Revision of the Shareholder Rights Directive

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1. About EuropeanIssuers

EuropeanIssuers represents the interests of quoted companies across Europe. Our members include both national associations and companies. We aim to ensure that EU policy creates a regulatory environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including both issuers and investors.

2. Regulatory and Economic Context

Over the last 10 or so years, there has been a great deal of EU regulation of non-financial companies. Originally the Financial Services Action Plan and the Company Law and Corporate Governance Action Plan, then with the financial crisis, quoted companies were subject to spillover from financial regulation, and more consultations on corporate governance. However, what has not been done is a review of the implementation of the 2007 shareholder rights directive, or a review of the effect all the other regulation e.g. on improving the role of independent directors. The impact assessment suffers from this lack of analysis. Neither of the consultations undertaken contained a real analysis of options and possible solutions. This means that the proposal suffers from a lack of support from companies on many of the details, since they perceive that the EU does not understand companies and that the law-making process in Brussels is remote from the real world in which they live.

3. IPOs in Europe

Europe needs growth and jobs, for which it needs companies to be able to make profits and employ more people. What companies need is a more stable regulatory framework, not one which is constantly changing without policymakers having bothered to look at whether their last set of proposals worked.

Companies that do go public tend to create more jobs – the US IPO Task Force noted that such companies tend to double their employment rates post IPO. However, the number of IPOs in OCED countries has decreased by nearly 3 times from 2000, while companies need to be twice the size they were 10 years ago in order to access the public markets.

Earlier this year, we decided to put together a Task Force to look at the situation regarding IPOs in Europe. because we feared that becoming or staying a quoted company was becoming seen as too burdensome for many companies. More companies are sold in trade
sales than come to the public markets. There is particularly a problem for smaller companies seeking to access capital markets. One of the relevant factors for such companies is the cost of regulation; both the administrative costs and the management time. Several companies have told us that the proposals published by the European Commission could act as a disincentive to listing.

4. Future Direction for Capital Markets, which support companies

The capital markets that European companies want to live in are those which support the diversity of different markets, and the different roles played by boards and shareholders. Most companies would support an engaged rather than adversarial culture between themselves and their shareholders. However, there are different views as to the role that shareholders can play a role in supporting good governance. It is not clear whether dispersed shareholders have the resources to analyse proposals and to vote. Outcomes should aim to improve dialogue, not to impose huge administrative costs on companies.

We have concerns on the potential burden on companies in the following proposals:

5. Related party transactions

The proposal would grant a vote to shareholders on a very wide range of transactions. We question:

- Whether a vote is appropriate or whether a review / confirmation by directors not involved in the transaction to check that the transactions are fair and reasonable from the perspective of the company should suffice;
- Whether the proposals may not act as a deterrent to listing on public markets, given the delays and costs involved in shareholder votes and in seeking independent reports;
- Whether shareholders will have the time and resources to analyse the details of transactions, and whether this may delay transactions and thus put publicly quoted companies at a disadvantage to their private competitors;
- Whether the proposals could not be limited to only the most important transactions. The current proposal does not allow for real exemptions, especially for groups, and is too bureaucratic. Smaller companies will be harder hit; 5% of a company with €50m market cap is very different to 5% of a company with €5bn market cap.

6. Remuneration

We would prefer that the details of remuneration be left to Member States, together with the choice of vote as to whether ex ante or ex post, and whether advisory or binding.

The more detailed the proposals, the more likely shareholders are to rely on the analysis of proxy advisers to conduct the analysis. Or else they may be in the position where the corporate governance analysts are spending 80% of their time on remuneration, as one investor stated at the Irish Presidency conference last year, which means that they have little time left for anything else. Where there is to be a vote, whether it be advisory or binding, then it will be important that companies understand the reasons for any votes against – hence the need for a right to shareholder identification.
7. **Shareholder Identification**

We support a right for the company to seek identification of its shareholders, which should be initiated by the company. The company should be able to approach anyone along the chain; we do not believe that the EU should impose any one mechanism, given the various different systems in Europe. However, we do believe that it is important to get the basic principles right.

The right should be granted for the company to choose the level of identification detail that it needs e.g. whether to go down to the level of the fund manager, or to the pension fund behind casting the vote. We do not support an opt-out or a threshold after which identification would no longer be possible, given the dispersed ownership of many larger companies. Too many shareholders would then be excluded e.g. one DAX30 company currently has approximately 175 000 shareholders, of which fewer than 100 shareholders hold positions of 0,1% or more. Finally, what makes the system effective is the right for the company to withhold the dividend and voting rights.

Without an efficient shareholder identification system, companies will not be able to engage with their shareholders in order to understand the intentions behind the votes, which will undermine the provisions on remuneration and related party transactions.

8. **Shareholder Rights**

EuropeanIssuers has been actively working towards ensuring that investors can exercise their rights as shareholders through active participation at our member companies’ general meetings since the 2007 directive. However, the company does not know who all of its shareholders are and so cannot communicate directly with them. Communications in the latter case must go along the chain of intermediaries. We would support the implementation of the EU General Meeting standards\(^1\) for communication along the investment chain.

It is important that the shareholders themselves take steps to negotiate their expectations from intermediaries relating to timelines, reconciliation of holdings, and costs, in their contracts with intermediaries, and that the institutional investors report back to their beneficial owners as to what they have done on their behalf.

More detailed comments can be found in our position papers below:

- [Shareholder Identification and Shareholder Rights](#)
- [Related Party Transactions](#)
- [Remuneration / Say on Pay](#)

More information can be found at [www.europeanissuers.eu](http://www.europeanissuers.eu).

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\(^1\) Industry standards agreed in 2010 after the 2007 directive was agreed and after discussions among different industry parties: issuers, CSDs, custodian banks, investors, etc