



By email: sergio.cofferati@europarl.europa.eu

28 January, 2015

Dear Mr Cofferati,

Re: DRAFT REPORT on the proposal for a directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement

The International Corporate Governance Network (ICGN) is an investor-led organisation of governance professionals with members including institutional investors based in 50 countries and collectively responsible for assets under management in excess of US\$18 trillion. Our membership also includes other stakeholders including company directors, professional advisors and academics.

Established in 1995, our mission is to inspire and promote effective standards of corporate governance to advance efficient markets and economies world-wide. We achieve this through the ICGN Global Governance Principles (attached) which are implemented by influencing public policy, connecting peers at global events and informing knowledge through guidance and education.

The ICGN supports the Shareholder Rights Directive initiative and particularly welcomes enhanced rights for shareholders. We promote shareholder responsibilities as an important means to help ensure the effective functioning of capital markets and long term corporate sustainability. The proper oversight of good governance involves securing and maintaining the rights of shareholders and developing the transparency needed for them to exercise these rights in a responsible, informed and considered way.

We have actively participated in the European Commission's consultation process related to the revision of the Shareholder Rights Directive. This includes the submission of comment letters, speaking at the European Corporate Governance Conference under the Italian Presidency and presenting to the Legal Affairs Committee of the European Parliament in Brussels.

With this letter we would like to respond to the draft report published on 19 December 2014 by Sergio Gaetano Cofferati, rapporteur to the European Parliament's Legal Affairs Committee. While this draft report details a large number of amendments, the ICGN would like to respond to a few of the proposed amendments which are of greatest relevance to our membership.

Long-term shareholding and differential voting rights (Amendments 6 and 42)

ICGN is fully supportive of investors taking a long-term perspective on shareholding, particularly in investment mandates that support a beneficial owner's long-term

funding needs. However we strongly oppose the proposal outlined in Amendment 42, Article 3ea, which introduces voting control that is disproportionate to a shareholder's economic interest in a company by virtue of differential voting rights, loyalty dividends, loyalty shares and tax incentives.

While we understand that the spirit of the amendment is to encourage long-term responsible ownership, the experience of using loyalty shares in France provides evidence that controlling shareholders – almost exclusively – take advantage of this option which effectively doubles their voting influence at shareholder meetings and disenfranchises minority shareholders. Used in this way, differential voting rights provide a mechanism for controlling shareholders to preserve undue control while drastically limiting their economic exposure. It can lead to unintended consequences, such as entrenchment of management in a way that can serve as an antitakeover mechanism.

We encourage the European Parliament not to implement any proposal that allows for unfair treatment of minority shareholders and to fully consider the adverse implications that this proposal will have at a European-wide level. For the same reason, we oppose the Florange Act in France, which actively places hurdles in the way of the 'one share one vote' principle, as well as the Growth Decree in Italy, which facilitates the introduction of differential voting by eliminating the critical safeguard provided by the supermajority requirement. These both undermine the rights of minority shareholders – many of whom are the world's largest global investors - and will impact on the attractiveness of European markets for global investment.

Related party transactions (Amendments 16, 77, 78)

We support the amendments to the Directive giving shareholders a right to vote on material related party transactions. However we are concerned about the additional language inserted in the above-reference amendments that prevents insiders from having a “determining” role in the vote, as opposed to not having any role. This new language will dilute the impact of the Directive in terms of potentially allowing insiders to take part in votes and exert inappropriate influence in transactions where they are an interested party. We recommend that this language relating to the “determining role” of insiders be deleted.

Investor disclosures and responsibilities (Amendments 9, 10, 46, 48, 49)

We are concerned that some investor responsibilities in the amended draft are overly prescriptive, and are particularly cautious about Amendment 46 whereby it is proposed that the comply or explain provision on the engagement policy be modified to a requirement—not an option for explanation. This would appear to contradict the flexible comply or explain regime that generally reflects the spirit of this Directive.

The amendments relating to investor disclosures are also problematic. An asset manager's disclosure of stewardship responsibilities should be made in the first instance to the asset manager's clients and not to the public at large. A six monthly public reporting requirement on stewardship activities is excessive and runs the risk of encouraging short-termism.

Finally, we challenge the particular change in Amendment 8 about the scope of disclosures, and would note that it is normally beyond the scope of investor

engagement for investors to engage with other stakeholders. The limited resources of investor engagement are usually best spent engaging directly with companies.

We hope that these comments are useful in your deliberations and the ICGN Policy Director, George Dallas (george.dallas@icgn.org), would be happy to elaborate on any of the points raised in this letter. Thank you for your consideration.

Yours sincerely,

Erik Breen
Chairman, ICGN Board

Cc. Kerrie Waring, Managing Director, ICGN
Bram Hendriks, Co-chair, ICGN Shareholder Rights Committee
Alexander Juschus, Co-chair, ICGN Shareholder Rights Committee