



Confédération Européenne des Associations d'Administrateurs
European Confederation of Directors Associations

July 2005,

Responses to the second consultation on fostering an appropriate regime for shareholders' rights ¹

The European Confederation of Directors' Associations (ecoDa) is a new organisation which held its launch event at the European Parliament on Monday 25th April. Its objective is to represent the views of company directors from EU member states to corporate governance policy-makers at EU level.

EcoDa is representing the views of its four members, the UK's *Institute of Directors* (IoD), the *Institut Français des Administrateurs* (IFA), the *Association Belge des Administrateurs* (AB) and the *Institut Luxembourgeois des Administrateurs* (ILA) on corporate governance and company law issues.

EcoDa welcomes the opportunity to comment on the second consultation of the European Commission, which is of utmost interest.

EcoDa has preliminary remarks:

1- The Confederation is willing to play an active part in the development of good practices on corporate governance across the EU

2- The aim of any EU intervention in shareholder rights should primarily be to ensure that every shareholder in any given European company has the same rights and the same ability to exercise them. Therefore laws and practices that have the effect of discriminating against certain shareholders in a company should be the basis of any intervention. Achievement of identical requirements across the EU should not be considered a goal at this time.

3- In the first consultation, responses from two foreign countries, the United States of America and Australia, demonstrated that in order to attract foreign investment companies may have to constrain dissemination of information in some circumstances. EU legislation should not act as a barrier to non-EU investment. Since the first at least of these countries

¹ http://europa.eu.int/comm/internal_market/company/docs/shareholders/consultation2_en.pdf

accounts for a high percentage of cross-border shareholdings in EU companies, ecoDa would ask the European Commission to take this into account in examining their answers.

4- It is of high importance to generate a true debate during the general meetings. Shareholders should be encouraged to participate. As well as quantity of information, quality of the debates' contents should be also increased. Companies should be encouraged to make general meetings more open and explanatory. Such an objective can not be achieved by excessive rigidity. Over-regulation must be avoided if the EU is willing to preserve corporate governance based on national laws and cultures. Intervention in shareholders' rights should be strictly limited at this time.

EcoDa's responses to each question are as followed:

1. The scope

1.1: - Yes, any directive on shareholders' rights should be restricted to companies whose shares are admitted to trading.

1.2: - The majority of ecoDa's members agree but the regulation of UCITS should be through means of the UCITS directive rather than the shareholder rights directive.

2. The "ultimate investor" or the "ultimate account holder"

2.1: - The majority of ecoDa's members are opposed to conferring a legal entitlement on the "ultimate investor" or account holder.

3. Stock lending and depositary receipts

3.1.1: - Yes, ecoDa agrees in principle, but believes that there would be considerable difficulty in framing rules. It should be left to the market to develop best practice in this area.

3.1.2: - Yes, 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

3.2 : - Only holders of depositary receipts should have the right to determine how the voting rights are exercised.

4. Pre-general meeting communications

Notice periods:

4.1: - Opinions amongst ecoDa's members are divided concerning the minimum notice period. With changes to electronic communication shorter notice periods will become more acceptable.

4.2: - No, the period should be the same for all general meetings, but this argues for that minimum not being excessively long. Firstly, a common period avoids issues of complexities arising out of different national rules about different types of general meetings. Secondly, the issues arising at other general meetings often involve more complex decisions than the annual general meeting. A single provision relating to all general meetings would allow each member state to provide longer notice for all or particular types of meeting.

Content of the notice:

- Although ecoDa's members agree with the proposed content of the notice, opinions amongst members are divided concerning the need for EU intervention.
- The majority of ecoDa's members disagree. Flexibility must be remained by letting national laws or codes (such as stock exchange rules), or even companies themselves organize it.

Information relevant to the General Meeting:

- No, it should not be a directive provision. Since this relates in part to the notice period for meetings, we remark that no period suitable to all of ecoDa's members has been found.

Dissemination, language, of the meeting notice and materials:

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

Specific section of the issuer's website dedicated to the general meeting:

- The majority of ecoDa's members consider that no specific requirements should be made in a directive. It would tend to act as deterrent to further developments rather than encourage the evolution of best practices.

5-Admission to the general meeting – share blocking:

5.1: - Yes, ecoDa agrees. Share blocking is a key barrier to the exercise of voting rights, especially for cross-border investors.

5.2: - The record date should be set before a general meeting to allow for authentication and reconciliation of positions. Any directive should not be prescriptive as to the record date. It would require abrogation of provisions of corporate law.

6- Shareholders rights in relation to the general meeting**6.1 Electronic participation:**

- Yes in principle, but problems of evidence of ownership will have to be overcome. Any abuse has to be prevented as well as possible malfunction of the system. These current difficulties suggest that this might be better deferred or considered as a recommendation.

6.2 Rights to ask questions:

- EcoDa's members agree that questions linked to the agenda can improve the functioning of GM, however opinions are divided on the way it should be done. The majority of ecoDa's members consider that the EU might intervene on that field but a minority still consider that as well as the practical issues, there are legal issues as to differences in national laws on the liability of directors and, if questions are directed at them, auditors. Consequently, it should not be in a directive at this time.

6.3 Rights to add items to the agenda and table resolutions:

6.3.1: - Yes, ecoDa strongly agrees.

6.3.2: - Yes, ecoDa strongly agrees

6.3.3: - Yes, but this would be better left without reference to any particular period. The mechanics of receiving and circulating resolutions are developed in national law, so the EU document should merely enable it to occur.

6.4 Voting

Voting by correspondence

6.4.1: - Yes, ecoDa strongly agrees.

6.4.2: - Yes, ecoDa strongly agrees.

Proxy voting

6.5.1 : - Yes, provided this person is able to enter into a binding agreement.

6.5.2: - Yes, ecoDa agrees.

6.5.3: - Yes, this should follow 6.1.

6.5.4: - Proxies should have the same rights as shareholders.

6.5.5: - EcoDa's members find either that this might influence the voting intentions or that it would be cumbersome. EcoDa members are not aware of any significant abuse that this proposal is intended to remedy.

6.5.6: - Yes.

6.5.7: - The majority of ecoDa's members consider that there is no need for an EU proxy form. The EU added-value is not to be found in unnecessary administrative burdens and documents.

7- Position of intermediaries in the cross-border voting process

Definition of intermediary

- The majority of ecoDa's members are not sure that the activity should need to be a regular or commercial one. Doubt remains also concerning the practical benefits of such a definition.

Registration as nominees

- The majority of ecoDa's members agree.

Being granted a power of attorney

- The majority of ecoDa's members are not convinced that this is necessary and that it should be required in a European directive.

Voting upon instructions

1.: - Yes, ecoDa agrees.

2.: - Yes, but doubt remains amongst the members if it should be left to market practice and not included in any directive.

3.: - Yes, in principle.

8- Communications following the general meeting

Dissemination of the voting rights

1.: - EcoDa believes that it should be good practice to do this, but the majority of its members do not believe it should be a requirement. The problems of distorted press information will tend to make companies want to get the facts out.

2.: - Shareholders are interested in obtaining verification that their votes have been received. However national systems should be able to determine how blank or discretionary proxies are carried out.

9. Other suggestions

Double or plural voting should be abolished.

Some of ecoDa's members consider that shareholders should have the right to better information about stable shareholding, conventions by which shareholders bind themselves to remain owners during a fixed period. These conventions should be accessible in the interest of all shareholders.

EcoDa is willing to assist you in your continued work on that particular issue.

For further explanations, don't hesitate to contact:

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