



ICGN

International Corporate Governance Network

15th February 2016

Revision of the Shareholder Rights Directive (SHRD)

ICGN comments on proposals from the Council of Ministers (Council) and the European Parliament (Parliament)

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 world-wide. 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.¹

ICGN's position on the points of the SHRD that have particular importance to ICGN and its members are presented below. We have presented these points in the autumn of 2015, but with the new Dutch Presidency of the European Council we wish to reach out to the Dutch members of the SHRD working group to reiterate our position.

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, therefore, 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.

Article 3g: ICGN believes that the prescriptive disclosure requirements under paragraphs 2a to 2f may ultimately lead to anodyne disclosures. Investment strategies are

¹ In a separate, but related initiative, ICGN has also developed a draft Global Stewardship Code to serve as a global framework for investor stewardship in a way that complements the SHRD's focus on investor responsibilities. The draft is currently out for consultation and will be presented to ICGN membership for approval in June 2016: <https://www.icgn.org/sites/default/files/ICGN%20Global%20Stewardship%20Code%20Consultation%20FINAL%20November%202016.pdf>

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. Based on the above, **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) & 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.

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.

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.

Right to vote on the remuneration policy (Article 9a)

ICGN believes that shareholders should have an opportunity to vote on the remuneration policies of investee companies, particularly where significant change to remuneration structures is proposed or where significant numbers of shareholders have opposed a remuneration resolution. In particular, all share-based remuneration plans should be subject to prior shareholder approval.

Differential voting rights

While the issue of granting differential voting rights to longer-term shareholders is not currently on the legislative agenda for the SHRD), ICGN is aware of that this topic had been under review earlier in the year by the European Parliament. While ICGN shares the view with the European Parliament 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 had engaged with members of European Parliament earlier in the year on this point, and ICGN is pleased to see that differential voting rights are no longer under discussion for SHRD. However at this time 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 would welcome a follow-up dialogue with you to further clarify ICGN's position on the key points in the SHRD as addressed in this letter. For any further comments and questions, please contact George Dallas, ICGN Policy Director (george.dallas@icgn.org).

Thank you very much for your attention this matter.

Yours sincerely,

Erik Breen Chairman, ICGN Board

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ICGN Bram Hendriks, Co-chair, ICGN Shareholder Rights Committee
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