BUSINESSEUROPE

EuropeanIssuers

Brussels, 28 April 2015

RE: Business message on the upcoming JURI committee vote on the shareholder rights proposal

Dear Mr Cofferati,

You are the rapporteur of the proposal revising the shareholders rights directive, a fundamental piece of legislation in company law and corporate governance, which in its essence is about how companies organise themselves and relate to their key stakeholders and the outside world.

In a time where Europe is trying to set the building blocks for a Capital Markets Union, legislative reforms should ensure that stock markets remain an attractive way to access investment. In the last 6 years, the opposite has been observed, where almost 1 000 companies delisted from European stock markets. To counterbalance the current trend, the legislative environment for companies should be kept as simple as possible. This which will motivate them to become listed and stay listed.

A principle-based approach is always the best route in corporate governance by leaving to member states and to companies (on a comply or explain basis) the task to adapt these to the national prevailing environment (e.g. board structures, ownership models, company size, etc).

In the context of the vote and of the future legislative debate, BUSINESSEUROPE and the EuropeanIssuers would like to reiterate their main concerns about certain provisions of the proposal:

- **Related party transactions** are part of the daily life of companies, especially in groups of companies. We agree that transparency is essential to prevent conflicts of interest and to avoid potential abuses, however, the proposal's prescriptive provisions would slow down corporate decisions, increase costs and inadvertedly give sensitive information to competitors.
- The objective of triggering debate within a company on issues related to **remuneration of directors should not mean imposing a uniform rule** across the EU. More flexibility is needed in the definition of the remuneration policy so it can be adapted to different corporate models of management and, most importantly, to companies' needs. There is no evidence that a binding say on pay is more effective than a voluntary one. Boards should remain responsible for determining the remuneration of executive directors. We also question the need to define **maximum amounts** and **pay ratios** which will add costs and hamper a company's capacity to attract talented board members.
- While supporting the objective underlying the Commission proposal of fostering better engagement between companies and their shareholders, we would like to stress that to meet this objective an **effective cross-border shareholder identification** system is indispensable.

- The current revision is not the right place to include amendments on **country-by-country reporting on profits, taxes and subsidies**. This is already being dealt in other areas like the accountancy directive and in the 2015 Commission communication on tax transparency as well as at international level (e.g. OECD and G20). In addition, this expansion of the directive's scope has not been properly assessed and risks putting EU companies at a competitive disadvantage.

You will find at annex a one-page note with our main recommendations for the upcoming vote which we have also shared with the other members of the JURI Committee.

We remain at your disposal should you wish to discuss this subject further.

Yours sincerely,

Jérôme P. Chauvin

Deputy Director General
BUSINESSEUROPE

Susannah Haan

Secretary General
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One-pager: BUSINESSEUROPE and EuropeanIssuers recommendations on the upcoming JURI vote on shareholders rights

Related Party Transactions

- **No single model** from any jurisdiction for the respective roles of boards and shareholders should be imposed on others. In this respect, the proposal may transfer too many powers from boards to shareholders. As it stands, the prescriptive level of the proposal would impede the company's ordinary business and swamp investors with many votes on minor transactions;
- **The definition of "material" related party transactions** should **be left for member states**;
- There should be a **possibility for the administrative and supervisory bodies of the company to approve material related party transactions**, provided that safeguards are in place to ensure that related parties are prevented from abusing their position;
- All **transactions within groups of companies** as well as those **carried out in the ordinary course of business on market equivalent or standard terms** (as is the case in various national laws) should be **exempted** from a vote by shareholders.

Director remuneration

- Member States should be able to **choose between advisory or binding votes** and **whether there should be a vote on both the remuneration policy and report or only on one of the two**;
- The **pay ratio** and obligation to define **maximum amounts** should be deleted. Their added value is doubtful;
- Member States may provide, as an alternative to the vote, that the remuneration report is submitted as a discussion item in the annual general meeting;
- The amendments about **worker representatives** (e.g. amendments 69, 283, 316) seem misplaced in this proposal. This is not related to the proposal's objective which is shareholder engagement.

Shareholder identification

- Shareholder identification is necessary for enhancing shareholder engagement, therefore companies should not be charged for the data;
- No monopoly for collection of shareholder identification data: all EU companies should be able to **choose to use the most efficient means of identification**.

Country by Country reporting (amendments 477-485)

- The current revision **is not the right place** to include amendments on country-by-country reporting on profits, taxes and subsidies. This is **already being dealt** in other areas like the Directive on non-financial and diversity disclosure (just adopted), in the 2015 Commission communication on tax transparency, as well as at international level (e.g. OECD and G20);
- In addition, this expansion of the directive's scope has **not been properly assessed** and **risks putting EU companies at a competitive disadvantage**, should there be communication to the public and tax authorities of third countries of sensitive information.

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