

Commissioner Charlie McCreevy
European Commission
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Privatanleger e.V.**

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By email: Markt-COMPLAW@cec.eu.int.

Dear Mr McCreevy,

we are writing on our behalf as proxy agency in response to the second consultation document by the Services of the Internal Market Directorate General's consultation document, dated 13th May 2005 "Fostering an Appropriate Regime for Shareholders' Rights" (the consultation document).

The VIP is the first and lonely proxy agent, representing institutional shareholders, even in cross border situation. Based on our 30 year experience VIP is a professional association in only interest of shareholders. VIP is focused to promote good corporate governance and the fair treatment of equity investors.

The VIP strongly endorses the European Commission's (the Commission) commitment to protecting shareholder rights and supports the consultation document's efforts to resolve the problems that arise from ownership arrangements and inefficient and unmotivated voting procedures. These problems are still and every of concern to VIP and its clients – those days f.e. in UNICREDIT AGM/EGM taking place in Genoa Friday next week. We agree that the elimination of obstacles to the free exercise of shareholder rights and shareholder voting will enhance both the goals of VIP and the founding principle of the European Union that free movement of investment capital should not be impeded by national boundaries.

1. Scope – Listed Companies.

We agree that the measures suggested in the consultation document should be limited to listed companies formed under the laws of a Member State and should not be extended to non-listed companies.

2. The “ultimate investor” or “ultimate account holder”

Contrary to the view expressed in the consultation document, we recommend that the “ultimate investor” should be defined and given a legally enforceable right to determine how shares are voted. We believe that defining the ultimate investor is a prerequisite to clear, effective and legally enforceable shareholder rights and to accountability in share voting.

VIP recommends that the ultimate investor should be defined as “the last natural or legal person holding a securities account in the chain of intermediaries and who is not a securities intermediary within the European securities holding system, nor a custodian.” We believe this definition is needed to establish who is legally entitled to control the arrangements that govern the voting of shares – the beneficial owner. The absence of such a definition would create a void, permitting variability among Member States, perpetuating the current uncertainty, potentially disenfranchising investors who have an economic interest in share voting, and thereby increasing both the risks and costs of cross-border investment – both is to be regarded in parallel.

We are aware of the difficulties of defining the ultimate investor with the degree of certainty needed to ensure that “in the vast majority of cases it does indeed result in conferring the entitlement to control voting rights to the person who actually runs the risk of the investment in the shares”. However, this goal is worth achieving, and we believe the recommended definition can achieve it.

The proposed UNIDROIT definition of “ultimate account holder” is a useful first step, but it would be acceptable to us only to the degree that it is consistent with the recommended definition of ultimate investor and does not in any way interfere with or reduce the rights of the ultimate investor – and those rights have to be executed in an AGM/EGM.

3.1 Stock Lending

We in VIP support the ICGN’s proposed Securities Lending Code of Best Practice posted under the Issues and Representation section of their website. As a proxy agent we or our client-parties are not involved in a securities lending transaction.

4. Pre General Meeting Communications

- a. Notice periods for convening a General Meeting.** We endorse the proposed minimum standard of 21 business days notice before Annual General Meetings, although we think that 20 business days, equivalent to four weeks, would be equally effective. However, we would recommend elimination of the reference to the AGM “first call /second call”. We see in all cases, that multiple meeting calls cause confusion, encourage companies to evade quorum requirements and serve no justifiable purpose in the conduct of shareholder meet-

ings – once again take example of UNICREDIT where “during 3 days” calls are published for AGM and EGM to the (clear to all insiders in Italy) same hour. A fixed meeting date, followed by adjourned sessions, permits flexibility when needed without reducing quorum or otherwise degrading the shareholder meeting. We disagree with the minimum standard of 10 business days for other meetings of listed companies, particularly for companies with global ownership. We can think of no situation where the urgency of company business subject to shareholder approval would outweigh the importance of adequate notice to shareholders and time for them to make an informed voting decision. Therefore, we would recommend 20 or 21 business days notice for all general meetings of shareholders.

b. Content of the Notice. We endorse the proposed minimum standards but urge an additional requirement that listed companies are required to maintain a web site on which the meeting notice and other meeting documents should be made available electronically to all shareholders and the investing public. We offer a free-of-charge list “AGM-Agenda”, to publish all European AGM dates in 12 month previously on our homepage.

c. Information relevant to the General Meeting. We recommend that the proposed minimum standard require the full text of meeting documents to be made available no later than 20 business days before the Annual General Meeting. In addition, we believe that the same standard should be applicable to all general meetings of shareholders. Ten days is not sufficient time for documents to be processed and for shareholders to read them and make informed voting decisions.

d. Dissemination and language of the meeting notice and materials. We agree that in order to accommodate the needs of global investors, meeting notices and disclosure documents should be made available in a language “customary in the sphere of international finance”. However, we do not agree that an exception should be made by action at the General Meeting. This exception would permit abuses in cases where insiders control a majority of voting rights (whether through super-voting rights or vote caps or securities with special rights) or where public investors otherwise own a minority interest that needs protection from majority power.

e. Specific section of the issuer’s website dedicated to the General Meeting. We endorse the proposed minimum standards and urge the Commission to adopt a uniform requirement for Member States that all listed companies should maintain a website through which shareholders can access all disclosure documents, not solely those related to general meetings of shareholders.

5. Admission to the General Meeting – Share Blocking. We enthusiastically endorse the proposed minimum standards to abolish share blocking and other voting requirements conditioned on the immobilization of voting securities. With equal enthusiasm we endorse the proposed minimum standard to establish a record date by conditioning the right to vote upon “qualifying as a shareholder...on a given date prior to the relevant General Meeting.” There is no inconvenience to participate in those practices of many countries!

6. Shareholder Rights in Relation to the General Meeting

- 6.1 Electronic participation in general meetings.** We endorse the proposed minimum standards requiring Member States to eliminate all barriers to the development of electronic means for shareholders to participate in general meetings. The best – certainly – could be the representation by directors of the shareholder /beneficial owner, and the better way is the physical representation – but in comparison to non participation the electronic way is preferable.
- 6.2 Right to ask questions.** We endorse the proposed minimum standard giving shareholders the right to ask questions and receive responses and requiring the questions and responses to be made available to all shareholders. The right to ask questions has to be followed by the obligation to answer. The further level is a special audit right – auditing a very concrete erased question, mentioned by a “qualified” shareholder.
- 6.3 Rights to add items to the agenda and table resolutions.** We endorse the proposed minimum standard. We have reservations about the application of a uniform threshold to all companies. However, we recognize that a threshold expressed alternatively as a fixed monetary amount or as a percentage of equity permits the flexibility needed in applying the standard to companies of different size and capital structure. In any event, we recommend that the equity standard should be expressed as “5% of voting share capital of the issuer”, rather than simply as 5% of share capital. This would avoid the use of non-voting shares or super-voting shares/ golden shares to interfere with the application of the standard. We also endorse the proposed minimum standard requiring those rights to be exercised in advance of the general meeting so as to permit other shareholders to act upon the items or resolutions. We also recommend the addition of a requirement that listed companies should disclose in the notice of meeting the procedures and timetable for shareholders to exercise these rights to add items to the agenda and to table resolutions at the general meeting.
- 6.4 Voting by correspondence.** We endorse the proposed minimum standard requiring Member States to permit voting by correspondence and to eliminate any impediments to electronic voting at general meetings.
- 6.5 Voting by proxy.** We endorse all proposed minimum standards relating to voting by proxy. As a general matter, we believe that the standards outlined represent a fair and manageable system of proxy voting similar to that now in place in a number of major markets. Proxy voting is an essential right for any investors who, for whatever reason, wish their rights to be exercised on their behalf by another person. This right is too important to allow for variations among Member States that might create confusion or permit abuses. Finally it has to outlined that personal and physical representation (by proxy) is general standard and economical reasonable.

7. Position of Intermediaries in the Cross-Border Voting Process.

Definition of intermediary. We endorse the proposed definition of intermediary, as it encompasses the variety of intermediary and custodial arrangements now commonly used in cross-border share ownership, recognizes that intermediaries may be acting for their own account and does not conflict with the definition of “ultimate investor” that we recommend above.

Being granted a power of attorney. We endorse the proposed minimum standard for the same reasons that we endorsed the minimum standards relating to voting by proxy – certainly best option is the physical representation and decision in place.

Voting upon instructions. We endorse all the proposed minimum standards.

8. Communications Following the General Meeting

There are some additional issues f.e. as: establishment of uniform minimum quorum requirements; adoption of a one-share-one-vote for equity securities; sponsorship of a central information database for disclosure documents of listed companies in all EC Member States; and establishment of standards for permitted collective action and communication by shareholders not for the purpose of effecting a change in control.

We hope those suggestions will be helpful to the Commission in its continuing efforts to establish an appropriate regime for shareholder rights in the European Union. The VIP applaud the Commission's extensive efforts in pursuing this task and we pledge our continuing assistance – only in full interest of beneficial owners, who finally are clients and users of the proxy agency VIP.

Yours sincerely

V I P Vereinigung Institutionelle Privatanleger e.V.

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