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Subject: Eumedion's response to the Draft ICGN Global Stewardship Code

The Hague, 14 January 2016

Dear Mr. Dallas,

Eumedion welcomes the opportunity to submit comments on the Draft ICGN Global Stewardship Code for institutional investors (hereinafter: ICGN Code). By way of background, Eumedion is the Dutch based corporate governance and sustainability forum for institutional investors. Our 70 Dutch and non-Dutch participants represent more than € 4 trillion assets under management. Participants include a wide range of institutional investors; pension funds, mutual funds, asset managers and insurance companies. It is the objective of Eumedion to maintain and further develop good corporate governance and sustainability performance of Dutch listed companies.

The ICGN Code contains seven principles that form a basic skeleton of key stewardship responsibilities. Those principles are accompanied by guidance that provides for further explanation of the individual principles. Overall, Eumedion supports such ICGN Code and expresses its hope that it will contribute to the development and further improvement of stewardship activities globally. Notwithstanding our general support, we do have a few suggestions for further improvement of the document. Before commenting on the specific principles and related guidance of the ICGN Code, we would like to take the opportunity to make some key remarks.

## 1. Key remarks

Eumedion strongly supports the concept of stewardship. We believe that responsible use of the shareholder rights strengthens the checks and balances within listed companies, which is key to creating long term value for the company and all its stakeholders, including shareholders. Eumedion is of the opinion that engaged share-ownership by institutional investors should be based on a pre-determined and well-considered stewardship policy. Therefore, Eumedion has published its own best practices on engaged share-ownership in June 2011.<sup>1</sup> The best practices guide Eumedion participants to a high standard of responsible share-ownership. In our view, that does not only mean that institutional investors cast 'informed' votes at shareholder meetings, but it also includes – amongst others – the close monitoring of investee companies' activities and having constructive dialogues with boards.

Like Eumedion, other national bodies/countries have developed national stewardship codes. As a consequence, investors with an international portfolio could be faced with conflicting and/or overlapping code provisions. Therefore, we support the development of a coherent set of minimum stewardship responsibilities on an international level. We agree that the ICGN Code can not only serve as a point of reference for the development of stewardship codes but that it can also complement existing national stewardship codes. Disclosures made under the ICGN Code can demonstrate the extent to which investors have implemented best practices of national stewardship codes that have similar objectives. This may make it possible for investors to efficiently communicate fundamental stewardship standards in a global context.

However, we believe that the ICGN Code should not serve as an international 'passport'. On the one hand the consultation document (p. 5) states that the ICGN Code is intended to complement and not supersede national stewardship codes. On the other hand it states (p. 4) that it is not practical for investors to be signatories of stewardship codes in every single country they invest in and that the ICGN Code should serve as an international 'passport'. We are concerned that the application of the ICGN Code – in case it serves as an international 'passport' – might be used to camouflage unwillingness to adhere to domestic realities and governance standards which are incorporated in national stewardship codes. It might even cause pressure on national bodies to delete those domestic realities and governance standards from national stewardship codes. That would be counterproductive to the intended development and further improvement of stewardship activities globally.

## 2. Specific remarks

Below we would like to draw your attention to some comments on the specific questions raised in the consultation document.

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<sup>1</sup> [http://www.eumedion.nl/en/public/knowledge/network/best-practices/best\\_practices-engaged-share-ownership.pdf](http://www.eumedion.nl/en/public/knowledge/network/best-practices/best_practices-engaged-share-ownership.pdf).

*Q1. Do you agree or disagree with the stated purposes of ICGN Global Stewardship Code? Are there other applications you might envisage?*

*Q2. Do you believe the draft ICGN Global Stewardship Code is appropriately positioned to complement stewardship codes that are in place in other jurisdictions or to serve as a guide for the development of stewardship codes?*

We partly agree. As mentioned in our key remarks, we believe that the stated purposes of the ICGN Code are too broad and should be narrowed down to purpose 2 (serve as a point of reference for investors on what stewardship entails and how to implement it in practical terms) and purpose 3 (serve as a point of reference to guide jurisdictions seeking to establish their own stewardship codes).

The preamble states that the ICGN Code builds on ICGN's existing policy framework, and that it adds to ICGN's guidance on stewardship (p. 4). In this respect we wonder why purpose 2 and 3 cannot be reached through the existing ICGN's existing policy framework. We suggest to clarify this before the final version of the ICGN Code is adopted. Furthermore we advise to add some language regarding the cohesion between the ICGN Code and ICGN's existing policy framework (e.g. what does the ICGN Code add to especially the ICGN Guidance on Institutional Investors Responsibilities?).

*Q3. Do you agree with the seven principles of the Code? Is there a principle that should be excluded – or another principle that should be included?*

Yes. Eumedion generally supports the seven principles of the ICGN Code, although we believe that principle 7 is currently too weak (see also our comments on principles 4 and 7 below). Institutional investors represent trillions of euros assets under management. Institutional investors can influence the board composition and the company's strategy, they are amongst the very important players on the capital markets and can thus have a big impact on capital markets. Representing such an amount of capital, their responsibilities go beyond the responsibilities towards their beneficiaries or clients. The behaviour of institutional investors can have consequences for society at large. Against that background we believe that institutional investors should *publicly* report on the implementation of their stewardship policy and voting policy (at least on an annual basis) and how they have voted (at least on a quarterly basis). We therefore advise to include this position in the principles instead of the guidance.

*Q4. Are there aspects of the guidance points that you do not agree with or are there further guidance points to consider?*

## **General**

The proposal for a revised EU Shareholder Rights directive (SRD) contains – among other things – specific requirements regarding the engagement policy of institutional investors and asset managers (draft article 3f SRD). There is some overlap between the subject of those requirements and the ICGN Code. We believe that conflicting requirements should be avoided. We therefore suggest to clarify the cohesion between the ICGN Code and the upcoming European legislation in the final version of the ICGN Code.

### **Guidance accompanying principle 1**

It is not clearly stated what, specifically, a conflict of interest means in the context of the proposed guidance. We advise to further explain to what sort of conflicts of interests the guidance should apply by way of giving examples. For example conflicts of interests can occur in the situation in which the investor in question also offers financial products (such as insurance contracts) to the enterprise. Or when a member of the management board or the supervisory board of the institutional investor is also a member of the management board or supervisory board of the company in question.<sup>2</sup>

### **Guidance accompanying principle 4**

The guidance states that investors in developing or emerging markets where active voting is yet to be established may prefer not to publish their voting records in their initial stewardship activities. Furthermore the guidance mentions that public disclosure of voting is regarded as good practice. As mentioned under Q3, we believe that the principles – instead of the guidance – should state that institutional investors should publicly report on the implementation of their stewardship policy and voting policy (on an annual basis) and how they have voted (on a quarterly basis). We believe that no exemptions should be made for institutional investors in developing or emerging markets and therefore suggest to delete that exemption from the guidance.

The guidance states that asset managers and asset owners should, where possible, seek to confirm whether or not votes have been cast in accordance with the instructions of their client/beneficiary. We advise to clarify the cohesion between this guidance and draft article 3c of the new SRD, which obliges companies to give a vote confirmation to a shareholder or a third party nominated by that shareholder.

The information that institutional investors need in order to make responsible and informed vote decisions may be collected from a wide range of sources. Proxy advisors' analyses and/or recommendations are among those sources and serve as input to the investors' analysis. Eumedion supports the proposed disclosure requirements regarding the use of proxy research and voting services. In this respect we would like to note that the use of a proxy voting advisor or a voting service could not be a substitute for the institutional investor's own responsibility to vote in an informed and responsible manner. We suggest to reflect this position in the guidance.

Eumedion welcomes the proposed guidance that enhances transparency regarding stock lending and -voting, including the types of circumstances where shares would be recalled to vote. We advise to reflect in the guidance (and not only on p. 16) that investors should not borrow shares solely for the purpose of exercising voting rights on these shares. Furthermore, the guidance could address more explicitly under what circumstances investors should recall their shares. In our view investors should consider recalling their lent shares before the voting registration date for the relevant general meeting

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<sup>2</sup> More examples can be found in the guidance accompanying best practice 5 of Eumedion's best practices on engaged share-ownership ([http://www.eumedion.nl/en/public/knowledge-network/best-practices/best\\_practices-engaged-share-ownership.pdf](http://www.eumedion.nl/en/public/knowledge-network/best-practices/best_practices-engaged-share-ownership.pdf)).

of the relevant investee company, if the agenda for this general meeting contains one or more controversial subjects.

### **Guidance accompanying principle 5**

Eumedion supports the approach that investors – as part of the stewardship policy – should address how engagement might be escalated in cases company engagement results in unresolved concerns. We advise to give examples of how engagement might be escalated. This may include the writing of a letter to the management and/or supervisory board in which the matters of concern are explained, issuing a public statement or taking legal action.<sup>3</sup>

### **Guidance accompanying principle 7**

While Eumedion agrees that public disclosure of voting activity is called for as good practice, we believe that the ICGN should take a further step. Therefore we suggest to remove from this guidance the note that this is good practice. We are of the opinion that investors should publicly disclose (at least once in a quarter) how they voted the shares in investee companies<sup>4</sup> and as mentioned under Q3 we believe that this position should be included in the principles instead of the guidance. In our view investors should preferably at individual company level publish for each item on the agenda whether they voted in favour of or against, or abstained. We also wonder what the cohesion is between this disclosure obligation and the proposed disclosure of voting records (incorporated in the guidance accompanying principle 4). We are of the opinion that institutional investors should report on a) the implementation of their voting policy and b) how they voted the shares in investee companies.

According to the guidance external assurance of stewardship code activities is encouraged as good practice. The meaning of this sentence is not clear to Eumedion. We therefore advise to further define what assurance means in the context of the proposed guidance.

*Q5. Are there aspects of the roles of asset owners, asset managers and companies that you do not agree with or are there further guidance points to consider?*

Eumedion acknowledges that some investors do not have the human resources to become directly involved in a dialogue and other engagement activities. This could for example be the case where the invested capital is (largely) managed by an external asset manager. Therefore, Eumedion agrees that the ICGN Code should also be applied by asset managers.

The consultation document (p.15) states that the monitoring of the asset manager's compliance to the ICGN Code should be undertaken by the asset owner and that the asset owner's compliance should be undertaken by the asset owner's trustees. We support this approach. The consultation document mentions a number of supportive actions that can be taken by asset owners such as 'encouraging stewardship code adoption by asset managers' and 'incorporating stewardship

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<sup>3</sup> More examples can be found in the guidance accompanying best practice 3 of the Eumedion's best practices on engaged share-ownership ([http://www.eumedion.nl/en/public/knowledgenetwork/best-practices/best\\_practices-engaged-share-ownership.pdf](http://www.eumedion.nl/en/public/knowledgenetwork/best-practices/best_practices-engaged-share-ownership.pdf)).

<sup>4</sup> See best practice 8 of the Eumedion's best practices on engaged share-ownership and best practice IV.4.3 of the Dutch corporate governance code.

practices into investment management agreements'. We are of the opinion that investors who have issued so-called passive mandates to their asset managers are expected to have taken the application of stewardship codes by those asset manager into consideration when choosing the asset managers in question. We suggest to reflect this position in the final document.

We hope that our comments and suggestions are of any assistance. 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](mailto:diana.vankleef@eumedion.nl), tel. 070 2040 302).

Yours sincerely,

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