



Revision of the Shareholder Rights Directive (SHRD)

ICGN comments on proposals from the Council of Ministers (Council) and the European Parliament (Parliament) in advance of the Trilogue discussions

ICGN is an investor-led membership organisation of more than 650 individuals based in 47 countries. Our mission is to inspire and promote effective standards of corporate governance to support the sustainable value creation of companies and to advance efficient markets and economies worldwide. Our membership includes institutional investors with global assets under management in excess of US\$26 trillion, as well as other stakeholders including company directors, professional advisors and academics. For more information on the ICGN, please visit www.icgn.org.

ICGN supports the objective of the Shareholder Rights Directive (SHRD) of strengthening shareholder rights, as well as shareholder responsibilities. We believe that properly equipped shareholders can play an important role in holding companies' boards and management to account, thus enhancing the sustainability of EU companies. ICGN has actively contributed to this dialogue and has engaged with both the Commission and Parliament with regard to SHRD, including a presentation in December 2014 to the European Parliament. In advance of the Trilogue discussions, ICGN would like to reiterate our position on the key points of the SHRD that have particular importance to ICGN and its members.

Approval of related-party transactions

Article 9c: ICGN advocates that **material related party transactions should be approved by a majority of disinterested shareholders** prior to any such transaction taking place. We urge all parties in the trilogue to **revert to the Commission's original proposal under Article 9c**. The approval of related-party transactions by administrative or supervisory bodies at companies, as proposed by the Council and the Parliament will not address investor concerns given that the highest risk to minority shareholders arises from instances where a related party is a large/controlling shareholder, who can exert significant influence over the company's administrative and supervisory bodies.

ICGN supports **the Council's and Parliament's proposed exemptions** for intra-group transactions and transactions conducted in the ordinary course of business. This is an appropriate approach to ensure that the related-party transactions regime originally proposed by the Commission is both workable in practice and does not impose an unnecessary compliance burden for companies.

Transparency of institutional investors and asset managers

Article 3f: ICGN agrees that institutional investors and asset managers should develop a policy on shareholder engagement. We note, however, that not all investment strategies lend themselves to active engagement. For this reason, ICGN believes that investors should be able to explain their approach. **We support the Council's text on Article 3f.**

ICGN supports and encourages public disclosure of the engagement policy, as well as reporting on its implementation and the exercise of voting rights. However, there should be no obligation for investors to disclose publicly sensitive



information related to specific company engagements. Furthermore, ICGN believes that concert party rules or takeover regulations should not prevent shareholders from sharing perspectives about companies in which they have mutual interest or concern. Better education or clearer definition of what counts as “prohibited acting in concert” and the legitimate exercise of ownership rights through collective and coordinated efforts also would help to foster investor engagement and collaboration efforts.

Article 3g: ICGN believes that the prescriptive disclosure requirements under paragraphs 2a to 2f may ultimately lead to anodyne disclosures. Investment strategies are often fund or mandate specific, which for larger institutions may result in a large number of individual disclosures. This will not achieve the objective to enhance transparency, but will likely have the opposite effect. For this reason, institutional investors should be able to report on their overall approach, supplemented, where relevant, by disclosures at an asset class level. Institutional investors should also be free to determine what kind of disclosures they require of their asset managers. **ICGN supports the Council’s text on Article 3g.**

Article 3h: ICGN supports proposals to increase transparency within the industry, and agrees that asset managers should report on their approach to shareholder engagement and the exercise of voting rights. However, we believe that disclosure of commercially sensitive aspects of the investment strategy and its implementation (e.g. as provided in Article 3h para. 2 (b,c,d,e) and para. 2a of the Parliament’s proposal) should be between asset managers and their institutional investor clients. To this end, **we support the Council’s text on Article 3h**, which follows the Commission’s original proposal. To be effective, public disclosures should set out the asset manager’s overall approach, supplemented, where relevant, by disclosures at an asset class level.

Vote on the remuneration policy and share-based remuneration

Article 9a: ICGN welcomes a shareholder vote on remuneration arrangements. Experience of countries that have adopted ‘say-on-pay’ votes has resulted in improved dialogue on remuneration matters, as well as being an enabler for dialogue on wider governance issues. It has also improved the alignment of interests between companies and shareholders. These benefits have occurred regardless of whether the vote has been binding or advisory. We would argue that positive outcomes associated with a ‘say-on-pay’ vote do not necessarily hinge on whether or not the vote is binding on the company. Rather, success rests on the underlying substance of the legislation or regulation. Ultimately, the ICGN favours an advisory vote given the relative ease of amending the substance of the underlying regulations in order to reflect evolutions in remuneration best practice. It is also worth noting that in the event of controversial remuneration arrangements, an increasing number of investors hold to account the individual members of the remuneration committee by voting against their re-election to the board.

ICGN supports the Council’s proposal on Article 9a, which does not impose restrictions on the use of share-based remuneration. In principle a remuneration package either in shares or in cash can be acceptable if there is a strong and effective relation between pay and performance, objectively measured. However, ICGN believes share-based remuneration has an important role to play and has particular advantages relative to awards based on cash or other securities.



The primary reason for this position is the alignment of interests between the legal owners of the company and the representatives employed to manage the interests of these owners.

We recognise that remuneration practices, as well as regulations and legislations, may differ between markets and even from company to company. We believe this is appropriate. ICGN fears that limiting share-based remuneration may lead to unintended consequences, such as overly complex remuneration structures, an increase in short-term cash-based remuneration, heightened opportunities for manipulating the vesting of remuneration awards and the creation of an environment that lessens management focus on making strategic decisions that support the long-term sustainability of the company. In addition, the ICGN is concerned about the negative effects on certain companies that are not in a financial position to compete for high-calibre employees. Being able to weight a majority of an individual's variable remuneration towards share-based awards provides an opportunity to avoid this situation.

Article 9b: ICGN supports the Parliament's proposal on Article 9b, as we do not believe that an exemption for smaller companies from the shareholders' vote on the remuneration report is necessary or justified.

Facilitation of the exercise of shareholder rights (Articles 3a to 3d).

Simplifying the complex voting chain and addressing the barriers to cross-border voting will facilitate the exercise of voting rights and will encourage more shareholder engagement across the EU. ICGN believes that the European Commission should facilitate the adoption of a common approach across the Member States to improve the accuracy and timeliness of vote execution and thus allow for efficient processing of votes.

ICGN supports proposals to require companies and intermediaries to transmit vote confirmations to shareholders. Similarly, we are strong proponents of enabling companies to identify their beneficial owners or holders of voting rights; we also believe that shareholders should have the possibility to benefit from the shareholder identification framework.

Finally, ICGN strongly advocates transparency around the level and make-up of fees related to proxy voting activities throughout the voting chain.

Differential voting rights

ICGN is pleased to see that differential voting rights are no longer under discussion for SHRD. We had engaged with members of European Parliament earlier in the year on this point. While ICGN shares the view that long-term investment perspectives should be encouraged among institutional investors—particularly to guard against short-termism, we were concerned that the introduction of differential rights is a flawed tactic with potentially unintended consequences. Such control differentials do not necessarily influence investor attitudes towards long-term perspective, but they run the risk of entrenching existing owners, particularly controlling owners, thereby reducing overall their accountability both to minority shareholders and the company as a whole. We would like to take this opportunity to confirm the following fundamental principle relating to ownership and control: **it is crucial that all shareholders are treated equally and fairly, and are able to exercise influence in proportion to their capital at risk.**

We hope these points are useful for your deliberations, and we extend our best wishes for a



constructive Trilogue discussion. For any further comments and questions, please contact George Dallas, ICGN Policy Director (george.dallas@icgn.org).

Thank you very much for your attention on this matter.

Yours sincerely,

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