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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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
- Outcome of the European Parliament's proceedings
(Strasbourg, 6 to 9 July 2015)

I. INTRODUCTION

The rapporteur, Mr. Sergio Gaetano COFFERATI (S&D, IT) presented a report on the proposal for a directive on behalf of the Committee on Legal Affairs. The report contained one single amendment (amendment 1) voted by the Committee.

In addition, the rapporteur tabled eight other amendments on behalf of his group (amendments 24 – 31). These amendments constituted compromise amendments proposed following the vote in the Committee and were intended to replace parts of amendment 1. The EUL/NGL group tabled two amendments (amendments 2 and 3).

II. DEBATE

The debate on the proposal was held on 7 July 2015. The rapporteur, Mr. Sergio Gaetano COFFERATI (S&D, IT) opened the debate and:

- recalled the difficult process finding a compromise on the proposal given the complexity and divergent views;
- considered the directive to be part of larger whole of defining the profile of the governance of companies for the future. This directive dealt with shareholders. Later stakeholders would have to be tackled to take into account the social dimension, and he expected Commission to come up with further initiatives. This directive defined how companies should steer themselves in the long run. Focus was on increased transparency of corporate governance and on a more long term approach. It should be easier for shareholders to exercise their voting rights. Increased transparency would make shareholders work more effectively;
- stated that the aim of the Parliament had been to strengthen the Commission's proposal, inter alia:
 - on related parties transactions, taking into account the national differences without calling into question the uniform nature of EU policy;
 - on directors and remuneration, shareholders should vote but with each Member State deciding whether such vote would be consultative or binding; and
 - on country by country reporting, new instruments were needed such as annual reporting by listed companies. Parliament had come to the conclusion that, while conscious of the fact that the Accounting Directive was up for review, the Shareholders Directive was the right place to include provisions on this.

Commissioner JOUROVÁ:

- recalled that the aim of the proposals was, in the aftermath of the economic crisis, to address structural weaknesses in corporate governance (such as focus on short-term gains) and to contribute to putting the EU back on the path of long-term sustainable growth. Focus should be to encourage long-term financing and long-term shareholder engagement and giving investors the necessary tools to engage and protect their rights;
- addressed the amendments tabled in the Parliament:
 - country by country reporting. While Commission agreed on the need to tackle the issue, this legislation was not the right place to address it. A thorough analysis was needed. The Commission had launched a public consultation on possible options to feed into the impact assessment work to be concluded at the latest in the first quarter of 2016;
 - measures to incentivise long-term shareholdings through increased voting rights or dividends. The Commission agreed with the aim but doubted the means proposed, warning against discouraging cross-border and foreign investors and losing sight of the interests of minority shareholders;
 - related party transactions. The Commission was concerned that the amendments watered down the original Commission proposal. A harmonised threshold for the application of rules on related party transactions in the single market was needed, given that currently, 40% of shareholders were cross-border based.

The rapporteur for the opinion of the Economic and Monetary Affairs, Mr Olle LUDVIGSSON (S&D, SE) agreed with the aims of the proposal and underlined the need to create more transparency of international companies. To expand the country by country reporting to all sectors was an evident and effective reform. The aim was to provide better access for shareholders to information and more in general to fight against corruption, tax fraud and aggressive tax planning.

On behalf of the EPP group, Mr Tadeusz ZWIEFKA (PL):

- stated that the Directive dealt with a number of key questions on corporate governance, inter alia how to look at investors and entrepreneurs in the EU;
- in this context, called for being constructive when regulating this area. It should not be done in such a way that growth was hampered but rather in a way that incentivised economic growth and the creation of jobs. Not governments or the Parliament created jobs but companies, with 90 % of companies being SMEs;
- argued that shareholders should have the right to decide on how to remunerate managers and board members. He was therefore very pleased with the report tabled.

On behalf the S&D group, Ms Evelyn REGNER (AT):

- welcomed the improvements on transparency, governance and taxation. In particular, her group had achieved more transparency as concerns important information such as board room pay, tax strategies and risky company transactions;
- advocated the importance of employee participation. Her group had brought in changes to the original proposal in order to strengthen the interests of employees;
- underlined the inclusion of the provisions of country by country reporting. These provisions had their rightful place in this directive. It was an opportunity to move in the right direction in order to fight against tax havens and for more justice in the area of taxation.

On behalf of the ECR group, Mr Morten MESSERSCHMIDT (DK):

- agreed that there should be common rules for the concerned companies but the proposal that had been tabled went too far and beyond what the Parliament should get involved in. Attempting to regulate questions on remuneration constituted an unheard degree of meddling in how companies should be run. He did not subscribe to the assumption behind the proposal that European listed companies were driven by short term gains;
- stated that his group would abstain in the vote on the proposal.

On behalf of the ALDE group, Ms Cecilia WIKSTRÖM (SE):

- welcomed the compromise found. Concessions had to be made but the end result was acceptable. She asked her group to support the compromise found;
- underlined that for her group the main concern had been to improve the ability for shareholders to exercise their rights in cross-border situations and not to add unnecessary red tape and bureaucracy;
- would like to have removed even more of the Commission's proposals on a detailed remuneration policy and remuneration report for the director's remuneration. However, the compromise respected her key points.

On behalf of the EUL/NGL group, Mr Jiří MAŠTÁLKA (CZ):

- welcomed the progressive report tabled and confirmed the main objectives of the directive, ie. to enhance long term engagements of investors in companies and to increase openness by making the minutes from general assemblies public;
- recalled that for the first time, the remuneration of board members was mentioned in an EU document;
- believed that country by country reporting was necessary as a solution to fight tax evasion.

On behalf of the Greens/EFA group, Mr Pascal DURAND (FR):

- welcomed that the Commission with the proposal acknowledged that focus should be on long term investments. It was also positive that it had taken into account all stakeholders, small shareholders and employees. However, it was not sufficient and one had to go much further on the issue of the lack of transparency in relation to big companies and their activities;
- stated that the LUX leaks scandal had demonstrated the need to find responses. Fiscal optimisation constituted a threat to loyal competition because SMEs and small businesses did not have the same possibilities to do this. He welcomed the work of the rapporteur to find a common ground that represented the general interest against the private international companies and fiscal competition.

On behalf of the EFDD group, Ms Laura FERRARA (IT):

- believed that the report would make changes in corporate governance. The rules proposed would benefit European citizens and the economic system as well as go against the speculators who caused the financial crisis;
- called for rigorous rules on salaries of managers and on the running of companies. Principles should be introduced to make managers more responsible and to ensure more corporate social responsibility;
- supported rules to fight tax evasion and avoidance, and on the choice of country where taxes should be paid.

On behalf of the ENF group, Mr Steeve BRIOIS (FR):

- stated that certain provisions went in the right direction: extension of the participation of shareholders and stakeholders in the governance of companies and increased transparency of companies;
- nevertheless, regretted that the proposals did not go far enough because they would not enable a better regulation of the international finance system. Only common rules on taxation of financial transactions would limit speculation and motivate investors to invest long-term.

The intervention of subsequent speakers focused mainly on the issue of country by country reporting.

Mr. Axel VOSS (EPP, DE) found the provisions on country by country reporting problematic because it was not rightly placed. The risk was that there would now be reporting provisions in different pieces of legislation.

Ms Beatrix VON STORCH (ECR, DE) rejected the notion of the fully transparent company that she claimed the left wing groups advocated. She believed that data protection and tax secrecy went before transparency, also for companies.

Mr Andreas SCHWAB (EPP, DE) pointed out that not all problems would be solved by country by country reporting as e.g. it would not shed light on the intra-corporate transactions. More discussion was required but this proposal was a first step.

Mr Jeppe KOFOD (S&D, DK) recalled that welfare costs money, money paid through taxes. However, for some corporations it had long been too easy to avoid paying taxes. This directive was a massive step in fighting tax avoidance and irresponsible investments. Country by country reporting should apply to all sectors in order to track the financial streams and ensure that corporations paid taxes in those countries where they earned their money.

III. VOTE

When it voted on 8 July 2015, the plenary adopted nine amendments. Amendment 1 was partly adopted. All of the eight compromise amendments (amendments 24 – 31) were adopted.

The amendments adopted are set out in the annex to this note. The vote on the legislative resolution was postponed to a later session, thereby not closing the first reading. The matter was then referred back to the Committee on Legal Affairs, pursuant to Rule 61(2) of the European Parliament's Rules of Procedure.

(8.7.2015)

Corporate governance: long-term shareholder engagement and transparency

*****I**

Amendments adopted by the European Parliament on 8 July 2015 on the 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 (COM(2014)0213 – C7-0147/2014 – 2014/0121(COD))¹

(Ordinary legislative procedure: first reading)

[Amendment 1, unless otherwise indicated]

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

¹ The matter was referred back to the committee responsible for reconsideration pursuant to Rule 61(2), second subparagraph (A8-0158/2015).

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

DIRECTIVE (EU) 2015/...OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, Directive 2013/34/EU as regards certain elements of the corporate governance statement *and Directive 2004/109/EC*

(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 Committee²

² OJ C 451, 16.12.2014, p. 87.

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2007/36/EC of the European Parliament and of the Council³ 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.

³ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17).

(2) Although they do not own corporations, which are separate legal entities beyond their full control, shareholders play a relevant role in the governance of those corporations.

The financial crisis has revealed that shareholders in many cases supported managers' excessive short-term risk taking. Moreover, ■ the current level of “monitoring” and engagement *in investee companies* by institutional investors and asset managers is *often* inadequate *and too much focused on short-term returns*, which *leads* to suboptimal corporate governance and performance of listed companies.

(2a) Greater involvement of shareholders in companies' corporate governance is one of the levers that can help improve the financial and non-financial performance of those companies. Nevertheless, since shareholder rights are not the only long-term factor which needs to be taken into consideration in corporate governance, they should be accompanied by additional measures to ensure a greater involvement of all stakeholders, in particular employees, local authorities and civil society.

- (3) In the Action Plan on European company law and corporate governance 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 *right to identify* their shareholders and directly communicate with them. Therefore, *to improve transparency and dialogue*, this Directive should provide for a framework to ensure that shareholders can be identified. [Am. 29]
- (5) The effective exercise of their rights by shareholders depends to a large extent on the efficiency of the chain of intermediaries maintaining securities accounts for shareholders, especially in a cross-border context. This Directive aims at improving the transmission of information by intermediaries through the equity holding chain to facilitate the exercise of shareholder rights.

- (6) In view of the important role of intermediaries they should be obliged to facilitate the exercise of rights by shareholders ■ when *shareholders* would like to exercise these rights *themselves* or *would like* to nominate a third person to do so. When *shareholders do* not want to exercise the rights *themselves* and *have* nominated the intermediary as a third person, the latter should be obliged to exercise these rights upon the explicit authorisation and instruction of the shareholders and for *their* benefit.
- (7) In order to promote equity investment throughout the Union and the exercise of rights related to shares, this Directive should *establish a high degree of transparency with regard to costs of services provided by intermediaries. In order to* prevent price discrimination of cross-border as opposed to purely domestic share holdings, *any differences in the costs levied between domestic and cross-border exercise of rights should be duly justified and should reflect the variation in actual costs incurred for delivering the* services provided by intermediaries. Third country intermediaries which have established a branch in the Union should be subject to the rules on shareholder identification, transmission of information, facilitation of shareholder rights and transparency of *costs* to ensure effective application of the provisions on shares held via such intermediaries.

- (8) Effective and sustainable shareholder engagement is ***a relevant element*** of listed companies' corporate governance model, which depends on checks and balances between the different organs and different stakeholders. ***Proper involvement of stakeholders, in particular employees, should be considered an element of utmost importance in developing a balanced European framework on corporate governance.***
- (9) Institutional investors and asset managers are ***often*** important shareholders of listed companies in the Union and therefore can play a ***significant*** 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 ***properly*** with companies in which they hold shares and ■ that capital markets ***often*** exert pressure on companies to perform in the short term, which ***jeopardizes the long-term financial and non-financial performance of companies and leads, among several other negative consequences,*** to a suboptimal level of investments, for example in research and development to the detriment ***of the*** long-term performance of the companies ■ .

- (10) Institutional investors and asset managers are often not transparent about investment strategies and their engagement policy ■ , implementation *and results* thereof. Public disclosure of such information *would* 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, *enhance* shareholder engagement and strengthen companies' accountability to *stakeholders and* 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, ***including their environmental and social risks***, conduct dialogues with investee companies ***and their stakeholders*** and exercise voting rights. Such engagement policy should include policies to manage actual or potential conflicts of interests, such as the provision of financial services by the institutional investor or asset manager, or companies affiliated to them, to the investee company. This policy, its implementation and the results thereof should be publicly disclosed ***and sent to the institutional investors' clients*** on an annual basis. Where institutional investors or asset managers decide not to develop an engagement policy and/or decide not to disclose the implementation and results thereof, they shall give a clear and reasoned explanation as to why this is the case.

- (12) Institutional investors should annually disclose to the public how their investment strategy is aligned with the profile and duration of their liabilities and how it contributes to the medium to long-term performance of their assets. Where they make use of asset managers, either through discretionary mandates involving the management of assets on an individual basis or through pooled funds, they should disclose to the public the main elements of the arrangement with the asset manager with regard to a number of issues, such as whether it incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, whether it incentivises the asset manager to make investment decisions based on medium to long-term company performance and to engage with companies, how it evaluates the asset managers performance, the structure of the consideration for the asset management services and the targeted portfolio turnover. This would contribute to a proper alignment of interests between the final beneficiaries of institutional investors, the asset managers and the investee companies and potentially to the development of longer-term investment strategies and longer-term relationships with investee companies involving shareholder engagement.

- (13) Asset managers should be required to **publicly** disclose ■ how their investment strategy and the implementation thereof is in accordance with the asset management arrangement and how the investment strategy and decisions contribute to medium to long-term performance of the assets of the institutional investor. Moreover, asset managers should **publicly** disclose **the portfolio turnover**, whether they make investment decisions on the basis of judgements about medium to long-term performance of the investee company, ■ and whether they use proxy advisors for the purpose of their engagement activities. ***Further information should be disclosed by the asset managers directly to the institutional investors, including information on the portfolio composition, on the portfolio turnover costs, on conflicts of interest which have arisen and how they have been dealt with.*** This information would allow institutional investors to better monitor asset managers, and 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 ***ensure to the best of their ability*** that their voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them and are not affected by any existing or potential conflict of interest or business relationship. ***Proxy advisors should adopt and follow a code of conduct. Departures from the code should be declared and explained, together with any alternative solutions which have been adopted. Proxy advisors should report on the application of their code of conduct on a yearly basis.*** They should disclose certain key information related to the preparation of their voting recommendations and any actual or potential conflict of interest or business relationships that may influence the preparation of the voting recommendations.

- (15) Since remuneration is one of the key instruments for companies to align their interests and those of their directors and in view of the crucial role of directors in companies, it is important that the remuneration policy of companies is determined in an appropriate manner *without* prejudice to the provisions on remuneration of Directive 2013/36/EU of the European Parliament and of the Council⁴ *and taking into account the differences in board structures applied by companies in the different Member States . Directors' performance should be assessed using both financial and non-financial performance criteria, including environmental, social and governance factors.*
- (15a) *The remuneration policy for company directors should also contribute to the long-term growth of the company so that it corresponds to a more effective practice of corporate governance and is not linked entirely or largely to short-term investment objectives.*

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

- (16) In order to ensure that shareholders have an effective say on the remuneration policy, they should be granted the right to **vote on** 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 **voted** by shareholders. The **voted** remuneration policy should be publicly disclosed without delay. [Am. 30]
- (17) To ensure that the implementation of the remuneration policy is in line with the approved policy, shareholders should be granted the right to **hold an advisory** vote on the company's remuneration report. In order to ensure accountability of directors the remuneration report should be clear and understandable and should provide a comprehensive overview of the remuneration granted to individual directors in the last financial year. Where the shareholders vote against the remuneration report, the company should, **where necessary, enter into dialogue with the shareholders in order to identify the reasons for rejection. The company should** explain in the next remuneration report how the vote of the shareholders has been taken into account. [Am. 31]

- (17a) *Increased transparency regarding the activities of large companies, and in particular regarding profits made, taxes on profit paid and subsidies received, is essential for ensuring the trust and facilitating the engagement of shareholders and other Union citizens in companies. Mandatory reporting in this area can therefore be seen as an important element of the corporate responsibility of companies to shareholders and society.*
- (18) In order to provide *stakeholders*, shareholders *and civil society* easy access to all relevant corporate governance information the remuneration report should be part of the corporate governance statement that listed companies should publish in accordance with article 20 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013⁵.

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

- (18a) *There is a need to differentiate between procedures for establishing the remuneration of directors and systems of wage formation for employees. Consequently, the provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) Treaty on the Functioning of the European Union (TFEU), general principles of national contract and labour law, and the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs.*
- (18b) *The provisions on remuneration should also, where applicable, be without prejudice to provisions on the representation of employees in the administrative, management or supervisory body as provided for by national law.*
- (19) Transactions with related parties may cause prejudice to companies **█**, as they may give the related party the opportunity to appropriate value belonging to the company. Thus, adequate safeguards for the protection of *companies'* interests are of importance. For this reason Member States should ensure that *material* related party transactions ***should be approved by the shareholders or by the administrative or supervisory body of the companies, in accordance with procedures which prevent a related party from taking advantage of its position and provide adequate protection for the interest of the company and of shareholders which are not related parties,***

including minority shareholders. For *material* transactions with related parties
█ companies should publicly announce such transactions *at the latest* at the time of the
conclusion of the transaction and accompany the announcement by a report █ assessing
whether the transaction is on market terms and confirming that the transaction is fair and
reasonable from the perspective of the *company*, including minority shareholders. Member
States should be allowed to exclude transactions entered into between the company and
*joint ventures and one or more members of its group, provided that those members of the
group or joint ventures are wholly owned by the company or that no other related party
of the company has an interest in the members or in the joint ventures, and transactions
entered into in the ordinary course of business and concluded on normal market terms.*

- (20) In view of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995⁶ it is necessary to strike a balance between the facilitation of the exercise of shareholders' rights and the right to privacy and the protection of personal data. The identification information on shareholders should be limited to the name and contact details of, ***including full address, telephone number and, if relevant, e-mail address and the numbers of shares owned and voting rights held by*** 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, ***of shareholder engagement and of the dialogue between the company and the shareholder.***

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

- (21) In order to ensure uniform *application of the Articles on identification of shareholders, on transmission of information, on facilitation of the exercise of shareholder's rights and on the remuneration reports, the power to adopt delegated acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of defining the specific requirements regarding the transmission of information on the identity of shareholders, the transmission of information between the company and the shareholders and the facilitation by the intermediary of the exercise of rights by shareholders, and the standardised presentation of the remuneration report. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and of the Council.*

- (22) In order to ensure that the requirements set out in this Directive or the measures implementing this Directive are applied in practice, any infringement of those requirements should be subject to penalties. To that end, penalties should be sufficiently dissuasive and proportionate.
- (23) Since the objectives of this Directive cannot be sufficiently achieved by the Member States in view of the international nature of the Union equity market and action by Member States alone is likely to result in different sets of rules, which may undermine or create new obstacles to the functioning of the internal market, the objectives can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (24) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents⁷, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

⁷ OJ C 369, 17.12.2011, p. 14.

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 **in order to facilitate shareholders' engagement in the long term, including the identification of shareholders, the transmission of information and the facilitation of the exercise of shareholder rights. It additionally** creates transparency on the engagement policies of **institutional investors and asset managers and on the activities of proxy advisors** and **lays down certain requirements with regard to directors' remuneration and related party transactions.**”*

(aa) The following paragraph is added after paragraph 3:

“3a. The undertakings referred to in paragraph 3 shall in no case be exempted from the provisions laid down in Chapter IB.”

(b) The following paragraph is added after paragraph 3a:

*“3b. Chapter Ib shall apply to institutional investors and to asset managers to the extent that they invest, directly or through a collective investment undertaking, on behalf of institutional investors, in so far they invest in shares. **It shall also apply to proxy advisors.***

(ba) The following paragraph is added after paragraph 3b:

“3c. The provisions of this Directive are without prejudice to the provisions laid down in sectorial EU legislation regulating specific types of listed companies or entities. The provisions of sectorial EU legislation shall prevail over this Directive to the extent that the requirements provided by this Directive contradict the requirements laid down in sectorial EU legislation. Where this Directive provides for more specific rules or adds requirements compared to the provisions laid down by sectorial EU legislation, those provisions shall be applied in conjunction with the provisions of this Directive”.

(2) In Article 2, the following points (d) *to (jc)* are added:

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

(da) ‘large company’ means a company which meets the criteria laid down in Article 3(4) of Directive 2013/34/EU;

(db) ‘large group’ means a group which meets the criteria laid down in Article 3(7) of Directive 2013/34/EU;

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

- (f) ‘institutional investor’ means an undertaking carrying out activities of life assurance within the meaning of Article **2(3)(a), (b) and (c), and activities of reinsurance covering life insurance obligations** and not excluded pursuant to **Articles 3, 4, 9, 10, 11 or 12** of Directive **2009/138/EC** of the European Parliament and of the Council⁸ and an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council⁹ 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;

⁸ ***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 (Solvency II) (OJ L 335, 17.12.2009, p. 1)***

⁹ 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 Council¹⁰ providing portfolio management services to institutional investors, an AIFM (alternative investment fund manager) as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council¹¹ 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 Council¹²; 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;

¹⁰ ***Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).***

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

- (h) ‘shareholder engagement’ means the monitoring by a shareholder alone or together with other shareholders, of companies on **relevant** matters **including** strategy, **financial and non-financial** performance, risk, capital structure, **human resources, social and environmental impact** and corporate governance, having a dialogue with companies **and their stakeholders** on these matters and **exercising** voting **rights and other rights attached to shares**;
- (i) ‘proxy advisor’ means a legal person that provides, on a professional basis, recommendations to shareholders on the exercise of their voting rights;
- (l) ‘Director’ means
- any member of the administrative, management or supervisory bodies of a company;
 - **chief executive officer and deputy chief executive officers, where they are not members of administrative, management or supervisory bodies**;
- (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 Council¹³;

¹³ 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).

- (ja)** *'assets' means the total asset value presented on the company's consolidated balance sheet prepared in accordance with international financial reporting standards;*
- (jb)** *'stakeholder' means any individual, group, organisation or local community that is affected by or otherwise has an interest in the operation and performance of a company;*
- (jc)** *'information regarding shareholder identity' means any information allowing to establish the identity of a shareholder including at least:*
- the names of shareholders and their contact details (including full address, telephone number and e-mail address), and, where they are legal persons, their unique identifier or, in case the latter is not available, other identification data;*
 - the number of shares owned and voting rights associated with those shares."*

(2a) In Article 2, the following paragraph is added:

"Member States may include in the definition of Director referred to in point (l) of the first paragraph, for the purposes of this Directive, other individuals that cover similar positions."

(2b) After Article 2, the following article is inserted:

"Article 2a

Data protection

Member States shall ensure that any processing of personal data under this Directive is done in accordance with national laws transposing Directive 95/46/EC."

(3) After Article 3, the following Chapters Ia and Ib 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, ***taking account of existing national systems***.
2. Member States shall ensure that, on the request of the company, the intermediary communicates without undue delay to the company ***the information regarding shareholder identity***. Where there is more than one intermediary in a holding chain, the request of the company shall be transmitted between intermediaries without undue delay. ***The intermediary having the information regarding shareholder identity shall transmit it directly to the company***.

Member States may provide that central security depositories (CSDs) are the intermediaries to be responsible for collecting the information regarding shareholder identity and for providing it directly to the company.

3. Shareholders shall be duly informed by their intermediary that **information regarding their identity** may be **processed** in accordance with this article **and, where applicable, that the information has actually been forwarded to the company**. This information may only be used for the purpose of facilitation of the exercise of the rights of the shareholder, **of engagement and dialogue between the company and the shareholder on company-related matters. Companies shall in any case be allowed to give third parties an overview of the shareholding structure of the company by disclosing the different shareholder categories**. The company and the intermediary shall ensure that natural **and legal** persons are able to rectify or erase any incomplete or inaccurate data. **Member States shall ensure that the companies and the intermediaries do not store the information regarding shareholder identity transmitted to them in accordance with this Article for longer than necessary and, in any event, for longer than 24 months after the company or the intermediaries have learnt that the person concerned has ceased to be a shareholder.**

4. Member States shall ensure that an intermediary that reports *to the company the information regarding shareholder identity in accordance with paragraph 2* is not considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.
5. *To ensure uniform application of this Article*, the Commission shall be empowered to adopt *delegated acts in accordance with Article 14a* to specify the *minimum* requirements to transmit the information laid down in paragraphs 2 and 3 as regards the format of the information to be transmitted, the format of the request, *including the secure formats to be used*, and the deadlines to be complied with. [Am. 24]

Article 3b

Transmission of information

1. Member States shall ensure that if a company *does* not directly communicate with its shareholders, the information related to their shares shall be *made available via the company's website and* transmitted to them or, in accordance with the instructions given by the shareholder, to a third party, by the intermediary without undue delay in all of the following cases:
 - (a) the information is necessary to exercise a right of the shareholder flowing from its shares;
 - (b) the information is directed to all shareholders in shares of that class.

2. Member States shall require companies to provide and deliver the information to the intermediary related to the exercise of rights flowing from shares in accordance with paragraph 1 in a standardised and timely manner.
3. Member States shall oblige the intermediary to transmit to the company, in accordance with the instructions received from the shareholders, without undue delay the information received from the shareholders related to the exercise of the rights flowing from their shares.
4. Where there is more than one intermediary in a holding chain, information referred to in paragraphs 1 and 3 shall be transmitted between intermediaries without undue delay.
5. ***To ensure uniform application of this Article***, the Commission shall be empowered to adopt ***delegated acts, in accordance with Article 14a***, to specify the ***minimum*** requirements to transmit information laid down in paragraphs 1 to 4 as regards the content to be transmitted, the deadlines to be complied with and the types and format of information to be transmitted, ***including the secure formats to be used***.

Article 3c

Facilitation of the exercise of shareholder rights

1. Member States shall ensure that the *intermediaries* facilitate the exercise of the *shareholder* rights by the shareholder, including the right to participate and vote in general meetings. Such facilitation shall comprise at least **one** of the following:
 - (a) the intermediary makes the necessary arrangements for the shareholder or a third person nominated by the shareholder to be able to exercise themselves the rights;
 - (b) the intermediary exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for his benefit.
2. Member States shall ensure that companies *publicly disclose, via their website, the minutes of the general meetings and the results of votes. Member States shall ensure that companies* confirm the votes cast in general meetings by or on behalf of shareholders, *when they are cast by electronic means*. In case the intermediary casts the vote, it shall transmit the voting confirmation to the shareholder. Where there is more than one intermediary in the holding chain the confirmation shall be transmitted between intermediaries without undue delay.

3. ***To ensure uniform application of this Article***, the Commission shall be empowered to adopt ***delegated acts, in accordance with Article 14a***, to specify the ***minimum*** 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 form of the voting confirmation and the deadlines to be complied with. ■

Article 3d

Transparency on costs

1. Member States ***may*** allow intermediaries to charge ***the costs of*** the service to be provided ***by the companies*** under this chapter. Intermediaries shall publicly disclose prices, fees and any other charges separately for each service referred to in this chapter.
2. ***Where intermediaries are permitted to charge costs in accordance with paragraph 1, Member States shall ensure that intermediaries publicly disclose, separately for each service, the costs for the services referred to in this chapter.***

Member States shall ensure that any *costs* that may be levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory, *reasonable* and *proportionate*. Any differences in the charges levied between domestic and cross-border exercise of rights shall *only* be *permitted where* duly justified *and shall reflect the variation in actual costs incurred for delivering the services*.

Article 3e

Third country intermediaries

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

CHAPTER IB

TRANSPARENCY OF INSTITUTIONAL INVESTORS, ASSET MANAGERS AND PROXY ADVISORS

Article 3f

Engagement policy

1. Member States shall, *without prejudice to Article 3f(4)*, ensure that institutional investors and asset managers develop a policy on shareholder engagement (“engagement policy”). This engagement policy shall determine how institutional investors and asset managers conduct the following actions:
 - (a) to integrate shareholder engagement in their investment strategy;

- (b) to monitor investee companies, including on their non-financial performance, *and reduction of social and environmental risks*;
- (c) to conduct dialogues with investee companies;
- (d) to exercise voting rights
- (e) to use services provided by proxy advisors;
- (f) to cooperate with other shareholders;
- (fa) to conduct dialogue and cooperate with other stakeholders of the investee companies.**

2. Member States shall, *without prejudice to Article 3f(4)*, ensure that the engagement policy includes policies to manage actual or potential conflicts of interests with regard to shareholder engagement. Such policies shall in particular be developed for all of the following situations:
- (a) the institutional investor or the asset manager, or other companies affiliated to them, offer financial products to or have other commercial relationships with the investee company;
 - (b) a director of the institutional investor or the asset manager is also a director of the investee company;
 - (c) an asset manager managing the assets of an institution for occupational retirement provision invests in a company that contributes to that institution;
 - (d) the institutional investor or asset manager is affiliated with a company for whose shares a takeover bid has been launched.

3. Member States shall ensure that institutional investors and asset managers publicly disclose on an annual basis their engagement policy, how it has been implemented and the results thereof. The information referred to in the first sentence shall at least be available, *free of charge*, on the company's website. ***Institutional investors shall provide their clients with that information on an annual basis.***

Institutional investors and asset managers shall ***publicly disclose***, for each company in which they hold shares, ***whether*** and how they cast their votes in the general meetings of the companies concerned and provide an explanation for their voting behaviour. Where an asset manager casts votes on behalf of an institutional investor, the institutional investor shall make a reference as to where such voting information has been published by the asset manager. ***The information referred to in this paragraph shall at least be available, free of charge, on the company's website.***

4. Where institutional investors or asset managers decide not to develop an engagement policy or decide not to disclose the implementation and results thereof, they shall give a clear and reasoned explanation as to why this is the case. [Am. 25]

Article 3g

Investment strategy of institutional investors and arrangements with asset managers

1. Member States shall ensure that institutional investors disclose to the public how their investment strategy (“investment strategy”) is aligned with the profile and duration of their liabilities and how it contributes to the medium to long-term performance of their assets. The information referred to in the first sentence shall at least be available, *free of charge*, on the company's website as long as it is applicable *and shall be sent annually to the company's clients together with the information on their engagement policy*.
2. Where an asset manager invests on behalf of an institutional investor, either on a discretionary client-by-client basis or through a collective investment undertaking, the institutional investor shall annually disclose to the public the main elements of the arrangement with the asset manager with regard to the following issues:
 - (a) whether and to what extent it incentivises the asset manager to align its investment strategy and decisions with the profile and duration of its liabilities;

- (b) whether and to what extent it incentivises the asset manager to make investment decisions based on medium to long-term company performance, including non-financial performance, and to engage with companies as a means of improving company performance to deliver investment returns;
- (c) the method and time horizon of the evaluation of the asset manager's performance, and in particular whether, and how this evaluation takes long-term absolute performance into account as opposed to performance relative to a benchmark index or other asset managers pursuing similar investment strategies;
- (d) how the structure of the consideration for the asset management services contributes to the alignment of the investment decisions of the asset manager with the profile and duration of the liabilities of the institutional investor;
- (e) the targeted portfolio turnover or turnover range, the method used for the turnover calculation, and whether any procedure is established when this is exceeded by the asset manager;
- (f) the duration of the arrangement with the asset manager.

Where the arrangement with the asset manager does not contain one or more of the elements referred to in points (a) to (f), the institutional investor shall give a clear and reasoned explanation as to why this is the case. [Am. 26]

Article 3h

Transparency of asset managers

1. Member States shall ensure that asset managers disclose, *as specified in paragraphs 2 and 2a*, how their investment strategy and implementation thereof complies with the arrangement *referred to in Article 3g(2)*.
2. Member States shall ensure that asset managers *annually* disclose to the *public* all of the following information:
 - (a) whether or not, and if so how, they make investment decisions on the basis of judgements about medium-to long-term performance of the investee company, including non-financial performance;
 - (b) the level of portfolio turnover, the method used to calculate it and an explanation if the turnover exceeded the targeted level;

- (c) whether or not, and if so, what actual or potential conflicts of interest have arisen in connection with engagement activities and how the asset manager has dealt with them;
- (d) whether or not, and if so how, the asset manager uses proxy advisors for the purpose of their engagement activities;
- (e) *how, overall, the investment strategy and implementation thereof contributes to the medium to long-term performance of the assets of the institutional investor.*

2a. Member States shall ensure that asset managers annually disclose to the institutional investor with which they have entered into the arrangement referred to in Article 3g(2) all of the following information:

- (a) *how the portfolio was composed and an explanation of any significant changes in the portfolio in the previous period;*
- (b) *portfolio turnover costs;*
- (c) *their policy on securities lending and the implementation thereof.*

3. The information disclosed pursuant to paragraph 2 shall ***at least be available, free of charge, on the asset manager's website. The information disclosed pursuant to paragraph 2a shall*** be provided free of charge and, in case the asset manager does not manage the assets on a discretionary client-by-client basis, it shall also be provided to other investors on request.
- 3a. ***Member States may provide that, in exceptional cases, an asset manager may be allowed, if approved by the competent authority, to abstain from disclosing a certain part of the information to be disclosed under this Article if that part relates to impending developments or matters that are in the course of negotiation and its disclosure would be seriously prejudicial to the commercial position of the asset manager.***

Article 3i

Transparency of proxy advisors

1. Member States shall ensure that proxy advisors adopt and implement adequate measures to ***ensure to the best of their ability*** that their ***research and*** voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them, ***and are developed in the sole interest of their clients.***

1a. Member States shall ensure that proxy advisors refer to the code of conduct which they apply. Where they depart from any of the recommendations of that code of conduct, they shall declare it, explain the reasons for doing so and indicate any alternative measures adopted. This information, together with the reference to the code of conduct which they apply, shall be published on the proxy advisor's website.

Proxy advisors shall report every year on the application of that code of conduct. Annual reports shall be published on the proxy advisor's website and shall remain available, free of charge, for at least three years after the date of publication

2. Member States shall ensure that proxy advisors shall on an annual basis publicly disclose all of the following information in relation to the preparation of their *research and* 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, regulatory *and company-specific* conditions into account;
- (ca) the essential features of the research undertaken and voting policies applied for each market;*
- (d) whether they have *communication or* dialogues with the companies which are the object of their *research and* voting recommendations *and their stakeholders*, and, if so, the extent and nature thereof;
- (da) the policy regarding prevention and management of potential conflicts of interest;*
- (e) the total number *and the qualifications* of staff involved in the preparation of the voting recommendations;
- (f) the total number of voting recommendations provided in the last year.

That information shall be published on *the* website *of proxy advisors* and remain available, *free of charge*, for at least three years from the day of publication.

3. Member States shall ensure that proxy advisors identify and disclose without undue delay to their clients ■ any actual or potential conflict of interest or business relationships that may influence *the research and* the preparation of the voting recommendations and the actions they have undertaken to eliminate or mitigate the actual or potential conflict of interest.”

(4) The following articles 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 and submit it to a binding vote of the general meeting of shareholders*. Companies shall only pay remuneration to their directors in accordance with a remuneration policy that has been *voted on at the general meeting of shareholders*. *Any change to the policy shall be voted on at the general meeting of shareholders and* the policy shall be submitted *in any case* for approval by the *general meeting* at least every three years.

However, Member States may provide that the votes by the general meeting on the remuneration policy are advisory.

In cases where no remuneration policy has been implemented previously and shareholders reject the draft policy submitted to them, the company may, while reworking the draft and for a period of no longer than one year before the draft is adopted, pay remuneration to its directors in accordance with existing practices.

In cases where there is an existing remuneration policy and shareholders reject a draft policy submitted to them in line with the first subparagraph, the company may, while reworking the draft and for a period of no longer than one year until the draft is adopted, pay remuneration to its directors in accordance with the existing policy.

2. The policy *shall be* clear, understandable, in line with the business strategy, objectives, values and long-term interests of the company and *shall incorporate* measures to avoid conflicts of interest.
3. The policy shall explain how it contributes to the long-term interests and sustainability of the company. It shall set clear criteria for the award of fixed and variable remuneration, including all *bonuses and all* benefits in whatever form.

The policy shall indicate the *appropriate* relative proportion of the different components of fixed and variable remuneration. It shall explain how the pay and employment conditions of employees of the company were taken into account when setting the policy or directors' remuneration.

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

Member States shall ensure that the value of shares does not play a dominant role in the financial performance criteria.

Member States shall ensure that share-based remuneration does not represent the most significant part of directors' variable remuneration. Member States may provide for exceptions to the provisions of this subparagraph under the condition that the remuneration policy includes a clear and reasoned explanation as to how such an exception contributes to the long-term interests and sustainability of the company.

The policy shall indicate the main terms of the contracts of directors, including its duration and the applicable notice periods and *terms of termination and* payments linked to termination of contracts *and the characteristics of supplementary pension or early retirement schemes*. *Where national law allows companies to have arrangements with directors without a contract, the policy shall in that case indicate the main terms of the arrangements with directors, including their duration and the applicable notice periods and terms of termination and payments linked to termination and the characteristics of supplementary pension or early retirement schemes.*

The policy shall specify the company's procedures for the determination of the remuneration of directors, including the role and functioning of the remuneration committee.

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

4. Member States shall ensure that after approval by the shareholders the policy is made public without delay and available, *free of charge*, on the company's website at least as long as it is applicable. [Am. 27 rev.]

Article 9b

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

1. Member States shall ensure that the company draws up a clear and understandable remuneration report, providing a comprehensive overview of the remuneration, including all benefits in whatever form, granted, *in accordance with the remuneration policy referred to in Article 9a*, to individual directors, including to newly recruited and former directors, in the last financial year. It shall, where applicable, contain all of the following elements:
 - (a) the total remuneration awarded, paid *or due* split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration is linked to long-term performance and information on how the *financial and non-financial* performance criteria where applied;

- (b) the relative change of the remuneration of *executive* directors over the last three financial years, its relation to the development of the *general performance* of the company and to change in the average remuneration of employees *over the same period*;
 - (c) any remuneration received *or due to* directors of the company from any undertaking belonging to the same group;
 - (d) the number of shares and share options granted or offered, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof;
 - (e) information on the use of the possibility to reclaim variable remuneration;
 - (f) information on how the remuneration of directors was established, including on the role of the remuneration committee.
2. Member States shall ensure that the right to privacy of natural persons is protected in accordance with Directive 95/46/EC when personal data of the director are processed.

3. Member States shall ensure that shareholders have the right to ***hold an advisory*** vote on the remuneration report of the past financial year during the annual general meeting. Where the shareholders vote against the remuneration report the company shall, ***where necessary, enter into a dialogue with the shareholders in order to identify the reasons for the rejection. The company shall*** explain in the next remuneration report how the vote of the shareholders has been taken into account.
- 3a. ***The provisions on remuneration in this Article and in Article 9a shall be without prejudice to national systems of wage formation for employees and, where applicable, to national provisions on the representation of employees on boards.***
4. ***To ensure uniform application of this Article,*** the Commission shall be empowered to adopt ***delegated acts in accordance with Article 14a*** to specify the standardised presentation of the information laid down in paragraph 1 of this Article. [Am. 28]

Right to vote on related party transactions

1. Member States shall ensure that companies, in case of **material** transactions with related parties **█**, publicly announce such transactions **at the latest** at the time of the conclusion of the transaction, and accompany the announcement by a report **█** assessing whether or not it is on market terms and confirming that the transaction is fair and reasonable from the perspective of the **company, including minority shareholders, and providing an explanation of the evaluations the assessment is based on**. The announcement shall contain information on the nature of the related party relationship, the name of the related party, the amount of the transaction and any other information necessary to assess the **economic fairness of the transaction from the perspective of the company, including minority shareholders**.

Members States shall define specific rules with regard to the report to be adopted in accordance with the first subparagraph, including the actor responsible for providing the reports, which shall be one of the following:

- *an independent third party;*
 - *the supervisory body of the company; or*
 - *a committee of independent directors*
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 companies, in accordance with procedures* which *prevent a related party from taking advantage of its position and provide adequate protection for the interests of the company and of shareholders which are not related parties, including minority shareholders.*

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

The intention is to prevent related parties from gaining an advantage from a special position and to provide proper protection for the company's interest.

- 2a. *Member States shall ensure that related parties and their representatives are excluded from the preparation of the report referred to in paragraph 1 and from the votes and decisions that take place in accordance with paragraph 2. Where the related party transaction involves a shareholder, this shareholder shall be excluded from any vote regarding the transaction. Member States may allow the shareholder who is a related party to take part in the vote provided that national law ensures adequate safeguards which apply during the voting process to protect the interests of shareholders who are not related parties, including minority shareholders, by preventing the related-party from approving the transaction despite the opposing opinion of the majority of shareholders which are not related parties or despite the opposing opinion of the majority of the independent directors.*
3. *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, 2 and 3 are aggregated for the purposes of application of those paragraphs. ■*

4. Member States may exclude *from the requirements in paragraphs 1, 2 and 3*:
- transactions entered into between the company and one or more members of its group *or joint ventures*, provided that those members of the group or joint ventures are wholly owned by the company *or that no other related party of the company has an interest in those members or in the joint ventures*;
 - *transactions entered into in the ordinary course of business and concluded on normal market terms.*
- 4a. *Member States shall define material transactions with related parties. Material transactions with related parties shall be defined taking into account:*
- (a) *the influence that the information about the transaction may have on the decisions of the subjects involved in the approval process;*
 - (b) *the impact of the transaction on the company's results, assets, capitalisation or turnover and the position of the related party;*

(c) *the risks that the transaction creates for the company and its minority shareholders.*

When defining material transactions with related parties, Member States may set one or more quantitative ratios based on the impact of the transaction on the revenues, assets, capitalization or turnover of the company or take into account the nature of the transaction and the position of the related party.”

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

“CHAPTER IIA

DELEGATED ACTS AND PENALTIES

Article 14a

Exercise of delegated powers

1. ***The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***

2. *The power to adopt delegated acts referred to in Articles 3a(5), 3b(5), and 3c(3) and Article 9b shall be conferred on the Commission for an indeterminate period of time from ...*.*
3. *The delegation of power referred to in Articles 3a(5), 3b(5), and 3c(3) and Articles 9b may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of that decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
4. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

5. *A delegated act adopted pursuant to Articles 3a(5), 3b(5) and 3c(3) and Article 9b shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.*

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 *at the latest* by [date for transposition] ■ and shall notify it without delay of any subsequent amendment affecting them.”

Article 2
Amendments to Directive 2013/34/EU

Directive 2013/34/EU is amended as follows:

(-1) In Article 2, the following point is added:

"(17) 'tax ruling' means any advance interpretation or application of a legal provision for a cross-border situation or transaction of a company which might lead to a loss of tax in Member States or which might lead to tax savings for the company resulting from artificial intra-group transfers of profits."

(-1a) In Article 18, the following paragraph is inserted after paragraph 2:

"2a. In the notes to the financial statements large undertakings and public-interest entities shall also disclose, specifying by Member State and by third country in which they have an establishment, the following information on a

consolidated basis for the financial year:

- (a) name(s), nature of activities and geographical location;*
- (b) turnover;*
- (c) number of employees on a full time equivalent basis;*
- (d) value of assets and annual cost of maintaining those assets;*
- (e) sales and purchases;*
- (f) profit or loss before tax;*
- (g) tax on profit or loss;*
- (h) public subsidies received;*
- (i) parent companies shall provide a list of subsidiaries operating in each Member State or third country alongside the relevant data."*

(-1b) *In Article 18, paragraph 3 is replaced by the following:*

"3. *Member States may provide that point (b) of paragraph 1 and paragraph 2a are not to apply to the annual financial statements of an undertaking where that undertaking is included within the consolidated financial statements required to be drawn up under Article 22, provided that that information is given in the notes to the consolidated financial statement."*

(-1c) *The following article is inserted:*

"Article 18a

Additional disclosure for large undertakings

1. *In the notes to the financial statements, large undertakings shall, in addition to the information required under Articles 16, 17, 18 and any other provisions of this Directive, publicly disclose essential elements of and information regarding tax rulings, providing a break-down by Member State and by third country in which the large undertaking in question has a subsidiary. The Commission shall be empowered to set out, by means of delegated act in accordance with Article 49, the format and content of publication.*

2. *Undertakings of which the average number of employees on a consolidated basis during the financial year does not exceed 500 and which, on their balance sheet dates, have on a consolidated basis either a balance sheet which does not exceed a total of 86 million euros or a net turnover which does not exceeds 100 million euros shall be exempt from the obligation set out in paragraph 1 of this Article.*
3. *The obligation set out in paragraph 1 of this Article shall not apply to any undertaking governed by the law of a Member State whose parent undertaking is subject to the laws of a Member State and the information of which is included in the information disclosed by that parent undertaking in accordance with paragraph 1 of this Article.*
4. *The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC."*

(1) Article 20 is amended as follows:

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

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

(b) paragraph 3 is replaced by the following:

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

(c) *paragraph 4 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 2a
Amendments to Directive 2004/109/EC

Directive 2004/109/EC of the European Parliament and of the Council¹⁴ is amended as follows:

(1) In paragraph 1 of Article 2, the following point is added:

"(r) 'tax ruling' means any advance interpretation or application of a legal provision for a cross-border situation or transaction of a company which might lead to a loss of tax in Member States or which might lead to tax savings for the company resulting from artificial intra-group transfers of profits."

(2) The following articles are inserted:

"Article 16a

Additional disclosure for issuers

1. Member States shall require each issuer to annually publicly disclose, specifying by Member State and by third country in which it has a subsidiary, the following information on a consolidated basis for the financial year :

(a) name(s), nature of activities and geographical location

(b) turnover

¹⁴ **Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).**

- (c) number of employees on a full-time equivalent basis*
 - (d) profit or loss before tax*
 - (e) tax on profit or loss*
 - (f) public subsidies received*
- 2. The obligation set out in paragraph 1 shall not apply to any issuer governed by the law of a Member State whose parent company is subject to the laws of a Member State and of which the information is included in the information disclosed by that parent company in accordance with paragraph 1.*
 - 3. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the issuer concerned.*

Article 16b

Additional disclosure for issuers

- 1. Member States shall require each issuer to publicly disclose annually, on a consolidated basis for the financial year, essential elements of and information regarding tax rulings, providing a break-down by Member State and by third country in which it has a subsidiary. The Commission shall be empowered to set out, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), the format and content of publication.*
- 2. The obligation set out in paragraph 1 of this Article shall not apply to any issuer governed by the law of a Member State whose parent company is subject to the laws of a Member State and whose information is included in the information disclosed by that parent company in accordance with paragraph 1 of this article.*
- 3. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the issuer concerned."*

(3) *In Article 27, paragraph 2a is replaced by the following:*

"2a. The power to adopt the delegated acts referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8), Article 13(2), Article 14(2), Article 16a(1), Article 17(4), Article 18(5), Article 19(4), Article 21(4), Article 23(4), Article 23(5) and Article 23(7) shall be conferred on the Commission for a period of 4 years from January 2011. The Commission shall draw up a report in respect of delegated power at the latest 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 27a."

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive *at the latest* by [18 months after entry into force] **█**. 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 ...,

For the European Parliament

For the Council

The President

The President
