PensionsEurope Position Paper on the proposal for a Shareholder Rights Directive

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for occupational pensions. Some members operate purely individual pension schemes.

PensionsEurope has **23 member associations** in EU Member States and other European countries with significant – in size and relevance – workplace pension systems[1].

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope member organizations cover the workplace pensions of about **80 million European citizens**. Through its Member Associations PensionsEurope represents approximately **€ 3.5 trillion of assets** managed for future pension payments.

PensionsEurope Members are large institutional investors representing the **buy-side** on the financial markets.

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[1] EU Member States: Austria, Belgium, Croatia, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden, UK. Non-EU Member States: Guernsey, Iceland, Norway, Switzerland.

1. General

The European Commission published in April 2014 a company law and corporate governance package, including the revised Shareholder Rights Directive (2007/36/EC). It is part of the package of the Communication on Long-term Financing of the European Economy.

Pension funds and other institutions for occupational retirement provision (IORPs), for purposes of this response jointly referred to as: "pension funds", are by their nature long-term investors, due to the match with the long duration and maturities of their liabilities. With the right incentives being given and all relevant conditions being met, pension funds ought to be in a position to play a very important role in the long-term investment (LTI) enhancement.

In this respect, we welcome the Commission's aim to encourage and facilitate long-term shareholder engagement with investee companies; an engaged shareholder base alongside high standards of governance, transparency and protection of minority shareholder rights should enhance the attractiveness of the EU market for both investors and issuers, and so play a role in driving economic growth across Europe. We are especially supportive of the following aspects:

- We support more transparency and disclosure; both from companies to their investors as well as from asset managers to their investor clients.

- We welcome especially the extension of important shareholder rights providing protection for minority shareholders, such as with respect to Related Party Transactions.

- We deem it positive to introduce a vote on remuneration policies Europe-wide, it enables greater dialogue between investee companies and shareholders.

However, some concerns remain in relation to the proportionality of some parts of the revised proposal and we would like to comment on these amendments in this position paper.

2. PensionsEurope's position

- **Article 3a – Identification of shareholders**

The introduction of a consistent approach to the identification of shareholders across the EU is positive. We nevertheless believe that some issues require amendment:

- We are concerned that there is as risk that the proposals as currently presented risk engendering a system that is to the commercial advantage of the intermediaries in the chain. By introducing a proposal under which it is mandatory for investment intermediaries to (i) allow companies the right to identify underlying shareholders, as well as (ii) facilitate the exercise of rights by shareholders, such as the right to participate and vote in general

meetings, there is a risk that the intermediaries may charge excessive prices for the provision of their services under these regulations. Neither the listed companies, nor their shareholders would be well served by the charging.

- In addition, identifying shareholders may often not be easy because they can by grouped by custodians and/or brokers into pooled accounts.

- In this regard, we consider that a minimum threshold should be established in order to identify significant shareholdings. Those shareholders would be more interested in monitoring the company's performance and are better aware of their rights. The Dutch regime can be taken as an example. In The Netherlands, the Security Depositary Act provides for a minimum threshold of 0,5% of share capital to have the shareholder identification mechanism put in place. This enables the listed company to identify and engage those investors that have a relevant stake in the company.

- **Article 3f - Engagement policy**

Pension funds recognize that they have stewardship responsibilities which include engaging with companies and voting. In many Member States, it is established good practice amongst institutional investors that they disclose their voting policies, voting process and voting decisions. In the UK, asset managers are required to comply or explain against the UK Stewardship Code, asset owners are encouraged to sign up, this is also the case in The Netherlands. UK and Italian pension funds also already disclose their policy on ESG investments and the exercising of voting rights in their Statement of Investment Principles (SIP) and in the informative document. In Italy, the informative document must be published on the pension funds' website and has to be updated at least yearly.

However, we are concerned about some of the elements in this article:

- We question aspects of the requirements for annual public disclosure of the engagement policy. We are concerned about this requirement to provide an explanation of voting behavior in addition to transparency on the voting behavior. If every vote cast has to be explained, this could create an extra burden for engaged share-ownership and would be very time-consuming and mean an administrative burden for the companies. A balance needs to be struck between encouraging the right behaviors whilst avoiding the issue becoming a compliance tick-box exercise with standardized disclosures; as such avoiding over-prescription is important. In this regard, we believe a recommendation would be more appropriate. This would encourage a uniform application of the principles and best practices and at the same time allow the provisions to adequately fit into the distinct economic and legal systems of the Member States.

- Pension funds can use holding mandates which replicate a broad market index. In this case, institutional investors do not set any incentives for the asset manager, because the latter

does not take any discretionary decisions. The only concern is the cost efficient replication of the index in question. Therefore the option of using passive mandates must remain open for pension funds and should be taken into account in the directive accordingly.

- The board of directors has the responsibility to decide on the strategic policy of the company. Changes in the company's policy may be due to the engagement of shareholders, equally it is possible that the board of directors may have other motives. This can make it sometimes difficult to establish the result of an engagement policy and therefore we feel that a requirement to annually publicly disclose the results of an engagement policy could create expectations which cannot always be met.

Article 3g - Investment strategy of institutional investors and arrangements with asset managers

In general terms, occupational pension funds must ensure that their investment approach is consistent with their legal responsibility. Mandates and incentives given to asset managers play an important role in long-term investment strategies. Pension funds, as long-term investors, share the Commission's desire to promote greater long-termism within capital markets. Most important is the alignment of interests between pension funds and their asset managers – only this way the success of LTI can be ensured.

We therefore welcome the objectives of this article, however, we feel that the current article strikes too prescriptive an approach:

- The mandate which governs the relationship between institutional investors and their asset managers is subject to contract law and both parties are able to make provisions in the investment mandate for the alignment of their interests and obligations. In addition, the mandate relationship between the institutional investor and the asset manager is subject to European legislation. Investments by pension funds are subject to the prudent person principle (art 18 IORP Directive). We consider it inappropriate to require disclosure of specific contractual arrangements between two parties, especially when for example the fund in which the institutional investor has invested is not public. Public information on the method and time horizon of the evaluation of the specific asset manager may be competitively sensitive. In addition, the focus may shift from the issue of what fee structure is best for the investors to the one most easily justified to the public.

- It is supposed that long-term investors (and their asset managers) should follow a buy-and-hold strategy without making major changes to their portfolios – and that they should get involved as active investors in the companies whose shares they hold. Whereas, in reality asset allocation and the adoption of different investment strategies executive by a number of investment managers will play an important role for pension funds managing long-term liabilities. An institutional investor may hold shares in a listed company for a very long time, while at the same time also having a relatively high turnover in a small part of the equity position per company. While important, in particular for long-only equity mandates, portfolio

turnover does not tell the full story of an institutional investors' investment strategy. A pension fund's investment strategy encompasses much more than investment in listed equities, in particularly it includes assets such as bonds, real-estate and infrastructure. As such it only makes sense to use a portfolio approach which looks at how the overall asset allocation is aligned with the overall profile and duration of the liabilities - such as in art. 18 of the IORP Directive.

- Thus, requiring institutional investors to disclose publicly the main elements of the arrangement with the asset manager would in our view not be the right way of achieving long-term investment, instead giving undue prominence to only a narrow element of the strategy with potential unintended consequences. We think that the objective be more effectively achieved by requiring a pension fund to discuss and disclose its investment beliefs to the competent authority and how these are translated through its investment strategy and arrangements with their asset managers. This could be achieved through the Asset Liability Management studies.

- **Article 3h - Transparency of asset managers**

Asset managers are asked to disclose on a half-yearly basis to the institutional investor how their investment strategy and implementation thereof is in accordance with the arrangement and how the investment strategy and decision contributes to medium to long-term performance of the assets of the institutional investor. It should be noted here that on grounds of existing European legislation (MiFID, UCITS and AIFM) asset managers already have transparency obligations to a certain extent (art 23 AIFM and art 75 UCITS).

We consider it important though that asset managers provide detailed reporting to clients explaining clearly how they have sought to enhance and protect value for their clients. Reporting should enable quick and simple identification of the full range of costs borne by their investments, which would enable an easy assessment of the net return to them. However, we would like to make the following remarks:

- We feel that is not necessary to prescribe the regularity of this detailed reporting by asset managers on a half-yearly basis, ensuring that such reporting is provided at least on an annual basis should be sufficient.

- The focus of these aspects of the Directive should be to enable clients to understand the what, why and how with respect to the activities of their investment manager. In turn this will foster a more constructive relationship in which both parties share the objective of achieving long-term sustainable investment returns in the interests of the underlying beneficiaries.