

Panel on
Purpose and Tools of European Company Law
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1. Legal tools available to the EU organs are well known (regulations, directives and recommendations) but the purposes of European company law are less clearly defined.
2. It is worth mentioning that the introduction to the list of our recommendations stresses that EU harmonization “should be done after careful vetting of facts, consultations and impact assessments, and in observance of the principles of proportionality and subsidiarity. The majority of the Reflection Group believes that, subject to a few exceptions, recommendations should be used as a principal form of soft harmonization, whilst regulations and directives ought to be implemented only on solid evidence of a need by the EU business.
3. The existing national company laws offer a wide choice of vehicles to conduct business activity within the Member States borders and transnationally. EU studies and recommendations should serve as tool boxes to facilitate proliferation of recommended models on voluntary basis.
4. Example: EU Feasibility Study on an alternative to the capital maintenance regime established by the Second Company Law Directive (2008) prompted Poland’s Codification Commission to prepare a draft law aimed at modernizing our limited liability company. Its main feature consists in the elimination of the minimum capital requirement and introduction of no-par value shares whilst the interest of the company, its shareholders and stake-holders will be protected *inter alia* by simple balance sheet test and solvency statements to be made by management board.
5. The demise of the statutory minimum capital and its substitution by solvency/liquidity tests should not lead to a conclusion that protection of interests of stakeholders (i.e. creditors) should no longer constitute one of the purpose of EU company. An effective verification of solvency of companies by their counterparties is a myth because only some creditors can effort to conduct audits and these audits are of limited significance due to proliferation of statutory superpriorities granted to derivatives, repos, etc.