



European Securities and Markets Authority (ESMA)
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Submitted electronically

Ref: B15.14
Subject: Eumedion's response to the call for evidence of ESMA on the Impact of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis (ESMA/2015/920)

The Hague, 27 July 2015

Dear Sir/Madam,

In its Final Report of February 2013 the European Securities Markets Authority (ESMA) recommended that the proxy advisory industry should develop its own code of conduct that focuses on (1) identifying, disclosing and managing conflicts of interest, (2) fostering transparency to ensure the accuracy and reliability of the advice, (3) disclosing general voting policies and methodologies, (4) considering local market conditions and (5) providing information on engagement with issuers¹. Following that recommendation the Best Practice Principles Group published the Best Practice Principles for Providers of Shareholder Voting Research and Analysis² (hereinafter: BBP) in March 2014. In line with its commitment in its Final Report, ESMA is currently reviewing the development of the BBP. Eumedion welcomes the opportunity to comment on the call for evidence of ESMA on the impact of the BBP, which was published on 8 June 2015.

By way of background, Eumedion is the dedicated representative of the interests of 70 institutional investors, all with a long term investment horizon. Eumedion aims to promote good corporate governance and sustainability in the companies our participants invest in. Together our participants

¹ ESMA Feedback statement of 19 February 2013 on the consultation regarding the role of the proxy advisory industry (ESMA/2013/84).

² <http://bppgrp.info/wp-content/uploads/2014/03/BPP-ShareholderVoting-Research-2014.pdf>.

invest over € 1 trillion of capital in equity and corporate non-equity instruments. They invest for their clients and their beneficiaries in listed companies worldwide.

1. Key remarks

In its Discussion Paper on proxy advisors³ ESMA defined proxy advisors as “firms that analyse the resolutions presented at the general meetings of listed companies in order to submit voting advice or recommendations on these resolutions to their clients”. The scope of the BBP has nevertheless been extended beyond the scope of the guidance of ESMA due to the too broad definition of “shareholder voting research and analysis”. As a result the BBP also apply to not-for-profit investor fora (e.g. providers which only issue alerts, bulletins and newsletters) which carry out activities which are totally different from those of proxy advisory firms and which have completely different positions in the listed companies’ governance framework. The aim of the BBP should not be to maximise the number of signatories, but to profoundly mitigate the specific risks to which proxy advisors’ clients are exposed in the context of proxy advice provided to them. In our view, the scope of the BBP should be narrowed down to proxy vote advisory services only.

In order to clarify the scope of the BBP we recommend introducing a single clear definition of proxy advisors. The proposal for a revised Shareholder Rights directive (SRD)⁴ contains – among other things – specific requirements for proxy advisors. One of those requirements is that proxy advisors that are subject to a code of conduct (for example the BBP) will have to report about how they apply this code (draft article 3i SRD). Against this background we advise to align the scope of the BBP with that of the SRD. This could be effectuated by incorporating the definition of proxy advisor from the SRD in the BBP (draft article 2 (i) SRD). Eumedion believes that the definition of proxy advisor of the SRD is correct in principle and more appropriate than the ambiguous term “provider of shareholder voting research and analysis” used in the BBP.

2. Specific remarks

Since Eumedion qualifies as a non-signatory to the BBP we confine our response to the questions raised in paragraph 3.2 and 4.2.

Paragraph 3.2

Q1: What is the nature of your involvement in the proxy advisory industry (proxy advisor, investor, issuer, proxy solicitor etc.)? To facilitate the comprehensibility of your response to this Call for Evidence, please describe your role in and your interaction with the industry.

Eumedion represents institutional investors' interests in the field of corporate governance and related sustainability performance. It is the objective of Eumedion to maintain and further develop good corporate governance and sustainability performance of Dutch listed companies. Eumedion currently has 70 Dutch and non-Dutch institutional investors as members. Together they represent approximately 25% - 30% of all Dutch listed shares.

³ ESMA Discussion Paper of 22 March 2012 on an overview of the proxy advisory Industry and considerations on possible policy options (ESMA/2012/212).

⁴ Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement. In this response we have used the Presidency Council compromise text of the SRD (dated 20 March 2015) and the European Parliament's text of the SRD in first reading (dated 8 July 2015).

As part of its services, Eumedion sends so-called alerts to all its members based on the recommendations of the Eumedion Investment Committee. The committee, in which a large number of Eumedion members are represented, recommends sending an alert when a proposal on the AGM agenda of a Dutch listed company is (flagrantly) contrary to the provisions of i) Dutch legislation and regulations, ii) the Dutch corporate governance code and/or iii) the Eumedion Corporate Governance Manual. The alert does not advise members on how they should vote, but it provides extra information that they can use as input in their decision-making processes about their voting decisions. We would like to emphasise that the alert is not a substitute for the institutional investor's own responsibility to vote in an informed and responsible manner. The alert is also sent to the company concerned and to the main proxy advisors. The proxy advisors can take the information of the alert into account when drafting their own voting recommendations. The procedure of sending an alert is included in the Execution Regulations of the Eumedion Investment Committee, based on Section 4.7 of the Regulations of the Eumedion Investment Committee.

Q2: Have you previously had concerns with the functioning of any areas of the proxy advisory industry? If yes, please specify.

Yes, we refer to our response to ESMA's 2012 Discussion Paper 'An Overview of the Proxy Advisory Industry; Consideration on Possible Policy Options'⁵ and to our response to the draft Best Practice Principles For Governance Research Providers (Draft Code)⁶. Eumedion expressed its support for policy initiatives that promote transparency of proxy voting practices and for establishing effective measures to limit potential conflicts of interest. We believe that these issues are appropriately addressed by the new SRD and the BBP.

Q3: Did you become aware of the BPP at the time of their publication, i.e. March 2014? If yes, how did you become aware of the BPP? If no, when did you become aware of the BPP and how?

We did become aware of the BPP at the time of their publication. As mentioned above, Eumedion already responded to the Draft Code.

Q4: What is your view on the width and clarity of the scope of entities covered by the BPP (i.e. do you consider that the BPP cover the European proxy advisory market appropriately)? Please explain.

As mentioned in our key remarks and in our answer to Q1, Eumedion's activities are totally different from those of proxy advisory firms. Eumedion nevertheless falls under the scope of the BBP because we issue alerts and newsletters. We are of the opinion that the BBP should not be applied to us because the decision to send out an alert is made by our Investment Committee in which a large number of Eumedion members are represented. As mentioned in our key remarks, we believe the scope of the BBP is too broad and should be narrowed down to proxy vote advisory services only. The BBP should copy the definition of proxy advisor that is used in the new SRD.

⁵ http://www.eumedion.nl/en/public/knowledgenetwork/consultations/2012-06_esma-consultatie_stemadviesbureaus.pdf.

⁶ http://www.eumedion.nl/en/public/knowledgenetwork/consultations/2013-12_response_draft_code_proxy_advisors.pdf.

Q5: In your view, are the BBP drafted in a way so that they address the following areas identified in ESMA's 2013 Final Report? Please provide examples to support your response.

a. Identifying, disclosing and managing conflicts of interest

Yes, we refer to Principle Two of the BBP, which is supported by draft Article 3i (2) and (3) of the new SRD.

b. Fostering transparency to ensure the accuracy and reliability of the advice

Yes, we refer to Principle One of the BBP, which is supported by draft Article 3i (2) of the new SRD.

c. Disclosing general voting policies and methodologies

Yes, we refer to Principle One of the BBP, which is supported by draft Article 3i (2) of the new SRD.

d. Considering local market conditions

Yes, we refer to Principle One of the BBP, which is supported by Article 3i (2) of the new SRD.

e. Providing information on engagement with issuers

Yes: we refer to Principle One and Three of the BBP, which is supported by draft Article 3i (2) of the new SRD. However, we still believe that the BBP should be enhanced by a provision that requires proxy advisors to inform their clients about any changes in their initial voting recommendations as a result of the dialogue with the issuer. Such a provision would reflect ESMA's suggestion in its Final Report of 2013 that proxy advisors should also inform its clients of the outcome of the dialogue with the issuer. We believe the wording "**may** also include informing clients of the outcome of that dialogue" in the Guidance on Principle Three of the BBP is too weak. We also believe that the dialogue between proxy advisors and issuers should be confined to the prevention of material misstatements.

Q6: What is your overall assessment of the quality of the signatory statements? Please provide examples referring to the areas identified under Q5.

We did not perform an in-depth investigation of the signatory statements, but in general – especially those of the proxy advisors with the highest market shares – they give a good picture of:

- the methodologies and models the different proxy advisors apply;
- the main information sources they use;
- the procedures put in place to ensure quality of the research;
- whether and, if so, how they take national market conditions into account;
- how they react on misstatements in the report;
- whether they have dialogues with issuers and, if so, the extent and nature thereof;
- the policy regarding the prevention, management and disclosure of potential conflicts of interest;
- and the procedures regarding the publication of the report.

Q7: In your view, are there proxy advisors which possibly fall within the scope of the BPP and have not signed the BPP?

No. We also refer to our key remarks above.

Q8: How would you describe the impact which the BPP have had on the proxy advisory industry in practice? Please provide examples to support your response.

Q9: Have you observed any changes in signatories' practices in the areas mentioned under Q5 since the publication of the BPP in March 2014 and specifically during the 2015 proxy season? Please provide examples to support your view and specify whether these changes addressed the concerns you mentioned in response to Q2, if any.

We do not have sufficient and profound information to answer this question, but in our perception the BPP has improved the standards within the proxy advisory industry. However, we believe that the effectiveness of and confidence in the BBP could further benefit from establishing an independent body that monitors the BBP on a regular basis and publicly reports on the monitoring outcomes. This is similar to the UK Financial Reporting Council and the Dutch Corporate Governance Code Monitoring Committee, which monitor the application of the Corporate Governance Codes in their respective countries. Such a BPP Monitoring Committee could also report on the impact of the BBP on the proxy advisory industry.

Moreover, some of our members still question the quality of the proxy advisors' voting recommendations on extraordinary transactions, such as mergers and acquisitions, significant divestments and asset sales. The quality of the voting recommendations on these voting items has not substantially improved in the 2015 proxy season. In general, the analysis is not very profound and the voting recommendation is often based on the initial market reaction on the announcement with regard to the extraordinary transaction.

Q10: To what extent do you consider the conduct of BPP non-signatories in relation to the areas identified under Q5 to be different from that of BPP signatories? Please provide examples to support your view.

We do not have sufficient information to answer this question. We also refer to our key remarks above.

Q11: Do you consider other measures than the BPP necessary to increase understanding of and confidence in the proxy advisory industry? If yes, please explain why and specify the measures which would in your opinion be suitable.

The new SRD obliges proxy advisors to publicly disclose reference to the code of conduct which they apply and report on the application of this code. Where the proxy advisor departs from any recommendation of the code of conduct it applies, it shall declare which parts it depart from, provide an explanation for doing so and indicate, where appropriate, indicate what alternative measures have been adopted (draft Article 3i (1) of the new SRD). The BPP only contain three high level principles and guidance on each of them. The BBP are silent on specific "recommendations". In order to be more in line with the new SRD and to increase understandability and transparency, we would suggest transforming parts of the guidance into "recommendations" which the proxy advisors have to apply, or explain if and why they do not.

Q12: Do you have any other general comments that ESMA should take into account for the purposes of its review?

As mentioned above, the new SRD also contains requirements for proxy advisors. It is confusing that the proxy advisory industry, on the instigation of ESMA, already developed the BBP and that the European legislator is already overlaying these principles with proposed legislation. This gives rise to the question how coherent the BBP and draft Article 3i of the new SRD (which for example both oblige proxy advisors to disclose the research methodology, the voting policy and the conflicts-of interest-policy) are.

Paragraph 4.2

Although we are of the opinion that the BPP should not be applicable to Eumedion – reference is made to our key remarks above – we decided to answer the questions 13 – 23 out of courtesy.

Q13: Where are your company's headquarters?

The Hague, The Netherlands.

Q14: Does your proxy advisory business cover the global market or are you specialised in particular countries, regions and/or markets?

The Eumedion alert service only covers the Dutch market i.e. companies which have their statutory seat in the Netherlands and have their shares traded on a Dutch regulated market or on an MTF.

Q15: For each European country in which you conduct your proxy advisory business, what is the percentage of listed companies that you cover? Please fill in the table below.

In the Netherlands, we monitor the AGM voting items of all 100 Dutch listed companies i.e. coverage of 100%.

Q16: For each of the countries you have listed under Q15, can you provide the number of listed companies you had a dialogue with during or in relation to the 2015 proxy season?

Eumedion members and staff had a dialogue with 32 companies.

Q17: Are you providing proxy advisory services only or do you also offer other services? If you offer other services, please briefly describe the role proxy advisory services play relative to the share of total business.

Related to the proxy season, we are only providing the alert service and organising collective dialogues with Dutch listed companies. We do not issue voting recommendations.

Q18: For each European country in which you conduct business, what was your turnover in 2014?

We refer to our answer to question 14.

Q19: What is your total number of clients investing in European listed companies and their approximate total assets invested in such companies?

Eumedion currently has 70 Dutch and non-Dutch institutional investors as members. Together they represent approximately 25% - 30% of all Dutch listed shares.

Q20: Please estimate the percentage of clients using your proxy advisory services which request a custom policy. Have you noticed any trend in the services requested in recent years? Please differentiate across classes of investors (e.g. investment funds, pension funds, insurance companies etc.).

Not applicable.

Q21: Please indicate your number of employees during the 2015 proxy season and the percentage of seasonal employees.

The number of employees during the 2015 proxy season was 4 (2.8 fte). Be aware that the alert service is just one of the activities of Eumedion as platform of institutional investors.

Q22: What made you decide not to become a signatory to the BPP?

We believe that the scope of the BBP is too broad and should not be applied to us. That is why we decided not to become a signatory to the BBP. We also refer to our key remarks and to our answer on Q1.

Q23: Though you are not a signatory to the BPP, has your practice in the following areas changed since the publication of the BPP? If yes, why and how did it change? Please provide examples to support your response.

a. Identifying, disclosing and managing conflicts of interest;

We did not change our internal procedures with respect to these subjects.

b. Fostering transparency to ensure the accuracy and reliability of the advice;

We did not change our internal procedures with respect to these subjects.

c. Disclosing general voting policies and methodologies;

We did not amend the Eumedion Corporate Governance Manual. Last update dates from 2013. We are considering a next update in 2016.

d. Considering local market conditions;

We did not change our internal procedures with respect to these subjects.

e. Providing information on engagement with issuers.

The text of our alerts used to be sent to the members of Eumedion and to proxy advisors. With respect to fostering transparency, since the 2015 proxy season the text of the alert is also sent to the company it concerns.

If you would like to discuss our views in further detail, please do not hesitate to contact us. Our contact person is Diana van Kleef (diana.vankleef@eumedion.nl, tel. +31 70 2040 302).

Yours sincerely,

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