UNICE
THE VOICE OF BUSINESS IN EUROPE

22.6/00/1

12 October 2006

Dear Member of the European Parliament,

RE: AMENDMENTS TO THE COMMISSION PROPOSAL FOR A DIRECTIVE ON SHAREHOLDERS' RIGHTS

UNICE has been actively involved in the discussions on the above-mentioned subject and has always stressed the need to strike the right balance between shareholders' rights and companies' interests.

UNICE considers that, in order to avoid unnecessary legal burdens to companies linked to the exercise of shareholders' rights, some provisions need fine-tuning.

In this context, we would like to offer you some comments, complementing UNICE's position (UNICE Position Paper at annex).

In particular, UNICE strongly expresses its support to the following amendments:

1. Amendment 103 and 109 to Mr Klinz's draft opinion on **general meeting notice (article 5)**: UNICE expresses its opposition to the Commission proposal of a uniform rule of a 30 calendar day notice period. A period of 21 days, as established by the Finnish Presidency Compromise Proposal, could be accepted but with the following improvement.

   UNICE strongly supports that the date for the convocation of annual general meetings (AGMs) should not be less than 21 calendar days and not less than 14 calendar days for the convocation of other general meetings (extraordinary general meetings, EGMs). This differentiation between types of general meetings and the notice periods will ensure consistency with the Directive on takeover bids. Calling EGMs at short notice enables companies to deal efficiently with issues arising as a matter of urgency such as shareholder authorisation of directors' dealings with the company, directors' service contracts or significant transactions involving the company and other situations that do not fall under the scope of the Directive on takeover bids. UNICE believes that an identical notice period for both AGMs and EGMs as proposed by the Commission and by the Finnish Presidency will not allow companies to respond promptly in situations where that is necessary.

   We would also like to draw your attention to the fact that the requirement of article 5, 1a of the Finnish Presidency proposal by which "the Member State shall require the company to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community", is unjustified and could prove extremely onerous for companies.

AV. DE CORTENBERGH 168
B-1000 BRUSSELS
VAT BE 863 418 279

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@UNICE.BE
WWW.UNICE.ORG

The relevant information should be considered as sufficiently available simply through the officially appointed mechanism referred to in article 21(2) of the Transparency Directive. Therefore, UNICE proposes that this sentence be deleted.

2. Amendments 106 and 107 to Mr Lehne's report and amendment 129 to Mr Klinz's draft opinion on the **right to ask questions (article 9)**: UNICE strongly supports the deletion of this article as proposed by several Members of the Parliament and by the Finnish Presidency. As stated in our position paper, an obligation to answer all questions sent by shareholders ahead of the general meeting could prove unmanageable for companies, increase costs considerably and deprive general meetings of their role as a forum for effective debate. It is a matter of best practice for European companies to reply to shareholders' questions but the creation of a legal right to ask questions and receive answers ahead of the general meeting could ultimately lead to extra costs and abuses contrary to shareholders' interests.

   Moreover, this Directive deals with cross-border voting whereas the right to ask questions refers to a communication issue. Thus, this right does not fall within the scope of this Directive and should be a matter for better regulation.

   UNICE could agree to this subject being dealt with under national laws or referred to the Transparency Directive.

3. Amendment 154 and 155 to Mr Klinz's draft opinion on **post-general meeting information (article 15)**: UNICE agrees that only the substantive decisions taken at the general meeting should be published on the companies` internet site. An obligation to publish the results of all votes on each resolution tabled - substantial and procedural - would deprive companies not only of the right to take a vote on a show of hands, but also of the right to take a decision by acclamation. It would also prove inefficient and burdensome to companies. In some Member States resolutions submitted for the approval of a general meeting are adopted by acclamation, provided that no shareholder demands a vote. In other Member States, a show of hands is used on procedural motions. Removal of those two convenient practices would greatly interfere with the conduct of general meetings.

   If necessary, the article could make it clear that publication of voting results is only required when there has actually been a formal ballot or a poll is taken on a resolution.

   For shareholders who need assurance that their votes have been taken into account, it is sufficient that they are granted the right to demand that their votes are recorded in the minutes of the general meeting.

For those reasons, UNICE strongly opposes the Presidency proposal on **voting results (article 14)** (merging both articles) and all amendments that lead to a legal obligation for companies to publish the complete voting results of every resolution tabled at the general meeting, as well as an obligation to count all votes on all resolutions (mentioned on article 14 of the Commission proposal for a directive). Hence, UNICE opposes the introduction of an obligation to have a vote on each resolution tabled at the general meeting.

We thank you for taking active part in the discussions on the amendments and in the vote in the respective Committee and plenary.

We trust that you can support our views and remain at your disposal should you wish to discuss this further.

Yours sincerely,

Jérôme P. Chauvin
Director, Legal Affairs Department

Addressees:
- Members of the Committee on Economic and Monetary Affairs
- Members of the Committee on Legal Affairs