to the today business environment of European companies characterised by globalisation, transparency, governance and technological change. The EC initiatives for simplification and better regulation provide the opportunity for a fundamental review of the Company Law Directives, many of which have been in place for many years. The possibilities include making the Directives more principles-based: allowing more flexibility without introducing unnecessary detailed requirements for all specific circumstances by establishing harmonisation based on common principles.

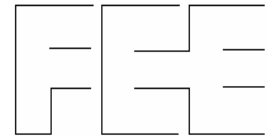
7. The Company Law Directives cover limited liability companies. Since the legal liability of these companies is limited, the Directives provide for a number of safeguards based on the Treaty of Rome, notably on Article 54.3(g) under which guarantees are granted to third parties to ensure a minimum protection for shareholders, creditors and other stakeholders. One of these safeguards is transparency, including the obligation for (financial) reporting.

Level of Regulation needed in the Field of Company Law

General Approach to EU Company Law

8. Whether simplification necessarily means deregulation at EU level is open to question. Many of the administrative burdens at national level are a consequence of “gold-plating” or conservative implementation of options by Member States when implementing EU Directives. Deregulation at EU level may lead to more regulations at national level depending on the Member State concerned.

9. Total repeal of Directives at EU level will not necessarily result in similar actions at Member State level and may ultimately not result in any simplification. On the contrary, decades of harmonisation may be impaired, if certain minimum requirements are not kept. As stated in the Consultative Communication on page 4 “harmonisation has also positive effects on the competitiveness of companies”. Furthermore, harmonisation leads to increased legal certainty and transparency which contributes to the minimum protection of shareholders, creditors and other stakeholders and facilitates cross-border transactions. The Second, Third, Sixth and Twelfth Company Law Directives guarantee a minimum level of protection for shareholders and creditors of limited companies throughout the EU, even without creating a full level playing field. However, differences in implementation at Member State level can undermine these benefits, for example, in relation to the Second Directive, some Member States permit distribution of share premium which undermines the protection of shareholders and other stakeholders. The different legal systems in place in the various Member states bring a particular need for harmonisation on the basis of common principles.



10. Deregulation may have positive implications such as promoting growth and creating more room for regulatory competition between EU Member States. The whole of the EU needs to remain competitive vis-à-vis other jurisdictions in an increasingly global environment and at the same time within the limits of the Treaty of Rome. There is a tension between the need for deregulation and the need for consistent and harmonised standards across the internal market. In a highly competitive global environment, if the benefits arising as a result of harmonised EU company law are outweighed by the administrative costs and burdens on business then the regulation needs to be reviewed with the aim of simplification or deregulation.

11. The increased mobility of companies (not only within the EU but globally) requires flexible responses to a constantly changing environment. These changes can only be addressed if the EU and Member States are able to react swiftly to these new developments. A harmonised EU framework should not form an impediment to innovation. In our view, competition should be driven by quality, price and timeliness, not by regulatory aspects.

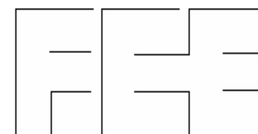
12. New Member States have implemented the European company law acquis and are in the process of gaining experience with the legislation and need sufficient time to do so. For Member States whose enforcement framework is still developing, EU regulation can have a beneficial impact.

13. For the reasons mentioned in the previous paragraphs, FEE does not support a complete repeal of any of the Company Law Directives but calls for a substantial reform of the Directives supported by a proper impact assessment. We believe that the existing Directives are still needed be it in revised and modernised form. Simplification needs to be achieved using an appropriate balance of harmonisation (which can be beneficial in creating the basis for a level playing field within the EU) and deregulation (if those benefits are outweighed by the additional bureaucracy and administrative burdens). We support the need for updating and modernisation of the Company Law Directives to better reflect today's business conditions of globalisation and fast changing and technological environment. Better regulatory impact assessments would be of great assistance in properly assessing the benefits and disadvantages of changing legislation be it through deregulation, repeal, simplification or otherwise. All consequences should be carefully weighed including the implications at national level.

14. FEE calls for a further distinction in legislation between listed companies (and eventually other public interest companies) and other limited liability companies whereby listed companies could be subject to specific legislation. This legislation should be established under a process similar to the Lamfalussy process, which guarantees consultation with a broad range of stakeholders before legislation is adopted. The general company law legislation applying to all companies could be far less detailed and more principles-based, but maintaining adequate protection for third parties. Ideally, a bottom-up approach ("think small first") could be envisaged, adding on "building blocks" to address more complex circumstances on listed companies. Detailed capital market requirements for listed companies can be addressed in EU capital market legislation and/or in the listing requirements. All issues specifically addressed at listed companies should no longer be covered by the general company law legislation.

15. In addition, it could be considered if reduction in administrative burdens for companies can be found in the recently revised Capital Market Directives such as Transparency Directive and Prospectus Directive.

16. FEE calls for a reform of the Second Company Law Directive. In this context, the FEE September 2007 Discussion Paper on Alternatives to Capital Maintenance Systems proposes the introduction of an alternative capital maintenance regime in the form of a solvency-based regime which would involve both a "snap-shot" test and a "forward looking" test. FEE envisages the EC giving the Member States the possibility to require or allow companies to follow an alternative system, as well as the existing system. We refer to the Executive summary in the Discussion paper (copy enclosed).



17. FEE does not consider the repeal of the Twelfth Company Law Directive appropriate. This Directive facilitates the establishment of subsidiaries in other Member States, as it removes the need for a second share to be held through a nominee, and can avoid the need to instruct local counsel, and we therefore think it should be retained. The scope of the Twelfth Directive covers not only companies with an individual person as the “single member” (single shareholder) but also corporate groups with cross-border activities. However, the requirements for supporting internal procedures (e.g. the requirement for shareholder decisions to be recorded in writing) should be reconsidered as to whether single member companies should be treated any differently from other companies.

ANNEX 2
Individual Simplification Measures Concerning the Third and Sixth Company Law Directives

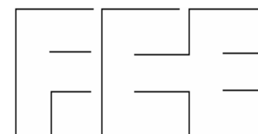
1. Reporting Requirements under the Third and Sixth Company Law Directives

18. In general, we consider the detailed written report of management as required under the Third and Sixth Company Law Directives useful because it explains the draft terms of the operation and sets out the legal and economic grounds for the merger or division. Therefore, it should be retained in order to achieve transparency not only with the shareholders but also with all other stakeholders.

19. In our opinion, the reporting requirements under the Third and Sixth Directives are an example of a situation where the requirements for listed and unlisted companies could be differentiated. Listed companies should continue to be required to have a detailed written report of management, interim financial statements (“accounting statement”) and a report of an independent expert in the context of a merger or division. However, it could be considered to exempt unlisted companies from the obligation to prepare an interim financial statement and a management report where the shareholders of the particular company so formally decide in accordance with that company’s by-laws.

20. There are situations where both an independent expert report on the draft terms of the merger or division, including the proposed exchange ratio is required as well as an independent expert report on the contribution in kind. However such reports are not addressing the same purpose. An independent expert report on the in kind contribution is essential in all circumstances. If the contribution in kind is not properly valued, for example shares in private limited companies and intangible assets, this has an impact on the equity of the resulting company. Under the March proposed amendments to the Third and Sixth Directives (in the meantime adopted by EP and Council), it is proposed that “neither an examination of the draft terms of merger nor an expert report shall be required if all the shareholders and the holders of other securities giving the right to vote of each of the companies involved in the merger/division have so agreed”.

21. However, in the case of spin-offs there should be in all circumstances a requirement to have a detailed written report of management and interim financial statements since a higher level of protection of creditors, investors and other third parties is needed.



Annex 3
Additional Simplification Measures in Company Law

1. Publication Obligations under the First and Eleventh Company Law Directives

22. FEE agrees that not all information specified in the First Directive needs to be published in both the (electronic) commercial register and the (electronic) National Gazette and supports a complete repeal of Article 3.4. The information of Article 3.4 should be available in electronic format from the electronic commercial registers. However, it is important that changes to the electronic commercial register can be easily traced in form of a daily transaction list (log). Therefore, there should be a requirement to report in the electronic commercial register in one place the new relevant information such as announcements on founding of a new company, mergers, decrease of capital and appeals and other legal actions given the significant nature of this information.

23. FEE supports the proposals to reduce the disclosure requirements for branches under the Eleventh Company Law Directive. We agree that the Member State should accept certified translations prepared in another Member State provided that the certificate issued has been acceptable to the judicial or administrative authorities of that other Member State.

2. Registered Office of the European Company

24. We have no objection to the deletion of both requirement that the registered office of an SE shall be located in the same Member State as its head office and that the Member State option to require the SE registered in their territory to locate their head office and their registered office in the same place. However, we question whether this proposal constitutes a significant simplification, given the relatively small take-up of the format of SE. We also observe that it would be needed to review the impact of deleting such a requirement for unintended tax and social consequences.

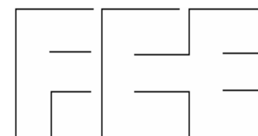
25. Furthermore, although the SE is a European legal form, most of the applicable law is national law. Therefore, it might be of interest to third parties to recognise in which Member State the SE is registered. As long as the SE Regulation requires that the SE locates both its head office and its registered office in the same Member State, it will be transparent and recognisable to third parties under which national law the SE acts and, for example, which law is applicable to accounting and reporting.

Simplifying Business for SMEs in the Areas of Accounting and Auditing

General

26. We welcome the recognition of the EC that harmonised accounting and auditing requirements have significantly raised the quality of financial reporting and auditing in the EU and the intention of the EC to continue to pursue the overall goal to keep and improve accounting and auditing quality in the EU.

27. Accounting and auditing are tools that provide added value to a wide range of stakeholders: managers, business partners, bankers, creditors, investors, employees, trade unions, and public administrations. Reduction of accounting and auditing requirements will in many situations and several countries increase the burdens on other parties that rely on audited financial statements since they will need to acquire reliable financial information in alternative ways. The different legislative environments and related systems of controls in which audited financial statements play an important role should not be ignored. There is evidence that unregulated markets may provide insufficient or unreliable information and that a well-functioning and sustainable economy also benefits from proportionate statutory requirements beyond reliance on agency theory and private contracting.



28. Accounting is an essential facilitator of cross-border trade. There is a need for more internationally comparable and harmonised financial statements, especially for medium sized and large non-listed companies, because of increasing cross border operations, mergers and acquisitions involving companies in different Member States, increasing internationalisation of capital markets and related supervision within the EU, and requirements following Basel II. Financial reporting is the only common language for the 23 million European SMEs across 27 different Member States with 23 different languages.

29. SMEs often do not have strong financial expertise in-house so rely on independent external input received from professional accountants to improve financial and management controls. A reduced involvement of accountants and auditors in SMEs will have implications for the quality of the internal management and controls of such SMEs and could potentially increase the risk of failures and fraud. Reporting and related audit, enhancing the quality of the reporting, provides transparency and helps SMEs to get access to finance.

ED IFRS for SMEs

30. FEE supports high quality, global principles-based financial reporting standards for SMEs since these promote consistency and transparency and help companies and their advisors to respond appropriately, to new developments in business practice. In that respect FEE welcomes the IASB project to develop an international financial reporting standard for SMEs. All companies including SMEs with cross-border activities, branches and subsidiaries will experience simplification in their financial reporting by being able to use one standard and accounting framework and speak thereby one accounting language in all countries concerned. The Fourth and Seventh Directives are implemented differently in EU Member States and, therefore cannot entirely fulfil this role. Moreover, also SMEs may be involved in cross-border activities outside Europe.

31. FEE welcomes the IASB project. However the FEE response to both EFRAG and IASB on the ED will call for substantial changes to the current exposure draft in the form of a stand-alone document and further simplification, sharing many of the comments raised by EFRAG to make it more useful for SMEs and other non-public accountable entities (NPAEs).

32. Within Europe it is uncertain to what extent the future standard will be taken up directly by countries. We understand that the EC at this stage is not considering endorsing the future standard for application in the EU. FEE is of the opinion that EU Regulation should not be an impediment for Member States to allow the use of the future standard “IFRS for SMEs” and have the market provide an indication on the uptake of this standard for use in Europe subject to the current draft being amended appropriately.

33. An additional benefit of the future IFRS for SMEs is that the education in accounting and financial reporting can be more focused on the IFRS principles and requirements. This can bring enormous cost savings in the educational field.

34. FEE is calling on European stakeholders organisations with an interest in financial reporting and in addition those with an interest in SMEs to express their views on the Exposure Draft to EFRAG or directly to the IASB in a constructive manner with indication of what elements in the Exposure Draft need to be changed.

Annex 4

Simplification Measures for SMEs in Accounting and Auditing

1. Introduction of "Micro Entities"

35. Introducing a fourth category of company would in our view render the regulatory system unnecessarily complex and would ignore the fact that such micro-enterprises have chosen to operate under the legal form of a limited liability company, whereas they could have chosen a different legal form. All limited liability companies, in common with other businesses, need to have sound accounting systems, resulting in reliable financial information that can be used for different purposes, including tax purposes. There is the danger that wide-spread deregulation for micro-enterprises might adversely affect the perceptions of owner/managers as to the importance of consistently prepared credible financial information. Companies, including micro-enterprises, would benefit from better – clearer and simplified – legislation with, as a starting point the Fourth and Seventh Directives being made more accessible and up to date.

36. At present, micro-enterprises are accustomed to report publicly. This information not only enhances transparency, comparability and harmonisation, but is in many, if not all cases, needed for tax purposes. Moreover it provides credible financial information for minority shareholders. The existing (public) reporting obligation is not perceived as being unduly onerous and its continuance would not constitute a major administrative burden. Removing such a requirement – without a careful assessment of the impact – will make it difficult to restore in future, should this seem desirable. Many companies would consider any change from the current situation as a burden.

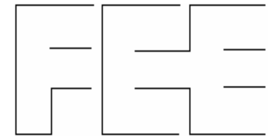
37. Choosing to operate under limited liability comes with certain obligations in relation to transparency and accountability. Whether these micro-entities as part of the population of small companies as a whole, or as a separate category, could benefit from less onerous reporting requirements within the Directives whilst still providing sufficient transparency to their stakeholders, requires further consideration.

38. FEE supports the idea of reducing the burdens for micro-entities in relation to financial reporting. A "lighter" reporting regime for micro-entities could be introduced within the Accounting Directives with for example further exemptions on disclosures. Introducing a separate category of company outside the Directives is in our view therefore not needed.

39. It is inconsistent to leave the reporting decision for micro-enterprises to Member States but at the same time to require an exemption from statutory audit for all micro-enterprises. This is undermining the principle of subsidiarity. The exemption from audit should remain a Member State option.

40. The removal of the Member State option to require statutory audit of small companies is not considered to be a feasible proposal for a number of reasons. In particular, the decision on whether a certain size of company would need to be audited or not should be taken in the context of the economy in which such companies operate and, therefore, should be taken at the Member State level. Additionally, the risk which is associated with a particular type of company is not necessarily determined by the size of the company, for example a public company, business corporation, a private company, limited by shares or guarantee, a labour sponsored capital company, government corporation or widely held corporation. A recent Belgian study[1] demonstrates that the presence of an auditor has a positive effect on the survival score of a company, especially in small entities.

[1] The Effects of external auditing in privately held companies – Empirical evidence from Belgium, Marleen Willekens, Tilburg University and KU Leuven, 2007



2. Trespassing thresholds for SMEs

41. We are not aware that the existing system of a two-year adaptation period has given rise to administrative burdens or unfair treatment of companies. A period of two years either way allows companies to have an exceptionally good or bad year in isolation, without it having an immediate impact on reporting requirements.

42. We therefore strongly recommend maintaining the existing adaptation period of two years. If the proposal were implemented it could lead to an undesirable information deficiency for the stakeholders of growing companies. It could mean that micro-companies which became 'small' companies would only be required to report under Fourth directive rules after they had spent five years in the higher category; in the case of fast-growing companies, which did not spend the required five years within a particular category, they could conceivably grow from micro-size to medium-size without being subject to any reporting requirement at all. We consider that this could prove dangerous not only for the companies themselves but for their creditors and other stakeholders, who in some cases could see companies becoming insolvent before they became subject to reporting requirements. We also consider that these proposals are contrary to the overall direction of other EC projects, which accept the need for more transparency.

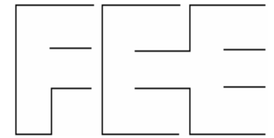
43. Reduction of the period for less detailed requirements to one year when a company has reduced in size is also too short: the company may have had an exceptionally "bad year" and as a result it might fall into a lower reporting category in which it then can stay there for five years. Moreover most companies use a "model" set of financial reporting schedules, based in their software on a chart of accounts - which would be different for smaller and larger companies. In practice companies will not immediately change their model of accounts as this is costly especially where it concerns specially developed tailor-made software. This is undermining the transparency and harmonisation initiatives, but also the objective of creditor and other stakeholder protection.

Procedure for Adapting Thresholds

44. The Communication suggests that adaptation of the thresholds should in the future be left to the Commission assisted by the Accounting Regulatory Committee with scrutiny rights for the Council and European Parliament (comitology). We are not supportive of introducing an "easier" method for adaptation of the thresholds, given that adaptation of the thresholds has a serious impact on society at large.

45. FEE is strongly of the opinion that the implementation of the thresholds should remain a Member State option. There is no one size that fits all: the extent to which the thresholds are implemented by Member States largely depends on the size of the national economy and the significance of audited financial statements to third parties (for example taxation authorities). The savings of higher audit thresholds for SMEs might be offset by additional costs that SMEs may face in having to provide greater certainty to banks, vendors, shareholders and tax authorities. The audit plays an important role in serving the public interest to strengthen accountability and reinforce trust and confidence in financial reporting. Moreover, before any change is made to the thresholds, a regulatory impact assessment is needed to assess the impact on individual countries, on significant stakeholders within these countries and important economic sectors.

46. Introducing an "easier" method for adopting the thresholds and thereby making it "easier" to increase thresholds could have a significant impact on the EU economy. There are a number of issues that need to be taken into account when considering the implications of changing the thresholds. In particular there are implications for the quality of financial information on the public record, the levels of economic crime such as money laundering and the fight against corruption. There is also a public interest issue for stakeholders such as employees, lenders, suppliers, customers, banks, tax authorities etc. in smaller and medium-sized entities. Furthermore, the risk which is associated with a particular type of company is not necessarily determined by the size of the company.



3. Relief from Publication Requirements for Small Entities

47. Preparing and publication of meaningful accounting information should be one of the consequences of incorporation and thereby gaining limited liability as set out earlier in this position. Public reporting increases transparency and provides added value to a wide range of stakeholders at minimal extra costs to business: managers, business partners, bankers, creditors, investors, employees, trade unions, and public administrations. Publication requirements have in addition a disciplinary effect on enterprises. A reduction in publication requirements will in many situations and several countries transfer the burden to other parties that rely on the (audited) financial statements, as they will need to acquire reliable financial information in alternative ways. Many stakeholders (e.g. co-operation partners and debtors) seek information from the official trade register on the credit standing of the company, financial information regarding its stability, the statutes (company articles), as well as names of the board members, managing director(s), authorised signatories, auditors and the company's track record. If this information is no longer published, it leads to a very complex and much more costly way for all parties involved to secure many matters of day to day business.

48. The different legislative environments and related systems of controls in which audited financial statements play an important role should not be ignored. Substantial evidence has not been provided to rebut the concern that deregulation in this area could lead to insufficient or unreliable information. A well-functioning and sustainable economy also benefits from proportionate statutory requirements beyond reliance on agency theory and private contracting. A thorough impact assessment needs to be carried out to assess whether the measures do not have a detrimental effect on the economy at large.

4. Extension of Exemptions for Companies without Particular External User

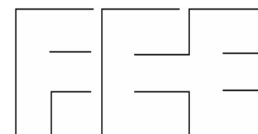
49. We believe that one of the key determinants in the consideration of extension of small company exemptions to medium-sized companies without particular external user should be an entity's ownership structure and involvement of stakeholders. Medium-sized companies are not insignificant in size and are likely to have public interest aspects and a number of other users of accounts for example employees, suppliers, customers, banks and tax authorities. If some medium-sized companies are no longer required to prepare audited accounts or file any account at all, it might be far more costly for these other stakeholders to obtain the information they need.

50. We consider that the application of a risk based approach would be complex and risks creating a further category of companies. A "risk-based" approach requires clear criteria to be set, which cannot be confined to share-ownership but should take into account the extent of liabilities and borrowing and include a series of financial ratios and indicators. Questions arise as to who will monitor the risk-assessment, how shall changes in company's risk profile be recorded and checked and how can criteria be consistently applied? Accordingly we have doubts about the merits of embedding a risk-based approach in legislation.

51. Any extension of small company exemptions to certain medium-sized companies as a Member State option should be only considered following a thorough impact assessment to determine whether the benefits of further relaxation outweigh the potential costs.

52. As is the case with the exemption from statutory audit for small companies, not all Member States are likely to take up this exemption, depending on the particular circumstances of their jurisdiction.

53. We would not favour granting exemptions from the disclosures in the notes or in the annual report. The annual report provides important information on going concern and post-balance sheet events that are also of interest to the stakeholders and market concerning medium-sized companies.



5. Simplification for All Companies

Consolidation – Article 57

54. Before Article 57 could be turned from a Member State option into a company option (as it seems the EC is proposing) or even a mandatory exemption for small companies, whereby all subsidiaries are exempted from the content, auditing and publication requirements of their individual statutory accounts when a number of conditions are fulfilled[2], it needs to be investigated why few Member States have taken up the existing provisions of Article 57 of the Fourth Company Law Directive. The reasons might be associated with the following concerns:

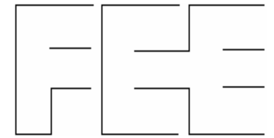
- Parent guarantee for subsidiary commitments might be problematic in case of companies with minority shareholders;
- There are certain risks for the parent company;
- There is a lack of detailed information at the local level as some stakeholders might still be interested in the individual company's financial statements (workers council, tax authorities);
- It might encourage the formation of groups where subsidiaries might be set up for illegitimate means as they would no longer require an audit;
- The Article is complex and may lead to uncertainty about the position of the creditors;
- The Article is (perceived to be) more difficult to apply across borders should, for example, a creditor of a subsidiary based in one country seek to make a claim against the guarantee of the parent company which is based in another country as different legal systems apply. However the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters is assumed to have largely taken away this problem.

55. The group auditor assesses the level of audit necessary for the consolidated accounts. Whether or not an audit is needed for the individual accounts is a different discussion which will not necessarily depend on whether or not Article 57 is adopted. The administrative savings might be limited – for instance, if the group auditors decide they need an audit of the subsidiary then this will need to be performed anyway irrespective of Article 57.

56. It is not clear to us what is meant by the sentence "In addition, requirements to provide consolidated accounts for personal holdings (where the main holder of the group is a natural person) are burdensome and could be abolished." and what article is referred to. At this stage we are unable to comment on the proposal but we are willing to reconsider the proposal after clarification.

---

2 Article 57 of the Fourth Council Directive:
Notwithstanding the provisions of Directives 68/151/EEC and 77/91/EEC, a Member State need not apply the provisions of this Directive concerning the content, auditing and publication of annual accounts to companies governed by their national laws which are subsidiary undertakings, as defined in Directive 83/349/EEC, where the following conditions are fulfilled:
(a) the parent undertaking must be subject to the laws of a Member State;
(b) all shareholders or members of the subsidiary undertaking must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;
(c) the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary undertaking;
(d) the declarations referred to in (b) and (c) must be published by the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC;
(e) the subsidiary undertaking must be included in the consolidated accounts drawn up by the parent undertaking in accordance with Directive 83/349/EEC.



Consolidation – Clarification Relationship between IAS Regulation and the Seventh Directive

57. First of all clarification needs to be provided by the EC on the relationship between the Directives (national law) and the IAS Regulation in that there is no obligation to prepare IFRS based consolidated accounts for parent undertakings with immaterial subsidiaries.

Accounting for Deferred Taxes

58. Accounting for deferred taxation is not treated by the Directives except for the disclosure requirement but by national accounting legislation, national accounting standards or IFRS. Once deferred taxation is accounted for, the disclosures are not burdensome and are in fact (both in cases of tax liabilities and tax credits) considered helpful. Moreover there is an existing Member State option (Article 44.1 Fourth Directive) which allows Member States to permit small companies to draw up abridged notes without the disclosure requirement of Article 43.11. We question whether there is a burden for medium-sized companies or whether the benefits of disclosure outweigh the perceived disadvantages.

Disclosures

Deletion of requirement to explain formation expenses (Article 34.2)

59. The preferred method in accounting – and the required method under IFRS (IAS 38.19) – is to expense formation expenses. If this preferred method is not followed it seems important to explain the amount of formation expenses that is capitalised. If the formation expenses are expensed, no further explanation is needed.

Omission of disclosure requirement of the breakdown of net turnover into categories of activity and geographical markets (Article 43.1.8)

60. We are of the opinion that this disclosure requirement is not essential and could be omitted. Moreover there is an existing Member State option (Article 44.1 Fourth Directive) which allows Member States to present small companies to draw up abridged notes without the disclosure requirement of Article 43.1.8.

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

Yours sincerely,

Jacques Potdevin
President

<u>Encl</u>.
- FEE Preliminary Position of 17 April which includes FEE position of 21 March 2007
- Executive Summary of Discussion Paper on Alternatives to Capital Maintenance Regimes