



Secretariat to the Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel

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Subject: FSB Peer Review on Corporate Governance

The Hague, 9 September 2016

Dear Sir/Madam,

Eumedion welcomes the opportunity to comment on the peer review on the implementation of the G20/Organisation for Economic Co-Operation and Development (OECD) Principles of Corporate Governance (Principles). 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 Principles have proved to be a fundamentally important standard for national policymakers and regulators as well as for companies and investors in their efforts to improve corporate governance frameworks and practices. They have been adopted as one of the Financial Stability Board's Key Standards for Sound Financial Systems and form the basis for the World Bank Reports on the Observance of Standards and Codes in the area of corporate governance.

Eumedion welcomes the efforts of the FSB to build more resilient financial institutions to address the weaknesses that contributed to the financial crisis. We share the view of the FSB that effective corporate governance is critical to the proper functioning of the financial sector and financial stability more generally. The peer review will hopefully contribute to the development and further improvement of corporate governance practices of financial institutions. Eumedion aims to contribute to this development and improvement by making some comments regarding the areas covered by the peer review.

1. The protection of minority shareholders should be strengthened

Last June Eumedion published a position paper about the protection of the interests of minority shareholders at Dutch listed companies with a controlling shareholder.¹ The main conclusion of this position paper is that those interests should be better protected. Against this background we concur that minority shareholders should be protected from abusive actions by controlling shareholders. However, we feel that the guidance on Principle II.G fails to properly achieve this. Therefore we believe that countries should take measures regarding the topics mentioned below.

- Disclosure of a relationship agreement: we believe that the company and the controlling shareholder should draw up a relationship agreement which at least confirms that all transactions between them will be agreed on customary market terms, regulates any representation on the board and contains assurances that all appearance of insider trading will be combatted.
- The majority of board members should be independent: We concur with the guidance that independent board members can contribute significantly to the decision-making of the board (guidance on VI.E). The current guidance states that national principles, and in some cases laws, recommend that a significant part, in some instances a majority, of the board should be independent (guidance on V.A.5). We believe that countries should take a further step by stating that the majority of the members of the board should be independent. The Dutch Corporate Governance Code already prescribes that in case of a one-tier board the majority of the board members must be independent non-executive directors (best practice provision III.8.4).
- Independent shareholder approval of material related party transactions concluded with the controlling shareholder: Eumedion supports that all material related party transactions and the terms of those transactions should be fully disclosed (guidance on V.A.6). Eumedion does not believe that disclosure requirements are sufficient for major transactions between the company and the controlling shareholder. Therefore we take the view that major transactions between the company and the controlling shareholder and the granting of additional rights to the controlling shareholder should be subject to independent shareholder approval. We have asked the Dutch regulator to give this proposal of Eumedion a statutory basis.

2. Intermediaries should facilitate the exercise of shareholder rights

The right to vote in the general meeting of shareholders is a fundamental shareholder right. Shares are usually held through a chain of securities intermediaries across borders. The poor performance of the chain of intermediaries makes it very difficult and often very costly for shareholders to exercise their voting rights (especially cross-border). The guidance mentions some obstacles – use of voting rights and the process of communicating with investors - (guidance on II.C.6) but fails to properly address all the obstacles. We take the view that intermediaries should be obliged to facilitate the exercise of the rights by the shareholders and that they should offer the possibility to identify the shareholders of a company. With respect to the identification of shareholders we feel that the privacy of small shareholders should be protected and that shareholders should also be entitled to use the

¹ <http://www.eumedion.nl/en/public/knowledgenetwork/position-papers/2016-06-position-paper-minority-shareholders-final-version.pdf>.

details of the identified other shareholders in order to facilitate the exchange of information between shareholders in connection with subjects to be discussed at the general meeting of shareholders. The Dutch Security Depository Act contains an obligation for Dutch intermediaries to facilitate the exercise of rights by shareholders and regulation regarding the identification of the most important shareholders (shareholders who hold at least 0.5% of the issued capital). According to the Dutch law the identification information may be used in order to facilitate the exchange of information between the company and its shareholders and between shareholders. Nevertheless, given the cross-border nature of the obstacles that shareholders face, the effectiveness of the Dutch legislation is limited. In order to be effective it is necessary to regulate all the intermediaries in the chain. We welcome the legislation that is currently developed on a European level in this respect. In this way the European intermediaries are regulated and obliged to: a) facilitate the exercise of the rights by the shareholders and b) offer the possibility to identify the shareholders of a company².

Eumedion supports the remark in the guidance that the procedures for shareholder meetings should ensure that votes are properly counted and recorded (guidance on V.A.9). For shareholders it is important to know whether the votes casted by them have been taken into account. Currently this is not the case in the Netherlands. In this respect, we welcome the upcoming European legislation which obliges companies to give a vote conformation.³

3. Shareholders should also have the right to vote on the remuneration report

The Principles (II.C.4) state that shareholders should be able to make their views known on the remuneration of board members. Eumedion agrees with that. In the Netherlands, shareholders have the right to vote on executive remuneration policies⁴. This right of the general meeting of shareholders has strengthened the checks and balances relating to the approval of the remuneration of executives. We feel that shareholders should also be able to hold board members to account when the remuneration policy they have adopted is not implemented adequately. Eumedion regrets that Dutch shareholders have no right to vote on the remuneration report. We therefore welcome the proposed introduction of a separate vote on the remuneration report in the revised Shareholder Rights Directive.⁵

4. The role of CEO and Chairman should be separated

Without clearly separated functions of Chairman and the CEO it would become very difficult to establish a good governance structure and proper checks and balances within the board. Therefore Eumedion agrees with the remark in the guidance that the objectivity of the board and its independence may be strengthened by the separation of those roles (guidance on VI.E) and shares the view that companies should clearly disclose the different roles and responsibilities of the

² Draft article 3a and 3c of the Proposal for a 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 COM(2014) 213 final.

³ Draft article 3c of the Proposal for a 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 COM(2014) 213 final.

⁴ Section 2:135 par. 1 Civil Code of the Netherlands.

⁵ Draft article 9b of the Proposal for a 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 COM(2014) 213 final.

Chairman and CEO (guidance on V.A.9). This information can be used by shareholders in their dialogues with companies.

5. Self-evaluation of the board should include a periodic evaluation under external guidance

We agree with the Principle that boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences (VI.E.4). We believe that national corporate governance codes could contribute to guaranteeing the quality of this (self-) evaluation by including that an evaluation under external guidance should be organised at least once every three years. This is in line with the codes in various other countries.⁶

6. Diversity of the boards is broader than gender alone

A board with diversified membership can contribute to the functioning of those bodies, which is of huge importance for institutional investors. The guidance states (guidance on VI.E.4) that countries may wish to consider measures that enhance gender diversity on boards and senior management. We believe that measures regarding diversity should not be limited to gender alone. This is in line with the vision of the Dutch Corporate Governance Code Monitoring Committee which believes that in addition to gender, aspects such as age, nationality, expertise, independence and experience are key in bringing about meaningful discussions within the management board and supervisory board.⁷ Besides that it is also in line with the vision of the European legislator which obliges certain large undertakings and groups to disclose diversity policies in relation to the administrative, management and supervisory bodies with regard to aspects such as, for instance, age, gender or educational and professional backgrounds.⁸

7. Boards should engage with shareholders directly

The Principles recommend that institutional investors disclose their policies with respect to corporate governance (III.A). We agree with the remark in the guidance that direct contact and dialogue with the board and management, represent other forms of shareholder engagement that are frequently used. We believe that effective shareholder engagement is a basic element for good governance. Therefore Eumedion has formulated ten best practices for engaged share ownership for its participants.⁹ Maintaining a constructive dialogue with investee companies is one of the key elements of these best practices and also of the revised Shareholder Rights Directive.¹⁰ Eumedion participants try to act as engaged share-owners, but cannot succeed without the cooperation of the companies. Therefore we believe that the management and supervisory boards should be willing to enter into a dialogue.

⁶ See Monitoring Report Financial Year 2014 from the Monitoring Committee, p. 49 (<http://www.commissiecorporategovernance.nl/download/?id=2769>).

⁷ Proposal for the revision of the Dutch Corporate Governance Code, p. 26 (<http://www.commissiecorporategovernance.nl/download/?id=2835>).

⁸ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (article 20). If no diversity policy is applied by the undertaking, it should explain why that is the case.

⁹ http://www.eumedion.nl/en/public/knowledgenetwork/best-practices/best_practices-engaged-share-ownership.pdf.

¹⁰ Draft article 3f of the Proposal for a 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 COM(2014) 213 final.

8. The external auditor should be appointed by shareholders

The guidance (guidance on V.C) states that it is good practice for external auditors to be appointed either by an independent audit committee of the board or an equivalent body or by shareholders directly. The ultimate clients of the audit are the shareholders and other stakeholders. Therefore we believe that the external auditor should be appointed by the shareholders. This is also in line with European regulation which provides for a right of the general meeting of shareholders or members of public-interest entities to choose the statutory auditor or the audit firm.¹¹

9. The role of the trust office should be clarified

The guidance states that the trust office should issue proxies on a timely basis to depository receipt holders and that the depository receipt holders should be able to issue binding voting instructions (guidance on III.B). Eumedion believes that the trust office may only take part in voting at the general meeting on the explicit instructions of a holder of depository receipts (and may not automatically vote on the receipts for which no proxies have been asked) and that the trust office should automatically grant voting proxies for each individual general meeting to holders of depository receipts, which means without the holders having to ask explicitly for these. This practice is already in place at the ABN AMRO Group. Currently the Dutch Corporate Governance Code is being reviewed. In this respect, Eumedion has asked the Dutch Monitoring Committee to reflect this position in the revised Dutch Corporate Governance Code.¹²

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, tel. 070 2040 302).

Yours sincerely,

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¹¹ Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

¹² <http://www.eumedion.nl/en/public/knowledgenetwork/consultations/2016-04-comments-revision-cg-code.pdf>.