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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement

(Text with EEA relevance)

{SWD(2014) 126 final}

{SWD(2014) 127 final}

{SWD(2014) 128 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The importance of creating a modern and efficient corporate governance framework for European undertakings, investors and employees that must be adapted to the needs of today's society and to the changing economic environment was acknowledged by the Commission's 'Europe 2020' Communication¹ that calls for improvement of the business environment in Europe.

The past years have highlighted certain corporate governance shortcomings in European listed companies. These shortcomings relate to different actors: companies' and their boards, shareholders (institutional investors and asset managers) and proxy advisors. Identified shortcomings related mainly to two problems: insufficient engagement of shareholders and lack of adequate transparency.

Stakeholders were consulted on two Green Papers ("Corporate governance in financial institution"² and "The EU corporate governance framework"³) In relation to what they considered to be the most important issues to be tackled at European level.

Based on these consultations and further analysis, the Commission's Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies⁴ provides the Commission's roadmap in the area, based the two objectives of enhancing transparency and engaging shareholders. This Action Plan announces a number of initiatives, amongst other, a potential revision of the Shareholder Rights Directive.

Against this background, the overarching objective of the current proposal to revise the Shareholder Rights Directive is to contribute to the long-term sustainability of EU companies, to create an attractive environment for shareholders and to enhance cross-border voting by improving the efficiency of the equity investment chain in order to contribute to growth, jobs creation and EU competitiveness. It also delivers on the commitment of the renewed strategy on the long-term financing of the European economy⁵: it contributes to a more long-term perspective of shareholders which ensures better operating conditions for listed companies.

This requires the realisation of the following more specific objectives: 1) Increase the level and quality of engagement of asset owners and asset managers with their investee companies; 2) Create a better link between pay and performance of company directors; 3) Enhance transparency and shareholder oversight on related party transactions; 4) Ensure reliability and quality of advice of proxy advisors; 5) Facilitate transmission of cross-border information (including voting) across the investment chain in particular through shareholder identification.

This proposal is also consistent with the existing regulatory framework. In particular, the new Capital Requirements Directive and Regulation (CRD IV package)⁶ have, in order to tackle excessive risk taking, further strengthened the framework with regard to the requirements for the relationship between the variable (or bonus) component of remuneration and the fixed

¹ Communication from the Commission Europe 2020. A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final.

² COM(2010) 284 final

³ COM(2011) 164 final

⁴ COM(2012) 740 final

⁵ Communication on Long term-financing COM(2014)...

⁶ Directive 2013/36/EU and Regulation (EU) No 575/2013.

component (or salary). These rules apply to credit institutions and investment firms, both listed and non-listed. The rules in this proposal would however only be applicable to listed companies and aim at increasing transparency and ensuring that shareholders have a vote on the remuneration policy and report. Existing rules regulating institutional investors and asset managers, for instance in the UCITS Directive⁷, AIFM⁸ and MIFID⁹ are consistent with this Directive.

At the date of adoption of this proposal the Commission also adopted a recommendation on the quality of corporate governance reporting ('comply or explain'). The EU corporate governance framework is above all based on the comply or explain approach which allows Member States and companies to create a framework that is in line with their culture, traditions and needs. To support the good functioning of that approach the Commission adopted the recommendation. However, a number of elements of corporate governance should, in view of the cross-border relevance and importance be dealt with at European level in a more binding form to ensure a harmonised approach across the EU (e.g. shareholder identification, the transparency and engagement of institutional investors and board remuneration).

The proposed EU action provides significant added value. Non-national shareholders hold some 44% of the shares in EU listed companies. Most of these investors are institutional investors and asset managers. Only EU action can ensure that institutional investors and asset managers, but also intermediaries and proxy advisors from other Member States are subject to appropriate transparency and engagement rules. Moreover, a significant number of listed companies have activities in several EU Member States. Appropriate standards ensuring a well-functioning corporate governance of these companies with a view to their long-term sustainability are thus in the interest not only of Member States where these companies are based but also of those Member States where they operate. Only common EU action can ensure such common standards.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of stakeholders and interested parties

The Commission held a number of public consultations that covered the different topics in this proposal. First, the 2010 Green Paper on corporate governance in financial institutions and remuneration policies and the 2011 Green Paper on the EU corporate governance framework. Moreover, two consultation were held on legislation on legal certainty of securities holding and dispositions which comprised questions on shareholders identification and effective cross-border exchange of information, including voting, across the investment chain. Moreover, the Commission services have maintained regular and wide dialogues with stakeholders throughout the procedure leading to this proposal for amendment.

In its reflection on the functioning of the European corporate governance framework the Commission has benefited from the advice of the European Corporate Governance Forum.¹⁰

⁷ Directive 2009/65/EC

⁸ Directive 2011/61/EU

⁹ Directive 2004/39/EC

¹⁰ The Forum was set up in 2004 to examine best practices in Member States with a view to enhancing the convergence of national corporate governance codes and providing advice to the Commission.

Additionally, the Commission sent a questionnaire to the Company Law Expert Group which is composed of member State representatives.¹¹

Finally, some corporate governance problems have been discussed in the Green Paper on the long-term financing of the European economy¹² which has initiated a broad debate about how to foster the supply of long-term financing and how to improve and diversify the system of financial intermediation for long-term investment in Europe.

Stakeholders and respondents overall expressed themselves in favour of increasing transparency as regards board remuneration and of granting shareholders a say on pay. They also supported measures regarding monitoring of asset managers by asset owners, more transparency from proxy advisors and reinforcing current rules on related party transactions. They favoured disclosure of voting policies and records by institutional investors. Additionally, a strong call had been made to increase the efficiency of the investment in transmitting information and facilitating cross-border voting by effective intermediary communication among themselves and with shareholders. Finally, clear support was shown for shareholder identification.

Impact assessment

The impact assessment undertaken by the Commission services identified five main issues: 1) Insufficient engagement of institutional investors and asset managers; 2) Insufficient link between pay and performance of directors; 3) Lack of shareholder oversight on related party transactions and 4) Inadequate transparency of proxy advisors 5) Difficult and costly exercise of rights flowing from securities for investors.

Insufficient engagement of institutional investors and asset managers

The financial crisis has revealed that shareholders in many cases supported managers' excessive short-term risk taking. Moreover, there is clear evidence that the current level of "monitoring" of investee companies and engagement by institutional investors and asset managers is sub-optimal. Institutional investors and their asset managers do not sufficiently focus on the real (long-term) performance of companies, but often on share-price movements and the structure of capital market indexes, which leads to suboptimal return for the end beneficiaries of institutional investors and puts short-term pressure on companies.

Short-termism appears to be rooted in a misalignment of interests between asset owners and asset managers. Even though large asset owners tend to have long-term interests as their liabilities are long-term, for the selection and evaluation of asset managers they often rely on benchmarks, such as market indexes. Moreover, the performance of the asset manager is often evaluated on a quarterly basis. As a result many asset managers' main concern has become their short term performance relative to a benchmark or to other asset managers. Short-term incentives turn focus and resources away from making investments based on the fundamentals (strategy, performance and governance) and longer term perspectives, from evaluating the real value and longer-term value creative capacity of companies and increasing the value of the equity investments through shareholder engagement.

Insufficient link between pay and performance of directors

Directors' remuneration plays a key role in aligning the interests of directors and shareholders and ensuring that the directors act in the best interest of the company. Shareholder control

¹¹ The Company Law Expert Group is a Commission Expert Group which provides advice to the Commission on the preparation of Company Law and Corporate Governance measures.

¹² COM(2013) 150 final.

prevents directors from applying remuneration strategies which reward them personally, but that may not contribute to the long-term performance of the company. Several shortcomings have been detected in the current framework. First, the information disclosed by companies is not comprehensive, clear nor comparable. Secondly, shareholders often do not have sufficient tools to express their opinion on directors' remuneration. As a result, there is currently an insufficient link between pay and performance of directors of listed companies.

Lack of shareholder oversight on related party transactions

Related party transactions (RPTs), i.e. transactions between a company and its management, directors, controlling entities or shareholders, create the opportunity to obtain value belonging to the company to the detriment of shareholders, and in particular minority shareholders. Currently, shareholders do not have access to sufficient information ahead of the planned transaction and do not have adequate tools to oppose to abusive transactions. As institutional investors and asset managers are in most cases minority shareholders, more control rights over RPTs would improve their ability to protect their investments.

Inadequate transparency of proxy advisors

The current equity market with its large number of (cross-border) holdings of shares and the complexity of the issues to be considered make the use of proxy advisors in many cases inevitable and thus proxy advisors have considerable influence on the voting behaviour of these investors. Two shortcomings have been observed: 1) the methodologies used by proxy advisors to make their recommendations do not always sufficiently take into account local market and regulatory conditions and 2) proxy advisors provide services to issuers who may affect their independence and ability to provide an objective and reliable advice.

Difficult and costly exercise of rights flowing from securities for investors

Investors face difficulties in exercising the rights flowing from their securities, especially if the securities are held cross-border. In intermediated holding chains, especially when they involve many intermediaries, information is not passed to shareholders from companies or shareholders' votes get lost. There is also a greater likelihood of misuse of the voting rights by intermediaries. Three main causes affect the systems: the lack of investor identification, a lack of timely transmission of information and rights in the investment chain and price discriminations of cross-border holdings.

Overall the described shortcomings lead to sub-optimal corporate governance and a risk of suboptimal and/or excessively short-term focused managerial decisions which result in lost potential for better financial performance of listed companies and lost potential for cross-border investment.

A range of options, including no policy change, have been considered to address each of the presented problems. In light of the careful assessment of these policy options, it appeared that the following preferred option would best fulfil the objectives without imposing disproportionate burdens:

- 1) Mandatory transparency of institutional investors and asset managers on their voting and engagement and certain aspects of asset management arrangements;
- 2) Disclosure of the remuneration policy and individual remunerations, combined with a shareholder vote;
- 3) Additional transparency and an independent opinion on more important related party transactions and submission of the most substantial transactions to shareholder approval;

- 4) Binding disclosure requirements on the methodology and conflicts of interests of proxy advisors;
- 5) Creating a framework to allow listed companies to identify their shareholders and requiring intermediaries to rapidly transmit information related to shareholders and to facilitate the exercise of shareholder rights.

Following an initial negative opinion, the Impact Assessment Board adopted a positive opinion on the revised Impact Assessment on 22 November 2013. It should be noted that the part of the impact assessment on shareholder identification, transmission of information and facilitation of the exercise of shareholder rights was initially dealt with in a separate impact assessment that was cleared by the IAB and was integrated only in the final impact assessment report at a later stage.

3. LEGAL ELEMENTS OF THE PROPOSAL

Legal basis, subsidiarity and proportionality

The proposal is based on Article 50(2) (g) and 114 of the Treaty on the Functioning of the European Union (TFEU) which is the legal basis for Directive 2007/36/EC. Article 50(2)(g) provides for the EU competence to act in the area of corporate governance. It provides in particular for coordination measures concerning the protection of interests of companies' members and other stakeholders, such as creditors, with a view to making such protection equivalent throughout the Union. Article 114 is the legal basis for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

According to the principle of subsidiarity the EU should act only where it can provide better results than intervention at Member State level and action should be limited to what is necessary and proportionate in order to attain the objectives of the policy pursued. As regards this aspect it is important to note that there is strong evidence that the EU equity market has to a very large extent become a European/international market.

In view of the international nature of activities of institutional investors, asset managers and proxy advisors the objectives relating to engagement of these investors and the reliability of the advice of proxy advisors cannot be sufficiently achieved by Member States. Action from Member States would only cover some of the institutions concerned and would most likely lead to different requirements, which could lead to an uneven level playing field on the internal market.

On the objectives to ensure sufficient transparency and shareholder oversight on directors' remuneration and related party transactions, the existing Member State rules in these areas are very different and as a result, they provide an uneven level of transparency and protection for investors. In both cases, the result of the divergence of rules is that investors are, in particular in case of cross-border investments, subject to difficulties and costs when they want to monitor companies and engage with them, and have no effective tools to protect their investments.

Without EU norms, rules and their application would be different from Member State to Member State, which could be detrimental to the EU level playing field. Without action at EU level the problems are likely to persist and only partial and fragmented remedies are likely to be proposed at national level. It therefore results that the objectives of this amendment are such that they cannot be fulfilled by unilateral action at the level of the Member States.

Targeted further development of the EU legal framework for corporate governance would create a better framework for shareholder engagement. EU rules ensure that the same transparency obligations will apply across the EU, which guarantees an EU level playing field and facilitate cross-border investment. As one of the key underlying problems is information asymmetry, this can only be dealt with through uniform transparency measures.

Harmonisation of disclosure requirements at EU level would be a remedy to asymmetry of information which is detrimental to shareholders and, therefore, plays a key role for minimising agency costs. It would be beneficial for cross-border investment, since it would facilitate comparison of information and make engagement easier and thus less costly. Moreover, it would make companies more accountable to other stakeholders like employees. Common standards at EU level are necessary to promote a well-functioning internal market and avoid the development of different rules and practices in the Member States.

Nevertheless, Member States should have a degree of flexibility as far as the transparency and information required in this proposal are concerned, in particular in order to allow the norms to adequately fit into the distinct corporate governance frameworks. To allow for such flexibility only some basic principles regarding shareholder identification, transmission of information by intermediaries and facilitation of the exercise of rights should be ensured. Moreover, institutional investors and asset managers should comply with certain of the obligations only on a comply or explain basis, for remuneration of directors the provisions only ensure the necessary transparency and a shareholders vote, while leaving the structure and level of remuneration to companies, while proxy advisors will only be subject to some basic principles to ensure accuracy and reliability of their recommendations.

To this end, an amendment to the Shareholders Right Directive is the most appropriate legal instrument as it allows a certain flexibility for Member States, while at the same time providing the needed level of harmonization. Amending the Directive also ensures that the content and form of the proposed EU action does not go beyond what is necessary and proportionate in order to achieve the regulatory objective.

Identification of shareholders has an impact on fundamental rights recognised in particular in the Treaty on the Functioning of the European Union (TFEU) and in the Charter of Fundamental Rights of the European Union (Charter), notably the right to the protection of personal data recognized in Article 16 TFEU and in Article 8 of the Charter. In view of this and of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995¹³ it is necessary to strike a balance between the facilitation of the exercise of shareholders' rights and the right to privacy and the protection of personal data. The identification information on shareholders is limited to the name and contact details of the corresponding shareholders and can only be used for facilitation of the exercise of shareholder rights.

Detailed Explanation of the Proposal

Improving engagement of institutional investors and asset managers

Articles 3f until 3h will increase the transparency of institutional investors and asset managers. They will be required by these articles to develop a policy on shareholder engagement, which should contribute to managing actual or potential conflicts of interests

¹³ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

with regard to shareholder engagement. They should in principle disclose to the public their engagement policy, how it has been implemented and the results thereof. Where institutional investors or asset managers decide not to develop an engagement policy and/or decide not to disclose the implementation and results thereof, they shall give a clear and reasoned explanation as to why this is the case.

Institutional investors will be required to disclose to the public how their equity investment strategy is aligned with the profile and duration of their liabilities and it contributes to the medium to long-term performance of their assets. Where they make use of an asset manager the institutional investor will have to disclose to the public the main elements of the arrangement with the asset manager with regard to a number of important elements listed in the article 3g. Where the arrangement with the asset manager does not contain such elements the institutional investor shall give a clear and reasoned explanation as to why this is the case.

Asset managers will be required to disclose on a half-yearly basis to institutional investors how their investment strategy and implementation thereof is in accordance with the arrangement and how the investment strategy and decisions contributes to medium to long-term performance of the assets of the institutional investor. They should moreover disclose to the institutional investor on a half-yearly basis a number of important elements related to the execution of the arrangement with the institutional investor.

Strengthening the link between pay and performance of directors

The proposal aims at creating more transparency on remuneration policy and the actual remuneration awarded to directors and creating a better link between pay and performance of directors by improving shareholder oversight of directors' remuneration. The proposal does not regulate the level of remuneration and leaves decisions on this to companies and their shareholders.

Articles 9a and 9b will require listed companies to publish detailed and user-friendly information on the remuneration policy and on the individual remuneration of directors, and Article 9b empowers the Commission to provide for a standardized presentation of some of this information in an implementing act. As is clarified in Article 9a paragraph 3 and 9b paragraph 1 all benefits of directors in whatever form will be included in the remuneration policy and report. The Articles give shareholders the right to approve the remuneration policy and to vote on the remuneration report, which describes how the remuneration policy has been applied in the last year. Therefore, such report facilitates the exercise of shareholder rights and ensures accountability of directors.

Board structures vary significantly between Member States. In Member States with a two tier system the supervisory board plays a very important role and is responsible for the remuneration for the members of the management board. This proposal would not affect the key role of the supervisory board in two tier systems. It would still be the supervisory board that would develop the remuneration policy to be submitted to shareholders for confirmation. Most importantly, it would still be for the board, on the basis of the policy, to decide on the actual remuneration to be paid. The requirement of a shareholder vote will, in line with the general objectives of the proposal, increase the engagement that the board will seek with its shareholders.

Improving shareholder oversight on related party transactions

The new article 9c will require listed companies that related party transactions representing more than 5% of the companies' assets or transactions which can have a significant impact on profits or turnover to submit these transactions to the approval of shareholders and may not

unconditionally conclude it without their approval. For smaller related party transactions that represent more than 1% of their assets, listed companies shall publicly announce such transactions at the time of the conclusion of the transaction, and accompany the announcement by a report from an independent third party assessing whether the transaction is on market terms and confirming whether it is fair and reasonable from the perspective of the shareholders. In order to target only transactions that could be most disadvantageous for minority shareholders and to keep administrative burden limited Member States should be allowed to exclude transactions entered into between the company and members of its group that are fully owned by the listed company. For the same reason, Member States should also be able to allow companies to request the advance approval by shareholders for certain clearly defined types of recurrent transactions above 5 percent of the assets, and to request from shareholders an advance exemption from the obligation to produce an independent third party report for recurrent transactions above 1 percent of the assets, under certain conditions. According to the Impact assessment, the most significant costs would be linked to the fairness opinion by an independent advisor. However, depending on the complexity of the transaction, an experienced advisor should be able to assess the fairness of the given transaction within between approximately 5 and 10 hours. This could result in a cost of maximum 2,500-5,000 € in case the opinion is made by an auditor.

Enhancing transparency of proxy advisors

Article 3i will require proxy advisors to adopt and implement adequate measures to guarantee that their voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them and are not affected by any existing or potential conflict of interest or business relationship. Proxy advisors are required by this article to publicly disclose certain key information related to the preparation of their voting recommendations and, to their clients and the listed companies concerned information on any actual or potential conflict of interest or business relationships that may influence the preparation of the voting recommendations.

Facilitating the exercise of rights flowing from securities for investors

Articles 3a of the proposal requires Member States to ensure that intermediaries offer to listed companies the possibility to have their shareholders identified. Intermediaries should, on the request of such a company communicate without undue delay the name and contact details of the shareholders. Where 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. For legal identities also their unique identifier, where available, should be transmitted. Such identifier allows a legal person to be identified by a number that is unique at EU level. On international level the Legal Entity Identifier has been proposed by the Financial Stability Board (FSB) and endorsed by the G20, to ensure consistent and comparable data. This is a necessary component of this project making it easier to track companies in cross-border situations through centralised searches by electronic systems. The Regulation on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC will ensure that the shares of listed companies shall be represented in book-entry form. In order to protect as much as possible the personal data of shareholders, intermediaries shall inform them that their name and contact details may be transmitted for the purpose of identification, while the information may not use this information for any other purpose than the facilitation of the exercise of the rights of the shareholder. Moreover, shareholders will be able to rectify or erase any incomplete or inaccurate data and the information should not be conserved for longer than 24 months.

Article 3b provides that if a listed company chooses not to directly communicate with its shareholders, the relevant information shall be transmitted to them by the intermediary. Listed companies are required to provide and deliver the information to the intermediary related to the exercise of rights flowing from shares in a standardised and timely manner. Where there is more than one intermediary in a holding chain, information referred to in paragraphs 1 and 3 shall be transmitted between intermediaries without undue delay.

Article 3c requires that intermediaries facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings and requires companies to 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. Articles 3a until 3c empower the Commission to adopt implementing acts to ensure an efficient and effective system of shareholder identification, transmission of information and facilitation of exercise of shareholder rights.

4. BUDGETARY IMPLICATION

The proposal has no implications for the Union budget.

5. EXPLANATORY DOCUMENTS

According to the Joint Political Declaration of 28 September 2011, the Commission should only request explanatory documents if it can "justify on a case by case basis [...] the need for, and the proportionality of, providing such documents, taking into account, in particular and respectively, the complexity of the directive and of its transposition, as well as the possible administrative burden".

The Commission considers that in this particular case it is justified to ask Member States to provide explanatory documents to the Commission due to the implementation challenges that will arise in the context of this proposal. The proposal aims to regulate a number of aspects of corporate governance and would cover a number of different players in that area, such as listed companies, institutional investors and asset managers, proxy advisors and intermediaries. Therefore it is likely that the provisions of this Directive will be transposed into several acts at national level.

In this context, the notification of transposition measures will be essential to clarify the relationship between the provisions of this Directive and national transposition measures, and therefore to assess the conformity of national legislation with the Directive.

The simple notification of individual transposition measures would not be self-explanatory and would not allow the Commission to ensure that all the EU legal provisions were faithfully and fully implemented. The explanatory documents are necessary to obtain a clear and comprehensive picture of the transposition. Member States are encouraged to present the explanatory documents in the form of easily readable conformity tables.

Given the above, the following recital is included in the proposed Directive: *"In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified."*

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2007/36/EC of the European Parliament and of the Council² establishes requirements in relation to the exercise of certain shareholder rights attaching to voting shares in relation to general meetings of companies which have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State.
- (2) The financial crisis has revealed that shareholders in many cases supported managers' excessive short-term risk taking. Moreover, there is clear evidence that the current level of "monitoring" of investee companies and engagement by institutional investors and asset managers is inadequate, which may lead to suboptimal corporate governance and performance of listed companies.
- (3) In the Action Plan on European company law and corporate governance³ the Commission announced a number of actions in the area of corporate governance, in particular to encourage long-term shareholder engagement and to enhance transparency between companies and investors.
- (4) In order to further facilitate the exercise of shareholder rights and engagement between listed companies and shareholders, listed companies should have the possibility to

¹ OJ C , , p. .

² Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17).

³ COM/2012/0740 final.

have their shareholders identified and directly communicate with them. Therefore, this Directive should provide for a framework to ensure that shareholders can be identified.

- (5) The effective exercise of their rights by shareholders depends to a large extent on the efficiency of the chain of intermediaries maintaining securities accounts for shareholders, especially in a cross-border context. This Directive aims at improving the transmission of information by intermediaries through the equity holding chain to facilitate the exercise of shareholder rights.
- (6) In view of the important role of intermediaries they should be obliged to facilitate the exercise of rights by the shareholder both when he would like to exercise these rights himself or wants to nominate a third person to do so. When the shareholder does not want to exercise the rights himself and has nominated the intermediary as a third person, the latter should be obliged to exercise these rights upon the explicit authorisation and instruction of the shareholder and for his benefit.
- (7) In order to promote equity investment throughout the Union and the exercise of rights related to shares, this Directive should prevent price discrimination of cross-border as opposed to purely domestic share holdings by means of better disclosure of prices, fees and charges of services provided by intermediaries. Third country intermediaries which have established a branch in the Union should be subject to the rules on shareholder identification, transmission of information, facilitation of shareholder rights and transparency of prices, fee and charges to ensure effective application of the provisions on shares held via such intermediaries;
- (8) Effective and sustainable shareholder engagement is one of the cornerstones of listed companies' corporate governance model, which depends on checks and balances between the different organs and different stakeholders.
- (9) Institutional investors and asset managers are important shareholders of listed companies in the Union and therefore can play an important role in the corporate governance of these companies, but also more generally with regard to the strategy and long-term performance of these companies. However, the experience of the last years has shown that institutional investors and asset managers often do not engage with companies in which they hold shares and evidence shows that capital markets exert pressure on companies to perform in the short term, which may lead to a suboptimal level of investments, for example in research and development to the detriment to long-term performance of both the companies and the investor.
- (10) Institutional investors and asset managers are often not transparent about investment strategies and their engagement policy and the implementation thereof. Public disclosure of such information could have a positive impact on investor awareness, enable ultimate beneficiaries such as future pensioners optimise investment decisions, facilitate the dialogue between companies and their shareholders, encourage shareholder engagement and strengthen companies' accountability to civil society.
- (11) Therefore, institutional investors and asset managers should develop a policy on shareholder engagement, which determines, amongst others, how they integrate shareholder engagement in their investment strategy, monitor investee companies, conduct dialogues with investee companies and exercise voting rights. Such engagement policy should include policies to manage actual or potential conflicts of interests, such as the provision of financial services by the institutional investor or asset manager, or companies affiliated to them, to the investee company. This policy, its implementation and the results thereof should be publicly disclosed on an annual

basis. Where institutional investors or asset managers decide not to develop an engagement policy and/or decide not to disclose the implementation and results thereof, they shall give a clear and reasoned explanation as to why this is the case.

- (12) Institutional investors should annually disclose to the public how their equity investment strategy is aligned with the profile and duration of their liabilities and how it contributes to the medium to long-term performance of their assets. Where they make use of asset managers, either through discretionary mandates involving the management of assets on an individual basis or through pooled funds, they should disclose to the public the main elements of the arrangement with the asset manager with regard to a number of issues, such as whether it incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, whether it incentivises the asset manager to make investment decisions based on medium to long-term company performance and to engage with companies, how it evaluates the asset managers performance, the structure of the consideration for the asset management services and the targeted portfolio turnover. This would contribute to a proper alignment of interests between the final beneficiaries of institutional investors, the asset managers and the investee companies and potentially to the development of longer-term investment strategies and longer-term relationships with investee companies involving shareholder engagement.
- (13) Asset managers should be required to disclose to institutional investors how their investment strategy and the implementation thereof is in accordance with the asset management arrangement and how the investment strategy and decisions contributes to medium to long-term performance of the assets of the institutional investor. Moreover, they should disclose whether they make investment decisions on the basis of judgements about medium-to long-term performance of the investee company, how their portfolio was composed and the portfolio turnover, actual or potential conflicts of interest and whether the asset manager uses proxy advisors for the purpose of their engagement activities. This information would allow the institutional investor to better monitor the asset manager, provide incentives for a proper alignment of interests and for shareholder engagement.
- (14) In order to improve the information in the equity investment chain Member States should ensure that proxy advisors adopt and implement adequate measures to guarantee that their voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them and are not affected by any existing or potential conflict of interest or business relationship. They should disclose certain key information related to the preparation of their voting recommendations and any actual or potential conflict of interest or business relationships that may influence the preparation of the voting recommendations.
- (15) Since remuneration is one of the key instruments for companies to align their interests and those of their directors and in view of the crucial role of directors in companies, it is important that the remuneration policy of companies is determined in an appropriate manner. Without prejudice to the provisions on remuneration of Directive 2013/36/EU of the European Parliament and of the Council⁴ listed companies and their

⁴ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms OJ L 176, 27.6.2013, p. 338..

shareholders should have the possibility to define the remuneration policy of the directors of their company.

- (16) In order to ensure that shareholders have an effective say on the remuneration policy, they should be granted the right to approve the remuneration policy, on the basis of a clear, understandable and comprehensive overview of the company's remuneration policy, which should be aligned with the business strategy, objectives, values and long-term interests of the company and should incorporate measures to avoid conflicts of interest. Companies should only pay remuneration to their directors in accordance with a remuneration policy that has been approved by shareholders. The approved remuneration policy should be publicly disclosed without delay.
- (17) To ensure that the implementation of the remuneration policy is in line with the approved policy, shareholders should be granted the right to vote on the company's remuneration report. In order to ensure accountability of directors the remuneration report should be clear and understandable and should provide a comprehensive overview of the remuneration granted to individual directors in the last financial year . Where the shareholders vote against the remuneration report, the company should explain in the next remuneration report how the vote of the shareholders has been taken into account.
- (18) In order to provide shareholders easy access to all relevant corporate governance information the remuneration report should be part of the corporate governance statement that listed companies should publish in accordance with article 20 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013⁵.
- (19) Transactions with related parties may cause prejudice to companies and their shareholders, as they may give the related party the opportunity to appropriate value belonging to the company. Thus, adequate safeguards for the protection of shareholders' interests are of importance. For this reason Member States should ensure that related party transactions representing more than 5 % of the companies' assets or transactions which can have a significant impact on profits or turnover should be submitted to a vote by the shareholders in a general meeting. Where the related party transaction involves a shareholder, this shareholder should be excluded from that vote. The company should not be allowed to conclude the transaction before the shareholders' approval of the transaction. For transactions with related parties that represent more than 1% of their assets companies should publicly announce such transactions at the time of the conclusion of the transaction, and accompany the announcement by a report from an independent third party assessing whether the transaction is on market terms and confirming that the transaction is fair and reasonable from the perspective of the shareholders, including minority shareholders. Member States should be allowed to exclude transactions entered into between the company and its wholly owned subsidiaries. Member States should also be able to allow companies to request the advance approval by shareholders for certain clearly defined types of recurrent transactions above 5 percent of the assets, and to request from shareholders an advance exemption from the obligation to produce an

⁵ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19)

independent third party report for recurrent transactions above 1 percent of the assets, under certain conditions, in order to facilitate the conclusion of such transactions by companies.

- (20) In view of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995⁶ it is necessary to strike a balance between the facilitation of the exercise of shareholders' rights and the right to privacy and the protection of personal data. The identification information on shareholders should be limited to the name and contact details of the corresponding shareholders. This information should be accurate and kept up-to-date, and intermediaries as well as companies should allow for rectification or erasure of all incorrect or incomplete data. This identification information on shareholders should not be used for any other purpose than the facilitation of the exercise of shareholder rights.
- (21) In order to ensure uniform conditions for the implementation of the provisions on shareholder identification, transmission of information, facilitation of the exercise of shareholder rights and the remuneration report, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷
- (22) In order to ensure that the requirements set out in this Directive or the measures implementing this Directive are applied in practice, any infringement of those requirements should be subject to penalties. To that end, penalties should be sufficiently dissuasive and proportionate.
- (23) Since the objectives of this Directive cannot be sufficiently achieved by the Member States in view of the international nature of the Union equity market and action by Member States alone is likely to result in different sets of rules, which may undermine or create new obstacles to the functioning of the internal market, the objectives can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.'
- (24) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents⁸, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

⁶ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁸ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2007/36/EC

Directive 2007/36/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) In Paragraph 1, the following sentence is added:

“It also establishes requirements for intermediaries used by shareholders to ensure that shareholders can be identified, creates transparency on the engagement policies of certain types of investors and creates additional rights for shareholders to oversee companies.”

(b) The following paragraph 4 is added:

“4. Chapter Ib shall apply to institutional investors and to asset managers to the extent that they invest, directly or through a collective investment undertaking, on behalf of institutional investors, in so far they invest in shares.”

(2) In Article 2 the following points (d) -(j) are added:

“(d) ‘intermediary’ means a legal person that has its registered office, central administration or principal place of business in the European Union and maintains securities accounts for clients;

(e) third country intermediary’ means a legal person that has its registered office, central administration or principal place of business outside the Union and maintains securities accounts for clients;

(f) ‘institutional investor’ means an undertaking carrying out activities of life assurance within the meaning of Article 2(1)(a) and not excluded pursuant to article 3 of Directive 2002/83/EC of the European Parliament and of the Council⁹ and an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council¹⁰ in accordance with Article 2 thereof, unless a Member States has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive;

(g) ‘asset manager’ means an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council¹¹ providing portfolio management services to institutional investors, an AIFM (alternative investment fund manager) as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council¹² that does not fulfil the conditions for an exemption in accordance with Article 3 of that Directive or a management company as defined in Article 2(1)(b) of

⁹ Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1).

¹⁰ Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

¹¹ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

¹² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

Directive 2009/65/EC of the European Parliament and of the Council¹³; or an investment company authorised in accordance with Directive 2009/65/EC, provided that it has not designated a management company authorised under that Directive for its management;

(h) ‘shareholder engagement’ means the monitoring by a shareholder alone or together with other shareholders, of companies on matters such as strategy, performance, risk, capital structure and corporate governance, having a dialogue with companies on these matters and voting at the general meeting.

(i) ‘proxy advisor’ means a legal person that provides, on a professional basis, recommendations to shareholders on the exercise of their voting rights;

(l) ‘Director’ means any member of the administrative, management or supervisory bodies of a company;

(j) ‘related party’ has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council¹⁴.

(3) After Article 3, the following Chapters Ia and 1b are inserted

“CHAPTER IA

IDENTIFICATION OF SHAREHOLDERS, TRANSMISSION OF INFORMATION AND FACILITATION OF EXERCISE OF SHAREHOLDER RIGHTS

Article 3a

Identification of shareholders

1. Member States shall ensure that intermediaries offer to companies the possibility to have their shareholders identified.
2. Member States shall ensure that, on the request of the company, the intermediary communicates without undue delay to the company the name and contact details of the shareholders and, where the shareholders are legal persons, their unique identifier where available. Where 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.
3. Shareholders shall be duly informed by their intermediary that their name and contact details may be transmitted for the purpose of identification in accordance with this article. This information may only be used for the purpose of facilitation of the exercise of the rights of the shareholder. The company and the intermediary shall ensure that natural persons are able to rectify or erase any incomplete or inaccurate data and shall not conserve the information relating to the shareholder for longer than 24 months after receiving it.
4. Member States shall ensure that an intermediary that reports the name and contact details of a shareholder is not considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

¹³ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

¹⁴ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p.1).

5. The Commission shall be empowered to adopt implementing acts to specify the requirements to transmit the information laid down in paragraphs 2 and 3 including as regards the information to be transmitted, the format of the request and the transmission and the deadlines to be complied with. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a (2).

Article 3b
Transmission of information

1. Member States shall ensure that if a company chooses not to directly communicate with its shareholders, the information related to their shares shall be transmitted to them or, in accordance with the instructions given by the shareholder, to a third party, by the intermediary without undue delay in all of the following cases:
 - (a) the information is necessary to exercise a right of the shareholder flowing from its shares;
 - (b) the information is directed to all shareholders in shares of that class.
2. Member States shall require companies to provide and deliver the information to the intermediary related to the exercise of rights flowing from shares in accordance with paragraph 1 in a standardised and timely manner.
3. Member States shall oblige the intermediary to transmit to the company, in accordance with the instructions received from the shareholders, without undue delay the information received from the shareholders related to the exercise of the rights flowing from their shares.
4. Where there is more than one intermediary in a holding chain, information referred to in paragraphs 1 and 3 shall be transmitted between intermediaries without undue delay.
5. The Commission shall be empowered to adopt implementing acts to specify the requirements to transmit information laid down in paragraphs 1 to 4 including as regards the content to be transmitted, the deadlines to be complied with and the types and format of information to be transmitted. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a (2).

Article 3c
Facilitation of the exercise of shareholder rights

1. Member States shall ensure that the intermediary facilitates the exercise of the rights by the shareholder, including the right to participate and vote in general meetings. Such facilitation shall comprise at least either of the following:
 - (a) the intermediary makes the necessary arrangements for the shareholder or a third person nominated by the shareholder to be able to exercise themselves the rights;
 - (b) the intermediary exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for his benefit.
2. Member States shall ensure that companies 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. Where there is more than one intermediary in the holding chain the confirmation shall be transmitted between intermediaries without undue delay.

3. The Commission shall be empowered to adopt implementing acts to specify the requirements to facilitate the exercise of shareholder rights laid down in paragraphs 1 and 2 of this Article including as regards the type and content of the facilitation, the form of the voting confirmation and the deadlines to be complied with. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a(2).

Article 3d

Transparency on costs

1. Member States shall allow intermediaries to charge prices or fees for the service to be provided under this chapter. Intermediaries shall publicly disclose prices, fees and any other charges separately for each service referred to in this chapter.
2. Member States shall ensure that any charges that may be levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportional. Any differences in the charges levied between domestic and cross-border exercise of rights shall be duly justified.

Article 3e

Third country intermediaries

A third country intermediary who has established a branch in the Union shall be subject to this chapter.”

CHAPTER IB

TRANSPARENCY OF INSTITUTIONAL INVESTORS, ASSET MANAGERS AND PROXY ADVISORS

Article 3f

Engagement policy

1. Member States shall ensure that institutional investors and asset managers develop a policy on shareholder engagement (“engagement policy”) This engagement policy shall determine how institutional investors and asset managers conduct all of the following actions:
 - (a) to integrate shareholder engagement in their investment strategy;
 - (b) to monitor investee companies, including on their non-financial performance;
 - (c) to conduct dialogues with investee companies;
 - (d) to exercise voting rights;
 - (e) to use services provided by proxy advisors;
 - (f) to cooperate with other shareholders.

2. Member States shall ensure that the engagement policy includes policies to manage actual or potential conflicts of interests with regard to shareholder engagement. Such policies shall in particular be developed for all of the following situations:
 - (a) the institutional investor or the asset manager, or other companies affiliated to them, offer financial products to or have other commercial relationships with the investee company;
 - (b) a director of the institutional investor or the asset manager is also a director of the investee company;
 - (c) an asset manager managing the assets of an institution for occupational retirement provision invests in a company that contributes to that institution;
 - (d) the institutional investor or asset manager is affiliated with a company for whose shares a takeover bid has been launched.
3. Member States shall ensure that institutional investors and asset managers publicly disclose on an annual basis their engagement policy, how it has been implemented and the results thereof. The information referred to in the first sentence shall at least be available on the company's website. Institutional investors and asset managers shall, for each company in which they hold shares, disclose if and how they cast their votes in the general meetings of the companies concerned and provide an explanation for their voting behaviour. Where an asset manager casts votes on behalf of an institutional investor, the institutional investor shall make a reference as to where such voting information has been published by the asset manager.
4. Where institutional investors or asset managers decide not to develop an engagement policy or decide not to disclose the implementation and results thereof, they shall give a clear and reasoned explanation as to why this is the case.

Article 3g

Investment strategy of institutional investors and arrangements with asset managers

1. Member States shall ensure that institutional investors disclose to the public how their equity investment strategy ("investment strategy") is aligned with the profile and duration of their liabilities and how it contributes to the medium to long-term performance of their assets. The information referred to in the first sentence shall at least be available on the company's website as long as it is applicable.
2. Where an asset manager invests on behalf of an institutional investor, either on a discretionary client-by-client basis or through a collective investment undertaking, the institutional investor shall annually disclose to the public the main elements of the arrangement with the asset manager with regard to the following issues:
 - (a) whether and to what extent it incentivises the asset manager to align its investment strategy and decisions with the profile and duration of its liabilities;
 - (b) whether and to what extent it incentivises the asset manager to make investment decisions based on medium to long-term company performance, including non-financial performance, and to engage with companies as a means of improving company performance to deliver investment returns;

- (c) the method and time horizon of the evaluation of the asset manager's performance, and in particular whether, and how this evaluation takes long-term absolute performance into account as opposed to performance relative to a benchmark index or other asset managers pursuing similar investment strategies;
- (d) how the structure of the consideration for the asset management services contributes to the alignment of the investment decisions of the asset manager with the profile and duration of the liabilities of the institutional investor;
- (e) the targeted portfolio turnover or turnover range, the method used for the turnover calculation, and whether any procedure is established when this is exceeded by the asset manager;
- (f) the duration of the arrangement with the asset manager.

Where the arrangement with the asset manager does not contain one or more of the elements referred to in points (a) to (f), the institutional investor shall give a clear and reasoned explanation as to why this is the case.

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

1. Member States shall ensure that asset managers disclose on a half-yearly basis to the institutional investor with which they have entered into the arrangement referred to in Article 3g(2) how their investment strategy and implementation thereof complies with that arrangement and how the investment strategy and implementation thereof contributes to medium to long-term performance of the assets of the institutional investor.
2. Member States shall ensure that asset managers disclose to the institutional investor on a half-yearly basis all of the following information:
 - (a) whether or not, and if so how, they make investment decisions on the basis of judgements about medium-to long-term performance of the investee company, including non-financial performance;
 - (b) how the portfolio was composed and provide an explanation of significant changes in the portfolio in the previous period;
 - (c) the level of portfolio turnover, the method used to calculate it and an explanation if the turnover exceeded the targeted level;
 - (d) portfolio turnover costs;
 - (e) their policy on securities lending and the implementation thereof;
 - (f) whether or not, and if so, what actual or potential conflicts of interest have arisen in connection with engagement activities and how the asset manager has dealt with them;
 - (g) whether or not, and if so how, the asset manager uses proxy advisors for the purpose of their engagement activities.
3. The information disclosed pursuant to paragraph 2 shall be provided free of charge and, in case the asset manager does not manage the assets on a discretionary client-by-client basis, it shall also be provided to other investors on request.

Article 3i

Transparency of proxy advisors

1. Member States shall ensure that proxy advisors adopt and implement adequate measures to guarantee that their voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them.
2. Proxy advisors shall on an annual basis publicly disclose all of the following information in relation to the preparation of their voting recommendations:
 - (a) the essential features of the methodologies and models they apply;
 - (b) the main information sources they use;
 - (c) whether and, if so, how they take national market, legal and regulatory conditions into account;
 - (d) whether they have dialogues with the companies which are the object of their voting recommendations, and, if so, the extent and nature thereof;
 - (e) the total number of staff involved in the preparation of the voting recommendations;
 - (f) the total number of voting recommendations provided in the last year.

That information shall be published on their website and remain available for at least three years from the day of publication.

3. Member States shall ensure that proxy advisors identify and disclose without undue delay to their clients and the company concerned any actual or potential conflict of interest or business relationships that may influence the preparation of the voting recommendations and the actions they have undertaken to eliminate or mitigate the actual or potential conflict of interest.”
- (4) The following articles 9a, 9b and 9c are inserted:

“Article 9a

Right to vote on the remuneration policy

1. Member States shall ensure that shareholders have the right to vote on the remuneration policy as regards directors. Companies shall only pay remuneration to their directors in accordance with a remuneration policy that has been approved by shareholders. The policy shall be submitted for approval by the shareholders at least every three years.

Companies may, in case of recruitment of new board members, decide to pay remuneration to an individual director outside the approved policy, where the remuneration package of the individual director has received prior approval by shareholders on the basis of information on the matters referred to in paragraph 3. The remuneration may be awarded provisionally pending approval by the shareholders.
2. Member States shall ensure that the policy is clear, understandable, in line with the business strategy, objectives, values and long-term interests of the company and that it incorporates measures to avoid conflicts of interest.

3. The policy shall explain how it contributes to the long-term interests and sustainability of the company. It shall set clear criteria for the award of fixed and variable remuneration, including all benefits in whatever form.

The policy shall indicate the maximum amounts of total remuneration that can be awarded, and the corresponding relative proportion of the different components of fixed and variable remuneration. It shall explain how the pay and employment conditions of employees of the company were taken into account when setting the policy or directors' remuneration by explaining the ratio between the average remuneration of directors and the average remuneration of full time employees of the company other than directors and why this ratio is considered appropriate. The policy may exceptionally be without a ratio in case of exceptional circumstances. In that case, it shall explain why there is no ratio and which measures with the same effect have been taken.

For variable remuneration, the policy shall indicate the financial and non-financial performance criteria to be used and explain how they contribute to the long-term interests and sustainability of the company, and the methods to be applied to determine to which extent the performance criteria have been fulfilled; it shall specify the deferral periods, vesting periods for share-based remuneration and retention of shares after vesting, and information on the possibility of the company to reclaim variable remuneration.

The policy shall indicate the main terms of the contracts of directors, including its duration and the applicable notice periods and payments linked to termination of contracts.

The policy shall explain the decision-making process leading to its determination. Where the policy is revised, it shall include an explanation of all significant changes and how it takes into account the views of shareholders on the policy and report in the previous years.

4. Member States shall ensure that after approval by the shareholders the policy is made public without delay and available on the company's website at least as long as it is applicable.

Article 9b

Information to be provided in the remuneration report and right to vote on the remuneration report

1. Member States shall ensure that the company draws up a clear and understandable remuneration report, providing a comprehensive overview of the remuneration, including all benefits in whatever form, granted to individual directors, including to newly recruited and former directors, in the last financial year. It shall, where applicable, contain all of the following elements:
 - (a) the total remuneration awarded or paid split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration is linked to long-term performance and information on how the performance criteria were applied;
 - (b) the relative change of the remuneration of directors over the last three financial years, its relation to the development of the value of the company and to change in the average remuneration of full time employees of the company other than directors;

- (c) any remuneration received by directors of the company from any undertaking belonging to the same group;
 - (d) the number of shares and share options granted or offered, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof;
 - (e) information on the use of the possibility to reclaim variable remuneration;
 - (f) information on how the remuneration of directors was established, including on the role of the remuneration committee.
2. Member States shall ensure that the right to privacy of natural persons is protected in accordance with Directive 95/46/EC when personal data of the director are processed.
 3. Member States shall ensure that shareholders have the right to vote on the remuneration report of the past financial year during the annual general meeting. Where the shareholders vote against the remuneration report the company shall explain in the next remuneration report whether or not and, if so, how, the vote of the shareholders has been taken into account.
 4. The Commission shall be empowered to adopt implementing acts to specify the standardised presentation of the information laid down in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a (2).

Article 9c

Right to vote on related party transactions

1. Member States shall ensure that companies, in case of transactions with related parties that represent more than 1% of their assets, publicly announce such transactions at the time of the conclusion of the transaction, and accompany the announcement by a report from an independent third party assessing whether or not it is on market terms and confirming that the transaction is fair and reasonable from the perspective of the shareholders, including minority shareholders. The announcement shall contain information on the nature of the related party relationship, the name of the related party, the amount of the transaction and any other information necessary to assess the transaction.

Member States may provide that companies can request their shareholders to exempt them from the requirement of subparagraph 1 to accompany the announcement of the transaction with a related party by a report from an independent third party in case of clearly defined types of recurrent transactions with an identified related party in a period of not longer than 12 months after granting the exemption. Where the related party transactions involve a shareholder, this shareholder shall be excluded from the vote on the advance exemption.
2. Member States shall ensure that transactions with related parties representing more than 5% of the companies' assets or transactions which can have a significant impact on profits or turnover are submitted to a vote by the shareholders in a general

meeting. Where the related party transaction involves a shareholder, this shareholder shall be excluded from that vote. The company shall not conclude the transaction before the shareholders' approval of the transaction. The company may however conclude the transaction under the condition of shareholder approval.

Member States may provide that companies can request the advance approval by shareholders of the transactions referred to in subparagraph 1 in case of clearly defined types of recurrent transactions with an identified related party in a period of not longer than 12 months after the advance approval of the transactions. Where the related party transactions involve a shareholder, this shareholder shall be excluded from the vote on the advance approval.

3. Transactions with the same related party that have been concluded during the previous 12 months period and have not been approved by shareholders shall be aggregated for the purposes of application of paragraph 2. If the value of these aggregated transactions exceeds 5% of the assets, the transaction by which this threshold is exceeded and any subsequent transactions with the same related party shall be submitted to a shareholder vote and may only be unconditionally concluded after shareholder approval.
4. Member States may exclude transactions entered into between the company and one or more members of its group from the requirements in paragraphs 1, 2 and 3, provided that those members of the group are wholly owned by the company.

- (5) After Article 14, the following Chapter IIa is inserted:

“CHAPTER IIa IMPLEMENTING ACTS AND PENALTIES

Article 14a Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC¹⁵. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Were reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 14b Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by [[date for

¹⁵ Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

OJ L 191, 13.7.2001, p. 45

transposition at the latest and shall notify it without delay of any subsequent amendment affecting them.”

Article 2

Amendments to Directive No 2013/34/EU

Article 20 of Directive 2013/34/EU is amended as follows:

(a) In paragraph 1, the following point (h) is added:

“(h) the remuneration report referred to in Article 9b of Directive 2007/36/EC.”

(b) paragraph 3 is replaced by the following:

“3. The statutory auditor or audit firm shall express an opinion in accordance with the second subparagraph of Article 34(1) regarding information prepared under points (c) and (d) of paragraph 1 of this Article and shall check that the information referred to in points (a), (b), (e), (f), (g) and (h) of paragraph 1 of this Article has been provided.”

(c) paragraph 3 is replaced by the following:

“4. Member States may exempt undertakings referred to in paragraph 1 which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC, from the application of points (a), (b), (e), (f), (g) and (h) of paragraph 1 of this Article, unless such undertakings have issued shares which are traded in a multilateral trading facility, within the meaning of point (15) of Article 4(1) of Directive 2004/39/EC.”

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President