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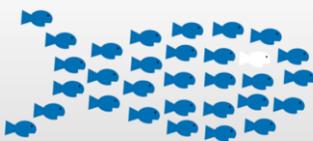


Review of the Shareholder Rights Directive

Position of Better Finance for All (The European Federation of Financial Services Users)

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Better Finance for All - The European Federation of Financial Services Users

Better Finance for All, the only dedicated representative of financial services users, counts more than fifty national and international members and sub-member organizations in turn comprising about 4.5 million individual members. Better Finance acts as an independent financial expertise center to the direct benefit of the European financial services users (shareholders, other investors, savers, pension fund participants, life insurance policy holders, borrowers, etc.) and other stakeholders of the European financial services who are independent from the financial industry.

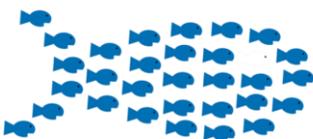
Better Finance has experts participating in the Securities & Markets, the Banking, the Occupational Pensions and Insurance and Reinsurance Stakeholder Groups of the European Supervisory Authorities; and in the EC Financial Services User Group. Its national members also participate in the national financial regulators and supervisors bodies when allowed. For further details please see our [website](#).

Executive Summary

Better Finance welcomes the European Commission's proposal to strengthen shareholders rights, seven years after the implementation of the first directive in this field. The directive tackles very important areas for individual shareholders and will help improving their rights. However we consider that certain improvements by the European Parliament are necessary to ensure an unrestricted internal market for shareholders across Europe, and therefore better support long term investment, growth and jobs.

The concrete demands of Better Finance for amending Directive 2007/36/EC are the following:

- Cost free voting should be guaranteed to all EU individual shareholders, both at national and EU cross-border level, to achieve an EU single market for engaged share ownership.
- No discrimination in exercising shareholders' rights across borders... To that end, efficiency and effectiveness in the voting "chain" between shareholders and issuing companies need significant improvements.
- Introduction of a harmonised record date throughout Europe.
- The confirmation of ownership at record date should in any case be sufficient proof to attend and vote at a general meeting, and should be automatically provided



electronically to all beneficial owners.

- The right of association for the collective defence of their rights is of utmost importance for shareholders. Moreover, no unjustified barrier should exist preventing shareholders of a given company to associate among themselves. There should be a legal recognition of shareholder associations as the best mechanism for the involvement of shareholders with the companies they co-own.
- The ownership structure of companies should be known not only by the issuers but also by the shareholders and shareholder associations. Nevertheless, the privacy of shareholders with holdings below a certain threshold should be respected. Both companies and shareholders should be entitled to start shareholder identification processes, based on equal grounds.
- Shareholders should approve the remuneration policy and report as proposed by the EC, and shareholders must be informed about the maximum ratio between fixed and variable pay of directors, about the maximum possible pay in a best case scenario and about pay caps (this information should be binding and at all times respected by the companies boards).
- Shareholders should be allowed to vote on relevant related party transactions exceeding 5 % of the companies' assets or transactions.
- Voting Rights for the underlying shares in Nominee Accounts (or for those cases where a third party is holding shares on behalf of end-investors) should be provided without any restrictions to the beneficial owner. It is important to promote a direct relationship between investors and the companies in which they invest by placing investors' own names on share registers and thereby ensure their legal rights of ownership.
- Most individual shareholders are by nature long term holders. Issuers could reward long term shareholding further through the mechanism of loyalty shares. However, there should be no departing from the "one share, one vote" principle.
- Lastly, not-for-profit proxy advisors representing individual investors should be exempted from costly reporting and transparency constraints.



Voting must be cost free for EU citizens holding shares in EU companies

We deem the proposals on voting fees (article 3b) as crucial and one of the most important points of the proposed recast of the Shareholder Rights Directive. Fees charged to individual shareholders have been identified as one of the main barriers to shareholder engagement inside the EU, especially cross-border.

The Commission proposes not only a better disclosure of prices, fees and charges provided by intermediaries; but more importantly that **domestic and cross-border exercise of rights shall be duly justified by intermediaries**. This is a first recognition of the issue, but a too limited step forward. Voting at national level (i.e. shareholder and issuer are based in the same country) in most, if not all, EU Member States is free of charge for the shareholder. The same should be the case at cross-border level.

Taking into account that the right to vote is a fundamental element of being a shareholder as well as basic human rights and democratic principles:

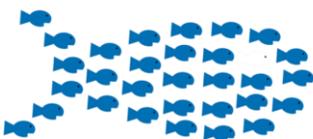
- EU citizens do not have to pay to exercise their political voting rights
- EU citizens do not have to pay to exercise their voting rights as co-owners of real estate,

Better Finance asks for a **cost-free (preferably digital) shareholder vote throughout the whole EU. EU citizens as individual investors should not have to pay in order to exercise their voting rights as owners of EU corporations, neither at national nor at cross-border level.**

According to the Commission proposal, intermediaries will also be required to publicly disclose prices, fees and any other charges to shareholders and separately for every service referred to in Chapter IA of the proposed Directive.

Notwithstanding our request for cost free voting for EU citizens inside the EU, we still welcome the Commission's statement that any fees of any kind charged to shareholders to exercise their rights shall be non-discriminatory and proportional.

We understand that the requirement to **publicly disclose prices, fees and any other charges** levied by intermediaries refers to both charges imposed on the shareholder and on the issuer and would welcome a respective clarification in order to avoid both the issuer and the shareholder to pay fees at the same time when shareholders exercise their voting rights. Only a thorough price transparency will ensure that both the issuer and the shareholder will not have to pay fees for the same service from the intermediaries.



In any case the fees (if any) should be fair, proportionate and in relation to the real costs of exercising the vote, which we feel unfortunately is not always the case. This complicated situation could be addressed by taking into account that we live in the 21st century, and that therefore the cross-border voting process should be adapted to the latest technological advances e.g.: entirely digital and internet-based, and open to non-bank competition; as this is not a financial (and therefore not a banking) process and business.

Last but not least we would like to state that the SRD should not provide intermediaries with a commercial opportunity to charge shareholders for services that are linked to the shareholders' fundamental right resulting out of share ownership – the voting right. Therefore, in our opinion, the identification process should be provided free of charge to the shareholder.

The intermediary with whom the shareholder has its securities account should automatically send the confirmation of ownership at record date to its client electronically. Also this confirmation of ownership at record date should in any case be sufficient proof of entitlement towards the issuer.

Increasing Efficiency in the Voting Chain

Better Finance believes in **more engagement of shareholders** through the **possibility to vote shares abroad without any obstacles**. We therefore strongly support the Commission's assessment that investors face difficulties in exercising their shareholder rights, especially if the securities are held cross border and intermediaries are involved.

[Our Report "Barriers to Shareholders Engagement"](#) revealed the major obstacles which still hinder the effective exercise of cross border voting rights within the EU. Failures in the voting chain that hinder shareholders in exercising their rights are well known and the solution has to be implemented at a European or worldwide level. This proposal addresses the issue by instructing intermediaries to facilitate the exercise of shareholder rights but does not solve the problem of cross border voting, especially for the following reasons.

1. This proposal does not tackle all parties involved in the intermediated voting chain. In a typical cross border holding chain with either individual or institutional investors at the end of the chain, the following parties are involved:





Whereas the Commission proposal tries to tackle inefficiencies within the intermediary chain, one main player, the voting agent, is completely left out.

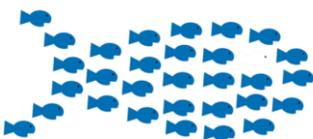
2. The Commission proposal requires intermediaries to transmit information from and to shareholders without undue delay. As the graph above shows, in cross-border cases the chain of intermediaries can be very long. This means that in cases where the record date is close to the general meeting, especially retail investors will have difficulties receiving the documents necessary to vote/attend the general meeting in due time as they are not necessarily electronically connected to the last intermediary. **Better Finance therefore considers that the Commission should introduce a uniform record date throughout Europe which should be set at least 5 calendar days before the general meeting and would welcome a harmonization of the issuers' deadlines – at least on national level.**

Better Finance strongly **supports the Commission's efforts to increase the efficiency of the chain of the intermediaries and asks to take our concerns above into account. There is urgent need for action.**

Last but not least we would like to raise the problems with voting restrictions for shareholders in appointing proxy holders to vote their shares which still exist in some Member States. Better Finance considers that the Shareholder Rights Directive should also tackle this issue and should ensure that any existing restrictions for shareholders to appoint a proxy to vote the shares at a general meeting should be abolished.

Shareholder Voting Rights on Directors' Pay and Related Party Transactions

1. Directors' pay is a key issue for shareholders. Therefore Better Finance **advocates that shareholders should have the right to approve the remuneration policy and report of companies' directors.** Shareholders should also be informed about the ratio between fixed and variable pay of directors. We are aware that in some Member States say on pay is generalised among big listed companies (e.g. Denmark) but we definitely believe this principle should be part of EU-wide legislation.



2. Shareholders, especially small individual ones, in general do not have the necessary resources to analyse the remuneration reports/policies in detail. In order to be able to exercise their say on pay vote responsibly, shareholders therefore need **thorough, clear and understandable information** on all aspects of the remuneration in question, especially on the **link between pay and performance, the maximum possible pay in a best case scenario and the existence of pay caps** (if any).

Directors' pay should not reward for failure and there should be a reasonable ratio to the next management levels in line with the peer group. This is especially important with respect to variable pay which should be predominantly related to financial performance and should be mainly long-term oriented. **Therefore Better Finance strongly supports the proposal of a vote on both remuneration policy and report.**

The information on the ratio between fixed and variable remuneration for directors should also be provided to the shareholder and should not be fixed or regulated at EU level, unlike banking remuneration as established by CRD IV.

We deem the ratio between the average remuneration of directors and the average remuneration of full time employees of the company other than directors as interesting but not relevant for the real performance of directors. Directors' performance has a direct relation with the creation of value for shareholders, and it is different from the value that the average employee delivers to the company. It may be much more reasonable to look at the individual remuneration of directors in relation to the other executives in the company at the next management level.

Information on remuneration could also be further clarified on the issue of share-based remuneration plans to executives, as these plans may entail very uncertain future costs for companies and therefore to shareholders.

3. Better Finance also **welcomes the proposal to introduce a shareholders' vote on relevant related party transactions** representing more than 5 % of the companies' assets or transactions thereby excluding a vote by the related party shareholder. So far related party transactions are a black-box for shareholders across Europe. Better Finance therefore supports the idea to provide shareholders with an independent auditor's report confirming that the transaction was fair and reasonable. Furthermore we consider it important that a reporting obligation of the



independent auditor of the report towards the shareholders is introduced, including a binding approval requirement for the general meeting.

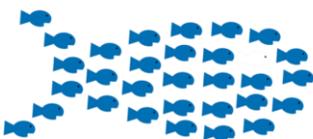
We also support the proposal from the European Commission to require that when 5% of the company's assets or transactions are exceeded, shareholders will have to vote and approve the transaction in a general meeting. We also support the proposal that in case 1% of a company's assets are exceeded there should be a public announcement. However we regret that no level 2 measures with regard to the definition of "company's assets or transactions" are foreseen in the draft.

Shareholder Engagement

We welcome the European Commission for their clear cut analysis and acknowledgement of the current failure of shareholders to get sufficiently engaged in companies' management. Better Finance strongly supports the proposed measures by the Commission, which we believe will indeed encourage shareholder engagement to promote long-term investment and create a more shareholder friendly corporate governance environment. We agree with the Commission's view that the reforms should focus on the role and behavior that institutional investors and asset managers should have in the management of EU companies: as Better Finance has stated lately, and especially since the publication of our Report "Barriers to Shareholder Engagement", **individual investors have been the most interested shareholders in engaging with companies.** The European Commission succeeds in identifying the key areas where intervention at EU-level is required. We believe however that some of these proposals could be improved especially by taking the interests of small investors more into account; and therefore promoting the access to capital markets for citizens and their investment in the real economy.

We support the European Commission proposals for asset managers and institutional investors to develop a policy on shareholder engagement, and refer to the management of actual or potential conflicts of interest with regard to shareholder engagement. These measures are positive not only for the promotion of long term investment but especially to strengthen compliance with the institutional investors' fiduciary duties.

According to the European Commission's proposals, institutional investors will be required to justify twice a year to the public how their investment strategy contributes to long-term performance of their assets.



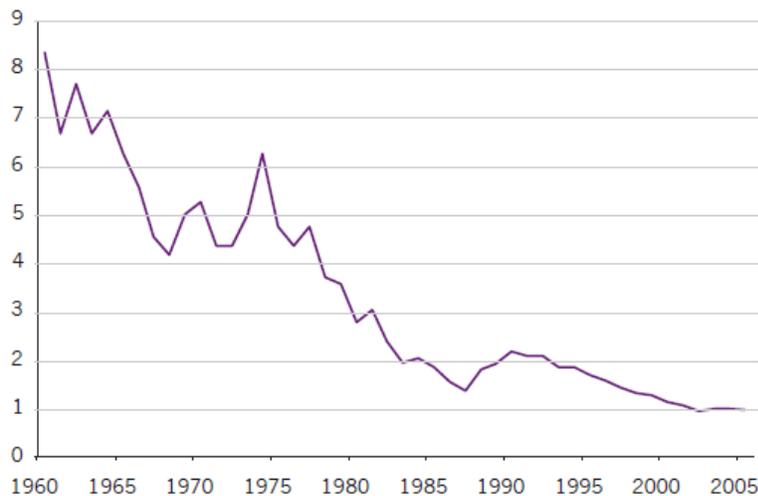
We consider that if institutional investors would only have to disclose their engagement activities - such as one-to-one meetings - on an annual basis, other (minority and individual investors) would face the problem of asymmetric information. Therefore, we believe that institutional investors should disclose annually their engagement policy and moreover disclose on a monthly basis their engagement activities per Investee Company.

Also, we believe the practice of certain companies of awarding an attendance bonus for shareholders being present or represented at a general meeting -frequent in Spanish AGMs- as a good tool to promote shareholder engagement.

Incentives for long term share ownership

Better Finance would like to stress that individual shareholders are mostly long term oriented as they invest in shares usually for long term purposes like retirement, children education, home purchase, etc. Actually the decrease of the average holding period of shares has evolved in parallel with a decrease of the direct ownership of listed shares by households and the increase of the ownership of “packaged” products such as investment funds, as the following graphs on the US market show:

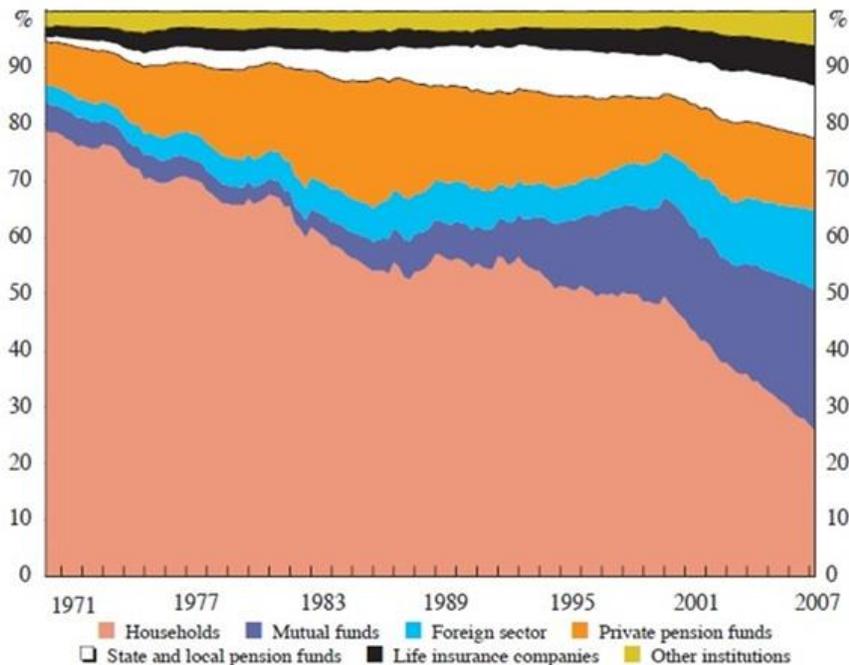
Figure 1: Average Holding Period for a Stock on the NYSE¹



¹ Source: Bolton P and Samama F. “Loyalty-Shares: Rewarding Long-term Investors” Journal of Applied Corporate Finance, Volume 25, page 75 (Summer 2013).



Figure 2: Ownership of US Corporate Equities, as a per cent of total holdings at market value²

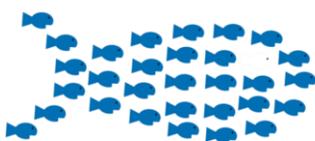


Better Finance is aware of the initiatives of certain EU Member States like France to promote longer term share ownership through increased dividends or additional voting rights. We are not against possible EU-wide proposals in this direction, which would be the ideal solution for the safeguard of the Internal Market principle. Nevertheless, such measures should ideally be consistent with current legal regimes at national level and should adhere to the overarching principle “one share – one vote” which ensures that there is no discrimination between shareholders.

We consider therefore that an incentive could never be an additional voting right as this would be against the one share – one vote principle. We could support however proposals such as awarding an increased dividend for long-term investors (that already exists in some EU countries such as France).

We also consider with interest certain proposals for loyalty shares or loyalty warrants granted “at the money” (market price), that decrease volatility, increase liquidity (due to the hedging of

² Source: Board of Governors of the Federal Reserve System.



traders), increase share borrowing cost (if stock price rises), provide better alignment with management stock option programs, and do not facilitate CEO “retrenchment”³.

Transmission of information

The European Commission proposes that if a company chooses to not directly communicate with its shareholders, the information related to their shares shall be transmitted to them or to a third party by the intermediary. Intermediaries should, on the request of such a company, communicate without undue delay the name and contact details of the shareholders. In case there is more than one intermediary in a holding chain, the request of the company and the identity and contact details of the shareholders shall be transmitted between intermediaries without undue delay. Intermediaries have to facilitate the right for shareholders to participate and vote in general meetings. Companies must confirm the votes cast in general meetings by or on behalf of shareholders. In case the intermediary casts the vote, it shall transmit the voting confirmation to the shareholder.

We believe that shareholder identification is an important right for both companies and shareholders. Better Finance feels that as regards the proposals of the European Commission for the communication of companies with their shareholders the scope is not wide enough: these proposals should cover all intermediaries within the custody and voting chain.

At the same time, we are concerned that the Commission proposal might imply that intermediaries and/or banks will be transmitting the names and addresses of all shareholders as well as the number of shares to verify, which may pose a threat to the fundamental privacy rights that shareholders as EU citizens enjoy.

That is why we deem it necessary to introduce a certain threshold which, once exceeded, will open the possibility for the company to initiate the process of identification. In the Netherlands since the introduction of the new identification procedure - after the Frijns Corporate Governance Act of 2013 - there is a threshold of 0.5% of the shares in order to respect the privacy of small (individual) investors. In general publicly available information on the ownership structure of EU companies should exist; although the identity of shareholders below a certain threshold should not be disclosed.

³ See in particular Bolton P and Samama F. “Loyalty-Shares: Rewarding Long-term Investors” Journal of Applied Corporate Finance, Volume 25 (Summer 2013).



Better Finance believes that the **right to initiate the identification process should be at arm's length: both for the issuer as well as for the shareholder**. As in the Netherlands, shareholders holding 1% of the shares should be able to use the identification procedure mechanism of the company to distribute documents and share views on the subjects the company addresses. Shareholders should also be able to use the identification procedure to share ideas and proposed agenda items.

Better Finance is in favor of the **principle of equality** which means that **all information given about the shareholder to the company should also be given to any other shareholder, including associations legitimately representing the interests of shareholders, in order to create a level playing field**.

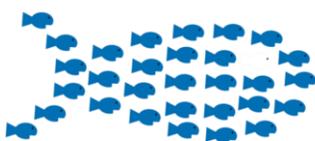
As regards the proposals for sanctions aimed at agents such as the fund manager, the pension fund or whoever is voting to provide shareholders' identities to issuers, we believe this is a possibility that should be further explored: in case there is no sanction, the investor may never know that the issuer had even asked for its identification. Issuers may only have access to the identity of the legal shareholder on the register, which may be the custodian bank, and companies may want to be able to contact the beneficial owner. As the Directive from the European Commission proposes, we support the idea that Member States are entitled to lay down and enforce whatever rules deemed appropriate to comply with the Directive. We look forward to seeing the actual proposals from the Member States at this regard.

Proxy Advisors

Better Finance welcomes the proposals regarding transparency for institutional investors. An increased transparency regime should not only affect institutional investors, as mentioned above; but proxy advisors will have to be much more transparent as well.

We agree with the European Commission's proposal to request public disclosure of key information related to the preparation of proxy advisors' voting recommendations. Also, we do agree with mandatory disclosure of information to their clients and to the concerned listed companies on any actual or potential conflict of interest of business relationships that may influence the preparation of the voting recommendations.

We are disappointed, however, that the European Commission did not seem to consider the unique features of non-for-profit proxy voting services carried out by investors' organizations, which should be exempted from high level disclosure rules as we advocated in [our Position Paper to the Action Plan on Corporate Governance and Company Law](#): non-for-profit proxy



advisors should be distinguished from commercial, for profit proxy advisors; as the former – by essence - do not bear the risks of conflicts of interests of the latter. Therefore, non-for-profit proxy advisors should benefit from a simplified disclosure regime as compared to commercial providers.