a.s.b.l.
Confédération Européenne des Associations d'Administrateurs
European Confederation of Directors' Associations

FOSTERING AN APPROPRIATE REGIME FOR SHAREHOLDERS' RIGHTS
European Commission third consultation document

EcoDa contribution
July 2007

II. Language of meeting documents

Question 1
Q 1.1.: Do you think there is a need for action in that area?

For ecoDa the language should be that of the issuer's registered office. Shareholders should make their own provisions for translation if necessary.

Q 1.2.: If your answer is yes, do you think a recommendation along the following lines would go into the right direction?
"1. Companies should make available to their shareholders the convocation for a general meeting, the meeting agenda and the documents to be submitted to the general meeting at least also in a language customary in the sphere of international finance, unless the General Meeting decides to the contrary.
2. Point 1 should not apply to companies
- that fulfil at least two of the criteria established by Article 11 of the Fourth Company law Directive on annual accounts (not exceeding a balance sheet total of EUR 3 650 000, a net turnover of EUR 7 300 000 and an average number of employees during the financial year of 50), or
- that neither have a wide foreign shareholder base (on average under 10% of the subscribed capital) nor are actively seeking foreign investment.
For these companies, the obligation referred to in point 1 should only apply where this is requested by shareholders representing at least 1/3 of the subscribed capital."

If ecoDa decides to change its opinion, we would require the request of a given number of shareholders in all circumstances, a delay for the translation, and we would ask to limit the translation to the documents explicitly indicated by the investor.

III. Depositary Receipts (DRs)

Question 2: Do you think a recommendation along the following lines would go into the right direction?
"The depositary agreement should provide that the depositary is not allowed to vote on the shares without instructions given by the depositary receipt holder, unless the latter has given the depositary explicitly such discretion."

The concepts of depositary receipts and voting rights are two different realities. Here the distinction is ambiguous. Even though ecoDa is not unsatisfied with the proposal, we are in favour of a better analysis of the differences between both concepts.

IV. Stock lending

Question 3:
Q 3.1: Do you believe that stock lending needs to be addressed at EU level? Please give your reasons.

EcoDa believes that there would be considerable difficulty in framing rules. It should be left to the market develop both its capacity to track shareholder ship and its best practice in this area.

EcoDa underlines the need of time to analyse the evolution of the market, specifically regarding the need of transparency.

Q 3.2: If your answer is yes, would you support recommendations along the following lines?
"1. Stock lending agreements should contain provisions informing the relevant parties of the effect of the agreement with regard to the voting rights attaching to the transferred shares.
2. Member States should ensure that shares can only be lent by financial intermediaries where the investor has explicitly agreed to his shares being used for stock lending in the framework agreement with his financial intermediary.
3. Borrowed shares should not be voted, except where the voting rights are exercised on instructions from the lender.
4. Stock lending agreements should provide that borrowers have to return equivalent shares to those borrowed promptly upon the lender's request."

It might be added on paragraph 1: "…contain provisions such as 1) the existence of, 2) the subject of, 3) the contracting parties to and 4) the effect on the voting rights of the sock lending".

Nevertheless, EcoDa recommends improving these minimal elements by benchmarking the best practices already existing, in order to fit market's practices.

V. Chain of intermediaries

1. Duties of intermediaries

Question 4:

Q 4.1: Do you consider that the duties of intermediaries in the voting process need addressing?

The intermediary should be obliged, on request, to inform the company who is going to vote. Companies should be able to have this information before general meetings. This could be linked to a period of time before the record date.

Q 4.2: If your answer is yes, would you consider recommendations along the following lines as adequate?

"1. Member States should ensure that before entering into relevant agreements, intermediaries explain to clients whether, and if so how, they will be able to give instructions about the exercise of voting rights.

2. Where a client is entitled to give instructions about the exercise of the voting right, Member States should ensure that financial intermediaries that are part of the chain of intermediaries between that client and the issuer either cast votes attached to shares in accordance with the clients' voting instructions or transfer the voting instructions to another intermediary higher up in the chain.

3. Financial intermediaries should keep a record of the instructions and provide confirmation that they have been carried out or passed on for a period of at least one year.

4. Member States should ensure that fees charged by intermediaries for the services referred to above do not exceed substantially the actual costs incurred by that intermediary.

5. Member States should ensure that intermediaries take the necessary measures to have the client's name registered in the register of companies which have issued registered shares. This obligation should not apply where the client objects to his name being registered.

6. "Client" within the meaning of this provision is the natural or legal person on whose behalf another natural or legal person holds shares in the course of a business. "

For ecoDa, point 4 does not seem to be relevant, is too imprecise.

2. Disclosure of investors

Question 5: Would you agree that the transparency directive, once implemented, will give a breakdown of voting rights and that further action at EU level would be premature?

Indeed, ecoDa thinks that one should indeed avoid that a given topic would be dealt with in more than one regulation making it difficult to fully assess one's rights and obligations.

VI. Management companies of investment schemes

Question 6: Do you think there is a need for a recommendation along the following lines?
"1. Management companies, the regular business of which is the management of collective investment schemes, shall be deemed to be 'clients' for the purposes of the draft recommendations set out in section V.1.
2. Member States should ensure that management companies referred to in point 1 shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares."

VII. Other suggestions

EcoDa wonders if the European Commission is not in the way of overregulation. Indeed, ecoDa believes that one should be careful not to regulate when the market is able to address regulation by itself.
Therefore, ecoDa considers that it should only take position when has a thorough fact finding.
Finally, ecoDa highly remarks that the different subjects tackled in the project should have been addressed in separated ways.