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NOTE

From:	General Secretariat of the Council
To:	Working Party on Company Law
Subject:	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 Presidency compromise text

Delegations will find attached a draft Presidency compromise text in view of the Working Party on Company Law on 12 November 2014.

It is based on the discussions of the Working Party of 3 and 23 June, 25 July, 18 September and 9 October 2014.

Delegations are informed that changes compared to the Commission's proposal are indicated in **bold/underlined** and deletions are marked with ~~strikethrough.~~ As regards Articles 1, 2 and 3a to 3i, the latest changes are indicated with grey shading.

ANNEX

2014/0121 (COD)

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 Committee[1]

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .

Whereas:

(1) Directive 2007/36/EC of the European Parliament and of the Council[2] 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 governance[3] 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 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.

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[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.

(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 Council[4] listed companies and their 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.

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[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.

(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 2013[5].

(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 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.

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[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)

(20) In view of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995[6] 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 Council[7]

(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.'

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[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).

(24) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents[8], 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,

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 **specific** requirements **regarding identification of shareholders, transmission of information and facilitation of exercise of shareholders rights**~~for intermediaries used by shareholders to ensure that shareholders can be identified,~~ **and specific**~~creates~~ transparency **requirements for institutional**~~on the engagement policies of certain types of~~ investors**, asset managers and proxy advisors** and creates additional ~~rights~~ **powers** for **the general meeting of** shareholders to oversee companies."

(aa) In Paragraph 2, the following subparagraph is added:

"For the purpose of application Chapter 1B the competent Member State shall be defined as follows:

(i) for institutional investors and asset managers, the home Member State as defined in applicable sectoral legislation;

[8] OJ C 369, 17.12.2011, p. 14.

(ii) for proxy advisors, the Member State in which the proxy advisors has a registered office or a head office, or where the proxy advisor has no registered office or head office in a Member State, the Member State in which the proxy advisor has an establishment."

(ab) In Paragraph 3, the following point is inserted:

"(ba) collective investment undertakings within the meaning of Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council[9];

(ac) In Paragraph 3, the following subparagraph is added:

"Undertakings referred to in point a), b) and ba) may not be exempted from the requirements provided for in Chapter Ib."

(b) The following paragraph ~~4~~ **5** is added:

"~~4~~**5**. 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) -(~~l~~**i**) 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**, including central securities depository as defined in point (1) of Article 2 (1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council[10]**;

~~(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;~~

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[9] 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).

[10] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

(f) 'institutional investor' means**:**

(i) -an undertaking carrying out activities of life assurance within the meaning of Article 2(**3**~~1~~)(a)**, (b) and (c)** of Directive **2009/138/EC** ~~2002/83/EC~~ of the European Parliament and of the Council[11] and of reinsurance within the meaning of Article 13 point (7) of that Directive as long as they cover life-insurance obligations ~~[12]~~ -and **which are** not excluded pursuant to ~~article 3 of~~ **that** Directive**:** ~~2002/83/EC of the European Parliament and of the Council~~[13]

(ii) ~~and~~ an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council[14] 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;

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[11] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ L 335, 17.12.2009, p. 1).

~~[12] 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).~~

~~[13] 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).~~

[14] 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).

(g)'asset manager' means an investment firm as defined in point (1) of Article 4(1) of Directive **2014/65/EU**~~2004/39/EC~~ of the European Parliament and of the Council[15] 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 Council[16] 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 Directive 2009/65/EC of the European Parliament and of the Council[17]; 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 **analyses**~~provides~~, on a professional basis, **the corporate disclosures of listed companies with a view to informing investors' voting decisions by providing research, advice or voting** recommendations ~~to shareholders on~~ **that relate specifically to** 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 Council[18] ~~.~~**;**

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15 **Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349)**~~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)~~.

16 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).

17 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).

18 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).

(~~l~~**k**) 'Director' means**:** ~~any member of the administrative, management or supervisory bodies of a company;~~

(i) a member of the administrative, management or supervisory bodies of a company;

(ii) a chief executive officer and the deputy chief executive officers where they are not members of the administrative, management or supervisory bodies of a company;

Member States may include in the definition of director other persons who perform functions similar to those of the members of the administrative, management or supervisory bodies of a company;

(l) 'information regarding shareholder identity' means any information allowing to establish the identity of a shareholder including at least the following information:

(i) ——name and contact details of the shareholders;

(ii) the number of shares and voting rights they hold;

(iii) for legal persons, their unique identifier where available. ".

(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 **have** the ~~possibility to have~~**right to identify** their shareholders ~~identified~~.

~~-~~**Member States may provide that companies having registered office on their territory can only request ~~the~~ identification ~~can only be requested~~ with respect to shareholders holding more than ~~at least~~ 0.5~~1~~% of shares or voting rights.**

Member States may provide that companies having registered office on their territory can only request identification with respect to shareholders which have not expressly refused identification.

2. Member States shall ensure that, on the request of the company **or of a third party designated by the company**, the intermediar**ies**~~y~~ communicate~~s~~ without undue delay to the company **the information regarding shareholder identity**~~the name and contact details of the shareholders~~**, the number of shares and voting rights they hold** ~~and, where the shareholders are legal persons, their unique identifier where available~~.

Where there is more than one intermediary in a holding chain, **Member States shall ensure that the company is able to obtain information regarding shareholder identity from any intermediary in the chain at least through one of the following ways:**

(a) **at** the request of the company ~~and~~ the **information regarding shareholder** identity ~~and contact details of the shareholders shall be~~**is** transmitted between intermediaries without undue delay**. Member States may designate the central securities depository as the intermediary in charge of collecting the information regarding shareholder identity, including from the other intermediaries of the holding chain;**

(b) at the request of the company the intermediary communicates to the company without undue delay the details of the next intermediary in the holding chain. ~~-~~

3. Shareholders shall be duly informed by their intermediary that the~~ir~~ **information regarding their identity** ~~**set out in paragraph 2**name and contact details~~ may be transmitted for the purpose of identification in accordance with this article. ~~This information may only~~ **not** be used ~~**in a way which is not compatible with**for the purpose of facilitation of the exercise of~~ **shareholder** ~~the rights~~ **and** ~~of the shareholder~~ **engagement**~~. The company and the intermediary shall ensure that natural persons~~**shareholders** ~~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.~~

~~**Member States shall specify the maximum period for which the information may be retained.**~~

Member States shall ensure that the companies and intermediaries:

(a) safeguard the confidentiality of the information they receive;

(b) keep and process the information they receive in a proper and careful manner;

(c) put in place technical and organizational measures to safeguard the information they receive from theft, loss or any other form of unlawful use;

(d) enable shareholders to rectify or erase any incomplete or inaccurate data;

(~~d~~e) do not use the information in a way that is not compatible with the purpose of facilitation of exercise of shareholder rights and of shareholder engagement;

(~~d~~f) do not conserve the information for longer than 24 months after receiving it unless the person remains a shareholder after that period. This rule is without prejudice to requirement regarding the conservation of date consistent with European Union legislation.

4. Member States shall ensure that an intermediary that reports **information regarding shareholder ~~the~~ identity ~~of a shareholder set out in paragraph 2~~**~~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.

4a Member States shall provide that shareholders' associations whose members represent jointly at least 1% of the share capital and shareholders that individually or jointly hold at least 3% of the share capital, have the right to obtain the information regarding shareholder identity for the sole purpose of facilitating their communication with the shareholders with the view of exercising their rights and of engagement. The requirements defined in paragraph 3 apply in this situation.

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 **format of** 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~~ **~~does~~ is** not **able to**~~to directly~~ communicate **directly** with its shareholders, the information **from the company** 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 intermediar**ies**~~y~~ without undue delay in ~~all of the following~~ case **where**~~s~~:

   (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~~ intermediar**ies**~~y~~ 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~~ intermediar**ies**~~y~~ 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 types and format of information**~~the content~~ to be transmitted **and**~~,~~ 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 intermediar**ies**~~y~~ facilitate~~s~~ 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**, upon request by the shareholder,** confirm the votes cast **through electronic means and by correspondence** ~~in general meetings~~**through electronic means** by or on behalf of shareholders. In case the intermediary casts the vote, it shall transmit the voting confirmation to the shareholder **without undue delay**. Where there is more than one intermediary in the holding chain the confirmation shall be transmitted between intermediaries without undue delay.

   Member States may provide that the confirmation by companies of votes cast by shareholders is published by the companies on their websites after the general meeting.

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**s** ~~and content~~ of the facilitation, the form**at** 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~~ **require** 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 **that may be levied for services provided under this chapter** 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 **proportional and** non-discriminatory**, in particular for cross-border services** ~~and proportional~~. ~~Any differences in the charges levied between domestic and cross-border exercise of rights shall be duly justified.~~

Article 3e

~~Specific provisions~~Third country intermediaries

~~Where the applicable law recognises as shareholder an intermediary as referred to in Article 13(1), Member States shall ensure that:~~

~~(a) upon request of the natural or legal person for whom he holds shares, the intermediary transmits the information as provided in Article 3b;~~

~~(b) upon request of the natural or legal person for whom he holds shares, the intermediary facilitates the exercise of rights as provided in Article 3c.~~

~~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 **either:**

(a) develop a policy on shareholder engagement ("engagement policy") **and make it publicly available or;**

(b) publicly disclose an explanation why they have chosen not to develop an engagement policy.

This engagement policy shall **explain** ~~determine whether or not and if so,~~ how institutional investors and asset managers **integrate shareholder engagement in their investment strategy** ~~with a view to improve the performance of their equity portfolio,~~ **and whether and if so, how they** conduct all of the following actions:

~~(a)to integrate shareholder engagement in their investment strategy;~~

(b) ~~to~~ monitor investee companies, including **both** on their **financial and** non-financial performance;

(c) ~~to~~ conduct dialogues with investee companies;

(d) ~~to~~ exercise voting rights **and other rights attached to shares**;

~~(e) to use services provided by proxy advisors;~~

(f) ~~to~~ cooperate with other shareholders**;**

(g) manage actual and potential conflicts of interests.

~~Where sectoral legislation requires an asset manager to develop a voting strategy, that voting strategy should be considered as part of the engagement policy.~~

2. **The voting strategy developed in accordance with Article 37 of Commission Delegated Regulation (EU) No 231/2013** [19] **and Article 21 of Commission Directive 2010/43/EU**[20] **shall be deemed to fulfil the requirement set out in point (d) regarding the exercise of voting rights.**

The strategy with regard to preventing or managing conflicts of interest arising from the exercise of voting rights developed in accordance with Article 37 of Regulation (EU) No 231/2013 and Article 21 of Directive 2010/43/EU shall be part of the conflicts of interest policy referred to in paragraph 1(g).

Other relevant conflicts of interest rules, including Article 14 of Directive 2011/61/EU, Article 12(1)(b) and 14(1)(d) of Directive 2009/65/EC and their relevant implementing rules and Article 23 of Directive 2014/65/EU shall also be applicable with regard to engagement activities.~~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~~ **the situation where** ~~all of the following situations:~~

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[19] Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1).

[20] Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (OJ L 176, 10.7.2010, p. 42).

~~(a) the institutional investor or the asset manager, or other companies affiliated to them, offer financial products to or have **significant**other commercial relationships with the investee company**. Conflicts of interest policies of asset managers should ensure that engagement is undertaken to the exclusive benefit of investors.**~~

~~**Where sectoral legislation requires an asset manager to develop a strategy with regard to preventing or managing conflicts of interest arising from the exercise of voting rights, that strategy should be considered as part of the conflicts of interest policy referred to in paragraph 2.**;~~

~~(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 **either:**

(a) how their engagement policy **~~and~~**~~, how it~~ has been implemented**, or:**

(b) an explanation of why they are not disclosing how the engagement policy has been implemented. ~~and the results thereof. The information referred to in the first sentence shall at least be available on the company's **investor's or asset manager's** website.~~

For the purposes of explaining how voting rights have been exercised, ~~i~~Institutional investors and asset managers shall, for each company in which they hold **0.25~~1~~% or more of the** shares **or voting rights**, **publicly** disclose **either:**

(a) ~~if and~~ how they cast their votes in ~~the~~ general meetings of the companies concerned and ~~provide~~ ~~an~~ **general information and** explanation ~~for~~ **on** their voting behaviour**, or;**

(b) an explanation of why they have chosen not to disclose how they have cast their votes.

For the purposes of calculating the aforementioned threshold, the number of shares or voting rights held by funds managed by the same asset managers or institutional investor shall be calculated on an aggregated basis.

~~**Further details of the implementation of the engagement policy shall be made available to the beneficiaries and members free of charge and on their request.**~~ Where an asset manager **implements the engagement policy, including voting,** ~~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. **The information referred to in paragraph 1, 2 and 3 shall at least be available on the company's investor's or asset manager's website** ~~**Without prejudice to any stricter provisions of sectoral legislation, w**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 and as to how such a decision meets the best interests of the clients or beneficiaries~~.

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 **long-term ~~time~~ horizon** ~~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~~ **institutional investor'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 **if so, how** to what extent it incentivises the asset manager to align its investment strategy and decisions with the **time horizon** profile and duration of its liabilities;~~

   (b) whether and **if so, how** ~~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 **take into account, when investing, medium to long-term company performance, including non-financial and corporate governance performance, and to** engage with companies ~~as a means of improving company performance to deliver investment returns~~;

   (c) ~~**whether and if so, how**~~ the method and time horizon of the evaluation of the asset manager's performance **and in particular whether and if so, how this evaluation~~it~~ takes long-term absolute performance into account**, ~~**focuses the asset manager on achieving absolute returns in line with the best interests of beneficiaries of the institutional investor, rather than on short-term relative performance benchmarks**~~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~~ **how** the ~~consideration~~ **remuneration of consideration for** ~~for~~ the asset manage**r's** ~~ment~~ ~~services~~ **services** contributes to the alignment of the investment decisions of the asset manager with the ~~time~~ **long-term horizon**~~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 (**b**~~a~~) to (**e**~~f~~), the institutional investor shall give a clear and reasoned explanation as to why this is the case.

3. Member States shall ensure that the information referred to in paragraph 1 and 2 of this Article is disclosed in the following way:

(a) Institutional investors regulated by Directive 2009/138 EC shall include it in their report on solvency and financial condition referred to in Article 51 of that Directive.

(b) Institutions for occupational retirement provision regulated by Directive 2003/41/EC shall disclose it on their website together with their engagement policy.

Article 3h

Transparency of asset managers

1. **~~In addition to information requirements set forth in sectoral legislation,~~** Member States shall ensure that **UCITS and AIF** asset managers **report** ~~disclose on **at least** a half-yearly basis~~ to ~~the institutional~~ investor**s** ~~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~~ **whether and if so** how the**ir equity investment strategy** ~~and implementation thereof complies with that arrangement~~**contributes to improve the medium to long-term performance of the fund. Where the assets of an institutional investor are managed on a discretionary client-by-client basis, the asset manager shall disclose on a yearly basis whether and how its equity investment strategy contributes to the medium to long-term performance of the assets of that institutional investor.** ~~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~~**t** ~~half~~ **least a** ~~yearly basis~~ all of the following information ~~**where not yet provided otherwise**~~:

(a) **whether and if so, how ~~they take into account, when investing,~~the asset manager monitors medium to long-term ~~company~~ performance factors of the investee companies, ~~including~~ such as non-financial ~~performance~~ as well as corporate governance information, and to what proportion of the equity investment such monitoring is applied;**

~~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~~ compos**ition**~~ed~~ 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 **portfolio turnover costs** ~~an explanation if the turnover exceeded the targeted level~~;

~~(d) portfolio turnover costs;~~

(e) **how** their policy on securities lending ~~and the implementation thereof~~**is applied at the time of the general meeting of the investee companies**;

(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. **Member States shall ensure that t**~~T~~he information disclosed pursuant to paragraph **1 and** 2 ~~shall be~~**is** provided **in the following documents:**

(a) in case of asset managers regulated by the UCITS Directive, the annual reports referred to in Article 68 of Directive 2009/65/EC, without prejudice to a more frequent reporting period provided for in that Article for portfolio composition

(b) in case of asset managers regulated by the AIFM Directive, the annual report referred to in Article 22 of Directive 2011/61/EU

(c) in case of asset managers regulated by the MiFID II Directive, the periodic communications referred to in Article 25 (6) of that Directive

~~free of charge~~ **to institutional investors, other professional investors and retail investors.** ~~and, i~~**I**~~n case the asset manager does not manage the assets on a discretionary client-by-client basis,~~ **of retail investors, the information**~~it shall also be provided to other investors on request.~~

Article 3i

Transparency of proxy advisors

1. **Member States shall ensure that proxy advisors publicly disclose~~, where applicable:a~~**

~~**(a) reference to a code of conduct to which they are subject;**~~**apply and report on the application of this code of conduct on an annual basis.**

~~**(b) reference to a code which they have voluntarily decided to apply.**~~

~~**Where reference is made to a code of conduct referred to in points (a) and (b), the proxy advisor should indicate where the relevant texts are publicly available.**~~

Where the proxy advisors departs from any recommendation of the code ~~referred to in points (a) and (b),~~of conduct which they apply, they~~it~~ shall explain which parts ~~it~~ they departs from, provide reasons for doing so and indicate, where appropriate, what alternative measures have been adopted.

Where proxy advisors decide~~o~~ not to apply a code of conduct, they should explain the reasons for doing so.

~~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. **Member States shall ensure that p**~~P~~roxy advisors **publicly disclose** ~~shall~~ on an annual basis ~~publicly disclose~~ **at least** 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;

(ca) where applicable, the essential features of the voting policies they apply for each market;

(d) whether they have dialogues with the companies which are the object of their voting recommendations, and, if so, the extent and nature thereof;

(da) the policy regarding prevention and management of potential conflicts of interests;

(e) ~~the total number~~**qualifications and training** of staff involved in the preparation of the voting recommendations;

~~(f) the total number of voting recommendations provided in the last year.~~

That information **may be part of the information disclosed in relation with the application of a code of conduct as set out in paragraph 1. It** 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~~ **or manage** 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. **Member States may allow companies to pay remuneration to their directors in accordance with a remuneration policy that has been submitted for approval by the shareholders even if the policy has been rejected. In that case, the policy shall be submitted for approval by the shareholders at the next general meeting.**

   The policy shall be submitted for approval by the shareholders at least every three years. **Member States may allow companies to submit the policy for approval by shareholders only at every change.**

   ~~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 **business strategy,** long-term interests and sustainability of the company. It shall **be clear and understandable and it shall indicate the different components** ~~set clear criteria for the award~~ of fixed and variable remuneration, including all benefits in whatever form**, to be awarded to directors**.

The policy shall indicate the maximum amounts of total remuneration that can be awarded **on the basis of both** ~~, and the corresponding relative proportion of the different components of~~ fixed and variable **components** ~~remuneration~~. **Member States may allow companies to indicate estimations about the maximum amounts of total remuneration, explaining the assumptions and the methods underlying such estimations. The policy** ~~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, t~~**T**he policy shall **set clear criteria for the award of the variable remuneration. It shall** indicate the financial and non-financial performance criteria to be used and explain how they contribute to the **business strategy,** 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~~;~~ **. I**~~i~~t shall specify ~~the deferral periods,~~ vesting periods for share-based remuneration and retention of shares after vesting, and information **on the deferral periods and** on the possibility of the company to reclaim variable remuneration.

The policy shall indicate the main terms of the **engagements with**~~contracts of~~ directors, including **the**~~its~~ duration and the applicable notice periods**, the main characteristics of supplementary pension or early retirement schemes** and **the terms of the termination and** payments linked to termination ~~of contracts~~.

The policy shall explain the decision-making process leading to its determination **including, where applicable, the role of the committees concerned**. Where the policy is revised, it shall include an explanation of all significant changes and how it takes into account the **votes** ~~views~~ of shareholders on the policy and report**s** ~~-~~**since the last vote on the remuneration policy by theg general meeting of shareholders** ~~in the previous years~~.

4. Member States shall ensure that after ~~approval by~~ the shareholders**' vote** 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, **awarded or due, according to the accrual method, over the last financial year** ~~granted~~ to individual directors, including to newly recruited and **to** 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 **business strategy and** long-term performance and information on how the **adopted** performance criteria where applied;

   (ab) the ratio between the average remuneration of directors and the average remuneration of full time employees of the company other than directors and an explanation of this ratio;

   (b) the relative change of the remuneration of directors over **at least** the last three financial years, its relation to the **evolution of the performance** ~~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 **awarded or due to individual** ~~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 **individual** directors was established, including on**, where applicable,** the role of the ~~remuneration~~ committee**s concerned**.

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.

Member States may provide that the remuneration report of the last financial year is submitted to shareholders in the annual general meeting.

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 **material** ~~such~~ transactions **at the latest** 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 **at least** information on the nature of the related party relationship, the name of the related party, **the date and** the amount of the transaction and any other information necessary to assess the transaction.

1a. Member States shall ensure that material transactions with related parties are subject to a report from an independent third party assessing whether or not the transaction is on market terms and whether or not the transaction is fair and reasonable from the perspective of the shareholders, including minority shareholders and explaining the assumptions it is based upon together with the methods used. Member States may provide that this report is produced by the independent directors of the company or by the administrative or supervisory body of the company provided that the related parties and the persons related to them are prevented from having a determining role in the preparation of the report.

~~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 **material** 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 **approved** ~~submitted to a vote~~ by the shareholders **or by the administrative or supervisory bodies of the company according to procedures which prevent a related party from taking advantage of its position and provide adequate protection for the minority shareholders' interests.** ~~in a general meeting~~. Where the related party transaction involves a **director or a** shareholder, this **director or** shareholder **and the persons related to them** shall be excluded from th**e**~~at~~ vote **or at least from having a determining role in the approval process**. ~~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**:**

(a) transactions entered into in the ordinary course of business and concluded on market terms, provided that the assessment of those conditions is ensured according to specific procedures in line with principles established in paragraph 2;

(b) transactions entered into between the company and its subsidiaries provided that no other related party has an interest in the subsidiary or provided that national law provides for adequate protection of interests of minority shareholders of subsidiaries;

(c) clearly defined types of transactions which are not disadvantageous to minority shareholders, such as issuance of shares on a pre-emptive basis or payment of dividends, provided that the related party is subject to terms not more favourable than those to which other shareholders are subject~~, provided that those members of the group are wholly owned by the company~~.

5. For the purposes of this Article a transaction by a company is a transaction entered into by the company or by its subsidiaries.

6. Material transactions with related parties are identified by Member States according to one or more quantitative ratios based on criteria such as the companies' market capitalization and assets or revenues, and which may take into account the nature of transactions with related parties.

Member States may adopt materiality thresholds for the application of paragraph 1 lower than those for the application of paragraphs 2 and 3 and may differentiate the thresholds according to the company size.

Member States may in addition adopt other criteria such as the nature of transactions or the position of the related party.

7. For the application of the quantitative criteria set out according to paragraph 6, Member States shall ensure that transactions with the same related party that have been concluded during the current financial year and have not been subject to the obligations listed in paragraphs 1, 2 or 3 are aggregated for the purposes of those paragraphs.

8. Member States may provide that directors and significant shareholders are required to inform the administrative, management or supervisory bodies of the company whether they, directly or indirectly or on behalf of third parties, have a material interest in any transactions concluded 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/EC[21]. 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 transposition at the latest and shall notify it without delay of any subsequent amendment affecting them."

[21] 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

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 **4**~~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 *For the Council*

The President *The President*