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#### NOTE

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From:	Presidency/General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	7088/15 DRS 24 CODEC 338
No. Cion doc.:	8847/14 DRS 53 CODEC 1090
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 Preparation of an informal trilogue

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#### I. INTRODUCTION

1. On 9 April 2014, the Commission submitted a 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.

The proposal was submitted in order to overcome certain corporate governance shortcomings in European listed companies and encourage a more long-term oriented and active engagement by shareholders, including in cross-border situations. The objective is to contribute to the long-term sustainability of EU companies and to enhance the growth, job creation and competitiveness of the EU economy.

## II. STATE OF PLAY

2. The Working Party on Company Law examined the proposal at fourteen occasions during the Greek, Italian and Latvian Presidencies.
3. The European Parliament's Legal Affairs Committee (JURI) is due to vote its report on 7 May 2015.
4. On the basis of the fruitful discussions at expert level, the Presidency submits to the Permanent Representatives Committee, in the Annex to this note, a compromise package to serve as basis for forthcoming negotiations with the European Parliament aiming at exploring the possibilities for a first-reading agreement. Changes compared to doc. 7088/15 are marked in **bold underlined** and ~~strike-through~~. It is understood that the text including the recitals will be amended during the trilogue process and the Working Party will be consulted on issues of a technical nature.
5. The elements of the compromise package are explained under Sections III and IV.

## III. LAST OUTSTANDING ISSUES SOLVED IN THE COMPROMISE PACKAGE

1. Data protection of personal information on remuneration of directors (Article 9b (2a), Recitals (18) and (18g)) and Article 2: the Presidency compromise has made palatable the general provision contained in the proposal. Disclosure of such personal data is sensitive and thus requires a justification between the need for transparency and rights of individuals to have their personal data protected. Ten years seem the maximum period for which this disclosure remains reasonable.

The Presidency compromise proposes that the remuneration report must only be published on the companies' website. In this way, after the expiry of the 10 years period it is sufficient that the companies either replace the full report with an anonymized version or remove the whole report. Thus, the text no longer requires that the report should be part of the corporate governance statement or of the management report. As a consequence, Article 2 is deleted. Nevertheless, Member States still have the possibility to require the remuneration report to be part of the management report.

2. Vote on the remuneration report (Article 9b (3) and Recital (19)): Article 9b (3) provides for a vote at the annual general meeting of shareholders on the remuneration policy. This vote has an advisory character, so as to leave flexibility to companies. In this context, some delegations want a compulsory vote for all companies in order for shareholders to follow the implementation of the policy by the company and thereby exercise their rights. On the other hand, some other delegations consider that such a vote on the remuneration report in the annual general meeting should be optional only and a discussion in the general meeting would be sufficient. In order to find a compromise, the Presidency proposes to limit the obligation to hold a vote on the remuneration report to the **largest companies**. This would roughly concern 10 % of listed companies across the EU. Member States may provide for this obligation to apply to all companies.

#### IV. EXPLANATION ON OTHER PARTS OF THE COMPROMISE PACKAGE

1. Definitions: "director" (Article 2(k)): one delegation still had a difficulty with this definition, however the Presidency did not change this definition because the function of chief executive officer (CEO) always exists in companies; "related party" (Article 2(j)): two delegations support a specific definition in this text, instead of referring to an internationally agreed standard. The Presidency remains of the opinion that the current definition is widely known, prevents diverging evolution of definitions and allows for the implementation of the Directive.

2. "Opt-out": identification of shareholders above a threshold of 0,5% of shares or voting rights (Article 3a (1)): two delegations remain of the opinion that this identification should be optional, in particular for intermediaries. A number of delegations have indicated that this optional identification is not acceptable as they initially supported more stringent identification rules. The Presidency considers the compromise to offer a reasonable middle ground.
3. "Ratio" (Article 9b (1) (b)): the drafting has been reviewed in order to address the concerns of some delegations regarding the clarity of the provision on the comparison of the change of the remuneration of directors, the evolution of the performance of the company and the average remuneration of employees.
4. Deletion of an exemption for transactions agreed before the related party relationship existed (Article 9c (4) (f)): three delegations want this exemption to remain included in the text, while some other delegations are not in favour of this new exemption which they consider would create a loophole allowing for fraud. The Presidency compromise text proposes to follow the latter.
5. Implementing acts (Articles 3a (5), 3b (5) and 3c(3)), Recitals (21) and (21a)): certain delegations had difficulties with the proposed implementing acts. The Presidency considers that the compromise text which now specifies that the implementing acts will define only minimum requirements offers sufficient guarantees as to the amplitude of the proposed acts.

## V. CONCLUSION

**The Permanent Representatives Committee is invited to mandate the Presidency to start negotiations with the European Parliament with a view to reaching a first reading agreement on the basis of the compromise package set out in the Annex.**

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<sup>1</sup>

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 Council<sup>2</sup> establishes requirements in relation to the exercise of certain shareholder rights ~~attached~~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.

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<sup>1</sup> OJ C , , p. .

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

- (2) The financial crisis has revealed that shareholders in many cases supported managers' excessive short-term risk taking. Moreover, there is clear evidence that the current level of “monitoring” of investee companies and engagement by institutional investors and asset managers is inadequate, which may lead to suboptimal corporate governance and performance of listed companies.
- (3) In the Action Plan on European company law and corporate governance<sup>3</sup> 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~~ **right** to have their shareholders identified and directly communicate with them. In order to achieve those objectives, intermediaries maintaining securities accounts ~~for~~ **on behalf of** shareholders **or other intermediaries** 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.
- (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 and of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995<sup>4</sup>, as interpreted by the Court of justice, which apply to the processing of shareholders' personal data under this Directive, the legislator has struck a balance between, on the one hand, the objectives pursued by this Directive, and, on the other hand, the right to privacy and to the protection of personal data of shareholders.

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<sup>3</sup> COM/2012/0740 final.

<sup>4</sup> 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). *The reference 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)).*

- (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 and is necessary in order to enable companies to communicate directly with their shareholders with a view to further facilitating the exercise of shareholders' rights and engagement with the company, in particular in case of cross border situations and through virtual means.
- (4d) In order to achieve this objective, 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 registration number or where available a unique identifier, such as Legal Entity Identifier (LEI code), contact details ~~of the corresponding shareholders~~ and the number of shares and where available 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 focus identification to shareholders that may have the largest influence on company's decisions and thus to limit the interference with shareholders' rights to the 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.
- (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 in order to achieve the objective pursued by this Directive, and in any event, for more than two years after the company or the intermediary has learnt that the person concerned has ceased to be a shareholder, without prejudice to any longer storage period that might be laid down by EU sectorial legislation. In this respect, imposing on companies and intermediaries to delete information regarding shareholder identity immediately on the day after the person concerned has effectively ceased to be a shareholder would not allow the achievement of the objective pursued by this Directive since the company or the intermediary may need to communicate with the person concerned even after he or she has ceased to be a shareholder.

Moreover, such an obligation would impose a heavy administrative burden on companies: many companies do not identify their shareholders on an ongoing basis but only request shareholder identification in connection with general meetings, important corporate events such as takeover bid and mergers. In certain cases, companies do not request such information and may not even be aware that a person has ceased to be a shareholder if not informed by the person concerned himself, in particular for small shareholders.

- (4f) Information regarding shareholders identity should be processed under this Directive for the purpose of identification of shareholders by the company in order to enable the company to communicate directly with them with the view to further facilitating the exercise of shareholders' rights and engagement with the company. Nevertheless, further 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 for other purposes. Further processing could include for example the storage of such information by companies and intermediaries for a longer period than the initial storage period provided by this Directive for other purposes such as tax control; the transmission of the information to other shareholders for other purposes such as enabling them to cooperate with each other with the view to further encourage engagement; **the keeping of the company's shareholder registers as required by national law for other purposes such as keeping track of property rights attached to the shares of a company;** the disclosure of such information to the public, ~~for example in a public register,~~ and eventually for longer period than initial retention period provided in this Directive, for other purposes such as transparency purposes; or the transmission of information regarding shareholder identity to the national authorities for other purposes, such as fight against money laundering or supervision of financial and capital markets.
- (5) Where companies do not directly communicate with their shareholders, 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~~ **on behalf of** shareholders **or other intermediaries**, especially in a cross-border context.



This Directive aims at improving the transmission of information by intermediaries through the equity holding chain to facilitate the exercise of shareholder rights.

- (6) In view of the important role of intermediaries they should be obliged to facilitate the exercise of rights by the shareholder both when he would like to exercise these rights himself or wants to nominate a third person to do so. When the shareholder does not want to exercise the rights himself and has nominated the intermediary as a third person, the latter should ~~be obliged to~~ exercise these rights upon the explicit authorisation and instruction of the shareholder and for his benefit.
- (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. In case of electronic voting, a confirmation of receipt of votes should be provided to the person that casts the vote. In addition, each shareholder who casts a vote in a general meeting should at least have the possibility to verify after the general meeting whether his vote has been validly 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, third country intermediaries which 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.

- (7b) This Directive is without prejudice of national laws of Member States regulating the holding and ownership of securities and the arrangements maintaining the integrity of securities and does not affect the beneficial owners or other persons who are not the shareholders under the applicable national law.
- ~~(7c) The smooth application of company law and corporate governance framework within the Single Market does not only require common legal rules but also convergence of regulatory and supervisory practices and close cooperation between the competent authorities of the Member States.~~
- (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 **often** 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' **their** 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 should be publicly disclosed **on-line** ~~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, 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 1% of the voting rights for the purposes of calculating the disclosure of voting records. The threshold of 1% of voting rights incentivizes transparency about voting on at least the biggest stakes of institutional investors and asset managers. For the purposes of the calculation of this threshold, the principle of aggregation would apply, i.e. the number of voting rights held by individual funds managed by the same asset manager or institutional investor would be calculated on an aggregated basis.

This would help to ensure that investors managing largely diversified portfolios on a fund basis would also be incentivized to be transparent about votes cast.

- (12) Institutional investors should annually disclose to the public how the principles underlying their equity investment strategy are aligned with the long-term horizon of their liabilities and how they contribute 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 should disclose to the public the main elements of the arrangement with the asset manager with regard to a number of issues, such as how it evaluates the asset manager's performance including its remuneration, 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.

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, asset managers should be required to disclose to institutional investors whether or not and if so, how their investments contribute 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 associated with the portfolio investments.

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 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. Member States should be allowed to provide that where the assets of an institutional investor are not managed on an individual basis but pooled together with assets of other investors and managed via a fund, information should also be provided to other investors at least upon request, in order to allow that all the other investors of the same fund may receive this information if they wish so.

- (14) In order to improve the information in the equity investment chain Member States should ensure that proxy advisors 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 and that shareholders have the possibility to 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 **hold a binding or advisory** vote on the remuneration policy, on the basis of a clear, understandable and comprehensive overview of the company's remuneration policy, which should contribute to the business strategy, long-term interests and sustainability of the company. **The policy can be designed as a frame within which the pay of directors must be held.** Companies should only pay remuneration to their directors in accordance with that remuneration policy. The remuneration policy should be publicly disclosed without delay after the vote by the general meeting.
- (16a) There may be exceptional circumstances, where the company may need to pay a specific director differently than other directors. Therefore Member States may allow companies to ~~define~~ **foresee** in their remuneration policy certain exceptional circumstances in which they are allowed, for the pay of an individual director, not to follow the rules applicable to all other directors.
- (17) To ensure that the implementation of the remuneration policy is in line with the 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. However, for companies other than very large companies in which directors' remuneration may attain higher proportions, Member States ~~should be able to~~ **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~~ **this information**, and to enable potential investors and **stakeholders** ~~employees~~ to be informed of directors' remuneration, the remuneration report should be ~~part of the corporate governance statement that listed companies should publish or should be disclosed in a separate report together with that corporate governance statement or the management report~~ **published at the company's website. This should be without prejudice of the possibility for Member States to also require the publication of this report through any other means, for example as part of the corporate governance statement of management report.**

(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 objectives pursued by this Directive, and, on the other hand, the right to privacy and to the protection of personal data of directors.

(18b) Directors contribute to the long-term success of the company. 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 each individual directors, in order to remedy potential situations where an individual director is granted an amount of remuneration that is not justified as regards his individual performance and 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 **stakeholders** ~~employees~~ to assess directors' remuneration, to what extent this remuneration is linked to the performance of the company and how the company implements in practice its remuneration policy. The disclosure and publication of anonymised remuneration reports would not allow the achievement of those objectives.



(18d) In order to increase transparency and accountability of directors and to enable shareholders, potential investors and stakeholders ~~employees~~ to have a full and reliable picture of the remuneration granted to each director, it is of particular importance that every element and total amount of remuneration are disclosed.

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.

(18f) Moreover, in view of protecting directors' rights to privacy and to protection of personal data, companies should not include in the remuneration report special categories of personal data of individual directors which are protected under Article 8 of Directive 95/46/EC or personal data which refer to the family situation of individual directors. In these cases, the report could disclose the amount of the remuneration granted without disclosing the ground on which it was granted if such disclosure reveals such sensitive data. The disclosure and publication of those sensitive data would go beyond what is strictly necessary in order to increase transparency and accountability of directors and to further facilitate the exercise of shareholders rights.

(18g) In order to enable shareholders, but also potential investors and stakeholderemployees, 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, public disclosure by companies ~~or, where applicable relevant registers,~~ of directors' personal data included in the remuneration report should be limited to 10 years. **In this respect, providing for a 10-year period of public access is consistent with periods laid down by other texts applicable to the public disclosure of corporate governance documents. For example, under Article 4 of Directive 2004/109/EC of the European Parliament and the Council of 15 December 2004<sup>5</sup>, the management report and the corporate governance statements must remain publicly available as part of the annual financial report for at least 10 years. There is a clear interest in stakeholders having those various types of corporate governance reports, including the remuneration report, available at least for 10 years, so as to provide the overall state of a company to shareholders and other stakeholders.**

~~In this respect, imposing on companies and, where applicable, relevant registers to limit public access to those data to a shorter period of time would impose a disproportionate administrative burden on them: in most cases, the remuneration report will be part of the management report, which, under Article 4 of Directive 2004/109/EC of the European Parliament and the Council of 15 December 2004<sup>6</sup>, must remain publicly available as part of the annual financial report for at least 10 years. Imposing on companies to amend their financial report after a number of years in order to delete or to anonymise the remuneration report would be particularly burdensome for companies, in particular for small and medium enterprises. The administrative burden on companies would be even greater since their financial report is also made publicly available through a central, commercial or companies register.~~

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<sup>5</sup> 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).

<sup>6</sup> ~~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).~~

At the end of this 10 year-period, and during an additional period of 5 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 10 years, shareholders may need to access such information during a longer period of time in particular for the purpose of potential legal actions.

- (18h) Personal data of individual directors should be processed under this Directive for the purposes of increase in transparency and accountability of directors and of facilitation of shareholders rights. Nevertheless, further 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 directors' personal data for other purposes. Further processing could include for example the possibility for companies to disclose information on individual directors' remuneration to national authorities upon request after the expiry of the 10-year period of public access, for other purposes such as tax control.
- (18i) The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by the Treaties, in particular 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 should be submitted to approval by the shareholders 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 the interests of shareholders who are not related party, including minority shareholders.

Where the related party transaction involves a director or a shareholder, this director or shareholder should be excluded from the vote. However, Member States should have the possibility to allow the shareholder who is a related party to take part in the vote provided that national law foresees appropriate safeguards in relation to the voting process to protect the interests of shareholders who are not related party, including minority shareholders, such as for example a higher majority threshold for the approval of transactions.

Companies should publicly announce 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 fairness of the transaction is fair and reasonable**. Public disclosure of such transaction, for example on company's website or by easily available means, is needed in order to allow shareholders, creditors, employees and 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.

Transactions entered into in the ordinary course of business and concluded on normal **market** terms should be excluded from the application of these requirements provided however that the administrative or supervisory body **establish an internal procedure to periodically assess** ~~is duly informed of such transactions and verifies~~ whether the conditions for the exclusion have been met. However, Member States should not be prevented from applying certain or all of the requirements to such transactions.

The interests of the shareholders who are not related party, including minority shareholders should also be protected in case of material transactions concluded between the related party of the company and that company's subsidiaries, in order to avoid abuse. Such transactions should at least be publicly announced. **The choice of safeguards that need to be put in place should be left to Member States.**

(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, implementing powers should be conferred on the Commission. In particular, the Commission implementing acts shall specify the **minimum standardisation requirements as regards** formats to be used and deadlines to be complied with.

Empowering the Commission to adopt implementing acts allows to keep this rules up to date with market and supervisory developments.

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. The implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>7</sup>

(21a) In exercising its implementing powers in accordance with this Directive, the Commission should:

- 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;
- encourage the use of modern technologies in the communication between companies, shareholders and intermediaries and where appropriate other market participants.

(21b) In order to ensure a more comparable and consistent presentation of the remuneration report, the Commission should adopt non-binding guidelines to specify its standardised presentation. The existing Member State practices as regards the presentation of the information included in the remuneration report are very different and, as a result, they provide an uneven level of transparency and protection for shareholders and investors.

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<sup>7</sup> 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).

The result of the divergence of practices is that shareholders and investors are, in particular in case of cross-border investments, subject to difficulties and costs when they want to understand and monitor the implementation of the remuneration policy and engage with the company on that specific issue. The Commission should carry out appropriate consultation with Member States before adopting its guidelines.

- (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.'
- (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 and Directive 95/46/EC, as interpreted by the Court of Justice, 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 implementing 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 implementing those provisions.;

(23ab) In case Member States decide to authorise or provide for the further processing of shareholders' and or directors' personal data processed in accordance with this Directive for other purposes than the initial purposes for which those data have been initially collected, retained and disclosed under this Directive, Member States should ensure that those data are not further processed in a way incompatible with those initial purposes.

When such further processing is not compatible with those initial purposes, further processing should be based on the unambiguous consent of the shareholder or the director, 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.

(23ac) Shareholders and directors should be duly informed that the information regarding their identity or their remuneration may be processed in accordance with this Directive or may be further processed for other purposes. In case of further processing, shareholders and directors should be informed on the other purposes.

(23b) The provisions of this Directive should be without prejudice to the provisions laid down in sectorial EU legislation regulating specific types of listed companies or specific types of entities, such as but not limited to credit institutions, investments firms, asset managers, insurance companies and pension funds. The provisions of sectorial EU legislation should be considered as *lex specialis* in relation to this Directive and should prevail over this Directive to the extent that the requirements provided by this Directive contradict the requirements laid down in sectorial EU legislation. However, specific provisions of EU sectorial legislation should not be interpreted in a way that undermines the effective application of this Directive and the achievement of the general aim of this Directive. 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 EU legislation, the provisions laid down by sectorial EU legislation should be applied in conjunction with the provisions of this Directive.

- (23c) This Directive should not prevent Member States from adopting or maintaining in force more stringent provisions in the field covered by this Directive to further facilitate the exercise of shareholder rights to encourage shareholder engagement and to protect the interests of minority shareholders. Such provisions should however not hamper the effective application of this Directive and the achievement of its objectives, and should in any event comply with the rules laid down in the treaties.
- (24) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents<sup>8</sup>, 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.

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<sup>8</sup> 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, specific transparency requirements for institutional investors, asset managers and proxy advisors and requirements as regards remuneration of directors and related party transactions.”

(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 sectorial 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<sup>9</sup>;

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<sup>9</sup> 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).

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

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

(b) The following paragraph 5 is added:

“5. Chapter Ib shall apply to institutional investors to the extent that they invest in shares traded on a regulated market directly or through an asset manager, and to asset managers to the extent they invest in such shares on behalf of investors.”

(c) The following paragraph 6 is added:

“6. The provisions of this Directive are without prejudice to the provisions laid down in sectorial EU legislation regulating specific types of listed companies or **specific types of** entities. 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) -(l) are added:

“(d) ‘intermediary’ means a person that provides services of safekeeping, or administration of shares or maintenance of securities accounts on behalf of shareholders or other intermediaries, 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<sup>10</sup>, 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<sup>11</sup> and central securities depository as defined in point (1) of Article 2 (1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council<sup>12</sup>, 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;

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<sup>10</sup> 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).

<sup>11</sup> 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).

<sup>12</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

(f) ‘institutional investor’ means:

- (i) an undertaking carrying out activities of life assurance within the meaning of Article 2(3)(a), (b) and (c) of Directive 2009/138/EC of the European Parliament and of the Council<sup>13</sup> 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<sup>14</sup> in accordance with Article 2 thereof, unless a Member States has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive;

(g) ‘asset manager’ means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council<sup>15</sup> 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<sup>16</sup> 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<sup>17</sup>; 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;

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<sup>13</sup> 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).

<sup>14</sup> 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).

<sup>15</sup> 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).

<sup>16</sup> 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).

<sup>17</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

- (h) 'shareholder engagement' means the monitoring by a shareholder alone or together with other shareholders, of companies on matters such as strategy, 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;
- (i) 'proxy advisor' means a legal person that analyses, on a professional and commercial 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<sup>18</sup>;
- (k) 'Director' means:
- (i) a member of the administrative, management or supervisory bodies of a company;
  - (ii) where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officers;

Member States may also 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, the registration number or where available their unique identifier, such as Legal Entity Identifier ".

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<sup>18</sup> 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).

- (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.
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 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 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 in 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 delay the details of the next intermediary in the holding chain.

3. Without prejudice to paragraph 3a of this Article and to any longer storage period laid down by EU sectorial legislation, 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 two years after the company or the intermediary has learnt that the person concerned has ceased to be a shareholder.
- 3a. Information regarding shareholder identity shall be processed under this Article for the purpose of enabling the company to identify its shareholders in order to directly communicate with them with the view to further facilitating the exercise of shareholders rights and of the engagement with the company. Member States may allow further processing of such information regarding shareholder identity for other purposes than this initial purpose provided that this information is not further processed in a way incompatible with this initial purpose or that the further processing has a legal basis at least in one of the grounds referred to in Article 7 of Directive 95/46/EC<sup>19</sup>. Member States shall ensure that the requirements laid down by 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 initial purpose, in accordance with paragraph 3a of this Article, they shall ensure that shareholders are duly informed on those other purposes.
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.

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<sup>19</sup> *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))*

- 4a. Member States shall communicate to ESMA whether or not they have provided that identification can only be requested with respect to shareholders holding more than 0,5% of the shares or voting rights in accordance with paragraph 1 of this Article by [the date of transposition]. ESMA shall publish this information on its website.
5. To ensure uniform application of this Article the Commission shall be empowered to adopt implementing acts to specify the **minimum** requirements to transmit the information laid down in paragraphs 2 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 shareholder, and;
  - (aa) is necessary to exercise rights 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 delay to the company, in accordance with the instructions received from the shareholders, the information received from the shareholders which is necessary to exercise 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 delay, unless the information can be directly transmitted by the intermediary to the company or to the shareholder or, in accordance with the instructions given by the shareholder, to a third party.
5. To ensure uniform application of this Article the Commission shall be empowered to adopt implementing acts to specify the **minimum** 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 party 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 when votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the vote.  
Member States shall ensure that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, at least upon request, a confirmation that their votes have been validly recorded and counted by the company, unless this information is already available to them. Member States may define the time-period which shall not be longer than 3 months within which the shareholder can request such confirmation.



In case the intermediary receives the confirmation referred to in the first or second subparagraph, it shall transmit it without delay to the shareholder or a third party nominated by the shareholder. Where there is more than one intermediary in the holding chain the confirmation shall be transmitted between intermediaries without delay, unless the information can be directly transmitted to the shareholder or a third party nominated by the shareholder.

3. To ensure uniform application of this Article, the Commission shall be empowered to adopt implementing acts 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 format of the electronic confirmation of receipt of the votes, the format for the transmission of the confirmation that the votes have been validly recorded and counted through the chain of intermediaries 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*

##### *Non-discrimination, proportionality and 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.
3. Member States may provide that intermediaries are not allowed to charge fees for the services provided under this chapter.

*Article 3e*  
*Third country intermediaries*

This Chapter also 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 3ea*  
*Information on implementation*

1. Competent authorities of Member States shall inform the Commission of substantial practical difficulties in enforcement of the provisions of this Chapter or non-compliance with the provisions of this Chapter by intermediaries within the EU or from a third country.
  
2. The Commission shall, in close cooperation with ESMA and EBA, submit a report to the European Parliament and to the Council on the implementation of this Chapter, including, its effectiveness, difficulties in practical application and enforcement, while taking into account relevant market developments at the EU and international level. The report shall also address the appropriateness of the scope of application of this Chapter in relation to third country intermediaries. The report shall be published by the Commission [4 years from the expiry of the transposition period referred to in Article 3(1)].

## 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 describes how they integrate shareholder engagement in their investment strategy and conduct engagement activities as referred to in Article 2 point (h) 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 description of their voting behaviour and their use of the services of proxy advisors. For each company in which they hold at least 1% of the voting rights, they shall publicly disclose how they cast their votes. For the purposes of calculating the threshold of 1% of the voting rights, the number of 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 be published on the institutional investor's or asset manager's website. Member States may provide that the information is published through other means that are easily accessible on-line.

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 contributes to the long-term performance of their assets.  
If these principles and the arrangement with the asset manager are not aligned in this way, the institutional investors 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 be published on the institutional investor's website. Member States may provide that this information is published through other means that are easily accessible on-line. 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 asset 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 assets of the institutional investor or of the fund. This shall include reporting on the key, material medium-to long-term risks associated with the investments, the portfolio turnover, portfolio turnover costs and 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.
  
2. 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 is already publicly available, the asset manager is not required to provide the information to the institutional investor directly.
  
3. Member States may provide that in case the asset manager does not manage the assets on a discretionary client-by-client basis, information disclosed pursuant to paragraph 1 shall also be provided to other investors of the same fund at least upon request.

*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;
  
  - (ba) procedures put in place to ensure quality of the research;
  
  - (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;

(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. The information does not need to be disclosed where the information is available as part of the disclosure under paragraph 1.

3. Member States shall ensure that proxy advisers identify and disclose without 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 and the assessment of the need for establishing regulatory requirements for proxy advisers, taking into account relevant EU and international market developments. The report shall be published by [4 years from the expiry of the transposition period referred to in Article 3(1)] and shall be accompanied, if appropriate, by legislative proposals.
- 4a. This Article also applies to proxy advisers 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 and that the general meeting of shareholders has the right to vote on the remuneration policy.

Companies shall only pay remuneration to their directors in accordance with that remuneration policy.

Member States may provide that the remuneration policy may foresee exceptional circumstances in which the remuneration paid to individual directors may be not in accordance with the rules laid down in the remuneration policy applicable to all other directors.

Member States shall ensure that the vote by the general meeting on the remuneration policy is binding. A remuneration policy shall continue to apply until a new one is approved by the general meeting.

However Member States may provide that the vote by the general meeting on the remuneration policy is advisory, provided that where the general meeting votes against the remuneration policy, a revised policy is submitted to a vote at the next general meeting.

Member States shall ensure that companies submit the remuneration policy to a vote by the general meeting 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, which can be awarded to directors.

Member States may provide that the policy indicates the maximum amounts of remuneration that can be awarded.

The policy shall explain how the pay and employment conditions of employees of the company were taken into account when setting the policy or directors' remuneration.

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

The policy shall indicate the 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 followed for its determination, review and implementation, 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 vote on the remuneration policy by the general meeting the policy is published with the date and the results of the vote without delay and is kept on the company's website at least as long as it is applicable.

*Article 9b*

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

1. Member States shall ensure that the company draws up a clear and understandable remuneration report, providing a comprehensive overview of the remuneration, including all benefits in whatever form, awarded or due over the last financial year to individual directors, including to newly recruited and to former directors. Where applicable, the remuneration report shall contain the following **information** 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 were applied;
  - (b) the **annual** ~~relative~~ change of the remuneration of directors over at least the last five financial years, ~~its relation to~~ the evolution of the performance of the company and ~~of to~~ ~~change in~~ the average remuneration of full time employees of the company other than directors during that period, **presented together in a manner which permits comparison**;
  - (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;

2. Member States shall ensure that companies do not include in the remuneration report special categories of personal data of individual directors which are protected under Article 8 of Directive 95/46/EC or personal data which refer to the family situation of an individual director.
- 2a. Without prejudice to paragraph 2b of this Article and to any longer period laid down by EU sectorial legislation, Member States shall ensure that companies ~~and, where applicable, relevant registers, no longer disclose to the public~~ **make publicly available the remuneration report or** personal data of directors included in the remuneration report in accordance with this Article after 10 years from the publication of the remuneration report. Member States shall ensure that at the end of this period, and during an additional period of 5 years, companies ~~and, where applicable, relevant registers only disclose~~ **the remuneration report or** those data **only** to shareholders upon request. ~~Member States shall lay down the maximum period of retention of those data by companies and, where applicable, relevant registers.~~
- 2b. Data regarding directors' remuneration included in the remuneration report shall be processed under this Article for the purposes of increasing transparency and directors' accountability and of further facilitating the exercise of shareholders' rights. Member States may allow further processing of such data for other purposes than this initial purpose provided that those data are not further processed in a way incompatible with this initial purpose or that the further processing has a legal basis at least in one of the grounds referred to in Article 7 of Directive 95/46/EC<sup>20</sup>.
- Member States shall ensure that the requirements laid down by EU law regarding the protection of personal data are complied with.

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<sup>20</sup> *The wording of paragraph 2b 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))*

- 2c. Member States shall ensure that directors are duly informed by the company that the information regarding their remuneration may be processed in accordance with this Article. If Member States allow further processing for other purposes than the initial purpose, in accordance with paragraph 2b of this Article, they shall ensure that directors are duly informed on those other purposes.
3. Member States shall ensure that the annual general meeting has the right to hold an advisory vote on the remuneration report of the past financial year. The company shall explain in the next remuneration report how the vote by the general meeting has been taken into account.

However, for companies that had an average market capitalisation of less than EUR 200 000 000 on the basis of end-year quotes for the previous three calendar years, Member States may provide, as an alternative to the vote, that the remuneration report of the last financial year is submitted 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.

**3a. Member States shall ensure that after the annual general meeting the remuneration report is published without delay on the company's website. The statutory auditor or audit firm shall check that the information required by this Article has been provided. Member States shall ensure that the directors of the company, acting within the competences assigned to them by national law, have collective responsibility for ensuring that the remuneration report is drawn up and published in accordance with the requirements of this Directive. Member States shall ensure that their laws, regulations and administrative provisions on liability, at least towards the company, apply to the directors of the company for breach of the duties referred to in this paragraph.**

4. In order to ensure consistent harmonisation in relation to this Article, the Commission shall adopt non-binding guidelines to specify the standardised presentation of the information laid down in paragraph 1 of this Article.

*Article 9c*

*Transparency and approval of 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 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 other information necessary to assess whether or not the transaction is fair and reasonable from the perspective of the shareholders who are not related party, including minority shareholders.
- 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 minority shareholders and explaining the assumptions it is based upon together with the methods used.

This report shall be produced by:

(-a) an independent third party or;

(a) the administrative or the supervisory body of the company or;

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

provided that the related parties are excluded from the preparation of the report.

2. Member States shall ensure that material transactions with related parties are approved by the general meeting 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, including minority shareholders.

Member States may provide that the general meeting has the right to vote on material transactions with related parties which have been 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 shall be excluded from the vote.

Member States may allow the shareholder who is a related party to take part in the vote provided that national law ensures appropriate safeguards which apply before or during the voting process to protect the interests of shareholders who are not related party, including minority shareholders, by preventing the related-party from approving the transaction despite the opposing opinion of the majority of shareholders who are not related parties or despite the opposing opinion of the majority of the independent directors.

- 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. The administrative or supervisory body of the company shall establish an internal procedure to periodically assess whether these conditions are fulfilled. The related parties shall be excluded from this assessment. However, Member States may provide that companies apply the requirements in paragraphs 1, 1a or 2 to transactions entered into in the ordinary course of business and concluded on normal market terms.
3. [deleted]

4. Member States may exclude or may allow companies to 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 undertaking or that national law provides for adequate protection of interests of shareholders who are not related party, including minority shareholders in such transactions;
  - (c) clearly defined types of transactions for which national law requires approval by the general meeting , provided that fair treatment of all shareholders and the interests of shareholders who are not related-party, including minority shareholders are specifically addressed and adequately protected in such provisions of law;
  - (d) transactions regarding remuneration of directors, or certain elements of remuneration of directors, awarded or due in accordance with the requirements of Articles 9a.
  - (e) transactions entered into by credit institutions on the basis of measures, aiming at safeguarding their stability, adopted by the competent authority in charge of the prudential supervision within the meaning of European legislation;
  - (f) ~~transactions agreed upon before the related party relationship existed provided that the terms of the transaction have not changed;~~
  - (g) transactions offered to all shareholders on the same terms where equal treatment of all shareholders is ensured.

5. Member States shall ensure that companies publicly announce ~~in accordance with paragraph 1~~ material transactions concluded between the related party of the company and that company's subsidiary. Member States may also provide that companies produce **the announcement is accompanied by a report according to paragraph 1a of this Article assessing whether or not the transaction is fair and reasonable from the perspective of the shareholders who are not related party, including minority shareholders and explaining the assumptions it is based upon together with the methods used. The exemptions provided in paragraph 2a and 4 shall also apply to the transactions specified in this paragraph.**
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 shareholders who are not related party, including minority shareholders.

When defining material transactions Member States shall set one or more quantitative ratios based on the impact of the transaction on the financial position, 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 materiality definitions for the application of paragraphs 1 and 1a different from those for the application of paragraph 2 and may differentiate the 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<sup>21</sup>.

(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<sup>22</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 14b*  
*Measures and penalties*

Member States shall lay down the rules on measures and 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.

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<sup>21</sup> 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).

<sup>22</sup> Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

The measures and 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 report published together with the management report or 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 management report or the corporate governance statement.~~

~~In any event, Member States shall ensure that such a disclosure complies with the requirements laid down by EU law regarding the protection of personal data. 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 [24 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.

Notwithstanding paragraph 1, Member States shall, not later than [24 months] after the adoption of the implementing acts referred to in Articles 3a (5), 3b (5) and 3c (3) of the Directive 2007/36/EC, bring into force the laws, regulations and administrative provisions necessary to comply with Article 3a, 3b and 3c of Directive 2007/36/EC.

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

*Article 4*

Entry into force

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

*Article 5*

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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