Council of the European Union

Brussels, 14 January 2015
(OR. en)

5215/15

LIMITE

DRS 3
CODEC 38

PUBLIC

Interinstitutional File:
2014/0121 (COD)

NOTE

From:	General Secretariat of the Council
On:	22 January 2015
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 in Annex II a Presidency compromise text in view of the Working Party on Company Law on 22 January 2015.

It is based on the discussions of the Working Party of 9 December 2014 and on delegations' written comments.

Delegations are informed that changes compared to the previous Presidency compromise text (doc. 15647/14) are indicated in **bold/underlined** and deletions are marked with ~~strikethrough.~~

It is understood that there is a general reservation from all delegations.
Delegations will find in Annex I an explanatory note on the main elements of the amended compromise text.

ANNEX I

Explanation on amendments of the preamble and the text of the directive

1. The text of the directive and the preamble is amended to reflect the opinion of Council's Legal Service on **data protection issues**, in particular justification is provided in the preamble with respect to:

   a) processing of **shareholders' personal data (identification)**;
   b) processing of **directors' personal data (remuneration)**.

2. The text of the directive and the preamble is amended to reflect the opinion of Council's Legal Service regarding **extraterritorial jurisdiction**.

3. The **preamble** is amended to include explanation and justification with respect to the following issues:
   a) confirmation procedure regarding shareholder's vote cast;

   b) observation of the principles of non-discrimination and proportionality with respect to charges for share holdings;

   c) threshold of voting rights with respect to requirement to disclose engagement policy, in particular explaining the reasons behind the choice of 0.3% threshold, as well as explaining why small investors may be exempted from this requirement;

   d) detailed and clear justification is provided for reinsertion of Article 3h and the need to provide the key elements of transparency of the asset managers towards investors;

e) detailed justification is proposed regarding requirements on proxy advisors;

f) justification is given regarding flexibility and reasons for exceptions included in the articles related to the adoption of the remuneration policy and reporting on it;

g) justification for flexibility is provided with respect to regulation on related party transactions, including rules on prevention of conflict of interests;

h) more detailed explanation is inserted on why the Commission should have powers to enact implementing acts.

4. The directive is amended with respect to the following issues :

a) in order to reflect the opinion of several Member States that Article 3a paragraph 1 contains only one exception (opt out) with respect to requirement of identification of shareholders. It is seen that further exceptions might jeopardise the purpose of the directive ;

b) in Article 3c paragraph 2 the general principle of vote confirmation is proposed and possibility for exceptions if votes are not cast electronically;

c) Article 3f paragraph 1(b) provides general rule for investors and asset managers to disclose engagement policy and has two levels of exceptions for disclosure of voting records: general (threshold of 0.3% of voting rights) and optional (small investors and managers);

d) in Article 3g the principle of comply or explain is strengthened;

e) Article 3h has been reinserted, however the text is redrafted to ensure that it sets only general principles and basic requirements. The text of the preamble is amended accordingly, explaining the reasons behind these requirements;

f) Article 9a is amended to reflect the discussions regarding remuneration policy and provides rules for those exceptional cases when it is justified to deviate from the policy;

g) Article 9b paragraph 4 is amended to give powers to the Commission to adopt guidelines (not implementing acts) regarding the presentation of information in the remuneration report;

h) in Article 9c paragraph 1(a), a clear rule of exclusion of related parties in preparation of assessment report accompanying announcement of RPT is introduced. Such approach is chosen to balance the fact that the requirement to have such report is optional. In paragraph 2(a) clear exclusion of related parties is also proposed taking into account the importance to ensure impartial approval of material transactions.

The text of the preamble and the directive is also improved to ensure more clarity and compatibility. The preamble has been amended also to reflect the changes in the text of the directive which have been agreed upon during previous negotiations.

ANNEX II

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.

(4a) Therefore, in order to enable listed companies to identify their shareholders and to facilitate the exercise of shareholder rights and engagement between companies and shareholders, intermediaries maintaining securities accounts for shareholders should be obliged, on the request of the company or of a third party designated by the company, to communicate to the company information regarding shareholder identity.

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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.

(4b) In view of the requirements laid down by EU law regarding the protection of personal data, in particular of Articles 7, 8 and 52 of the Charter of fundamental rights of the European Union, the case-law of the Court of Justice and of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995[4], which apply to the processing of shareholders' personal data under this Directive, the legislator has struck a balance between, on the one hand, the facilitation of the exercise of shareholders' rights and of engagement between the shareholders and the company, and, on the other hand, the right to privacy and to the protection of personal data of shareholders.

(4c) The transmission of information regarding shareholder identity by the intermediaries to the company is a useful addition to the existing framework laid down by Directive 2007/36/EC as it is necessary in order to enable companies to communicate directly with their shareholders to further facilitate the exercise of shareholders' rights and engagement with the company.

(4d) In order to achieve those objectives, a certain level of information on shareholder identity needs to be transmitted to the company. That information should include at least the name of the shareholder, for legal persons a unique identifier where available, contact details of the corresponding shareholders and the number of shares and voting rights held by that shareholder. The transmission of less information would not enable the company to identify its shareholders and to communicate with them. Nevertheless, in order to limit the interference with the shareholders' rights to privacy and to protection of their personal data, Member States should be allowed to exclude from the identification requirement shareholders holding less than a certain level of shares.

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[4] 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).

(4e) In order to enable the company to communicate with its shareholders, the company and the intermediaries should be allowed to store the information regarding shareholder identity as long as the person concerned remains a shareholder. However, in view of the principle of proportionality, the information regarding shareholder identity should not be stored for longer than necessary, and in any event, for more than a year after the person concerned has ceased to be a shareholder. In this respect, imposing on companies and intermediaries to delete information regarding shareholder identity immediately on the day after the person concerned has ceased to be a shareholder would impose a heavy administrative burden on companies and would not allow the achievement of the objectives pursued by this Directive. Most companies do not identify their shareholders on an ongoing basis but only request shareholder identification in the perspective of an annual general meeting or of important corporate events such as takeover bid. Therefore, the company and the intermediaries may not be immediately aware that the person concerned has ceased to be a shareholder. In addition, the company may need to communicate with the person concerned even after he or she has ceased to be a shareholder. Taking those circumstances into account, companies and intermediaries should be allowed to retain information regarding shareholder identity during a year after the person concerned has ceased to be a shareholder.

(4f) Information regarding shareholders identity should be processed under this Directive for the purpose of identification of shareholders, in order to facilitate the exercise of their rights and engagement with the company. Nevertheless, the processing of such information for other purposes might be necessary, in particular in order to comply with requirements laid down by EU or national law. Therefore Member States should be allowed to authorise further processing of information regarding shareholder identity. In such a case, Member States should ensure that this information is not further processed in a way incompatible with the purpose of facilitation of the exercise of shareholder rights and of shareholder engagement. When such further processing is not compatible with those objectives, further processing should be based on the unambiguous consent of the shareholder or on another legitimate ground for lawful processing. In any case, the requirements laid down by EU law regarding the protection of personal data should be complied with[5].

(4g) In view of their rights to privacy and to the protection of personal data, the shareholders should be duly informed that the information regarding their identity may be processed in accordance with this Directive or for other purposes. In case of further processing, the shareholders should be informed on the other purposes.

(5) **Where companies do not directly communicate with their shareholders, t**he 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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5 **[The wording of this recital may be adjusted in order to take into account the future Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data to be adopted by the European Parliament and the Council (see Interinstitutional file n° 2012/0011 (COD))]**

(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.

(6a) It is important to ensure that shareholders, who engage in the investee companies through voting have the knowledge of whether and how their votes have been taken into account. Each shareholder who casts his vote in a general meeting should at least have the possibility to verify whether his vote has been correctly recorded and counted by the company.

(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. **Unjustified differences between charges levied for domestic and cross-border exercise of shareholder rights should not be allowed.**

(7a) The chain of intermediaries may include intermediaries having their registered office or their head office outside the Union. Nevertheless, the activities carried out by those third-country intermediaries could have effects on the long-term sustainability of EU companies and on corporate governance in the Union. Moreover, in order to achieve the objectives pursued by this Directive, it is necessary to ensure that information is transmitted throughout the whole chain of intermediaries. If third-country intermediaries were not subject to this Directive and would not have the same obligations related to the transmission of information as the Union intermediaries, the flow of information would be at risk of being interrupted. Therefore, t~~T~~hird country intermediaries which ~~have established a branch in the Union~~ **provide services of safekeeping and administration with respect to shares 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** 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 **and** ~~,~~ 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.

(11a) Institutional investors and asset managers should publically disclose information about how they exercised their voting rights. However, a requirement to disclose all votes cast may be disproportionate if the investor has only a very minor stake in the investee company. Furthermore, this Directive aims at incentivising informed voting, whereas a requirement to disclose all votes may result in outsourcing of voting for compliance reasons, especially for minor stakes. Therefore, while investors should remain free to disclose all votes cast, the Directive sets a threshold of 0.3% of the voting rights for the purposes of calculating the disclosure of voting records. This threshold ensures that investors which do not establish concentrated portfolios, but retain shares for long time are also incentivised to exercise their shareholder rights in a responsible way. Such investors represent a substantial part of today's capital markets.

Furthermore, Member States should be allowed to exclude small institutional investors or asset managers from the requirement to publish voting records. Certain small institutional investors, such as for example pension funds having less than 100 members in total will be excluded from the application of this Directive if the Member State chose not to apply the relevant sectorial rules to them. Furthermore, the "comply or explain" mechanism allows small entities not to comply with all the relevant requirements of this Directive. However, Member States should be allowed to exclude certain small schemes from the application of the requirement on disclosure of voting records, independently of whether or not they are excluded from the application of other sectorial rules in order not to impose unnecessary regulatory burden on them. Given the differences in the size of the market in the Member States, it is appropriate to define the small institutional investors and asset managers for the purpose of this obligation at the national level.

(12) Institutional investors should annually disclose to the public how **the principles underlying** their equity investment strategy **are**~~is~~ aligned with the **long-term horizon** ~~profile and duration~~ of their liabilities and how **they**~~it~~ contribute~~s~~ to the medium to long-term performance of their assets. **A medium to long-term approach is a key enabler of responsible stewardship of 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, **institutional investors**~~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 **including its remuneration**, ~~the structure of the consideration for the asset management services~~ **how they monitor portfolio turnover costs incurred by the asset manager,** and **how they incentivise the asset manager to engage in the best medium-to long-term interest of the institutional investor**~~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 give proper information to the institutional investor which allows the latter to assess whether or not and how the manager acts in the best long-term interests of the investor and whether it pursues a strategy that allows for efficient shareholder engagement. In principle, the relationship between the asset manager and the institutional investor is a matter of a bilateral contractual arrangement. However, although big institutional investors may be able to request detailed reporting from the asset manager, especially if the assets are managed on the basis of a discretionary mandate, for smaller and less sophisticated investors it is crucial to set a minimum set of requirements in law, so that they can properly assess and hold the asset manager to account. Therefore, a** ~~A~~Asset managers should be required to disclose to institutional investors **whether or not and if so,** how their investment**s** ~~strategy and the implementation thereof is in accordance with the asset management arrangement and how the investment strategy and decisions~~ contribute~~s~~ to medium to long-term performance of the assets of the institutional investor **or of the fund**. **This should include reporting on the key material medium to long-term risks and opportunities associated with the portfolio investments and an explanation how the manager has sought to identify, monitor and manage them. This information includes corporate governance matters as well as other medium-to long-term risks, and it is key for the institutional investor to assess whether the manager carries out a medium to long-term analysis of the equity and the portfolio which is a key enabler of efficient shareholder engagement. As these medium to long-term risks will impact the returns of the investors, more effective integration of these matters into investment processes may be crucial for institutional investors.**

(13a) Moreover, **asset managers**~~they~~ should disclose **to institutional investors the portfolio turnover, portfolio turnover costs and their policy on securities lending. The level of portfolio turnover is a significant indicator of whether fund manager processes are fully aligned with the identified strategy and interests of the institutional investor, and indicates whether the asset manager holds equities for a period of time that enables it to engage in an efficient way. Frequent portfolio turnover may be an indicator of lack of conviction in investment decisions and momentum following behaviour, neither of which may be in the institutional investors' best long-term interests, especially as increases in turnover increase the costs faced by the investor and can influence systemic risks. On the other hand, unexpectedly low turnover may signal inattention to risk management or a drift towards a more passive investment approach. Securities lending can cause controversy in the area of shareholder engagement, under which the investors' shares are in effect sold, subject to a buyback right. Sold shares have to be recalled for engagement purposes, including voting at the general meeting. It is therefore important that the asset manager reports on its policy on securities lending and how it is applied to fulfil its engagement activities, particularly at the time of the general meeting of the investee companies.** ~~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 **that are subject to a code of conduct effectively report about their application of this code**. They should **also** 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. **This information should remain available for a period of at least 3 years in order to allow institutional investors to choose the services of proxy advisors taking into account his performance in the past.**

(14a) In order to ensure that this Directive has an impact on practices of third-country proxy advisors which provide analysis with respect to EU companies, proxy advisors having their registered office or their head office outside the Union which carry out their activities through an establishment located in a Member State should be subject to this Directive, regardless of the form of this establishment.

(15) **The form and structure of directors' remuneration are matters primarily falling within the competence of companies, their (supervisory) boards, shareholders and, where applicable, employee representatives. It is therefore important to respect the diversity of corporate governance systems within the Union, which reflect different Member States' views about the roles of corporations and of bodies responsible for the determination of policy on the remuneration of directors, and the remuneration of individual directors.** 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 **by competent company bodies,**. Without prejudice to the provisions on remuneration of Directive 2013/36/EU of the European Parliament and of the Council[6] listed companies and **that**their shareholders should have the possibility to define **express their views regarding** 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**submitted for** shareholder **approval**s. The approved remuneration policy should be publicly disclosed without delay.

[6] 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.

(16a) There may be situations, where the company is either in financial difficulties or under risk of falling in financial difficulties. In such exceptional circumstances, it may be necessary for the company to pay a remuneration to a specific director outside the general remuneration policy applicable to all directors. In addition, in order to attract a new director with specific set of skills or experience it may be necessary to pay such newly recruited directors a remuneration that exceeds the maximum amounts determined in the remuneration policy. However, in both cases a shareholder approval of the individual remuneration package of such a director should be subject to a shareholder vote.

(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 **transparency and** 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. **Member States may provide as an alternative to the vote on remuneration report that the remuneration report of the last financial year should be submitted to shareholders only for discussion in the annual general meeting as a separate item of the agenda. If Member State use this possibility, the company shall explain in the next remuneration report how the discussion in the general meeting has been taken into account.**

(18) In order to provide shareholders easy access to all relevant corporate governance information **in the same document where similar information is communicated, and to enable potential investors and employees to be informed of directors' remuneration,** 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[7] **or should be disclosed together with that corporate governance statement**.

(18a) In view of the requirements laid down by EU law regarding the protection of personal data, which apply to the processing of directors' personal data under this Directive, the legislator has struck a balance between, on the one hand, the necessity to increase transparency and accountability of directors and to further facilitate the exercise of shareholders rights, and, on the other hand, the right to privacy and to the protection of personal data of directors.

(18b) The disclosure of the remuneration of individual directors to shareholders and the publication of the remuneration report allow for an increase in transparency and in directors' accountability and facilitate the exercise of shareholders' rights and are necessary to achieve those objectives. In particular, the disclosure of such information to shareholders is necessary to enable them to assess directors' remuneration and to express their views on the modalities and level of directors' pay as well as on the link between pay and performance of directors, in order to remedy potential situations where an individual director is granted an amount of remuneration that is not justified as regards the performance of the company. As to the publication of the remuneration report, it is necessary in order to enable not only shareholders, but also potential investors and employees to assess directors' remuneration and to what extent this remuneration is linked to the performance of the company.

[7] 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)

(18c) In this respect, the disclosure and publication of anonymised remuneration reports would not enable shareholders, potential investors and employees to ascertain how individual directors are paid, whether the remuneration awarded or due to individual directors is in line with the performance criteria applied to them and to assess the trend in those directors' remuneration. The disclosure and publication of anonymised remuneration reports would for example make very difficult for shareholders, potential investors and employees to ascertain whether the company has taken the necessary measures to adjust the remuneration granted to an individual directors in case this remuneration had been overvalued or undervalued the year before .

(18d) In order to increase transparency and accountability of directors and to further facilitate the exercise of shareholders rights, it is of particular importance that every elements and total amount of remuneration, including remuneration awarded or due from any undertaking belonging to the same group, are disclosed. Disclosure and publication of only part of this remuneration would not enable shareholders, potential investors and employees to have a full and reliable picture of the remuneration granted and to compare this remuneration with the performance of the company.

(18e) In particular, in order to prevent the circumvention of the requirements laid down by this Directive by the company, to avoid any conflict of interest and to ensure loyalty of the directors to the company, it is necessary to provide for the disclosure and the publication of the remuneration awarded or due to the individual directors not only from the company itself, but also from any undertaking belonging to the same group. If remuneration awarded or due to individual directors by undertakings belonging to the same group as the company were excluded from the remuneration report, there would be a risk that companies try to circumvent the requirements laid down by this Directive by providing directors with hidden remuneration via a controlled undertaking.

In such a case, shareholders would not have a full and reliable picture of the remuneration granted to the directors by the company and the objectives pursued by this Directive would not be achieved. Nevertheless, in view of the principle of proportionality, the disclosure and publication of directors' remuneration should be limited to remuneration awarded or due to the directors by the company itself, or by undertakings belonging to the same group as the company within the meaning of point (11) of Article 2 of Directive 2013/34/EU, i.e. by subsidiary undertaking of the company, parent undertaking of the company and another subsidiary undertaking of the parent undertaking of the company.

(18f) Moreover, in view of protecting directors' rights to privacy and to protection of personal data, companies should not process special categories of personal data of individual directors which are protected under Article 8 of Directive 95/46/EC as well as information on remuneration awarded or due to individual directors because of their family situation.

(18g) In order to enable shareholders, but also potential investors and employees, to assess the trend in directors' remuneration over the years and to have an easy access to this information, it is necessary to provide for a public access to such information during a sufficient period of time. Nevertheless, in order to limit the interference with directors' rights to privacy and to protection of their personal data to what is strictly necessary in order to achieve the objectives pursued by this Directive, personal data of directors should be publicly accessible for no longer than 5 years after the publication of the remuneration report. At the end of this 5 year-period, and during an additional period of [8] [10] years, such data should only be disclosed to shareholders upon request: while the accessibility to such information appears to be less relevant or useful to the public after 5 years, shareholders may need to access such information during a longer period of time in particular for the purpose of potential legal actions.

(18h) Companies should not process personal data of individual directors in a way that is not compatible with the purposes of increase in transparency and accountability of directors and of facilitation of shareholders rights.

(18i) The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) TFEU, general principles of national contract and labour law, Union and national law regarding involvement and the general responsibilities of the supervisory, administrative and management bodies of the company concerned, and the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs.

(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 **material** 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~~**approval** by the shareholders ~~in a general meeting~~**or by the administrative or supervisory body according to procedures that prevent the related party from taking advantage of its position and provide adequate protection for minority shareholders' interests**. Where the related party transaction involves a **director or a** shareholder, this **director or** shareholder should be excluded from th**e**~~at~~ 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 c~~**C**ompanies should publicly announce ~~such~~ **material** transactions **at the latest** at the time of the conclusion of the transaction, **identifying the related party, the date and the value of the transaction and any other information that is necessary to assess whether the transaction is fair and reasonable. Public announcement of such transaction, for example on company's website, in a publicly available register or during general meeting of shareholders, is needed in order to allow shareholders, creditors, employees other interested parties to be informed of potential impacts that such transactions may have on the value of the company. Precise identification of the related party is necessary to better assess the risks implied by the transaction and to challenge this transaction including through legal action.** ~~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.~~

Transactions entered into in the ordinary course of business and concluded on normal terms should be excluded from the application of these requirements provided however that the administrative or supervisory body is duly informed of such transactions and verifies whether the conditions for the exclusion have been met.

~~(20) In view of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995[8] 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.~~

(20a) This Directive does not require companies, institutional investors, asset managers and proxy advisors to disclose information to the public if such disclosure could seriously damage their business operations.

(21) In order to ensure uniform conditions for the implementation of the provisions on shareholder identification, transmission of information **and** ~~,~~ facilitation of the exercise of shareholder rights ~~and the remuneration report~~, implementing powers should be conferred on the Commission. **In particular, the Commission implementing acts shall specify the standardised formats to be used and deadlines to be complied with. Empowering the Commission to adopt implementing acts allows keep this rules up to date with market and supervisory developments.**

~~[8] 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).~~

In addition, diverging implementation by Member States of these provisions could result in adoption of incompatible national standards which could increase risks and costs of cross-border operations and thus jeopardise their effectiveness and efficiency. Diverging requirements in Member States are also likely to result in additional burden for intermediaries. 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*. The implementing powers should be *exercised* in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[9]

(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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[9] 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).

(23a) Any processing of personal data under this Directive should comply with the requirements laid down in the EU law regarding the protection of personal data, in particular with Articles 7, 8 and 52 of the Charter of Fundamental Rights of the EU, the case law of the Court of Justice and Directive 95/46/EC, and with national laws implementing those requirements. In particular, data processed under this Directive should be kept accurate and up to date, data-subject should have a right of erasure or rectification of incomplete or inaccurate data and data should be protected against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in accordance with the requirements laid down by Directive 95/46/EC and national laws transposing that Directive. Moreover, any transmission of information regarding shareholder identity to third-country intermediaries should comply with the requirements laid down in articles 25 and 26 of the Directive 95/46/EC and in national laws transposing those provisions;

(23b) The provisions of this Directive should be without prejudice to the provisions laid down in sectorial legislation regulating specific types of listed companies or entities, such as but not limited to credit institutions, investments firms, asset managers, insurance companies and pension funds, to the extent that the requirements provided by this Directive duplicate or contradict the requirements laid down in sectorial legislation. The provisions of sectorial legislation should be considered as lex specialis in relation to this Directive. However, the mere existence of specific EU rules in a given sector should not exclude the application of this Directive.

Where this Directive provides for more specific rules or adds requirements compared to the provisions laid down by sectorial legislation, those provisions should be applied in conjunction with the provisions of this Directive.

(24) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents[10], 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,

[10] 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 advisor 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[11];

(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 **in shares**~~,~~ directly or through ~~a collective investment undertaking~~**an asset manager**, **and to asset managers to the extent**~~on behalf of investors, in so far~~ they invest in shares **on behalf of investors**."

(2) In Article 2 the following points (d) -(l) are added:
"(d) 'intermediary' means a legal person that 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 Council[12]**,** credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[13] and central securities depository

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11 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).

12 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).

13 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).

as defined in point (1) of Article 2 (1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council[14], in so far they provide services with respect to shares 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**;

(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 Council[15] 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 Council[16] 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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14 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).

15 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).

16 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 of the European Parliament and of the Council[17] 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 Council[18] 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[19]; 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, **financial and non-financial** performance, risk, capital structure and corporate governance, having a dialogue with companies on these matters and **exercising** voting **rights and other rights attached to shares**~~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 Council[20];

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17 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).

18 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).

19 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).

20 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).

(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 **where available** **the number of** 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) the request of the company, or of a third party designated by the company, is transmitted between intermediaries without undue delay. The information regarding shareholder identity is transmitted to the company or to a third party designated by the company without delay by the intermediary who holds the requested information. Member States may also provide that the central securities depository or other service provider is in charge of collecting the information regarding shareholder identity, including from the intermediaries inof the holding chain;

(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:~~

3. Member States shall ensure that the companies and the intermediaries do not store the information regarding shareholder identity for longer than necessary and, in any event, for longer than a year after the person concerned has ceased to be a shareholder.

3a. Member States may allow further processing of information regarding shareholder identity, provided that:

(i) this information is not further processed in a way incompatible with the purpose of facilitation of the exercise of shareholder rights and of shareholder engagement; or

(ii) when the purpose of further processing is incompatible with the purpose of facilitation of the exercise of shareholder rights and of shareholder engagement, the further processing has a legal basis at least in one of the grounds referred to in Article 7 of Directive 95/46/EC.

Member States shall ensure that the requirements laid down by EU law regarding the protection of personal data, in particular with Articles 7, 8 and 52 of the Charter of Fundamental Rights of the EU, the case law of the Court of Justice and Directive 95/46/EC, are complied with[21].

In particular, this Article is without prejudice to the right of Member States to provide access to the information regarding shareholder identity to other shareholders or to the public, provided that the requirements laid down in EU law regarding the protection of personal data are complied with.

3b. Member States shall ensure that shareholders are duly informed by their intermediary that the information regarding their identity may be processed in accordance with this Article. If Member States allow further processing for other purposes than the purpose of facilitation of exercise of shareholder rights and of shareholder engagement, in accordance with paragraph 3a, they shall ensure that shareholders are duly informed on those other purposes.

~~(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 date consistent with European Union legislation.~~

[21] The wording of paragraph 3a may be adjusted in order to take into account the future Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data to be adopted by the European Parliament and the Council (see Interinstitutional file n° 2012/0011 (COD))

4. Member States shall ensure that an intermediary that reports information regarding shareholder identity **in accordance with the rules laid down in this article** 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 to provide access to the information regarding shareholder identity to other shareholders or to the public. The requirements defined in paragraph 3 apply in this~~ .

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 which:

(a) the company is required to provide to the ~~investors~~**shareholder**, and;

(aa) is necessary to exercise ~~a~~ right**s** of the shareholder flowing from its shares, and;

(b) is directed to all shareholders in shares of that class.

2. Member States shall require companies to provide and deliver to intermediaries the information 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, the information received from the shareholders which is necessary to exercise ~~a~~ right**s** 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~~ **shareholder** 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~~ 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 for votes that are not cast electronically the confirmation is provided only upon request.

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~~.

Article 3e

Third country intermediaries

This chapter applies to intermediaries which have their registered office or head office outside the Union in so far they provide services with respect to shares 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.

~~*Article 3e*~~

~~*[deleted]*~~

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 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 conduct engagement activities as referred to in Article 2 point (h)**~~, 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 **in relation to their engagement**.

(b) Institutional investors and asset managers shall, on an annual basis, publicly disclose how this engagement policy has been implemented, including **a general explanation of their voting behaviour** ~~how they~~**and their** use **of** the services of proxy advisors. For each company in which they hold **0.3% of the voting rights**~~shares~~, they shall publicly disclose how they cast their votes**.** ~~and provide a general explanation of their voting behaviour.~~ Member States may provide that **small institutional investors and asset manager, which the Member States shall define on the basis of the number of their members or their overall assets under management, are exempted from the obligation of disclosure of voting records** ~~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 th**e**~~is~~ threshold **of 0,3% of the voting rights**, 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.

3. 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.

Article 3g

Investment strategy of institutional investors and arrangements with asset managers

1. Member States shall ensure that institutional investors publicly disclose 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 are aligned with the long-term horizon of their liabilities and contribute~~s~~ to the medium to long-term performance of their assets.
If these principles and the arrangement with the asset manager are not aligned in this way-, they should explain why this is the case.

2. Member States shall ensure that where an asset manager invests on behalf of an institutional investor, the institutional investors publicly disclose **whether and if so** 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 **whether and if so** how they monitor portfolio turnover costs incurred by the asset manager and how they incentivise the asset manager to engage **in the best medium-to long-term interest of the institutional investor**.
Where the arrangement with **the** asset manager does not contain such elements, the institutional investor shall explain 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 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.

Article 3h

Transparency of asset managers

1. Member States shall ensure that assets managers disclose on an annual basis to the institutional investor with which they have entered into the arrangements referred to in Article 3g whether and if so how their equity investments contribute to the medium to long-term performance of the asset of the institutional investor or of the fund. This shall include reporting on the key, material medium-to long-term risks and opportunities associated with the investments and, if applicable, an explanation how the manager has sought to identify, monitor and manage them.

2. Member States shall ensure that asset managers disclose to the institutional investor the portfolio turnover, portfolio turnover costs, their policy on securities lending and how it is applied to fulfil its engagement activities if applicable, particularly at the time of the general meeting of the investee companies.

3. Member States may provide that the information in paragraph 1 is disclosed together with the annual report referred to in Article 68 of Directive 2009/65/EC or in Article 22 of Directive 2011/61/EU, or periodic communications referred to in Article 25 (6) of Directive 2014/65/EU.

Where the information disclosed pursuant to paragraph 1 and 2 is already publicly available, the asset manager is not required to provide the information to the institutional investor directly.

~~*[deleted]*~~

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.
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) 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]

Information referred to in this paragraph shall be published 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 advisors 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."

4a. This Article also applies to proxy advisors having their registered office or head office outside the Union which carry out their activities through an establishment located in the Union.

(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.

However, Member States may ~~decide to~~ allow companies **in exceptional circumstances of proved or potential financial difficulty** to pay remuneration to individual director~~s~~ outside the general remuneration policy where the remuneration package **of that individual director** has been subject to **a** 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 to a vote by the shareholders at the next general meeting.
Member States shall ensure that companies submit the remuneration policy 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 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~~**T**he policy **shall** indicate~~s~~ the maximum amount~~s~~ of remuneration that can be awarded. **However, in case of recruitment of a director, companies may pay remuneration above that maximum amount where the remuneration package of that director has been subject to a shareholder vote.**

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, with respect to~~ the duration **of the arrangements with directors** 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 ~~adopted~~ **followed** for its determination including, where applicable, the role of the committees concerned. Where the policy is revised, it shall describe and explain 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 published with the date and the results of the shareholders' vote** ~~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 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 complies with the adopted remuneration policy and information on how its performance criteria where 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 directors of the company from any undertaking belonging to the same group **as defined in point (11) of Article 2 of Directive 2013/34/EU**;

(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 **that companies:**

~~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 **individual** directors;

(b) do not process special categories of personal data of individual directors which are protected under Article 8 of Directive 95/46/EC**, as well as information on remuneration awarded or due to individual directors because of their family situation.**

2a. Member States shall ensure that personal data of directors are publicly accessible for no longer than 5 years after the publication of the remuneration report and that companies take appropriate technical measures to limit the **public** accessibility of personal data of individual directors **after this period. Member States shall ensure that at the end of this period, and during an additional period of [8] [10] years, companies only disclose personal data of directors to shareholders upon request. Member State shall ensure that at the end of this additional period of [8] [10] years, personal data of directors are no longer disclosed.**

~~after a period of 10 years.;~~

~~(c)~~

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. In order to ensure consistent harmonisation in relation to this Article, **the Commission shall** ~~ESMA shall develop~~**adopt guidelines** ~~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~~ **conclusion** 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 value of the transaction and any other information necessary to assess the transaction.

1a. Member States may provide that the announcement published according to paragraph 1 is accompanied by a report assessing whether or not the transaction is fair and reasonable from the perspective of the shareholders **who are not related party**, ~~including~~ **in particular** minority shareholders and explaining the assumptions it is based upon together with the methods used.

This report is produced by:

(-a) an independent third party or;

(a) 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~~ **excluded from** the preparation of the report.

2. Member States shall ensure that material transactions with related parties are approved by the shareholders or by the administrative or supervisory body of the company according to procedures which prevent a related party from taking advantage of its position and provide adequate protection for the **interests of shareholders who are not related party, in particular** minority **shareholders** ~~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 ~~these conditions are assessed by~~ the administrative or supervisory body of the company **assesses whether these conditions are fulfilled.,** ~~with t~~**T**he related part**ies and the persons related to them shall be** ~~y~~ ~~prevented from having a determining role in~~**excluded from** th**is**~~e~~ 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 **they are wholly owned or that** no other related party of the company has an interest in the subsidiary or that national law provides for adequate protection of interests **of shareholders who are not related party, in particular** ~~of~~ minority shareholders in such transactions;

~~(c) clearly defined types of transactions for which national law provides for adequate protection of minority shareholders 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 **who are not related party, in particular minority shareholders** are **adequately** 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 **economic** 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~~ **materiality definitions** for the application of paragraph**s** 1 and 1a ~~lower~~ **different from** ~~than~~ those for the application of paragraph~~s~~ 2 and may differentiate the ~~ratios~~ **definitions** 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 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 Council[22]**.**

(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[23]. 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.

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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).

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

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.

(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.

In that case, Member States shall ensure that such a disclosure complies with the requirements laid down by EU law regarding the protection of personal data in particular with Articles 7, 8 and 52 of the Charter of Fundamental Rights of the EU, the case law of the Court of Justice and Directive 95/46/EC.

In any event, Member States shall ensure that public access to personal data contained in the remuneration report is limited in accordance with Article 9b(2a) of Directive 2007/36/EC.

(c) 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."

(d) 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	*For the Council*
The President	*The President*