



Organisation for Economic Co-operation and Development (OECD)  
Corporate Governance Committee  
2, rue André Pascal  
75775 Paris Cedex 16  
France

The Hague, 2 January 2015

Ref: B15.01  
Subject: Eumedion response draft revised OECD principles on corporate  
governance

Dear Sir/Madam,

Eumedion welcomes the OECD Corporate Governance Committee approach to revise the OECD Principles of Corporate Governance. Eumedion is the dedicated representative of the interests of 70 long term institutional investors – all with a long term investor horizon – and aims to promote good corporate governance and sustainability in Dutch and European listed companies. Together they have more than € 1 trillion assets under management. Eumedion has been advocating the importance of good corporate governance in listed companies as a key driver for long term performance. The way in which assets are managed plays an important role in terms of aligning the incentives of institutional investors and companies on their long-term strategies and mitigating short-termism and speculation.

Since its release in 1999 and after its first revision in 2004, the OECD Principles on Corporate Governance have proved to be a fundamentally important standard for national policymakers and regulators as well as companies and investors in their efforts to improve corporate governance frameworks and practices. Yet there are strong reasons to update the Principles. The last revision took effect a decade ago. Corporate governance in many countries has developed strongly since

then. While the financial crises, enrolling in 2008 and hitting many OECD countries, brought to light severe shortcomings in corporate governance, the OECD Principles remained unchanged.

Eumedion believes a revision is much needed so as to maintain the relevance, status and usefulness of the Principles and keep pace with the developments in the public equity markets and the corporate and investment sector. Corporate governance is a critical indicator in the investment decision making process of many long term institutional investors. Good governance gives confidence to investors and is integral to a well functioning capital market. The quality of companies' corporate governance plays a key role at every stage of the investment process, including the allocation of equity among competing companies and the ongoing monitoring of corporate strategies and performance. The current debate on corporate governance and shareholder rights needs to be seen in the context of in particular Europe's need for capital markets that fund long term growth at competitive costs.

Before commenting on specific Principles and related Annotations, we would like to take the opportunity to make some high level remarks.

### **1. High level remarks**

Eumedion generally supports and appreciates the proposed revisions as set out in the draft document. The revisions cover a wide spread of governance issues and we know that the OECD Corporate Governance Committee has undertaken significant work in recent years. The proposed revisions seem to appropriately reflect important corporate governance developments that took place in OECD markets over the last 5-10 years. However, on some aspects the revisions could show a little bit *more* ambition.

#### *Voting chain*

The proposed principles seem to fail to properly address one of the main obstacles to shareholder engagement: the poor performance of the intermediaries chain which makes it very difficult and often very costly for shareholders to exercise their voting rights (especially cross-border) and for issuers to know who their real ("beneficial") owners are, and therefore to communicate with each other. The shareholder identification framework should be easily accessible both by issuers and by shareholders.

#### *Shareholder engagement*

Also the Principles should more explicitly address one of the areas where most potential improvement lies: the engagement with companies by responsible investors. Institutional investors should be encouraged more to adhere to a code of best practice, such as the International

Corporate Governance Network (ICGN) Statement of Principles on Institutional Shareholder Responsibilities, the UK FRC Stewardship Code and the Eumedion Best Practices for Engaged Share-Ownership. Strong and constructive shareholder engagement is necessary to ensure that companies are properly accountable to their owners, thereby helping them to drive better performance through more effective governance. At the same time, the shareholders' abilities and willingness to commit time and resources to engagement activities also depend on the attitude and responsiveness of boards of the listed companies involved.

#### *The role of the statutory auditor*

We are also surprised of the lack of reference to the statutory auditor's role. High quality audits are critical for investors' confidence in what they report about the financial position of listed companies. We believe that the OECD Principles together with other standards and bodies could play a major role in encouraging audit quality and better reporting by both companies and external auditors. The ultimate clients of the audits – the shareholders and other stakeholders – must be enabled to get more insight into the work of the external auditor. The key issue is the conflicts of interests of external auditors as they are paid by the issuers whom they are supposed to critically audit. Therefore, auditors should be appointed by, and report to, the shareholders.

#### *Sustainability factors*

Eumedion supports that non-financial information and sustainability and integrated reporting are mentioned in the proposed Principles (paragraph 77). In addition to that the Principles could address more explicitly the importance of the board's consideration of longer term factors which might have a materially impact on the company's performance, in particular environmental, social and governance (ESG) risks. More and more institutional investors with a longer term investment horizon are prepared to raise their voices on material ESG risks at shareholder meetings and in their dialogues with companies. It would be very helpful if the OECD Principles would include some provisions stressing the Board's responsibility and accountability for material ESG risks in relation to corporate performance. The Principles should also encourage – instead of mentioning it – companies to provide an integrated report that puts historical performance into context, and portrays the risks, opportunities and prospects for the company in the future, helping stakeholders understand a company's strategic objectives and its progress towards meeting them.

## **2. CEO-Chairman combination**

The proposed principles encourage companies where a single person combines the roles of CEO and Chairman to clarify the rationale behind this arrangement (paragraph 90). While Eumedion welcomes this proposed amendment, we believe the OECD should take a step further. Without clearly separated functions of the Chairman and the CEO it would become very difficult to establish

a good governance structure and proper checks and balances within the board. The inappropriate combination of both functions is by nature excluded in a two-tier structure with a separate supervisory board, but it is not in a one-tier system. We note that in some countries with a dominant one-tier corporate culture, their corporate governance codes already promote a separation of the two functions (e.g. Sweden and the United Kingdom). The separation of the roles of CEO and Chairman should be reflected in the OECD Principles.

### **3. 'One share one vote' principle**

In the current Principles it is mentioned that, whilst the Principles take a neutral position, many institutional investors and shareholder associations support the concept of 'one share one vote'. In the consultation document (paragraph 28) it is proposed to remove this note, which Eumedion would not support. 'One share one vote' is based on the principle that the voting and dividend equity interest in a listed company should be proportional to the capital contribution of the shares. Some OECD countries have recently introduced or amended its mechanisms to grant multiple voting rights to long term shareholders (e.g. France and Italy), thereby setting aside the interests of minority shareholders. Therefore, we believe it is fundamentally important to maintain the reference to the 'one share one vote' concept in the Principles.

### **4. 'Comply or explain' principle**

Eumedion concurs with the attention that is paid to the 'comply or explain' principle (paragraph 1). Governance is best established and enhanced by a combination of well balanced legislation (company and securities law) and codes of conduct. On some fundamental topics mandatory measures are most appropriate including the division of responsibilities between shareholders and the board, division of functions between executives and non-executives, AGM procedures, public bids, the protection of minority shareholders' interests and collective redress. Other governance policy measures could for a significant part be implemented through codes of conduct based on the *comply or explain* mechanism and on an effective monitoring mechanism. This form of regulation is not only more flexible and easily adaptable to changing circumstances, but could also be more effective via its capability to set corporate governance standards at a higher level of ambition compared to – mandatory – legislation.

### **5. Different approach to smaller companies?**

Some of the proposed amendments seem to allow the adoption of differentiated corporate governance regimes for smaller and medium-sized listed companies (paragraph 3). Eumedion would disagree with that. As mentioned, we believe that governance is for a significant part well established through codes of best practice on a comply or explain basis. As such, there should be standards companies should comply to or move towards over time. In particular smaller companies

should adopt these standards to the extent they are appropriate to their stage of development, and shareholders should encourage smaller companies in that direction. Governance frameworks in OECD countries should reflect this approach: high standards but flexible application. Consequently, proportionality would be ensured for smaller companies without introducing lower governance standards.

## **6. Stock markets**

Eumedion supports the proposed approach that the role of stock exchanges and trading venues in terms of standard setting, supervision and enforcement of corporate governance needs to be assessed (paragraph 9). The consultation document rightly addresses that the quality of regulations that govern the functioning of stock markets is a highly important element in the governance framework, since the stock market is the place where the economic value of the governance is manifested (paragraph 8).

In reality, however, many stock markets have failed to take on that important role over the last fifteen years. Facilitated by regulatory frameworks (e.g. MiFID in Europe), exchanges have developed into highly commercial and profit maximising organisations, for instance fuelled the proliferation of high frequency trading. These forms of 'quick gains trading' has resulted in weakening of the buy-and-hold culture, stronger herd mentality, momentum trading, and a poor IPO climate for smaller and medium-sized companies. None of these are in the interest of engaged shareholders with a long term investment horizon who are serious about contributing to listed companies' governance. Consequently, we believe it is important to find ways so that stock exchanges can enlarge their abilities to serve their public function again.

## **7. Executive remuneration**

Eumedion supports that the important issues of transparency and a shareholder vote on executive remuneration are mentioned in the proposed amendments (paragraphs 15 and 23). When shareholders are allowed to vote on executive remuneration policies they are being offered the opportunity to influence the board's remuneration upfront. Engaged shareholders should also be able to hold board members to account on the company's performance in relation to executive pay and have a vote on the remuneration report. To that end, the principles could more explicitly address the importance of a vote on the remuneration report to facilitate the accountability of board members and executives.

## **8. Related party transactions**

Eumedion welcomes the draft guidance on transactions with related parties (paragraphs 34 and 35). When a listed company concludes a transaction with a related party and that transaction has

not been executed on market terms, the interests of shareholders can be prejudiced substantially. This risk exists specifically when the listed company has a shareholder with a controlling interest. In order to be able to assess whether a transaction is being effected at arm's length, shareholders need adequate information at the time of the transaction and should also have a right of approval when a significant related party transaction is involved (>5% of the assets).

## **9. Fundamental corporate changes**

Eumedion concurs with the proposed amendment to principle B (page 8 of the consultation document) that shareholders should be sufficiently informed and have the right to approve decisions concerning (a.o.) fundamental corporate changes. We would suggest adding two more elements:

1. Apart from sufficiently informed, shareholders should also be informed in a timely manner about fundamental corporate changes;
2. Not only a transfer of (substantially) all assets should qualify as a fundamental corporate change, but each asset-transfer resulting in a change of corporate identity and/or representing a value above 25% of the company's assets.

## **10. Electronic voting**

Eumedion welcomes that the consultation document extends and strengthens the guidance on proxy voting and electronic voting (paragraph 20). The exercise of voting rights by electronic means has been widely adopted and has enabled investors with international equity portfolios to increasingly vote their shares cross-border. However, several obstacles remain, leading to a vote execution chain, which can be costly, time-consuming and inefficient. The ICGN addressed the most important obstacles and made some recommendations for improvement in its recent viewpoint paper.<sup>1</sup> Eumedion believes that the OECD guidance would be further strengthened when the key elements of these recommendations were included. 'Creating a reliable vote confirmation system' is for instance an element that should be part of the annotations.

## **11. Collective engagement**

We believe that the Principles could address more explicitly the benefits of collective dialogues and other forms of collective engagement (paragraphs 26, 27 and 44). Engaged investors should be willing to collaborate with other active investors both under event-driven and normal circumstances. For having any meaningful impact on a company's governance it could be in the interest of the clients or beneficiaries of institutional investors to coordinate the engagement activities, in particular when ownership is dispersed. They could then share expertise, information and costs. Mechanisms to facilitate collective engagement could be useful in this respect and should be promoted in the

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<sup>1</sup> [https://www.icgn.org/images/ICGN\\_Viewpoint\\_Shareholder\\_Rights\\_Vote\\_execution\\_website.pdf](https://www.icgn.org/images/ICGN_Viewpoint_Shareholder_Rights_Vote_execution_website.pdf).

Principles. In relation to this Eumedion supports that the proposed guidance promotes regulators to issue guidance on forms of coordination and agreements that *do not* constitute acting in concert in the context of takeover rules.

## **12. Proxy advisors**

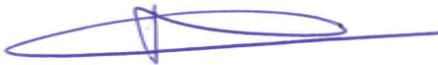
Eumedion supports the proposed guidance on proxy advisors and other service providers in the corporate governance framework (paragraphs 53 and 54). We welcome the guidance to enhance transparency and integrity around proxy advisors' policies and processes, including on methodology and how conflicts of interest are managed. The provisions may help to strengthen the industries' credibility. In the Principles it could also be stated that proxy advisors should adhere to codes of conduct that have been developed. The requirements on proxy advisors should obviously not withdraw shareholder-clients from fulfilling the duty to use the proxy advisory services responsibly. It is ultimately their own responsibility to use their voting rights in well-considered and thoughtful way, no matter whether proxy advisors services are used or not.

## **13. Cross listings**

Eumedion is pleased that proposed Principles address the issue of companies incorporated in one country that choose to list its shares on the public stock exchange of another country. This phenomenon of 'cross listing' results in a situation in which the shares of a company are traded in different jurisdictions than where the company is incorporated. This can create legal uncertainty and decreased confidence among investors. Therefore, we very much support that the Principles endeavour that companies and stock exchanges should clearly disclose which jurisdictions' rules and procedures apply (paragraphs 57 and 58).

Again we welcome the consultation document and hope that our comments and suggestions are of any assistance.

Yours sincerely,



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