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**NOTE**

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

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No. prev. doc.: 14801/16 + COR 1  
No. Cion doc.: 8847/16

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Subject: Proposal for a Directive of the European Parliament and of the Council on 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

- Analysis of the final compromise text with a view to agreement

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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 to 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. FINAL STEPS

2. On 7 December 2016 in the morning, the Permanent Representatives Committee revised its mandate (doc. 14801/16 + COR 1) in order to finalise those negotiations.
3. An agreement *ad referendum* between the co-legislators was reached at the third and final informal trilogue on 7 December 2016 in the afternoon, of which the Permanent Representatives Committee was informed on 9 December 2016.
4. The compromise text as agreed with the European Parliament is identical to the mandate granted to the Presidency on 7 December 2016. It is submitted to the Committee for the analysis of the final compromise with a view to agreement.

## III. CONCLUSION

**The Committee is invited to give its approval to the compromise text set out in the Annex to this Note and to mandate the Presidency to inform the European Parliament that, should Parliament adopt the text of the Proposal in the exact form as set out in the Annex - subject to legal-linguistic revision- at a forthcoming plenary meeting, the Council would adopt the proposed Directive thus amended.**

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**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**amending Directive 2007/36/EC as regards the encouragement of long-term shareholder**  
**engagement** ■

(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>

■  
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* to voting shares in relation to general meetings of companies which have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State.
- (2) The financial crisis has revealed that shareholders in many cases supported managers' excessive short-term risk taking. Moreover, there is clear evidence that the current level of “monitoring” of investee companies and engagement by institutional investors and asset managers is *often* inadequate *and too much focused on short-term returns*, which may lead to suboptimal corporate governance and performance of listed companies.

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<sup>1</sup> OJ C 451, 16.12.2014, p. 187.

<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).

- (3) In the *communication of the Commission of 12 December 2012 entitled „Action Plan on European company law and corporate governance”*, the Commission announced a number of actions in the area of corporate governance, in particular to encourage long-term shareholder engagement and to enhance transparency between companies and investors.
- (4) *Shares of listed companies are often held through complex chains of intermediaries which render the exercise of shareholder rights more difficult and may act as obstacle to shareholder engagement. Companies are often not able to identify their shareholders. Identification of the shareholders is essential to facilitate the exercise of shareholder rights and engagement as it is a prerequisite for direct communication between the shareholder and the company. This is particularly relevant in case of cross-border situations and through virtual means. Therefore, listed companies should have the right to identify their shareholders in order to be able to directly communicate with them. Intermediaries should have an obligation, upon the request of the company, to communicate to the company the information regarding shareholder identity. However, Member States should be allowed to exclude from the identification requirement shareholders holding only small number of shares.*
- (4a) *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 and contact details of the shareholder, for legal persons a registration number or if not available a unique identifier, such as Legal Entity Identifier (LEI code) and the number of shares and if requested by the company categories or classes of shares and the date of their acquisition. The transmission of less information would not enable the company to identify its shareholders and to communicate with them.*

- (4b) *Under this Directive personal data of shareholders should be processed to enable the company to identify its current shareholders in order to directly communicate with them with the view to facilitating the exercise of shareholder rights and the engagement with the company. This is without prejudice to Member States' laws providing for processing of personal data of shareholders for other purposes, such as enabling shareholders to cooperate between themselves.*
- (4c) *In order to enable the company to communicate directly with its current shareholders in view of facilitating the exercise of shareholder rights and the engagement with the company, the company and the intermediaries should be allowed to store personal data of shareholders as long as the person concerned remains a shareholder. However, companies and intermediaries are often not aware that a given person has ceased to be a shareholder unless they have been informed by the person concerned himself or unless they have obtained this information through a new shareholder identification exercise, which often only takes place once a year in relation to the annual general meeting or in relation to other important corporate events such as takeover bids or mergers. Therefore, companies and intermediaries should be allowed to store personal data until they have learnt that a person has ceased to be a shareholder and for a maximum period of 12 months after the company or the intermediary has learnt that the person concerned has ceased to be a shareholder. This is without prejudice to the fact that the company and the intermediary may need to store personal data of persons who have ceased to be shareholders for other purposes, such as ensuring adequate records for the purposes of keeping track of succession in title of the shares of a company, maintaining necessary records in respect to general meetings, including in relation to validity of its resolutions, fulfilling by the company of its obligations in respect to payment of dividends or interests relating to shares or any other sums to be paid to former shareholders.*

- (5) The effective exercise of their rights by shareholders depends to a large extent on the efficiency of the chain of intermediaries maintaining securities accounts *on behalf of* shareholders *or other persons*, especially in a cross-border context. *In the chain of intermediaries, especially when the chain involves many intermediaries, information is not always passed from companies to shareholders and shareholders' votes are not always correctly transmitted to companies.* This Directive aims at improving the transmission of information through the *chain of intermediaries* to facilitate the exercise of shareholder rights.
- (6) In view of the important role of intermediaries, they should be obliged to facilitate the exercise of rights by *shareholders, whether shareholders* exercise these rights *themselves* or nominate a third person to do so. When *shareholders do* not want to exercise the rights *themselves* and *have* nominated the intermediary as a third person, the latter should **█** exercise these rights upon the explicit authorisation and instruction of the *shareholders* and for *their* benefit.
- (6a) *It is important to ensure that shareholders, who engage in the investee companies through voting are able to know whether their votes have been correctly taken into account. A confirmation of receipt of votes should be provided in case of electronic voting. 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 EU and *facilitate* the exercise of rights related to shares, this Directive should *establish a high degree of transparency with regard to charges, including prices and fees, for the* services provided by intermediaries. *Discrimination between charges levied for domestic and cross-border exercise of shareholder rights acts as a deterrent to cross-border investment and the efficient functioning of the internal market and should not be allowed. Any differences in charges levied for domestic and cross-border exercise of shareholder rights should only be allowed if they are duly justified and reflect the variation in actual costs incurred for delivering the services by intermediaries.*
- (7a) *The chain of intermediaries may include intermediaries having no registered office or head office in 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 EU. 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 EU intermediaries, the flow of information would be at risk of being interrupted.*
- Therefore, third country intermediaries which 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 should be subject to the rules on shareholder identification, transmission of information, facilitation of shareholder rights and transparency and non-discrimination of costs to ensure effective application of the provisions on shares held via such intermediaries.*
- (7b) *This Directive is without prejudice to 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.*

- (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. ***Greater involvement of shareholders in companies' corporate governance is one of the levers that can help improve the financial and non-financial performance of those companies, including as regards environmental, social and governance factors, notably as referred to in the United Nations- supported Principles for Responsible Investment. In addition, greater involvement of all stakeholders, in particular employees, in corporate governance is an important factor in ensuring a more long-term approach by listed companies that needs to be encouraged and taken into consideration.***
- (9) Institutional investors and asset managers are ***often*** important shareholders of listed companies in the EU 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 ***often*** exert pressure on companies to perform in the short term, which may ***jeopardise the long-term financial and non-financial performance of companies and lead, among other negative consequences,*** to a suboptimal level of investments, for example in research and development to the detriment ***of the*** long-term performance of both the companies and the investor.
- (10) Institutional investors and asset managers are often not transparent about ***their*** investment strategies, 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 ***their*** accountability to ***stakeholders and*** civil society.

- (11) Therefore, institutional investors and asset managers should *be more transparent as regards their approach to shareholder engagement. They should either develop and publicly disclose* a policy on shareholder engagement *or explain why they have chosen not to do so. The policy on shareholder engagement should describe* how *institutional investors and asset managers* integrate shareholder engagement in their investment strategy *and which different engagement activities they choose to carry out and how they do it. The* engagement policy should *also* include policies to manage actual or potential conflicts of interests, *in particular in the situation where the institutional investors or asset managers or their affiliated undertakings have significant business relationship with the investee company.* This *engagement policy or the explanation* should be publicly available online.
- (11a) *Institutional investors and asset managers should publicly disclose information about the implementation of their engagement policy and in particular how they have exercised their voting rights. However, with a view to reduce possible administrative burden, investors may decide not to publish every vote cast if the vote is considered insignificant due to the subject matter of the vote or to the size of the holding in the company. Such insignificant votes may include votes cast on purely procedural matters or votes cast in companies where the investor has a very minor stake compared to the investor's holdings in other investee companies. Investors should set their own criteria regarding which votes are insignificant due to the subject matter of the vote or to the size of the holding in the company and apply them consistently.*
- (12) *A medium to long-term approach is a key enabler of responsible stewardship of assets. Therefore, the* institutional investors should annually disclose to the public how the *main elements of* their equity investment strategy are *consistent with the profile and duration* of their liabilities and how they contribute to the medium to long-term performance of their assets.

Where they make use of asset managers, either through discretionary mandates involving the management of assets on an individual basis or through pooled funds, *institutional investors* should disclose to the public *certain key* elements of the arrangement with the asset manager, *in particular how it incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities, how it evaluates the asset managers performance, including its remuneration, monitors portfolio turnover costs incurred by the asset manager and incentivises 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 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 how their investment strategy and implementation thereof *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 composition, portfolio turnover, portfolio turnover costs and their policy on securities lending. The level of portfolio turnover is a significant indicator of whether fund manager's 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.*

*The asset manager should also inform the institutional investor whether and if so how he makes investment decisions on the basis of the evaluation of the medium- to long-term performance of the investee company, including non-financial performance. This information is particularly useful to indicate whether the asset manager adopts a long-term oriented and active approach to asset management and takes social, environmental and governance matters into account.*

*The asset manager should provide proper information to the institutional investor on whether and if so what conflicts of interests have arisen in connection with engagement activities and how the asset manager has dealt with them. For example, such conflicts of interests may prevent the asset manager from voting or certain conflict situations may even prevent the asset manager from engaging at all. All these conflict situations should be disclosed to the institutional investor.*

*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) *Many institutional investors and asset managers use the services of proxy advisors who provide research, advice and recommendations how to vote in general meetings of listed companies. While proxy advisors play an important role in corporate governance by contributing to reduce costs of the analysis related to company information, they may also have an important influence on voting behaviour of investors. In particular, investors with highly diversified portfolios and many foreign holdings of shares rely more on proxy recommendations. In view of their importance, proxy advisors should be subject to transparency requirements. 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 *research, advice and* voting recommendations and any actual or potential conflict of interest or business relationships that may influence the preparation of the *research, advice and* 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 their performance in the past.*

(14a) *Third-country proxy advisors which have no registered office or head office in the EU may provide analysis with respect to EU companies. In order to ensure a level playing field between EU proxy advisors and third-country proxy advisors, this Directive should also apply to third-country proxy advisors which carry out their activities through an establishment in the EU regardless of the form of this establishment.*

(15) *Directors contribute to the long-term success of the company. 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 the policy on the remuneration of directors and of the remunerations 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. ***The remuneration policy should contribute to*** the business strategy, long-term interests ***and sustainability*** of the company and should ***not be linked entirely or mainly to short-term objectives. Directors' performance should be assessed using both financial and non-financial performance criteria, including where appropriate environmental, social and governance factors. The policy should describe the different components of directors' pay and the range of their relative proportions. The policy can be designed as a frame within which the pay of directors must be held.*** The remuneration policy should be publicly disclosed without delay ***after the vote by the shareholders at the general meeting.***
- (16a) ***In exceptional circumstances, companies may need to derogate from certain rules in the remuneration policy such as criteria for fixed or variable pay. Therefore, Member States may allow companies to apply such temporary derogation to the applicable remuneration policy if they specify in their remuneration policy how it would be applied in certain exceptional circumstances. Exceptional circumstances should only cover situations where the derogation from the remuneration policy is necessary to serve the long-term interests and sustainability of the company as a whole or assure its viability. The remuneration report should include information on remuneration awarded under such exceptional circumstances.***

- (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 small and medium-sized companies, Member States may provide, as an alternative to the vote on remuneration report that the remuneration report of the last financial year should be submitted to shareholders only for discussion in the annual general meeting as a separate item of the agenda. If Member State use this possibility, the company shall explain in the next remuneration report how the discussion in the general meeting has been taken into account.***
- (18) In order to provide shareholders easy access to **this** information, **and to enable potential investors and stakeholders to be informed of directors' remuneration**, the remuneration report should be **published at the company's website. This should be without prejudice to 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 or management report.**
- (18a) ***The disclosure of the remuneration of individual directors and the publication of the remuneration report allow for an increased transparency and accountability of directors as well as better shareholder oversight over directors' remuneration. This creates a necessary prerequisite for the exercise of shareholders' rights and the engagement with the company in relation to remuneration.***  
***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 director, 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 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.

- (18b) *In order to increase transparency and accountability of directors and to enable shareholders, potential investors and stakeholders 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.***

- (18c)** *In order to provide a complete overview of the directors' remuneration, the report should also disclose, where applicable, the amount of remuneration granted on the basis of the family situation of individual directors. Therefore, the remuneration report should also cover, where applicable, remuneration components such as family or child allowances. However, because personal data which refer to the family situation of individual directors or special categories of personal data within the meaning of Regulation No (EU) 2016/679 are particularly sensitive and require specific protection, the report should only disclose the corresponding amount of the remuneration granted without disclosing the ground on which it was granted.*
- (18d)** *Under this Directive, personal data included in the remuneration report should be processed for the purposes of increasing corporate transparency as regards directors' remuneration with the view to enhancing directors' accountability and shareholder oversight over directors' remuneration. This is without prejudice to Member States' laws providing for processing of personal data of directors for other purposes.*
- (18e)** *It is essential to assess the remuneration and the performance of directors not only annually but over an appropriate time period to enable shareholders, potential investors and stakeholders to assess properly whether the remuneration rewards long-term performance and to measure the middle-to long-term evolution in directors' performance and remuneration, in particular in relation to company performance. In many cases, it is possible only several years afterwards to appreciate whether the remuneration granted was in line with the long-term interests of the company. In particular the granting of long-term incentives may cover periods up to 7-10 years and may be combined with deferral periods of several years.*
- It is also important to be able to assess the remuneration granted to a director over the entire period that this director remains on a company's board. In average in the EU, directors stay on a company's board for a period of six years, although in some Member States the period exceeds eight years.*

*In order to limit the interference with directors' rights to privacy and to protection of their personal data, public disclosure by companies of directors' personal data included in the remuneration report should be limited to 10 years.*

*This period is also consistent with other periods laid down by EU law related 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>3</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 having those various types of corporate governance reports, including the remuneration report, available for 10 years, so as to provide the overall state of a company to shareholders and stakeholders.*

*At the end of this 10 year-period companies should remove any personal data from the remuneration report or cease to publicly disclose the remuneration report as a whole.*

*Following this period access to such personal data could be necessary for other purposes, such as exercise of legal actions.*

- (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. The provisions on remuneration should also, where applicable, be without prejudice to national law provisions on the representation of employees in the administrative, management or supervisory body.*

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<sup>3</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).

- (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 *companies' and 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 the company and 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 *not take part in the approval or 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 companies and 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 the fairness of the transaction. 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.*

- (20a) *This Directive sets up transparency requirements for companies, institutional investors, asset managers and proxy advisors. These transparency requirements are not meant to require companies, institutional investors, asset managers and proxy advisors to disclose to the public certain specific pieces of information the disclosure of which would be seriously prejudicial to their business position or, where they are not commercial companies, to the interest of their members or beneficiaries. Such omission should not undermine the objective of the disclosure obligations.*

(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<sup>4</sup>, implementing powers should be conferred on the Commission. ***In particular, the Commission implementing acts should 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 rule 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>4</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.***

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<sup>4</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).

- (21b) *In order to ensure a more comparable and consistent presentation of the remuneration report, the Commission should adopt 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. 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) *This Directive should be applied in compliance with EU data protection law and the protection of privacy as enshrined in the Charter of Fundamental Rights. Any processing of personal data of natural persons under this Directive should be done in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>5</sup>. In particular, data should be kept accurate and up to date, the data subject should be duly informed about the processing of personal data in accordance with this Directive and the data subject should have a right of rectification of incomplete or inaccurate data as well as right to erasure of personal data. Moreover, any transmission of information regarding shareholder identity to third-country intermediaries should comply with the requirements laid down in Regulation (EU) 2016/679.*
- (23ab) *The personal data under this Directive should be processed for the specific purposes defined in this Directive. The processing of those personal data for other purposes than the initial purposes for which those data have been initially collected should be in accordance with Regulation (EU) 2016/679.*
- (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, investment 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.*

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<sup>5</sup> *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)*

- (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, as well as to fulfil other purposes such as the safety and soundness of credit and financial institutions. 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>6</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.
- (25) *The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>7</sup> and delivered an opinion [on ...].*

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<sup>6</sup> OJ C 369, 17.12.2011, p. 14.

<sup>7</sup> *Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).*

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 **in order to encourage shareholder engagement, in particular in the long term. These specific requirements apply in relation to identification of shareholders, transmission of information, facilitation of exercise of shareholders rights, transparency for institutional investors, asset managers and proxy advisors, remuneration of directors and related party transactions.**”*

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

*“For the purpose of application of 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 EU sectorial legislation;*

(ii) *for proxy advisors, the Member State in which the proxy advisor has a registered office, or where the proxy advisor has no registered office in a Member State, the Member State in which the proxy advisor has 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, point (b) is replaced by the following:*

*“(b) collective investment undertakings within the meaning of point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council<sup>8</sup>;*

(ac) *The following paragraph is added after paragraph 3:*

*“3a. The undertakings referred to in paragraph 3 shall not be exempted from the provisions laid down in Chapter Ib.”*

(b) The following *paragraphs 4a and 5* are added:

*“4a. Chapter Ia shall apply to intermediaries in so far they provide services to shareholders or other intermediaries 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.*

5. Chapter Ib shall apply to:

- institutional investors to *the extent that they invest directly or through an asset manager in shares traded on a regulated market,*
- asset managers to the extent that they invest *in such shares* on behalf of **█** investors, *and*
- *proxy advisors to the extent that they provide services to shareholders 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>8</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).*

(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.”*

(1a) *In Article 2, point (a) is replaced by the following:*

(a) *‘regulated market’ means a market as defined in point (21) of Article 4(1), of Directive 2014/65/EU of the European Parliament and of the Council<sup>9</sup>.*

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

*“(d) ‘intermediary’ means a person, such as an investment firm as defined in point (1) of Article 4 (1) of Directive 2014/65/EU, a 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>10</sup> and a 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>11</sup>, that provides services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons;*

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<sup>9</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>10</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>11</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>12</sup> and of reinsurance within ***of the meaning of point (7) of Article 13 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>13</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** providing portfolio management services to **■** investors, an AIFM (alternative investment fund manager) as defined in Article 4(1)(b) of Directive 2011/61/EU 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>14</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>12</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>13</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>14</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).

█

(i) ‘proxy advisor’ means a legal person that *analyses*, on a professional *and commercial* basis, *the corporate disclosures and, where relevant, other information of listed companies with a view to informing investors’ voting decisions by providing research, advice or voting* recommendations █ *that relate to* the exercise of █ voting rights;

█

(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>15</sup>;

(k) ‘director’ means:

(i) *any 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 officer;*

*Member States may also include in the definition of director other persons who perform functions similar to those performed under (i) or (ii);*

(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 (including full address and, where available, e-mail address) of the shareholder, and, where it is a legal person, its registration number, or, if it is not available, its unique identifier, such as legal entity identifier;*

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<sup>15</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).

- (ii) *the number of shares held; and,*
- (iii) *only in so far they are requested by the company, one or more of the following details: the categories or classes of those shares or the date from which the shares are held.'*

- (3) After Article 3, the following Chapters Ia and Ib are inserted

“CHAPTER IA

IDENTIFICATION OF SHAREHOLDERS, TRANSMISSION OF INFORMATION AND FACILITATION OF EXERCISE  
OF SHAREHOLDER RIGHTS

*Article 3a*

*Identification of shareholders*

1. Member States shall ensure that **█** companies have *the right to identify* their shareholders. *Member States may provide that companies having registered office on their territory are only allowed to request identification with respect to shareholders holding more than a certain percentage of shares or voting rights which shall not exceed 0,5 %.*
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*.
- 2a. Where there is more than one intermediary in a **█** *chain of intermediaries, Member States shall ensure that* the request of the company *or of a third party designated by the company is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the company or to a third party designated by the company without delay by the intermediary who holds the requested information. Member States shall ensure that the company is able to obtain information regarding shareholder identity from any intermediary in the chain that holds the information.*  
*Member States may provide that the company may request the central securities depository or another intermediary or service provider to collect the information regarding shareholder identity, including from the intermediaries in the chain of intermediaries and to transmit the information to the company.*  
*Member States may additionally provide that at the request of the company, or of a third party designated by the company, the intermediary shall communicate to the company without delay the details of the next intermediary in the chain of intermediaries.*

3. *Pursuant to this Article personal data of shareholders shall be processed to enable the company to identify its current shareholders in order to directly communicate with them with the view to facilitating the exercise of shareholder rights and the engagement with the company.*
- 3a. *Without prejudice to any longer storage period laid down by EU sectorial legislation, Member States shall ensure that companies and intermediaries do not store personal data of shareholders transmitted to them in accordance with this Article for the purpose specified in this Article for longer than 12 months after they have learnt that the person concerned has ceased to be a shareholder.*
- 3ab. *Member States may provide by law for processing of personal data of shareholders for other purposes.*
- 3b. *Member States shall ensure that legal persons have the right of rectification of incomplete or inaccurate information regarding their shareholder identity.*
4. Member States shall ensure that an intermediary that reports *information regarding shareholder identity in accordance with the rules laid down in this Article* is not considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.
- 4a. *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 a certain percentage of the shares or voting rights in accordance with paragraph 1 of this Article and if so what percentage has been set 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 paragraph 2 as regards the *format of* information to be transmitted, the format of the request, *including their security and interoperability*, and the deadlines to be complied with. Those implementing acts shall be adopted *within a period of 15 months after entry into force of this Directive* in accordance with the examination procedure referred to in Article 14a (2).**

#### Article 3b

##### Transmission of information

1. Member States shall ensure that ***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*** :
  - (a) the information ***which the company is required to provide to the shareholder, to enable the shareholder to exercise rights*** flowing from its shares, ***and, which*** is directed to all shareholders in shares of that class, ***or***
  - (b) ***where that information is available to shareholders on the website of the company, a notice indicating where this information can be found on the website of the company.***
2. Member States shall require companies to provide and deliver ***to intermediaries*** in a standardised and timely manner ***the information referred to in paragraph 1(a) or the notice referred to in paragraph 1(b).***
- 2a. ***Member States shall provide that companies need not provide and deliver to intermediaries the information referred to in paragraph 1(a) or the notice referred to in paragraph 1(b) when they directly send the information or the notice to all their shareholders, or, in accordance with the instructions given by the shareholder, to a third party. In this case, paragraph 1 does not apply to the intermediaries.***

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 related to the exercise of the rights flowing from their shares.
4. Where there is more than one intermediary in a **■** chain *of intermediaries*, 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, *including their security and interoperability, and the deadlines to be complied with.* Those implementing acts shall be adopted *within a period of 15 months after entry into force of this Directive* 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 *one* 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 **█** chain of intermediaries 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, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted within a period of 15 months after entry into force of this Directive in accordance with the examination procedure referred to in Article 14a(2).*

*Article 3d*

*Non-discrimination, proportionality and transparency of costs*

1. Member States shall **require** intermediaries to **publicly disclose any 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 non-discriminatory and **proportionate in relation to the actual costs incurred for delivering the services**. Any differences **between** the charges levied between domestic and cross-border exercise of rights shall **only be permitted where** duly justified **and where they reflect the variation in actual costs incurred for delivering the services**.
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 no registered office or head office in the Union when they provide services referred to in Article 1(4a).**

*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 by ... [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 requirements under (a) and (b) or publicly disclose a clear and reasoned explanation why they have chosen not to comply with one or more of these requirements:***
- (a) ***Institutional investors and asset managers shall develop and publicly disclose an engagement policy that describes how they integrate shareholder engagement in their investment strategy. The policy shall describe how they monitor investee companies on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance, conduct dialogues with investee companies, exercise voting rights and other rights attached to shares, cooperate with other shareholders, communicate with relevant stakeholders of the investee companies 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, an explanation of the most significant votes and their use of the services of proxy advisors. They shall publicly disclose how they have cast votes in the general meetings of companies in which they hold shares. Such disclosure may exclude votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.***

2. *The information referred to in paragraph 1 shall be available free of charge on the institutional investor's or asset manager's website. Member States may provide that the information is published, free of charge, 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 **█** how *the main elements* of their equity investment strategy *are consistent* with the profile and duration of their liabilities, *in particular long-term liabilities*, and how *they contribute* to the medium to long-term performance of their assets **█** .
2. *Member States shall ensure that where* an asset manager invests on behalf of an institutional investor, either on a discretionary client-by-client basis or through a collective investment undertaking, the institutional investor *publicly discloses the following information regarding its* arrangement with the asset manager **█** :
  - *how the arrangement with the asset manager* incentivises the asset manager to align its investment strategy and decisions with the profile and duration of *the liabilities of the institutional investor, in particular long-term liabilities*;
  - *how it* incentivises the asset manager to make investment decisions based on *assessments about* medium to long-term *financial and non-financial* performance *of the investee company* and to engage with *investee* companies *in order to improve their performance in the medium to long-term*;

- *how* the method and time horizon of the evaluation of the asset manager's performance **■** and *the remuneration for asset management services are in line* with the *profile and duration* of the liabilities of the institutional investor, *in particular long-term liabilities, and take absolute long-term performance into account*;
- how *it monitors portfolio turnover costs incurred by the asset manager and how it defines and monitors a targeted portfolio* turnover or turnover range **■** ;
- the duration of the arrangement with the asset manager.

Where the arrangement with the asset manager does not contain one or more of such elements **■** , the institutional investor shall give a clear and reasoned explanation why this is the case.

3. *The information referred to in paragraphs 1 and 2 shall be available, free of charge, on the institutional investor's website and shall be updated annually unless there is no material change. Member States may provide that this information is available, free of charge, through other means that are easily accessible on-line.*  
*Member States shall ensure that institutional investors regulated by Directive 2009/138/EC are allowed to include this information in their report on solvency and financial condition referred to in Article 51 of that Directive.*

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 **■** how their investment strategy and implementation thereof complies with that arrangement and **■** contributes 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, on portfolio composition, turnover and turnover costs, on the use of proxy advisors for the purpose of engagement activities 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. This shall include also information on whether, and if so how, they make investment decisions based on evaluation of medium to long-term performance of the investee company, including non-financial performance, and on whether, and if so what conflicts of interest have arisen in connection with engagements activities and how the asset managers have dealt with them.***
  
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.***

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 proxy advisors do not apply a code of conduct, they shall provide a clear and reasoned explanation why this is the case. Where they depart from any of the recommendations of that code of conduct, they shall declare which parts they depart from, explain reasons for doing so and indicate, where appropriate, any alternative measures adopted.**  
**Information referred to in this paragraph shall be made publicly available, free of charge, on the websites of proxy advisors and shall be updated on an annual basis.**
  
2. **Member States shall ensure that, in order to adequately inform their clients about the accuracy and reliability of their activities,** proxy advisors **publicly disclose** on an annual basis **at least** all of the following information in relation to the preparation of their **research, advice and** 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, advice and voting recommendations and qualifications of the staff involved;**
  - (c) whether and, if so, how they take national market, legal, and regulatory **and company-specific** 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 **research, advice or** voting recommendations **and with the stakeholders of the company,** and, if so, the extent and nature thereof;

■

*(da) the policy regarding prevention and management of potential conflicts of interests; Information referred to in this paragraph shall be made publicly available on the websites of proxy advisors and remain available free of charge for at least three years from the day of publication. The information does not need to be disclosed separately where the information is available as part of the disclosure under paragraph 1.*

3. Member States shall ensure that proxy advisors identify and disclose without delay to their clients any actual or potential conflict of interest or business relationships that may influence the preparation of *their research, advice or* voting recommendations and the actions they have undertaken to eliminate, mitigate *or manage* the actual or potential conflict of interest.
- 4a. *This Article also applies to proxy advisors having no registered office or head office in the Union which carry out their activities through an establishment located in the Union.*

#### *Article 3j*

##### *Review*

1. *The Commission shall submit a report to the European Parliament and to the Council on the implementation of Articles 3f, 3g and 3h, including the assessment of the need to require asset managers to publicly disclose certain information under Article 3h, taking into account relevant EU and international market developments. The report shall be published by ... [3 years from the expiry of the transposition period referred to in Article 3(1)] and shall be accompanied, if appropriate, by legislative proposals.*
2. *The Commission shall, in close cooperation with ESMA, submit a report to the European Parliament and to the Council on the implementation of Article 3i, including the appropriateness of its scope of application and its effectiveness and the assessment of the need for establishing regulatory requirements for proxy advisors, 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.*

(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*** shareholders have the right to vote on the remuneration policy ***at the general meeting.***

***1a. Member States shall ensure that the vote by the shareholders at the general meeting on the remuneration policy is binding.*** Companies shall only pay remuneration to their directors in accordance with a remuneration policy that has been approved by ***the general meeting.***

***In case where no remuneration policy has yet been approved and the general meeting does not approve the proposed policy, the company may continue to pay remuneration to its directors in accordance with its existing practices and shall submit a revised policy for approval at the next general meeting.***

***In case where an approved remuneration policy exists and the general meeting does not approve the proposed new policy, the company shall continue to pay remuneration to its directors in accordance with the existing approved policy and shall submit a revised policy for approval at the next general meeting.***

***1b. However Member States may provide that the vote at the general meeting on the remuneration policy is advisory. In that case, companies shall only pay remuneration to their directors in accordance with a remuneration policy that has been submitted to such a vote at the general meeting. Where the general meeting rejects the proposed remuneration policy, the company shall submit a revised policy to a vote at the next general meeting.***

***1c. Member States may allow companies, in exceptional circumstances, to temporarily derogate from the remuneration policy, provided that the policy includes the procedural conditions under which the derogation can be applied and specifies which elements of the policy may be derogated from.***

*Exceptional circumstances shall only cover situations where the derogation from the remuneration policy is necessary to serve the long-term interests and sustainability of the company as a whole or to assure its viability.*

*1d. 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 four years.*

3. The policy shall *contribute* to the *business strategy*, long-term interests and sustainability of the company *and explain how it does so*. It shall *be clear and understandable and describe* the *different components* of fixed and variable remuneration, including all *bonuses and other* benefits in whatever form, *which can be awarded to directors and indicate their relative proportion*.

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

*When the company awards* variable remuneration, the policy shall *set clear, comprehensive and varied criteria for the award of the variable remuneration*. It shall indicate the financial and non-financial performance criteria *including, where appropriate, criteria relating to corporate social responsibility* and explain how they contribute to *the objectives set out in subparagraph 1, ■* and the methods to be applied to determine to which extent the performance criteria have been fulfilled. *It shall specify information on any deferral periods ■ and on the possibility for the company to reclaim variable remuneration.*

*When the company awards share-based remuneration, the policy shall specify vesting periods and where applicable retention of shares after vesting and explain how the share based remuneration contributes to the objective set out in subparagraph 1.*

The policy shall indicate the *duration* of the contracts *or 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, measures to avoid or manage conflicts of interests and, where applicable, the role of the remuneration committee or other committees concerned*. Where the policy is revised, it shall *describe and explain* all significant changes and how it takes into account the *votes and* 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 at the general meeting the policy together with the date and the results of the vote* is made public without delay *on the website of the company and remains publicly available, free of charge*, 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, in ***accordance with the remuneration policy referred to in Article 9a***. ***Where applicable, the remuneration report shall*** contain **■** the following ***information regarding each individual director's remuneration***:
  - (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, including how it contributes to the long-term performance of the company***, and information on how the performance criteria were applied;
  - (b) the ***annual*** change of the remuneration **■** over ***at least*** the last ***five*** financial years, **■** the ***evolution*** of the ***performance*** of the company and ***of*** the average remuneration ***on a full-time equivalent basis of*** employees of the company other than directors ***during that period, presented together in a manner which permits comparison***;
  - (c) any remuneration **■** from any undertaking belonging to the same group ***as defined in point (11) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council<sup>16</sup>***;
  - (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;

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<sup>16</sup> ***Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).***

- (e) information on the use of the possibility to reclaim variable remuneration;
  - (f) information on *any deviations from the procedure for the implementation of the remuneration policy referred to in article 9a(3) and on any derogations applied in accordance with Article 9a(1c), including the explanation of the nature of the exceptional circumstances and the indication of the specific elements derogated from.*
2. Member States shall ensure that *companies do not include in the remuneration report special categories of personal data of individual directors within the meaning of Article 9(1) of Regulation (EU) 2016/679 or personal data which refer to the family situation of an individual director.*
- 2a. *Pursuant to this Article companies shall process personal data of directors included in the remuneration report for the purpose of increasing corporate transparency as regards directors' remuneration with the view to enhancing directors' accountability and shareholder oversight over directors' remuneration.*
- 2ab. *Without prejudice to any longer period laid down by EU sectorial legislation, Member States shall ensure that companies no longer make publicly available pursuant to paragraph 3a of this Article personal data of directors included in the remuneration report in accordance with this Article after 10 years from the publication of the remuneration report.*
- 2c. *Member States may provide by law for processing of personal data of directors for 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 small and medium-sized companies as defined in Article 3(2) and (3) of Directive 2013/34/EU, 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.** *Without prejudice to Article 5(4) of this Directive, after the general meeting the companies shall make the remuneration report publicly available on their website, free of charge, for a period of 10 years, and may choose to keep it available for a longer period provided it does no longer contain personal data of directors. 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 **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 define material transactions for the purposes of this Article 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, including equity, or turnover of the company or take into account the nature of transaction and the position of the related party.*

*Member States may adopt different materiality definitions for the application of paragraph 2 than for the application of paragraphs 1 and 1a and may differentiate the definitions according to the company size.*

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 company and of 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 company and 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) administrative body or the supervisory body of the company or;*
- (b) the audit committee or any committee the majority of which is composed of independent directors;*

*Member States shall ensure that the related parties do not take part in 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 the company and of shareholders who are not related party, including minority shareholders.*

*Member States may provide that shareholders in the general meeting have 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 *not take part in the approval or 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 the company and 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. For such transactions 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 not take part in 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.*

■

4. Member States may exclude *or may allow companies to exclude* from the requirements in paragraphs 1, *1a and 2*:
  - (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 the company, of the subsidiary and of their 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 the company and 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;*
  - (g) *transactions offered to all shareholders on the same terms where equal treatment of all shareholders and protection of the interests of the company is ensured.*
  
5. *Member States shall ensure that companies publicly announce material transactions concluded between the related party of the company and that company's subsidiary. Member States may also provide that the announcement is accompanied by a report assessing whether or not the transaction is fair and reasonable from the perspective of the company and 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.*

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>17</sup>.*

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<sup>17</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).*

(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>18</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.

***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.”



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<sup>18</sup> Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

### 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 Directive 2007/36/EC, bring into force the laws, regulations and administrative provisions necessary to comply with Articles 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 ...,

*For the European Parliament*

*The President*

*For the Council*

*The President*