



Council of the
European Union

Brussels, 5 December 2014
(OR. en)

15647/14

LIMITE

DRS 152
CODEC 2274

Interinstitutional File:
2014/0121 (COD)

NOTE

From:	General Secretariat of the Council
On:	9 December 2014
To:	Working Party on Company Law
No. prev. doc.:	13758/14 DRS 119 CODEC 1923
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 9 December 2014.

It is based on the discussions of the Working Party of 26 November 2014 and on delegations' written comments.

Delegations are informed that changes compared to the previous Presidency compromise text (doc. 13758/14) are indicated in **bold/underlined** and deletions are marked with ~~strike through~~.

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.

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).

- (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 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.

³ COM/2012/0740 final.

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

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.

- (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.

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)

- (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.

- (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. **When exercising those powers the Commission shall take into account the relevant market developments and in particular existing self-regulatory initiatives such as, for example, *Market Standards for Corporate Actions Processing* and *Market Standards for General Meetings*.** ~~Those~~ **The implementing** 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.

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).

- (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,

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 specific requirements regarding identification of shareholders, transmission of information and facilitation of exercise of shareholders rights and specific transparency requirements for institutional investors, asset managers and proxy advisors and creates additional 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;
- (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 Council⁹;

(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.”

(a) The following paragraph 5 is added:

“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 investors, in so far they invest in shares.”

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

“(d) ‘intermediary’ means a legal person that ~~maintains securities accounts~~ **provides service of safekeeping and administration of securities for** clients, including **investment firm as defined in point (1) of Article 4 (1) of Directive 2014/65/EU of the European Parliament and of the Council¹⁰, credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹¹ and** 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 Council¹², **in so far they provide services with respect to shares of companies which have their registered office in a Member State**;

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 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).

¹¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

¹² 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)(a), (b) and (c) of Directive 2009/138/EC of the European Parliament and of the Council¹³ and of reinsurance within the meaning of Article 13 point (7) of that Directive as long as they cover life-insurance obligations and which are not excluded pursuant to that Directive;
- (ii) an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council¹⁴ 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 2014/65/EU of the European Parliament and of the Council¹⁵ providing portfolio management services to 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 Council¹⁶ 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 Council¹⁷; 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;

¹³ 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).

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).

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).

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).

(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, 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 that relate specifically to the exercise of voting rights;

(l) ‘[deleted]

(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 Council¹⁸;

(k) ‘Director’ means:

- (i) a member of the administrative, management or supervisory bodies of a company;
- (ii) **where applicable** a chief executive officer and, **where such function exists**, 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 companies have the right to identify their shareholders. Member States may provide that companies having registered office on their territory can only request identification with respect to shareholders holding more than 0.5% 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 intermediaries communicate without undue delay to the company the information regarding shareholder identity.
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,~~ **or of a third party designated by the company,** ~~the information regarding shareholder identity is transmitted between intermediaries without undue delay.~~ **The information regarding shareholder identity is transmitted to the company or a third party designated by the company without delay by the intermediary who holds the requested information.** Member States may ~~also designate~~ **provide that** the central securities depository **or other service provider** ~~as the intermediary is~~ in charge of collecting the information regarding shareholder identity, including from the ~~other~~ intermediaries of the holding chain;

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).

(b) at the request of the company, or of a third party designated by 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 information regarding their identity may be transmitted for the purpose of identification in accordance with this article.

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;
- (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;
- (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 data consistent with European Union legislation.

4. Member States shall ensure that an intermediary that reports information regarding shareholder identity is not considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

4a. **This article is without prejudice to the right of** Member States ~~shall to 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~~ **access to** 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~~ **to other shareholders or to the public**. 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 as regards the format of information to be transmitted, the format of the request 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 is not able to communicate directly with its shareholders, **the intermediaries transmit without delay from the company to the shareholders or, in accordance with the instructions given by the shareholders, to a third party,** 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 intermediaries without undue delay in case where~~**which**:
- (a) **the company is required to provide to the investor, and;**
- (aa) ~~the information~~ is necessary to exercise a right of the shareholder flowing from its shares, **and**;
- (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~~ intermediaries **the information** ~~related to the exercise of rights flowing from shares in accordance with~~**referred to in** paragraph 1 in a standardised and timely manner.
3. Member States shall oblige intermediaries to transmit **without undue delay** to the company, in accordance with the instructions received from the shareholders, ~~without undue delay the information received from the shareholders related~~ **which is necessary** ~~to the exercise of the~~**a** 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, **unless the information can be directly transmitted to the company or to the investor by the intermediary.**

5. The Commission shall be empowered to adopt implementing acts to specify the requirements to transmit information laid down in paragraphs 1 to 4 as regards the types and format of information to be transmitted 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 3c

Facilitation of the exercise of shareholder rights

1. Member States shall ensure that the intermediaries facilitate 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 the confirmation of the votes cast by or on behalf of shareholders is made available to shareholders by the companies on their websites after the general meeting.**

Member States shall ensure that companies, upon request by the shareholder, confirm the votes **which have been** cast through electronic means ~~and by correspondence~~ 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, **unless the information can be directly transmitted to the shareholder.**

~~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 as regards the types of the facilitation, the format 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 require intermediaries to publicly disclose prices, fees and any other charges that may be levied for services provided under this chapter separately for each service.
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.

CHAPTER IB

TRANSPARENCY OF INSTITUTIONAL INVESTORS, ASSET MANAGERS AND PROXY ADVISORS

Engagement policy

1. Member States shall ensure that institutional investors and asset managers either **comply with the following requirements or publicly disclose an explanation why they have chosen not to comply with these requirements:**
 - (a) **Institutional investors and asset managers shall develop and publicly disclose a policy on shareholder engagement (“engagement policy”) that explains how they integrate shareholder engagement in their investment strategy, and whether and if so how they monitor investee companies, including both on their financial and non-financial performance, conduct dialogues with investee companies, exercise voting rights and other rights attached to shares, cooperate with other shareholders, and manage actual and potential conflicts of interests.**
 - (b) **Institutional investors and asset managers shall, on an annual basis, publicly disclose how this engagement policy has been implemented, including how they use the services of proxy advisors. For each company in which they hold shares, they shall publicly disclose how they cast their votes and provide a general explanation of their voting behaviour. Member States may provide that the disclosure of the voting record is limited to companies where institutional investors and asset managers hold more than a certain percentage of the voting rights, provided that votes cast against the management of the investee company or against the voting policies of the institutional investor or asset manager are disclosed in all situations where the investor holds at least 0.1% of the voting rights. For the purposes of calculating this 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.**

2. The information referred to in paragraph 1 shall at least be published on the institutional investor's or asset manager's website. Member States may provide that the information is published on a centralized website or by other means that are easily accessible.

Where an asset manager implements the engagement policy, including voting, 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.:

- ~~(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 how institutional investors and asset managers integrate shareholder engagement in their investment strategy and whether and if so, how they conduct all of the following actions:~~

- ~~(a) ————— [deleted]~~
- ~~(b) — monitor investee companies, including both on their financial and non-financial performance.;~~
- ~~(c) — conduct dialogues with investee companies.;~~
- ~~(d) — exercise voting rights and other rights attached to shares.;~~
- ~~(e) — [deleted]~~
- ~~(f) — cooperate with other shareholders; **and**~~
- ~~(g) — manage actual and potential conflicts of interests.~~

~~2. The voting strategy developed in accordance with Article 37 of Commission Delegated Regulation (EU) No 231/2013¹⁹ and Article 21 of Commission Directive 2010/43/EU²⁰ shall be deemed to fulfil the requirement set out in point (d) regarding the exercise of voting rights.~~

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).

~~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).~~

3. ~~Other relevant c~~Conflicts of interest rules **applicable to institutional investors and asset managers**, 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.

~~3.~~ Member States shall ensure that institutional investors and asset managers publicly disclose on an annual basis either:

- ~~(a)~~ how their engagement policy has been implemented, or;
- ~~(b)~~ an explanation of why they are not disclosing how the engagement policy has been implemented.

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

- ~~(a)~~ how they cast their votes in general meetings of the companies concerned and provide general information and explanation 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.~~

~~Where an asset manager implements the engagement policy, including voting, 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.

Investment strategy of institutional investors and arrangements with asset managers

1. Member States shall ensure that institutional investors **publicly** disclose to the public **whether and if so how the principles underlying their equity investment strategy and the arrangements with asset managers who invest on their behalf, either on a discretionary client-by-client basis or through a collective investment undertaking** (~~“investment strategy”~~) **are** aligned with the long-term horizon 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 institutional investor's website.~~

2. **Member States shall ensure that where an asset manager invests on behalf of an institutional investor, the institutional investors publicly disclose how the method and time horizon of the evaluation of the asset manager's performance, including its remuneration, is aligned with the long-term horizon of the liabilities of the institutional investor. They shall also disclose how they monitor portfolio turnover costs incurred by the asset manager and how they incentivise the asset manager to engage.**
Where the arrangement with asset manager does not contain such elements, the institutional investor shall explain why this is the case.

~~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) [deleted]~~

 - ~~(b) whether and if so, how it incentivises the asset manager to take into account, when investing, medium to long-term company performance, including non-financial and corporate governance performance, and to engage with companies;~~

- ~~(c) the method and time horizon of the evaluation of the asset manager's performance and in particular whether and if so, how this evaluation takes long-term absolute performance into account;~~
- ~~(d) how the consideration for the asset manager's services contributes to the alignment of the investment decisions of the asset manager with the long-term horizon of the liabilities of the institutional investor;~~
- ~~(e) the approach regarding portfolio turnover, including, if applicable, any limitation to it targeted portfolio turnover range;~~
- ~~(f) [deleted]~~

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

3. **The information referred to in paragraph 1 and 2 shall at least be published on the institutional investor's website. Member States may provide that this information is published on a centralised website or by other means that are easily accessible.**

Member States shall ~~ensure~~**may provide** that **institutional investors regulated by Directive 2009/138 EC include this information in their report on solvency and financial condition referred to in Article 51 of that Directive.**

~~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. Member States shall ensure that UCITS and AIF asset managers report to investors whether and if so how their equity investment strategy 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.~~
- ~~2. Member States shall ensure that asset managers disclose to the investor all of the following information:
 - ~~(a) whether and if so, how the asset manager monitors medium to long term performance factors of the investee companies, such as non financial as well as corporate governance information, and to what proportion of the equity investment such monitoring is applied;~~
 - ~~(b) portfolio composition and an explanation of significant changes;~~
 - ~~(c) portfolio turnover, the method used to calculate it and portfolio turnover costs;~~
 - ~~(d) [deleted]~~
 - ~~(e) how their policy on securities lending is applied at the time of the general meeting of the investee companies;~~
 - ~~(f) whether, 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) [deleted]~~~~
- ~~3. Member States shall ensure that the information disclosed pursuant to paragraph 1 and 2 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~~

Article 3i

Transparency of proxy advisors

1. Member States shall ensure that proxy advisors publicly disclose reference to a code of conduct which they apply and report on the application of this code of conduct ~~on an annual basis.~~

Where the proxy advisors depart from any recommendation of the code of conduct which they apply, they shall explain which parts they depart from, provide reasons for doing so and indicate, where appropriate, what alternative measures have been adopted.

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

Information referred to in this paragraph shall be published by proxy advisors on their websites and updated on an annual basis.

2. Member States shall ensure that proxy advisors publicly disclose on an annual basis 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) qualifications and training of staff involved in the preparation of the voting recommendations;
- (f) [deleted]

~~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.~~ **Information referred to in this paragraph** It shall be published ~~on their website~~ **by proxy advisers on their websites** and remain available for at least three years from the day of publication. **It may be published as part of the information disclosed under paragraph 1.**

3. Member States shall ensure that proxy advisers identify and disclose without undue delay to their clients 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 manage the actual or potential conflict of interest.

4. **The Commission shall, in close cooperation with ESMA, submit a report to the European Parliament and to the Council on the implementation of this Article, including the appropriateness of its scope of application and its effectiveness, taking into account relevant EU and international market developments. The report shall be published by [...] and shall be accompanied, if appropriate, by legislative proposals.**

- (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 companies establish a remuneration policy as regards directors. Companies shall only pay remuneration to their directors in accordance with that remuneration policy.

Member States may decide to allow companies to pay remuneration to individual directors outside the general remuneration policy where the remuneration package has been subject to shareholder vote

Member States shall ensure that shareholder have the right to vote on the remuneration policy. Member States shall ensure that the vote of shareholders on the remuneration policy is binding. A remuneration policy shall continue to apply until a new one is approved by shareholders.

However Member States may provide that the vote of the shareholders on the remuneration policy is advisory, provided that where shareholders vote against the remuneration policy, a revised policy is submitted ~~for approval~~ **to a vote** by the shareholders at the next general meeting.

Member States shall ensure that companies submit the remuneration policy ~~for approval~~ **to a vote** by shareholders at every material change and in any case at least every five years.

2. [deleted]

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~~**describe** the different components of fixed and variable remuneration, including all benefits in whatever form, to be awarded to directors.
Member States may provide that t~~The policy shall indicate~~**for each component the** maximum amounts of remuneration that can be awarded.
 -The policy shall explain how the pay and employment conditions of employees of the company were taken into account when setting the policy or directors' remuneration.
 Where applicable the 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. Where applicable it shall specify 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 arrangements with directors, ~~including~~**with respect to** the 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.
 The policy shall explain the decision-making process ~~leading to~~**adopted for** its determination including, where applicable, the role of the committees concerned. Where the policy is revised, it shall ~~include and~~**describe and explain** ~~explanation of~~ all significant changes and how it takes into account the views of shareholders on the policy and reports -since the last vote on the remuneration policy by the general meeting of shareholders.
4. Member States shall ensure that after the shareholders' vote the policy is made public without delay and **is kept** available on the company's website, **with the date and the results of the shareholders' vote,** 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 to individual directors, including to newly recruited and to former directors. It shall, where applicable, contain all of the following elements:
 - (a) the total remuneration 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~~ **complies with the adopted remuneration policy** and information on how ~~the adopted~~**its** performance criteria were applied;
 - (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 of the company and to change in the average remuneration of full time employees of the company other than directors during that period;
 - (c) any remuneration awarded or due to ~~individual~~ 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 committees 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.
- Member States shall ensure in particular that companies:
- (a) do not use personal data of individual directors in a way that is not compatible with the purposes of facilitation of the exercise of shareholders' rights and increase of transparency and accountability with regard to the remuneration of directors;
 - (b) do not process special categories of personal data of individual directors which are protected under Article 8 of Directive 95/46/EC;
 - (c) take appropriate technical measures to limit the accessibility of personal data of individual directors after a period of 10 years.
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. The company shall explain in the next remuneration report how the vote of the shareholders has been taken into account.
- However,** Member States may provide, **as an alternative to the vote,** that the remuneration report of the last financial year is submitted to shareholders for discussion in the annual general meeting as a separate item of the agenda. The company shall explain in the next remuneration report how the discussion in the general meeting 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).~~

In order to ensure consistent harmonisation in relation to this Article, ESMA shall develop draft regulatory technical standards to specify the standardised presentation of the information laid down in paragraph 1 of this Article. ESMA shall submit those draft regulatory technical standards to the Commission by [xxx].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 9c

Right to vote on related party transactions

1. Member States shall ensure that companies publicly announce material transactions with related parties at the latest at the time of the approval of the transaction. 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~~ value of the transaction and any other information necessary to assess the transaction.

1a. Member States ~~shall ensure~~ may provide that **that the announcement published according to paragraph 1 is accompanied by** material transactions with related parties are subject to a report ~~from an independent third party~~ assessing 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.

~~The requirement of the first subparagraph shall be deemed met where the report is prepared by an external auditor fulfilling the conditions of independence described in Article 22 of Directive 2006/43/EC of the European Parliament and of the Council²⁴.~~

~~However, Member States may provide that t~~ This report is produced by:

(0a) an independent third party or;

(a) ~~the independent directors of the company~~ **the administrative or the supervisory body or the company** or;

(b) the audit committee or any committee the majority of which is composed by independent directors;

provided that the related parties and the persons related to them are prevented from having a determining role in the preparation of the report.

~~The report shall accompany the announcement published according to paragraph 1.~~

²⁴ ~~Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).~~

2. Member States shall ensure that material transactions with related parties are approved ~~at the latest at the time of their conclusion~~ 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.

Member States may provide that shareholders have the right to vote on material transactions approved by the administrative or supervisory body of the company.

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 the vote or at least from having a determining role in the approval process.

- 2a. Paragraphs 1, 1a and 2 shall not apply to transactions entered into in the ordinary course of business and concluded on **normal** market terms, provided that ~~the independent directors or the audit committee or any committee the majority of which is composed by independent directors assess whether these conditions are fulfilled according to specific procedures which prevent a~~ **assessed by the administrative or supervisory body of the company with the** related party **prevented** ~~from taking advantage of its position and provide adequate protection for the minority shareholders' interests~~ **having a determining role in the assessment**.
3. [deleted]
4. Member States may exclude from the requirements in paragraphs 1, 1a and 2:
- (a) [deleted]
 - (b) transactions entered into between the company and its subsidiaries provided that no other related party of the company has an interest in the subsidiary or ~~provided that~~ national law provides for adequate protection of interests of minority shareholders ~~of the company and of its subsidiaries~~ in such transactions;
 - (c) clearly defined types of transactions **for which national law provides for adequate protection of minority shareholders** ~~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.

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

Member States shall ensure that the interests of the minority shareholders of the company are protected in case of transactions concluded between the related party of the company and that company's subsidiaries.

6. For the purposes of this Article material transactions are defined by Member States taking into account:

- (a) the influence that the information about the transaction may have on the decisions of shareholders of the company;
- (b) the risk that the transaction creates for the company and its minority shareholders.

When defining material transactions Member States shall set one or more quantitative ratios based on the impact of the transaction on the revenues, assets, capitalisation or turnover of the company or take into account the nature of transaction and the position of the related party. Member States may adopt quantitative ratios for the application of paragraph 1 and 1a lower than those for the application of paragraphs 2 and may differentiate the ratios according to the company size.

7. Member States shall ensure that transactions with the same related party that have been concluded **in any 12 months period or in the same** ~~during the current~~ financial year and have not been subject to the obligations listed in paragraphs 1, 1a or 2 are aggregated for the purposes of those paragraphs.
8. This Article is without prejudice to the rules on public disclosure of inside information defined in Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council²².

²² Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

- (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/EC²³. 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.”

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.”

²³ Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

(ab) The following paragraph 2a is added:

“2a. Member States may provide that the report required by point (h) of paragraph 1 of this Article is disclosed:

(a) in a separate document published together with the corporate governance statement in the manner set out in Article 30; or

(b) on the company's website, provided that reference to this remuneration report is made in the corporate governance statement.

(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 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
