

European Commission  
DG Internal Market and Services  
Mr. Charlie McCreevy  
B-1049 BRUSSEL  
BELGIË

**Subject: Eumedion response to the European Commission's external study on proportionality between capital and control**  
**Ref: 2007.85**  
**Schiphol, September 11, 2007**

Dear Commissioner McCreevy,

On 4 June 2007, the European Commission published an external study on proportionality between capital and control in EU listed companies. It examined different Control Enhancing Mechanisms (CEMs) such as multiple voting rights, non-voting shares, pyramid structures, depositary certificates, priority shares and voting right ceilings. The outcome of the study is not a surprise: CEMs are rather common in the sample of listed companies in the EU Member States that are analysed in the study. Of all the 464 European companies included in the sample, 44% have one or more CEMs. As a consequence 80% of the investors would expect a discount on the share price of companies with CEMs. The discount applied by investors is large, commonly being in a range between 10% and 30%. After the presentation of the study, your services announced to carry out an impact assessment and to examine whether there is a need for EU-level action in this field. Eumedion, the Dutch corporate governance forum for institutional investors<sup>1</sup>, very much welcomed the publication of the external study and the open mind of the Commission. We do think that the Commission needs to take some action in relation to CEMs. Therefore we would like to share some considerations about the way forward.

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<sup>1</sup> Eumedion is the corporate governance forum for institutional investors (pension funds, asset managers, investment institutions and insurance companies). At present, Eumedion has 60 Dutch and foreign institutional investors as Members. Together these Members have more than 1 trillion euro of assets under management. They invest for Dutch beneficiaries and in Dutch listed companies.

1. The EU has chosen to opt for a governance-system in which the Annual General Meeting of Shareholders (AGM) plays a fully-fledged role in the system of checks and balances in a listed company. Although this is a path with many hurdles, shareholders should be challenged and not discouraged now we are entering the home straight. The easy alternative of simply increasing the level of detail of compliance-rules and the powers of government supervisors is not attractive and should in our opinion be avoided where possible. This means however that the AGM should be properly empowered.
2. Giving shareholders more influence in principle but allowing this to be watered down in practice by breaches of the one share, one vote principle is ineffective. We feel that encouraging the adoption of this principle and making it work is a merely logical step in the process the EU is following towards better functioning markets. Only in specific takeover situations, a breach of the one share, one vote principle can be justified, provided that this breach is of a temporary nature, is used in the company's long term interests and all its stakeholders and is not used to protect the position of the current Board. Temporary anti-takeover measures can enable the targeted company to determine its position in relation to the bidder and its plans and to seek alternatives.
3. We would prefer to see the principle of one share, one vote (in non-takeover situations) laid down in a Directive. In our view this would be the most optimal way to reach a real level playing field in the European internal market. However, due to the complexity of the matter and the possible resistance it will cause across EU Member States (bearing in mind the tough negotiations on the Takeover Bids Directive with a disappointing outcome), it is probably more realistic to issue a Recommendation and hence encouraging a more market-led solution. This market-led solution should consist of at least two elements: i) more transparency and ii) a mandatory and periodic shareholder vote on the continuation of existing CEMs.
4. The Commission could recommend that EU listed companies deliver full and meaningful disclosure of CEMs. This should include a detailed disclosure of the underlying reasoning for the CEMs, the way they are used, who are the main beneficiaries, the lifespan foreseen for these CEMs and an impact assessment (costs/benefits). Article 10 of the Takeover Bids Directive already requires EU listed companies to be transparent on their capital structure and their CEMs. However, these disclosures are essentially descriptive and standardised. EU listed companies should justify their CEMs and make an assessment of its impact on shareholder value and corporate governance. Most importantly, the Board should explain how the existence of CEMs is in the interests of *all* shareholders. This should help shareholders understand the impact of the CEMs and assess the associated risks and

benefits. The European Commission could recommend the Members States to include these disclosures in national corporate governance codes.

5. Meaningful transparency about CEMs would support investors in their ongoing dialogue with the listed company about possible changes in corporate governance. This dialogue has proven to be a very successful tool for improvements in the way companies organise themselves. At the same time, we have not entered home straight yet; there are still many laggards and elements which are not compliant with generally perceived best practices. It would be an important step forward if companies were to put the continuation of existing CEMs for – at least – an advisory vote to the AGM. Investors should have a formal means of expressing their views on the existing CEMs. Moreover such a vote should be periodically repeated, say every five years, as investors' views on companies and their CEMs change (as do companies and the public opinion) and as the composition of the AGM changes. A formal shareholder vote on the continuation of existing CEMs could give investors (more) comfort that the Board reviews the costs and benefits of CEMs on a regular basis. The European Commission could recommend the introduction of a shareholder vote as best practice (as it has done successfully with regard to the Board's remuneration policy).

We hope our statement contributes to your analysis if there is a need for the Commission to take action in this field. We certainly would welcome such an initiative. If you would like to discuss our views in further detail, please do not hesitate to contact us.

Yours sincerely,



Rients Abma

Executive director