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Insurance Europe key concerns on JURI Committee report on the revision of the Shareholder's Rights Directive

Expansion of the Scope — recital 1

With recital 1, the Legal Affairs (JURI) Committee report widens the scope of the application of the proposed Directive and expands it from listed companies to large companies and large groups. This substantial deviation from the European Commission's proposal lacks any justification. The proposed Directive should by no means apply to all large corporations as their legal set-up differs substantially from those of stock listed companies. Also, the unexpected widening of scope as proposed by the JURI Committee lacks an impact assessment.

Prevalence of sectoral legislation — article 1 (3c)

Article 1 (3c), as proposed by the JURI report, rightly points out that the provisions of this Directive are without prejudice to the provisions laid down in sectoral EU legislation regulating specific types of listed companies or entities. This represents a step in the right direction. Nevertheless, relevant legislation, such as Directive 2009/138/EC, is not mentioned, which might lead to legal uncertainty.

Support for long-term shareholding — article 3ea

It is not at all clear how the mechanism as proposed by the JURI Committee and the respective concrete measures can be realised in practice, especially with a view to legal issues and practicability. Therefore, these new requirements are considered superfluous.

Engagement policy — article 3f (1)

The JURI Committee report deletes the "comply or explain" provision, proposed in the Commission report. This approach will require institutional investors to mandatorily disclose the implementation of a yet-to-be developed engagement policy and its results. Mandatory disclosure requirements are very likely to generate significant operational efforts and also raise confidentiality concerns.

The definition of "engagement policy", as defined through the seven criteria in article 3 (f), remains too arbitrary and is not sufficiently clear. Insurance Europe is particularly concerned about the integration of the engagement of all shareholders in the investment strategy (article 3f (1)(a)), the proposed cooperation with shareholders (article 3f (1)(f)) and the JURI committee proposal to conduct dialogue and cooperate with other stakeholders of the investee companies. These provisions are not feasible in practice and will result in conflicts with capital market law.

The requirements in articles 3f para 1, para 2 and para 4, as well as recitals 11 and 13 are very concerning and should be deleted. Alternatively, Insurance Europe would support certain amendments tabled in the JURI committee, which stipulate that regulated institutional investors and asset managers that are covered by the scope of Directives 2009/138/EC, 2013/36/EU, 2003/41/EC or 2011/61/EU are not required to develop a policy on shareholder engagement. The regulated investors covered by these Directives, among them insurers and reinsurers, are already subject to a very wide variety of requirements and reporting obligations towards the relevant supervisory body.

Engagement policy — article 3f (2)

The JURI report would require institutional investors and asset managers to publicly disclose information for each company in which they hold shares, whether and how they cast their votes in the general meetings and provide an explanation for their voting behaviour. Public disclosure of voting behaviour as requested by the JURI Committee is not feasible and should, therefore, be deleted.

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Engagement policy — article 3f (4) as proposed by the Commission

According to the Commission's proposal, institutional investors or asset managers that decide not to develop an engagement policy or decide not to disclose the implementation and results thereof should give a reasoned explanation. The exculpation clause as proposed in original article 3f (4) must not be deleted.

Investment strategy of institutional investors and arrangements with asset managers — article 3g and 3g (2a)

According to article 3g (1) of the JURI report, the investment strategies would not only be required to be made publicly available free of charge, but also sent annually to clients along with information on the engagement policy. These disclosure requirements present the risk of disorganising the market and harming the trust based relationships between market players. These requirements are already contained in the Solvency II framework to a certain extent. The complementary requirements are unnecessary and inappropriately calibrated. The dialogue between the institutional investor and the asset manager is of course important for all parties to know and agree on what approach will be taken by the asset manager.

In addition, the obligation to disclose the main elements of the arrangement with the asset manager to the public (article 3g (2)) is not justified. Due to the extensive information and monitoring competences of the insurance supervisory authorities, disclosing the asset management agreements to the public is not necessary. Moreover, an obligation to disclose these agreements would impact on the right to contractual freedom and personal autonomy as well as with the protection of confidential business information.

The above mentioned requirements are very concerning and should be deleted.

Remuneration policy — article 9a

According to article 9a of the JURI report, the general meeting's vote on remuneration policy would be binding. Furthermore, under additions to recitals 16/17 and article 9a (3)(4b) stakeholders would also be able to express a view on remuneration policy before it is submitted to shareholders. These provisions still appear to not take existing arrangements in countries with a two-tier law system, such as Germany and France, into account. Therefore, the final provisions need to allow for appropriate interaction between the proposed Directive and local company law in all member states. This issue has also been identified by employer associations that have repeatedly voiced similar concerns on these provisions.

Country-by-country Reporting — recital 17a, article 18 (2a) and (3) and article 18a of the Directive No 2013/34/EU & article 16a and 16b of the Directive 2004/109/EC

Insurance Europe strongly believes that the proposed extension of the scope of country-by-country reporting (CBCR) via the currently ongoing revision of the Shareholder Rights Directive is not appropriate and is premature. Article 48 of the newly revised Accounting Directive 2013/34/EU of 26 June 2013 requires the Commission to holistically review the effectiveness and the possible scope extension of the existing requirements of CBCR, with a report to be submitted by 21 July 2018. Moreover, the European Parliament, Council and Commission have recently reconfirmed this mandate for the review in the Directive on non-financial disclosures 2014/95/EU, published on 15 November 2014. Furthermore, the proposed CBCR and the Shareholder Rights Directive do not have compatible objectives and the proposed CBCR requirements do not seem to be proportional.

Therefore, the extension of the scope of CBCR should not be addressed in the current revision of the Shareholder Rights Directive.

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