STRIKING THE RIGHT BALANCE IN CORPORATE GOVERNANCE & SHAREHOLDER ENGAGEMENT

Joint ACCA BUSINESSEUROPE ecoDA EuropeanIssuers event

3 February from 2pm to 6pm

BUSINESSEUROPE premises, Brussels

CONFERENCE REPORT

SUMMARY

On 3 February 2015, EuropeanIssuers, ACCA, BUSINESSEUROPE and EcoDA organised a joint conference on Shareholder Rights called "Striking the right balance in corporate governance and shareholder engagement".

The debate revealed that, while the objective of improving communication between companies and shareholders is welcome in principle, several speakers expressed the view that the proposals on related party transactions and remuneration go too far. And while companies are pleased with the proposal's intention to give them the right to identify their shareholders, they suggested that some of the wording needs to be better aligned to the complexities of today's capital markets.

After a welcome note by **Jérôme Chauvin**, Deputy Director General at BUSINESSEUROPE, a presentation of the main features of the SHRD proposal by **Jeroen Hooijer**, Head of Unit of Company Law in DG Justice and Consumers at the European Commission, a video message by **Sergio Cofferati**, MEP, and a key note address by **Cecilia Wikström**, MEP the first panel moderated by **David Cooper**, ACCA, and composed of **Mike Everett**, Governance & Stewardship Director at Standard Life Investments, **Anders Würtzen**, Head of Group Public Affairs at Maersk, **Cordula Heldt**, Head of Corporate Governance and Company Law at Deutsches Aktieninstitut**, Lars-Erik Forsgårdh** (LEF), Chairman of ecoDa, and **Tytti Peltonen**, Vice President for Corporate Affairs at Metsä Group, discussed the issue of "**Disclosure", including the aspects of remuneration and related party transactions**. Key points from the 1st panel were:

- **Panelists would prefer to see an approach that is more based on principles and leaves more detailed regulation to be designed according to the prevailing circumstances in each Member State.**
- **Say on Pay may well be suitable for empowering shareholders and incentivising them to engage in the governance of companies in jurisdictions where shareholder power and engagement is weak. However, in jurisdictions with strong shareholder power, the drawbacks may well override the advantages, leading to worse rather than improved corporate governance standards.**

- **The current proposal on the related party transactions would (1) slow down the decision-making process, (2) force company groups to constantly monitor several thousands of transactions, (3) potentially lead to disclosure of information that should be kept confidential, and (4) create additional costs.**
- **The panelists would recommend amending the draft directive by excluding ordinary business transactions from material related party transactions.**

The second panel, moderated by **Per Lekvall**, Member of the Swedish Corporate Governance Board, and comprising **Susannah Haan**, Secretary General of EuropeanIssuers, **Kirsten van Rooijen**, Managing Director Netherlands of Computershare and Georgeson, **Morten Kierkegaard**, Member of the management for VP SECURITIES and Managing Director for VP SERVICES, **Wilfried Blaschke**, Senior securities analyst at Commerzbank, and **Bram Hendriks**, Senior Corporate Governance Officer at ING Investment Management, focused on "**Communication", including shareholder rights and shareholder identification. Key points from the 2nd panel were:**

- **Pooled (omnibus) accounts may be cheaper than segregated accounts, but significantly reduce visibility and are problematic in terms of shareholder identification and voting. Vote confirmation needs more clarification from the industry in terms of what is required, when (investors want this as soon as sent) and to whom the confirmation can or should be provided.**
- **Cross-border obstacles with multiple intermediaries in the investment chain may lead to excessive costs and time deferrals, thereby preventing shareholders from exercising their rights. Investors describe the cross-border voting process and costs as a black box.**
- **All panellists agree that companies should have the right to identify their shareholders. Moreover, the most effective legal systems allow sanctions to be imposed.**
- **While being positive about engagement with companies in which they hold larger stakes, institutional investors favour thresholds on shareholder identification in order to avoid having to engage with companies in which they hold smaller stakes. However, they are less concerned if the purpose of the identification is to enable the company to map out its shareholder base, rather than with the expectation to engage in every case.**
- **Companies oppose both thresholds and opt-outs regarding shareholder identification as they would like the possibility to identify all their shareholders, and fear that these could render the right unworkable in practice e.g. by holding separate accounts below the threshold.**

A fuller note of the discussions is set out below.

NOTE OF THE DISCUSSIONS

Introductions

After welcoming all the participants, **Jérôme Chauvin**, BUSINESSEUROPE stressed how the shareholders rights proposal touches the core of corporate governance. It is essential to find a balanced and flexible approach to ensure European companies remain competitive in the global market. We must make sure that being listed remains an attractive way to attract investment. This cannot be accomplished using one-size-fits-all formulas which are not compatible with the diversity and richness of systems in corporate governance. This conference was therefore an excellent opportunity to ask the right questions and to identify the possible way forward for the legislative-debate.

Sergio Cofferati MEP sent a video message in which he:

- hoped that the European Union will be able to adopt measures that, all together, build up an effective and comprehensive system for the governance of the European companies;

- believed that we have to ensure a very high level of transparency in the management of companies and that we should develop and foster economic activities that are based on a long-term approach, and not oriented only to short term returns. This would be useful both for companies and stakeholders that also must be taken into consideration in this Directive;

- thought that having companies able to produce value, using the instruments that policy making will make available for this purpose, will have advantages for investors, workers and, obviously, society;

- believed that it is important to work together in order to achieve a common and effective solution.

In his keynote speech, **Jeroen Hooijer**, DG JUST, European Commission, explained on what basis the shareholders rights directive was drafted and presented its main features.

- Besides all the consultations conducted by the Commission, different studies make it clear that stock return can increase by 7% with more institutional investors' engagement. Engagement means the monitoring of companies on matters such as strategy, performance, risk, capital structure and corporate governance, having a dialogue with companies on these matters and voting in general meetings.
- The underlined political objective is to get more responsible investors. A lot of progress has been made under the Italian Presidency. The Latvian Presidency is working hard to find a suitable compromise. Regarding shareholders' identification, the Commission offers different solutions (company to identify its shareholders, Confirmation of votes cast, possibility to surpass the investment chain, no price-discrimination for cross-border services, safeguards for data protection, e.g. limited storage time etc.). As for engagement policy, the main solution is to enhance transparency and to impose rules on a "comply or explain" basis.
- Speaking about remuneration, the Commission wants to align the interests of the shareholders and the interests of the directors. No matter whether the vote is mandatory or not, if 1/3 of the shareholders vote against the remuneration report, it should be perceived as an important warning signal for directors. As for the proposed ratio requirement, the idea is not to take a picture of the today's situation but to take into account the remuneration trend in the company.

- Related party transactions below the normal market terms might generate a risk of value transfer. Shareholders should have the possibility to vote and to bring in an independent third party to give an independent opinion. Some Member States have expressed their desire for more flexibility and for a system that fits in with their national CG systems.
- Jeroen Hooijer highlighted other CG topics that will lead to more sustainability and growth like: diversity in decision making (Gender but also cultural background i.e.), better understanding of the importance of Corporate Culture, focus on the long-term, increased attention for reputation (social media plays an important part and can influence the way decisions are taken), conscious investment and independent directors. All those elements can have an impact on better management decisions. He also mentioned the ongoing discussion on the subject of taxation and groups of companies. Groups of companies that operate internationally can choose corporate arrangements targeted on fiscal benefits ("aggressive tax planning"). Tax planning and companies' structure are part of the governance of a company and should be discussed at large at boards' level. The Parliament has been pushing for setting rules on "country by country" (accounting rules + CDRIV) and the Greens have just proposed a similar amendment in the shareholders' rights directive. It is important to think about the pro and cons, and the objective behind.

In her introductory remarks, **Cecilia Wikström** (MEP) argued that:

- The Commission cannot be accused of a minimalistic approach of the shareholders rights directive. She said that "less is always more". Excessive pay can affect the decision process in companies and reflect a highly risky approach which is not true for normal pay.
- Shareholders spend too much time on considering salaries instead of dealing with strategic topics. Article 6 of the past shareholders rights directive has already given to shareholders rights to place items on the agenda of the general meeting. The new additions related to remuneration provide very little value for companies and the society in general. She called for the deletion of these requirements and to limit them to a brief article on the 'comply or explain principle'.
- On related party transactions, she agreed that the proposal will need to be modified significantly. Normal joint ventures, transactions on normal market terms should be excluded.
- The debate should concentrate on cross-border problems in order to facilitate businesses' functioning. Right now, it is important that the debate focuses on suggestions for improving the draft directive.

1st PANEL: Disclosure (remuneration and related party transactions)

The first panel was moderated by **David Cooper**, ACCA. **Mike Everett**, Standard Life

- Explained that Standard Life Investment was generally supportive of the desired outcomes of the draft directive (improved engagement, better links between pay and performance of directors, better shareholder oversight of related party transactions and easier exercise of rights across borders). When a binding vote on remuneration was proposed in the UK, Standard Life Investment was not initially favourable. However, having now gone through the first year, Standard Life Investment believes that the binding vote has encouraged increased engagement between companies and shareholders. Nevertheless, companies do not wish remuneration to be

the only topic on which shareholders should engage; strategy and succession planning are key elements to consider.

- When considering remuneration, the focus of Standard Life Investment is holding remuneration committees to account in relation to the alignment of the interests of executives with the company and long-term shareholders. Remuneration committees have to remain responsible for setting and implementing remuneration policy, a binding vote encourages them to engage with shareholders to ensure that views are aligned. Shareholders are not responsible for setting remuneration policies.
- On the topic of related party transactions, as shareholders Standard Life Investment would like to have a say on transactions which materially impact the nature of our investment particularly where there may be an opportunity to transfer material value from the company to the related party. This would not include transactions that were undertaken in the normal course of business. It is important to provide adequate rights to shareholders regarding related party transactions while balancing the need for such transactions used in the normal course of business.

Anders Würtzen, Maersk

- Maersk is among the critical parties regarding the Commission proposal on related party transactions.
- Maersk operates under the two tier model with a strict separation of the roles between the supervisory board and the management. Their board is composed of 12 members including 2 employees' representatives. Maersk has a good relationship with its shareholders and is submitted to a constant media attention. For them, precluding large shareholders from voting related party transactions is counterproductive.
- The draft directive will impose company group to constantly monitor several thousands of transactions. Even if this will create new jobs, it will not bring value. What is important for global companies is to take the right decisions at the right time. The amount of time to assess the transactions will slow down the decision process which will jeopardize the competitiveness of European companies. A number of safeguards for related party transactions are already in place. Maersk involves independent experts and imposes a strict division of liabilities thanks to the two tier system.

Cordula Heldt, Deutsches Aktieninstitut

- Explained that Deutsches Aktieninstitut sees a lot of problems concerning the proposal on related party transactions. Although the comparable regime in the UK may have worked excellently, different structures of capital markets and the differences of the proposal with the UK rules will cause them to be very onerous to apply. In the UK, transactions in the ordinary course of business are excluded from the scope, which is not the case with the Commission's proposal. This will lead to delays in approving transactions, which will harm the European economy.
- The need for companies to ensure an informed shareholder decision may lead to the disclosure of information that should be kept confidential, like the prices that are paid in a supplier chain. This information could also be collected by competitors outside Europe. Corporate groups will face a substantial compliance burden. The pure existence of corporate group law in Germany

(Konzernrecht), which balances the different interests of stakeholders and also provides for creditor protection, is brought into question. Under the proposed regime, the equivalent transaction, even if it is on market terms will be extremely burdensome if a related party is involved and cannot be concluded in a timely manner, cannot be kept confidential and will lead to additional costs.

- The same is not true for the same transaction with an unrelated party. What does that mean for the corporate structures in Europe, like joint ventures or corporate groups, in the future? Cordula Heldt would recommend deleting the proposal for now and elaborating a principle based rule together with the announced acknowledgement of "group interest". Companies should not be managed by shareholder referenda.

Lars-Erik Forsgårdh, ecoDa

- ecoDa would prefer to see a regulatory approach from the EU Commission that is less detailed, less prescriptive and more based on principles. There is a lack of recognition of the variety of corporate governance models in Europe.
- Say on Pay may well be suitable for empowering shareholders and incentivising them to engage in the governance of companies in jurisdictions where shareholder power and engagement is weak. However, in jurisdictions with strong shareholder power, the drawbacks may well override the advantages, leading to worse rather than improved corporate governance standards. There are a number of drawbacks associated with the Say on Pay principle: it deprives the board of one of its most powerful instruments for carrying out its fiduciary duties to the shareholders: to employ, dismiss and remunerate the CEO, and it causes a lack of clarity as to who can be held accountable for a remuneration decision of inferior standard.
- Upward delegation from the board to the AGM does not necessarily imply better standards. Instead, there is an obvious risk that a few international proxy advisors will set a generic standard that is not in the interest of the shareholders. ecoDa wants to see a clear distinction between the role of the board of directors and the role of the shareholders´ meeting in monitoring director and executive remuneration. However ecoDa welcomes the proposal that shareholders should have the possibility to express their views regarding the remuneration policy in the general meetings.
- A possible compromise would thus be to allow the general meeting to have an advisory role on remuneration policy. However, ecoDa does not support the idea that the employees shall have their own "say on pay" and strongly recommends that the proposal should not be mandatory.

Tytti Peltonen, Metsä Group

- The Commission's intent was to remedy perceived shortcomings in the protection of minority shareholders, and Metsä Group shares that aim. Nevertheless the approach could have serious unintended consequences for many companies such as Metsä Group, in particular with regards to provisions on related-party transactions. The new proposal undermines financial and operational planning; opens up possibility for malpractice; requires the publication of commercially sensitive information; and creates disproportionate administrative burdens and costs. With the current proposal, Metsä Group would be forced to seek shareholders' approval and organise general assemblies for ordinary business transactions conducted between the group companies.

- More generally, the proposal distorts the balance and division of tasks between the shareholders and the board of directors & management of the company and does not take into account the variety of governance models throughout Europe. Ordinary business transactions and transactions conducted on market terms should be excluded from the scope of the directive.
- Metsä Group believes that there are different efficient ways of protecting the interests of minority shareholders, such as control and pre-approval of related party transactions by independent directors within the board of directors. The proposed pre-approval mechanism does not resolve these issues: by reducing companies' horizon to a year, it would put long-term planning into question; the situation at the time of the pre-approval can change at any time and make the pre-approval obsolete; the publication of commercially sensitive information would still be required.

Q: Issues with director remuneration and related party transactions indicate that the communication lines between the shareholders and the company are not working properly. So do companies create their own difficulties in not engaging with shareholders early enough on these issues or is the problem that shareholders impose agendas on companies that do not fit with their business?

For **Lars-Erik Forsgårdh,** the question is what will be the next subject that the shareholders will engage in? According to him, it is no good having board members sitting in the nomination committee. The shareholders should take the lead in the nomination of board members to increase the quality of the nomination process. For **Mike Everett**, the most important is to put the right process in place to define the strategy and get the right monitoring system making sure that executives will implement correctly the strategy. Standard Life Investment does not sit in nomination committees of Nordic committees until now. What really matters for them is to make sure that companies have implemented the right succession planning.

Remarks from the audience:

- The Commission asks companies to refer to more demanding CG Codes and at the same time they continue adding more regulation. The main concern is how to enrich Codes if all new requirements become hard law in a few years' time.
- Member states should be free to choose ex post or ex ante / binding or advisory votes.
- One should not forget that pay cap create inflationary effect.
- How can shareholders be engaged for long term if they are not engaged in important transactions? Material transactions can change the nature of the company; this is why shareholders want a vote.
- It is important to trust non-executive directors but what will happen when the board itself or the management is a related party?

The panelists concluded that national company laws offer already guarantees to shareholders and creditors' protection, and that the proposals go too far. The transparency regime allocates more power to auditors; this should prevent the board from operating transactions when they are related-parties. The panellists recommended amending the draft directive by excluding ordinary business transactions from material related party transactions and assessing alternative decision making structure for material related party transactions. Politicians should not forget to promote professional board work. No regulation can replace professional boards with good judgment.

2nd PANEL: Communication (shareholder rights, shareholder identification)

The second panel was moderated by **Per Lekvall,** Swedish Corporate Governance Board.

Susannah Haan, EuropeanIssuers

- Set out the background by referring to the 2007 Shareholder Rights Directive, which included rights for shareholders to ask questions, add resolutions to the agenda, their attendance at the General Meetings, etc. Today communication still remains an issue on the table due to 'plumbing' problems in the investment chain, particularly to the end shareholder. Following the adoption of the 2007 directive, an industry group chaired by EuropeanIssuers started to work on standards for cross-border communications in order to facilitate the cross-border participation of investors in companies' General Meetings. The group agreed the standards[1] in 2010 and started to work on their implementation afterwards. This group's work should be taken into consideration by policymakers when revisiting the current directive, particularly if the Commission is to create additional regulation at Level II.
- Shareholder identification is a big issue for EuropeanIssuers, but identifying the company's shareholders is not always a straightforward process. Studies[2] of the various shareholder identification systems show that the most efficient and transparent systems are based on a right for companies to initiate the enquiry, so EuropeanIssuers did not like the original Commission proposal giving the right to intermediaries rather than companies.
- EuropeanIssuers also believes that Member States should not be obliged to allow intermediaries to charge for this data. Companies need to know: who owns the shares, on behalf of whom, how many shares, and contact details (name, e-mail, telephone number). The studies show that the identification process should allow companies to obtain the identity of their clients from intermediaries at any point in the chain. Moreover, the most effective legal systems allow sanctions to be imposed in the event of failure to provide companies with the correct information.
- EuropeanIssuers would also like to avoid the creation of monopolies for the collection of shareholder identification data; rather it is important to have healthy competition in place for issuer services.

Kirsten Van Rooijen, Computershare Netherlands

- Explained that Computershare, as issuer agent, believes that companies should be entitled to know who their shareholders are – it is central to facilitating engagement. She stressed that the way in which shares are now held makes it even more important for issuers to be able to identify their beneficial owners, as there can be in some instances a number of layers in the chain of ownership from legal owner to beneficial owner, and the common use of pooled accounts adds even more complexity. In addition, there are significant differences between countries in the issuer's right to identify their underlying beneficial owners. Issuers need a strong legal right to compel the disclosure of their beneficial owners.

[1] The EU industry General Meeting standards can be found at: http://www.europeanissuers.eu/en/?inc=page&pageid=topic&id=3

[2] See for example studies by Capital Precision on existing shareholder identification rules and practices in March 2012 or by Computershare: Transparency of Share Ownership, Shareholder Communications and Voting in Global Capital Markets in 2014.

- The level of transparency that an issuer can have is drawn from a combination of both the market structure and the legal right to compel disclosure. For instance, by international standards, the UK is generally seen as a transparent market of share ownership for issuers, due to a combination of a strong legal right for companies to disclose their beneficial owners and transparency at the Central Security Depositories level (nominees visible at the CSD level). In order for issuers to identify their shareholders, the starting point is usually the top level of ownership: usually CSD participants. Timely and cost effective access to the CSD records of ownership is therefore important. Shareholder identification, especially in UK, is a repetitive process tracing ownership and other interests in the shares (e.g. voting rights) through each layer of ownership, from that top level.
- The question also is whether or not the identified shareholder is also the one making the voting decision. Voting is often outsourced to investment advisors, with whom companies choose to communicate in this case.
- Regarding vote confirmation, the important issues are: what form of confirmation is required, at what point and to whom the confirmation can or should be provided. In many cases, the issuer agent will have no visibility of the end investor that seeks vote confirmation, and a coordinated flow of the confirmation through relevant chains of intermediaries and voting agents may be required. In particular, the use of pooled accounts makes it harder to reconcile and coordinate vote confirmation down to the end investor.
- Another important question is who would like to receive the vote confirmation, including whether confirmations are required for all investors by default or individual investors based on their request. The impact of different protocols for voting at company meetings (the use of show of hands, poll and direct voting) creates additional complexities to the provision of vote confirmations. There is also the need to agree market protocols for the resolution of over-vote positions, which impact the treatment of votes lodged (and thus confirmations issued). Given that these processes vary in different EU countries, there is a need for a market protocol regarding standardised messaging for electronic communication of confirmations. Computershare proposes the following short term proposal to deliver vote confirmation to those investors that require it, while continuing the market dialogue about a longer term solution:
  - The issuer agent to provide electronic confirmation of receipt of an electronic vote instruction back to the lodging party;
  - Subject to agreement by issuers, the issuer agent may additionally make available a service after completion of the meeting to any investor to certify that votes lodged in respect of a particular securities account were included in the final tabulation at the meeting, on payment of a reasonable fee.

Mr Lekvall asked which EU countries have the most and least efficient shareholder identification mechanisms, based on Computershare's experience of identifying shareholders and managing voting in different markets. **Ms Rooijen** replied that some of the most efficient models are in the UK, France, Germany and also Sweden. As an example, in the UK, companies have the legal right to request disclosure of the identity of any person with an interest in their shares and the registered shareholder can require the issuer to send shareholder communications directly to nominated beneficial owners. In Germany, it works well for registered shares, but not for bearer shares. In Sweden, the visibility at the CSD level is great, although the issuer has less power to drill through to

the end investor. As a result, foreign investors can be less visible. In other countries, there is a rather moderate level of transparency and there have been some problems for EU companies trying to identify foreign investors. Regarding vote confirmation, she mentioned that in case of the show of hands, publication on the company website of the votes following the meeting could be a solution, although in certain countries that could potentially conflict with privacy laws.

Morten Kierkegaard, VP SECURITIES/VP INVESTOR SERVICES

- The VP Group runs both the Danish CSD and a Registrar providing shareholder meeting services to companies. **Mr. Kierkegaard** said that he as both a CSD and a Registrar supports the objective of the proposal to increase shareholder transparency and to facilitate the exercise of shareholder rights.
- In the existing processes for identifying the beneficial owner across Europe, holding information from the local CSD is often already an integrated part. CSDs maintain securities accounts at least at the top tier level of the holding chain, but many CSDs - including the Danish one - also run segregated accounts, so the beneficial owner in those countries is already registered in the CSD to some extent. In the Danish CSD there are 3.5 million accounts.
- On the Danish market, the CSD is obliged to deliver the updated holding information to the company or its Registrar. This is done electronically on a daily basis. This setup has generated competition on the Danish market for Register and Shareholder meeting services, to the benefit of the companies and investors, so the current regime on the Danish market is quite effective. More than 50 percent of Danish share capital is owned by non-domestic investors through nominee structures. On average, the Registrar is able to identify the beneficial owner behind 75 percent of the total share capital and even more when public filing information is added.
- Currently there are still some barriers for shareholders in the EU to exercise their rights. One area that is increasingly important for Danish listed companies is foreign shareholders' greater interest in exerting their influence.
- Rapid and efficient electronic voting is of great benefit to the company. The regimes in Europe can be very different from each other and that may scare foreign investors. Therefore, there is a need for standardisation; implementation of the European Market Standards on General Meetings and on Corporate Actions Processing would be helpful.
- Based on his experience of the Danish market, withholding voting rights in case of failure to provide shareholder identification information is a very effective means to raise the level of shareholder identification.
- It is important that investors do not encounter too many different regimes within the EU when it comes to exercising Shareholder Rights. It all about balance – imposing a single model could be too dramatic a step, but some clear principles to adhere to would be preferable, so that standardised procedures can be built on these. The importance of this can be illustrated by the fact that 20 percent of Danish share capital is owned by US investors, who have alterative places to put their investments, if the processes get too complicated, fragmented and costly.

Wilfried Blaschke, Commerzbank

- Supported the importance of the industry General Meeting standards, but underlined t the need for rules, instead of voluntary standards. He proposed transferring some of the provisions from the Shareholder Rights Directive into a Regulation in order to ensure uniform implementation.

He emphasised his doubt in the ability of the banking sector to follow voluntary standards or rules in this area.

- He also felt that there was a lack of emphasis on the importance of digital communication. For example, German banks now have a delay of 21 days in order to inform their investors by post. This process is not efficient and implies great costs. Electronic communication would be preferable. He would support mandatory registration of shareholders directly in company share registers. If somebody would choose not to register, he/she should not be given the right to vote. He was unfavourable to bearer shares, which he believed were created to hide the identity of shareholders.
- Regarding article 3a of the shareholder right directive, he was supportive of limiting identification requests to one a year, as this would be more efficient. The voting process should be equal for everyone (domestic and foreign investors) and it should be done electronically. Regarding electronic communications, however, unfortunately not many banks have the retail shareholders' e-mail addresses stored in their databases.
- In terms of the language used for agendas and resolutions, if issuers are interested in getting in the votes, they should try to make it easier for foreign investors: e.g. if an issuer has a large base of Japanese shareholders, it could also prepare an agenda in Japanese. In the General Meeting standards, there is a recommendation that "for narrative text of the meeting notice (E.g. the description of an agenda item) Issuers with an international shareholder base should use also a language customary in the sphere of international finance, currently English".
- Communication for General Meetings between companies and investors (and the other way around) works usually fine within a country, but not on a cross-border level. Similar standards on Corporate Actions are being implemented faster and work well: however, these are connected to money (dividends, etc.) rather than governance (voting). Also, in the case of Corporate Actions, it is the investors who pay and so they are better placed to insist on more efficiency.

Bram Hendriks, ING Investment Management

- Stated that he had no problem with investors being identified, although he favoured a threshold below which identification was no longer possible. He underlined that there are several remaining cross-border obstacles in the intermediary chain, which may prevent shareholders from exercising their rights. Mr Hendriks co-chairs the ICGN (International Corporate Governance Network) committee on shareholder communication which organised a number of stakeholder seminars which were dedicated to this topic and had resulted in a viewpoint on obstacles to vote execution. The ICGN would be organising a roundtable with some global custodian banks in a couple of months' time on this Viewpoint.
- Regarding the SRD proposal, Mr Hendriks highlighted the need for the right balance between shareholder rights and responsibilities. He supports additional rights, but underlined that they always come with responsibilities, including shareholder rights. It is more than reasonable to expect from investors that they make an engagement policy available. In line with European corporate governance traditions, this should be subject to a "comply or explain" regime. However, several other investor disclosures have been included in the pending proposal. It should be avoided that these are overly prescriptive but rather serve the purpose of stimulating engaged Stewardship.

- Regarding voting rights, Mr Hendriks emphasized that the minority investors should not be disenfranchised towards long-term shareholders by the introduction of double voting rights and therefore supported the one-share-one-vote principle. He also underlined that investors face difficulties in exercising their rights attached to securities, especially in a cross-border context.
- There are remaining obstacles in cross-border communication between companies and investors through the intermediaries' chain. In many jurisdictions, intermediaries charge a lot of money for communication – the overlay of multiple intermediaries may lead to excessive costs and may even discourage shareholders from executing their rights. ING currently spends approximately 30 to 40 thousand euro a year globally on vote execution alone. Hence, investors would like to reduce the time and costs of voting, and to be able to obtain vote confirmation, as the voting process often resembles a black box. He would like to have the vote confirmation before the vote takes place, in order to be able to take correct action, if necessary. The remaining question though was: who is paying for the costs? ING takes its fair share by investing in research on voting and engaging with corporates ahead of general meetings. However, he did not know what a fair price for share voting is. Greater transparency of such costs in the proposed directive is therefore welcome. He underlined that double voting rights do not necessarily lead to more engagement. He gave an example of an Italian company where the majority shareholder owns 53% of the voting rights: within 2 years, their voting rights would double while the minority investors would be disenfranchised. In addition, the share registration process in order to be eligible for the double voting rights is obligatory, but cumbersome for the same reasons as voting.

Ms Van Rooijen mentioned that Computershare would face some operational issues in the case of double voting rights and explained that it is only possible in the case of registered shares. It would also complicate the electronic voting process. Clients in many of their markets are in favour of the one share one vote principle. **Ms Joëlle Simon**, Director of Legal Affairs at MEDEF, France and Vice-Chair of BUSINESSEUROPE's Legal Affairs Committee intervened to emphasize the fact that, although MEDEF strongly supports double voting rights in principle, they had been opposed to the recent change in French law that imposes such voting rights on companies in the case of registered shares.

Questions and Answers: discussion with the audience:

Answering the question from the audience whether bearer or registered shares were more popular and in which countries, **Ms Haan** said that the trend was in the recent years for fewer bearer shares overall[3]. One participant added that UK was currently trying to get rid of bearer shares. However, another participant mentioned that, in different countries, there is a different understanding of what a bearer or registered share is which adds to the complication. He strongly supported the right for issuers to identify their shareholders without any threshold and underlined that currently

[3] After checking the available information on 23 countries in the EU based on responses that we have available from members of the EU working group on General Meetings, EuropeanIssuers has come up with the following conclusion: 21 registered markets and around 12 bearer markets. The bearer only markets are: Austria and Poland (although we think that Austria recently introduced registered shares into legislation), while the following have a majority of bearer shares: Belgium, Czech Republic, and Germany. The registered only markets are: Bulgaria, Croatia, Cyprus, Estonia, Finland, Malta, Norway, Romania, Sweden, and UK. In addition, Switzerland has a majority of registered shares. We do not have information for all EU countries, so would be pleased to have additional feedback. In addition, it is possible that some definitions are understood in different ways.

everybody in the financial market investment chain knows who the shareholder is, except for the issuer.

What do investors think about thresholds? Mr Hendriks said it was important to set a threshold for shareholder identification, depending on the expectations on investors. He explained that while ING was happy to engage with companies where they hold large stakes, they would not like to engage with companies where they hold small stakes. As a matter of principle, he would not have a problem of smaller investors being identified, but he questioned what the company's objective would be when reaching out to all shareholders (including very small ones). If the aim is for the company to map out the make-up of its shareholder base, but not necessarily to engage in dialogue with every single one, then that would be easier for investors to understand.

Mr Hendriks asked whether EuropeanIssuers would support access of other shareholders to the shareholder identification data. **Ms Haan** explained that providing companies with access to shareholder contact details was already an important step but that the national systems are still very different, and so the decision to grant other shareholders access to this data should be left to the individual Member States.

Why do investors not insist on segregated rather than pooled (omnibus) accounts? While the increasingly popular omnibus (pooled) accounts may be cheaper, there can be problems with the lack of visibility. The questioner referred to the collapse of Lehman Brothers with its many omnibus accounts and asked whether it was not better for investors to have segregated accounts, even if they are slightly more expensive. **Ms Van Rooijen** underlined that pooled accounts are problematic regarding shareholder identification and also when the votes are coming in (before the General Meeting), as the agent may need to sort out discrepancies in the number of shares held. When votes come directly from the direct end investor, it is much easier.

Another participant stated that the possibility to identify the end beneficial owner and local account structures were very much dependent on the Member States' securities and ownership laws. For instance, in some countries with pooled account structures at CSD level, the beneficial owners are reflected in the books of the last custodian in the chain of intermediary, in some in direct holding systems at the CSD level (Sweden and Greece) and in some countries, at a nominee level.

What about stock lending - could or should this be addressed by the revision of the Shareholder Rights Directive? Ms Haan suggested that the more appropriate place might be in stewardship codes, which are mentioned in the Directive. However, she was not sure whether it is advisable to copy the content of such codes into legislation, as opposed to including the requirement for "comply or explain". A representative from one of the securities exchanges responded that this would in future be covered by the proposed regulation on reporting and transparency of securities financing transactions. There is a provision that one needs to seek the permission of the securities lender and that securities should not be lent without permission of the legal owner.

Why it is that while companies and investors want to communicate with each other, they still can't make it happen cross-border? Ms Haan answered that more pressure is needed from shareholders on intermediaries regarding the need for more standardised communication of information along the voting chain. This had been done for communication, but had not yet been

done for vote confirmation. First of all, there is need to sit down together to build some common understanding around the problems and objectives.

Why is it that communications around Corporate Actions can work, while there are still issues with communication for General Meetings? Surely the chain of intermediaries is the same? asked a representative of retail investors. **Ms Van Rooijen** answered that the answer is money: the Corporate Actions chain is lucrative for intermediaries. **Mr Hendriks** said that nobody really takes ownership of the voting chain; there are too many people involved. **Mr Blaschke** emphasised that, while in the case of Corporate Actions, the chain and procedures have been established and simply need some streamlining, in the case of General Meetings, nothing has been really established so far (apart from the voluntary industry standards). A representative of one of the proxy voting firms stated that it provides services to asset managers and custodian banks and that therefore has a good view of the whole voting chain. He underlined that, while the intermediary chain could become more transparent if there was an industry wide move to systematic vote confirmation, it could be reassuring to know that there is liability between most parties throughout the chain, just like for other Corporate Actions.

What is the implementation date for both the directive and the General Meeting standards? Mr Blaschke suggested 2017, although this would depend whether the standards would also adopted be into EU legislation. **Ms Haan** mentioned that some quick fixes could be done between now and then; e.g. SWIFT could be a possible solution in terms of electronic messaging format as well as voting confirmation, but not for smaller companies. But there are ways to remedy that, e.g. developing simple web interfaces, using existing data interfaces, etc.

Why can't investors have a consistent EU mandatory disclosures regime? Investors spend a lot of money complying with different disclosure requirements in Member States (e.g. 3% in the UK, 5% in Germany, etc.). Why could we not have one threshold for these disclosure obligations and therefore a consistent regime in the EU[4]?

Mr Lekvall asked **whether the threshold on shareholder identification would be a good idea and whether shareholders should have an opt-out from shareholder identification? Ms Haan** responded that issuers are not favourable to the threshold on shareholder identification, as they would like to have the possibility to talk to all shareholders who would like to talk to them, irrespective of whether they are large or small. Moreover, some of the biggest European listed companies have hundreds, thousands or even millions of **widely dispersed shareholders**, of which a very small number hold positions of more than 0,1%, and an even smaller number over 0,5%. For example, one large German company currently has approximately 175 000 shareholders. Of those, **fewer than 100 shareholders** hold positions of **0,1% or more.** An opt-out would be even worse, as it would render shareholder identification completely unworkable. There would also be a concern as to whether the opt-out would be the real investor's choice or that of the intermediary not even to ask the investor? She was aware of some such examples in practice where such a right is supposed to operate. **Mr Blaschke** suggested that there could be an opt-out, but only together with a loss of voting rights and dividend. However, it could be difficult to manage if an investor were to hold several accounts at 0.1%, as it might be too easy to keep under the threshold in order to avoid the

[4] This was proposed in the last review of the Transparency Obligations Directive, but Member States opposed harmonisation.

disclosure requirements. **Mr Hendriks** said that he was not in favour of an opt-out. In terms of a threshold, it depends for what purpose. If investors hold a small portion of the shares and the company does not intend to speak to all of them but just to know who they are, that could be acceptable[5].

Closing speech by Laila Medin, Deputy State Secretary of the Ministry of Justice of the Republic of Latvia, chairing Company Law Working Party in the Council

- Ms Medin underlined that the Latvians are very transparent, having learned the hard way about the importance of open communication with shareholders and partners. Striking the right balance is complicated. The Presidency needs to improve engagement, transparency and accountability, while respecting the different national corporate systems.
- At the same time, the Presidency gets many calls for common standards from cross-border investors and international players. In terms of the timetable, 5th February is the deadline for the Member States to submit amendments to the Council for the next working group meeting to be held at the beginning of March.
- The Council is looking to align its timeline with the Parliament. Ms Medin stated that the intention was to get the proposal adopted, while ensuring it is well written to avoid circumvention of the rules.

Pedro Oliveira, Senior Legal Adviser at BUSINESSEUROPE thanked all the speakers and participants and invited everyone to the cocktail kindly sponsored by **Computershare**.

[5] EuropeanIssuers believes that most companies want to check the identity of their shareholders on a quarterly basis. However, they may wish to check the top 10-20 holdings on a monthly basis. The circumstances will vary, depending on the shareholding structure and the economic circumstances of the company.