ICGN
International Corporate Governance Network
Inspiring good governance & stewardship

Ursula von der Leyen
President of the European Commission
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels

29 October 2024

Dear President Von der Leyen,

Subject: ICGN Recommendations to the European Institutions on Shareholder Rights

The International Corporate Governance Network (ICGN) is pleased to present its *Recommendations to the European Institutions on Shareholder Rights*. As the new College of Commissioners defines its priorities and work programme for the coming years, we would like to offer the perspective of institutional investors.

Led by investors responsible for assets under management of EUR 71 trillion, ICGN is a non-profit organisation that promotes high standards of corporate governance and investor stewardship. Our membership is based in more than 40 countries, and comprises asset owners, asset managers and advisers.

Stewardship is a fundamental aspect of an investor's fiduciary duty to protect and enhance long-term value for beneficiaries and clients, such as pensioners and retail investors. ICGN defines stewardship as the responsible allocation, management, and oversight of capital to protect and enhance long-term value for beneficiaries and clients. Good stewardship contributes to corporate resilience, capital market efficiency and integrity, and sustainable economic growth.

Investors' ability to act as responsible and effective stewards is reliant on them having rights and protections, such as the right to vote on major issues affecting the company, the right to participate in annual general meetings, the right to information, etc. We observe that some barriers to the exercise of shareholder rights remain in the European Union. These include legal and regulatory obstacles, as well as operational obstacles (such as local specificities creating complexity for foreign investors and reliance on manual processes).

We encourage the European Commission to address these issues through greater harmonisation of corporate governance and shareholder rights rules at EU level - particularly through the revision of the Shareholder Rights Directive II (and potentially a transformation into a Regulation). We also call for more coherence between various pieces of legislation. We believe that files related to financial and sustainability reporting, corporate governance, shareholder rights, and the functioning of markets should be allocated to the same Directorate General within the European Commission, to ensure more alignment in the regulatory framework in which companies and investors operate.

Enhanced harmonisation and coherence would be an important step towards the achievement of the Capital Markets Union and EU Sustainable Finance Agenda, and would help strengthen the attractiveness and competitiveness of Europe's capital markets.

ICGN Recommendations

1. **Remove obstacles to shareholder voting** - The revision of the Shareholder Rights Directive (SRD) II is an opportunity to remove remaining barriers to a modern and efficient voting process, by banning burdensome power of attorney requirements, physical attendance requirements, obstacles to split-voting, and manual processes. The European Commission should also ensure the ban on share blocking is implemented by all market participants in the European Economic Area (EEA).

2. **Harmonise Annual General Meeting (AGM) practices** - Investors would benefit from further harmonisation of AGM practices in the Single Market.
   - Many investors are concerned by decisions in some Member States to make the COVID-19 emergency measures of fully virtual AGMs or closed-doors AGMs permanent. This significantly limits the ability of shareholders, especially minority shareholders, to interact with boards and management, ask unmoderated questions, and make statements from the floor. ICGN encourages companies to provide hybrid AGMs, to give investors the option of virtual or live participation.[1.] In virtual AGMs, it is crucial to have strong safeguards to protect shareholder rights. Shareholders must have the ability to ask questions, including follow-up questions from the floor to management in real time, without prior gatekeeping by management.[2]
   - Meeting materials (including, in the case of director election, any relevant information about the candidates) should be distributed sufficiently in advance by the company to allow for informed shareholder decisions – this is often not the case.
   - Vote deadlines set by intermediaries and custodians can be sometimes significantly ahead of the AGM, preventing investors from casting their votes in the most informed manner possible. The cut-off date should be set closer to the meeting date, to enable more informed decisions.
   - A common approach to the timing of the ‘record date’ should be established.
   - Investors need systematic vote counting, the publication of the vote tally, and transparency on voting outcome per agenda item. We also recommend class-by-class vote disclosure (see below).

3. **Harmonise standards on shareholder proposals** - The European Commission should ensure that shareholders can file proposals (including the submission of resolutions, on any material topic, for an advisory vote at the AGM). It could be beneficial to introduce a set of harmonised standards for the Single Market (thresholds, nature, conditions, etc.). For instance, it would be helpful to have objective criteria, set at EU level, that companies must consider when deciding on whether to omit a proposal or include it in the ballot.

4. **Introduce safeguards for multiple-class shares** - ICGN supports the “one share, one vote” standard. Unequal voting rights (including loyalty shares) are problematic because they cause misalignment between control and economic interests, and dilute the voice and influence of minority shareholders. They may serve to entrench management and allow founders and controlling shareholders to monopolise the decision-making, potentially putting minority shareholder interests at risk.

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[1] *ICGN Statement on Post-COVID Annual General Meetings Rights,* April 2023
[2] See the Canadian Coalition for Good Governance (CCGG), *Virtual Shareholder Meetings Policy*, January 2023

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- We ask that the Directive on multiple-vote share structures be modified to include a set of **minimum mandatory safeguards** in all EU Member States, most importantly, a mandatory time-based sunset clause of 7 years or less. We would also encourage a limit on the ability to transfer such shares, a limit to the maximum voting ratio that can be applied, and ensuring that unequal voting rights cannot apply to certain material decisions).
- At a minimum, 'SRD III' (or 'SRR') should introduce a mandatory shareholder vote on the continuation of multiple voting rights (a review clause). This would allow independent shareholders (those without enhanced voting rights) to vote on converting superior voting rights shares into ordinary shares or retaining the dual-class shares structure for a certain amount of time.
- There should be mandatory **class-by-class vote disclosure**, whereby companies with multiple classes of shares are required to disclose vote tallies for each class. This gives visibility to both investors and to the boards and management of companies as to the nature of the preferences of both insider and independent shareholders.

5. **Ensure investors can rely on high quality corporate sustainability disclosures** - Investors need comparable, reliable, and verifiable corporate sustainability disclosures to make informed investment and stewardship decisions and for their own reporting to beneficiaries. They also need high-quality disclosures from investee companies to be able to comply with EU legislation.
   - We therefore encourage the transposition of the Corporate Sustainability Reporting Directive (CSRD) by all Member States, without delay, and a consistent implementation and enforcement under the coordination of ESMA.
   - ICGN supports the International Sustainability Standards Board's (ISSB) mission to develop a global baseline for sustainability disclosures and note their increased uptake by jurisdictions globally. We welcome the ongoing efforts to strengthen the interoperability between the ISSB Standards and European Sustainability Reporting Standards (ESRS), to help reduce the reporting burden for companies and ensure comparability of information for investors.

6. **Remove perceived obstacles to collaborative engagement** - Investors need reassurance that they can engage jointly with companies on important governance matters, including material issues related to long-term corporate sustainability, in all EU Member States, without being perceived as acting in concert with other investors. The European Commission could ask ESMA to review its 2014 Statement[3], and extend it to include guidance regarding acting in concert under the Transparency Directive. It is also important to ensure that the guidance has sufficient legal weight to be consistently implemented in all EU Member States.

Thank you again for the opportunity to share our perspective. If you have any questions, please contact our Global Policy Director, Severine Neervoort severine.neervoort@icgn.org).

Yours faithfully,

Jen Sisson

Jen Sisson, Chief Executive Officer, ICGN

[3] ESMA, *Public_statement_concerning_shareholder_cooperation_and_acting_in_concert*, June 2014

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ICGN Global Stewardship Principles provide an aspirational framework for investors to implement their fiduciary obligations on behalf of clients and beneficiaries. They are also a useful reference of international good practice for national stewardship codes. We encourage the European institutions to consider the ICGN Principles when promoting good stewardship practices across the European Union.

ICGN also established the **Global Stewardship Codes Network (GSCN)** in 2016 to provide a forum for 19 organisations across the world, responsible for developing and implementing stewardship codes, to exchange information and ideas.

The ICGN Global Stewardship Principles accompany the ICGN Global Governance Principles, first published in 2001, providing guidance to companies around high standards of corporate governance. The EU Corporate Sustainability Reporting Directive refers to the ICGN Principles as "an authoritative global framework of governance information of most relevance to users".

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