EUMEDION
CORPORATE GOVERNANCE FORUM

International Corporate Governance Network
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Submitted electronically

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Subject: Eumedion's response to the Revisions to the ICGN Global Governance Principles

The Hague, 27 January 2017

Dear Ms. Thomas,

Eumedion welcomes the opportunity to comment on the revisions to the ICGN Global Governance Principles (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.

Eumedion generally supports and appreciates the proposed revisions as set out in the draft document. Eumedion especially welcomes the prescription of an external review of the board (guidance 1.1 under j), the limitation of the number of directorships (guidance 1.4), the broad approach regarding diversity (guidance 3.1), the clarification that boards should be transparent about the risks and opportunities associated with environmental, social and governance matters (guidance 7.5), the enhanced attention for voting procedures (guidance 8.4), the introduction of an obligation for companies to give a vote confirmation (guidance 8.6) and the attention that is paid to (the monitoring of and transparency regarding) stewardship activities (guidance 10.1, 10.4 and 15.4).
Notwithstanding our general support, we do have a few suggestions for further improvement of the revised Principles. Those suggestions are mentioned below.

1. Cohesion between the Principles and the Global Stewardship Principles should be clarified

From the preamble follows that the Principles should be read in conjunction with ICGN's Global Stewardship Principles (Stewardship Principles). We concur that there is some overlap between the subjects covered by the Principles and the Stewardship Principles. We believe that conflicting requirements between the Principles and the Steward Principles should be avoided. We are therefore in agreement with the proposal of ICGN to delete some topics from the Principles that are currently included in the Stewardship Principles; for instance the examples of additional engagement steps that may be taken by investors in case the dialogue is not producing the desired result.[1] The cohesion between the Principles and the Stewardship Principles is not completely clear for Eumedion, however. Eumedion advises to clarify this in the final version of the Principles.

2. Dialogue with the board should not be limited to governance matters alone

We agree with the guidance that investors should engage with investee companies. The guidance (15.2) states that "Engagement is particularly constructive in advance of general meetings, to work together to identify agreeable positions and enhance understanding around company strategy, financial performance, risk to long term performance, governance, operations and with respect to social and environmental matters". Furthermore it follows from the guidance (1.2) that the board should make available communication channels for meaningful dialogue on governance matters with stakeholders, like shareholders. Eumedion participants try to act as engaged share-owners, but cannot succeed without the cooperation of the companies. Therefore we believe that the board should be willing to enter into a dialogue about all the topics mentioned in 15.2. This means that the dialogue should not be limited to governance matters alone and should also include aspects relating to e.g. environmental and social policy, strategy and risk management.[2] We advise to reflect this position in the final version of 1.2.

3. Annual approval of the external auditor by shareholders is too prescriptive

The guidance (7.9) states that the selection of the independent external auditor should be subject to shareholder approval on an annual basis. The ultimate clients of the audit are the shareholders and other stakeholders. Therefore we agree 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.[3] Eumedion wonders why it is necessary to prescribe that the selection of the external auditor should be approved every year. Eumedion believes that ICGN should not be too prescriptive in this respect.

[1] See provision 4.3 of the Stewardship Principles.
[2] See also best practice 9 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).
[3] Article 16 of 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.

4. Audit committees should also explain how discussions with the auditors are addressed

Eumedion welcomes the fact that more attention is paid to the auditor communications (guidance 7.10). We support the proposal that the audit committee report should include a summary of its discussions with auditors. Eumedion suggests that, in addition to this, the report should also provide information on how the points of those discussion were addressed.

5. The majority of the members of the supervisory or one-tier board of a controlled company should be independent

We believe that independent board members can contribute significantly to the decision-making of the board. The current guidance (2.5) states that in case of a controlled company – where there is a dominant shareholder or block such that they ultimately have the majority power – there should be at least three (or one-third) independent directors on the board. The preamble states that in controlled companies the governance considerations are primarily concerned with protecting the interests of minority shareholders. We are of the opinion that minority shareholders should be protected from abusive actions by controlling shareholders. However, we feel that guidance 2.5 fails to properly achieve this. We believe that in listed companies with a controlling shareholder the majority of the members of the supervisory or one-tier board should be independent.[4] We suggest to reflect this position in the final version of the Principles.

6. The guidance should leave room for other national approaches regarding independence

It follows from the guidance (2.6) that the board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination. The guidance gives some examples in this respect. One of them refers to the situation in which the director has been a director for such a period that his of her independence may have become compromised. The guidance correctly states that there is no fixed date that automatically triggers lack of independence and that this norm can differ in varying jurisdictions between 8-12 years. We would like to point out that not all countries – for example the Netherlands[5] – apply this approach. We advise to reflect in the final version of the Principles that there are also countries that have other approaches in place, like maximum appointment periods. For sake of clarity, we would also advise to make clear that the 8-12 year period refers to the term of office of a director.

7. The management report should contain information about the process for director nomination

We agree that the board should disclose the process for director nomination and (re)election (guidance 3.3). We believe that the management report should (also) provide information on the board recruitment process, including information on the use of external advisers, search and selection criteria and diversity (a.o. age, gender, nationality), competences, skills and experiences,

[4] This is also recommended in the position paper published by Eumedion on the position of minority shareholders in companies with a controlling shareholder (http://www.eumedion.nl/en/public/knowledgenetwork/position-papers/2016-06-position-paper-minority-shareholders-final-version.pdf).

[5] In the revised Dutch Corporate Governance Code (best practice 2.2.2) the appointment period for members of the supervisory board is maximized instead. This best practice also applies to non-executive directors.

preferably in the format of a board diversity and competence matrix.[6] We advise to reflect this positon in the final version of the Principles.

8. Shareholders should have an opportunity to vote on the remuneration policy and the remuneration report

The guidance (6.4) states that shareholders should have an opportunity for a binding vote on the remuneration policies (usually every three years). Eumedion agrees with that. In the Netherlands, shareholders already have the right to vote on executive remuneration policies[7]. Within the boundaries of the adopted remuneration policy, the supervisory board has the power to determine the remuneration package of an individual member of the management board. We feel that shareholders should 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 non-binding vote on the remuneration report. As mentioned above, the supervisory board is responsible for the implementation of the remuneration policy as adopted by the general meeting. The general meeting in turn monitors the way the supervisory board has performed this task. Eumedion believes that there is no need for shareholders to take over the role of the supervisory board in this respect. Therefore Eumedion is of the opinion that shareholders should have no right to vote on the remuneration package of an individual member of the management board.

9. The remuneration policy should be aligned with the long-term objectives of the company

Principle 6 states that the remuneration should be designed to effectively align the interests of the CEO and executive officers with those of the company and its shareholders. In our view their should be more emphasis on long-term considerations. This is also in line with the recommendations of Eumedion regarding the remuneration policy for the management board of listed companies. Those recommendations state that the remuneration policy should be aligned with the long-term strategy of the company and the corresponding goals. Eumedion suggests to reflect this position in the final version of the Principles. Furthermore, Eumedion believes that the structure and the level of the remuneration of management board members should be appropriate as regards the company's general remuneration policy. Therefore Eumedion concurs that remuneration should be determined within the context of the company as a whole.

10. Scope of shareholder approval of significant related party transactions should be clarified

Last June Eumedion published a position paper about the protection of the interests of minority shareholders at Dutch listed companies with a controlling shareholder.[8] The main conclusion of this position paper is that the interests of minority shareholders in such companies should be better protected. Against this background we concur that rights of all shareholders must be protected and that minority shareholders should have voting rights on key decisions or transactions which affect

[6] See Eumedion Focus Letter 2017 http://www.eumedion.nl/en/public/knowledgenetwork/speerheadsletter/2017-focus-letter.pdf.
[7] Section 2:135 par. 1 Civil Code of the Netherlands.
[8] http://www.eumedion.nl/en/public/knowledgenetwork/position-papers/2016-06-position-paper-minority-shareholders-final-version.pdf.

their interest in the company (Principle 9). Eumedion supports that all significant related party transactions should be based on the approval of a majority of disinterested shareholders (guidance 9.5). Eumedion wonders what is covered by the term "significant RPTs above an appropriate materiality threshold". We take the view that major transactions between the company and the controlling shareholder and the granting of additional rights, such as extra voting rights or a veto right, to the controlling shareholder should be covered by that and subject to 'independent' shareholder approval.[9]

11. Relationship agreements should be concluded with controlling shareholders

Furthermore, we believe that minority shareholders should be protected from abusive actions by controlling shareholders. We opine that the guidance on Principle 9 fails to properly achieve this. 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.[10] We suggest to address this in the final version of the Principles.

12. Rights of shareholders should not be restricted

We agree that shareholders should have the right to vote on major decisions which may change the nature of the company in which they have invested.[11] ICGN proposes to adjust the wording of guidance 9.2 sub g and suggests to add "that can result in the sale of the company". This seemingly technical adjustment results in a restriction of the scope of this provision and as a consequence restricts the rights of shareholders. Eumedion is not in favor of it and advises not to adjust the wording.

13. Technical remarks

- The scope of guidance 10.4 is not clear to Eumedion. This is caused by the inconsistent use of the words fund managers and asset managers. Eumedion advises to clarify this in the final version of the Principles.
- The guidance (7.12, sub e) states that the terms of reference of the audit committee should ensure that contracts with the auditors do not contain specific limits to the auditor's liability to the company for consequential damages. We believe that ICGN should be reluctant with respect to infringements of contractual freedom. Against this background we are of the opinion that guidance 7.12, sub e is too prescriptive.
- We agree that investors, where appropriate, should engage in the development of relevant public policy and good practice standards and be willing to encourage change. However, Eumedion is

[9] This is also recommended in the position paper published by Eumedion on the position of minority shareholders in companies with a controlling shareholder (http://www.eumedion.nl/en/public/knowledgenetwork/position-papers/2016-06-position-paper-minority-shareholders-final-version.pdf).
[10] This is also recommended in the position paper published by Eumedion on the position of minority shareholders in companies with a controlling shareholder (http://www.eumedion.nl/en/public/knowledgenetwork/position-papers/2016-06-position-paper-minority-shareholders-final-version.pdf).
[11] Section 2:107a Civil Code of the Netherlands already prescribes that decisions concerning a significant change in the identity or character of the enterprise or company should be approved by the shareholders.

not in favor of the proposal to add that investors “should also take care to promote strong financial markets and systemic stability” (10.5) and advises to delete that.

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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