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Insurance Europe positions on the revision of the Shareholder Rights Directive

Insurance Europe previously stated its positions on the EC proposal to revise the Shareholder Rights Directive (SRD) in October 2014. This document summarises Insurance Europe's key concerns in light of the final positions taken by the member states as agreed by the COREPER on 25 March 2015 and the European Parliament (EP) from 8 July 2015 regarding the amendments to the SRD.

Engagement policy — Art. 3f (amending Directive 2007/36/EC)

- Insurance Europe strongly supports the "comply or explain" characteristic of the engagement policy, as proposed by the European Commission and supported by the Council of the EU and the EP.
- Most national jurisdictions do not have specific provisions on shareholder engagement policy. Thus, provisions on the integration of the engagement of all shareholders in decisions on investment strategy need to be carefully considered. Shareholders of listed companies change frequently. Therefore, entering into a dialogue with all shareholders at all times poses a challenge. The provisions as foreseen by the Commission and the EP run the risk of conflicting with the legal principle of equal treatment of all shareholders in some EU member states. Overly burdensome requirements need to be avoided.
- Insurance Europe remains concerned by the requirement to disclose the implementation and results of the engagement policy for each company in which insurers hold shares on an annual basis. Insurance Europe believes that the disclosure requirements can generate significant operational effort and also raise confidentiality concerns.
- Insurers are concerned by the EP proposal asking institutional investors to conduct a dialogue with all investee companies and to cooperate with other shareholders, without any threshold in terms of the ownership in the companies. In an open market economy, different shareholders have different interests and objectives. An obligation to involve different interests beyond the existing minority protection would unduly restrict the rights of the individual investor.

Investment strategy of institutional investors and arrangements with asset managers — Art. 3g (amending Directive 2007/36/EC) as proposed by the EC and confirmed in the EP report

- Insurance Europe remains concerned by the proposals in Art. 3g as a number of provisions do not accurately reflect how insurers invest.
- The investment strategy is about disclosure between the institutional investor and the asset manager. Insurance Europe does not understand what the public interest is in such a disclosure. What is more important is the disclosure between the institutional investor and the asset manager on these issues ahead of the mandate being signed, so all parties know and agree on what approach will be taken by the asset manager. There is little value added by public disclosure.
- As a general comment, provisions on the investment strategy need to be carefully balanced. It must be clear that a new regime would work efficiently within the existing prudential framework, ie the Solvency II Directive, which is already very comprehensive regarding disclosure requirements. Additional requirements under the SRD could, in fact, have unintended detrimental effects on the investment allocation of insurers by creating disincentives for insurers to be exposed to equity risk.
- The criteria defining the investment strategy, such as the portfolio rotation or the structure of the remuneration, are often very asset-specific, highly subjective and confidential. The requirement to widely disclose this information to all customers is not only burdensome but also particularly concerning and can be misleading without the appropriate context and the expertise and knowledge that the parties involved possess.
- The disclosure of arrangements with asset managers is not justified, because it is legally questionable under the principle of freedom of contract. The same applies to the obligation to disclose the investment strategy, which contradicts the objectives of competition law.

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Remuneration policy and remuneration report — Art. 9a, 9b (amending Directive 2007/36/EC) and Recitals 15-17, 18a, 18b

- Insurance Europe strongly supports the member states option introduced by the EP and Council (ie member states have the right to provide that the votes by the general meeting on the remuneration policy are advisory*).* This element is key in order to address the differences in corporate law that exist between member states, in particular with respect to one-tier versus two-tier boards. Insurance Europe also welcomes the fact that, under the EP's proposal, the provisions on remuneration in Articles 9a and 9b would be without prejudice to national systems of wage formation for employees and to national provisions on the representation of employees on boards (Art. 9b para. 3a).

Country-by-country reporting (CbCR) / Tax rulings disclosure — Recital 17a, Art. 2 (amending Directive 2013/34/EU) and Art. 2a (amending Directive 2004/109/EC) as proposed by the EP

- Insurers are concerned by the introduction of CbCR requirements for large undertakings and public interest entities which would require them to disclose specific information on taxes, turnover and profit. The principle of CbCR and the Shareholder Rights Directive do not have compatible objectives and therefore the proposed requirements are not appropriate.
- The attempt to introduce CbCR in the framework of financial reporting on a broad basis is inappropriate, since it contradicts both the ongoing international negotiations of the OECD in respect of its base erosion and profit shifting (BEPS) action 13 and existing EU legislation on accounting. More precisely, Article 48 of the newly revised Accounting Directive 2013/34/EU requires the Commission to review holistically the effectiveness and the possible scope extension of the existing requirements of CbCR and asks for a report to be submitted to the EP and Council by 21 July 2018. This mandate has, in fact, been recently renewed by Directive 2014/95/EU (Corporate Social Responsibility Directive). The outcome of this CbCR review should not be anticipated and the existing political agreement should not be overwritten by the SRD.
- Moreover, the EC has recently consulted on further corporate tax transparency measures, in particular CbCR. This means that CbCR is currently being considered in at least four separate initiatives. This is exactly why Insurance Europe strongly argues in favour of aligning any EU initiatives on CbCR with those at international level, namely OECD BEPS action 13. The EU should focus on ensuring that the legislative implementation of BEPS will be coordinated and will not lead to unilateral differentiation among its member states nor to an uneven playing field between EU and non-EU entities. Work by EU policymakers towards a greater degree of harmonisation of tax systems and towards producing practical guidance and tools to enable implementation of BEPS would be far more effective, in Insurance Europe's view.
- Therefore, insurers strongly believe that the suggested far-reaching extension of the scope of CbCR via the revision of the Shareholder Rights Directive is not appropriate and is premature.
- Finally, although insurers are committed to tax transparency and measures designed to combat aggressive tax planning, we believe the scope needs to be appropriately targeted. The Shareholder Rights Directive is not the correct place to address the disclosure of tax rulings. Discussion and negotiations on automatic tax exchange are already underway and the outcome of the EC consultation on corporate taxation should not be anticipated.