



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Economic and Monetary Affairs

2014/0121(COD)

2.3.2015

OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement
(COM(2014)0213 – C7-0147/2014 – 2014/0121(COD))

Rapporteur: Olle Ludvigsson

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SHORT JUSTIFICATION

The Commission's proposal on shareholder engagement was launched in April 2014. It aims at enhancing the long-term perspective in the running of listed companies.

At present, too many companies have an overly strong focus on pleasing demands for high short-term profits and returns. This dynamics leads to planning deficiencies, under-investment and suboptimal performance in the long run.

In order to at least partly come to terms with the problem, the Commission wants to give minority shareholders – and institutional investors in particular – a more transparent, easily managed and influential role in corporate governance. The idea is that if investors engage more and are more long-term oriented in their engagement, companies will give higher priority to long-term concerns. This will in turn be beneficial for the end-customers of institutional investors and asset managers, for the companies and for society as a whole.

Overall approach

Your rapporteur would like to put this initiative into the overall context of stakeholder involvement in corporate governance. While this specific proposal focuses on shareholders, one should bear in mind that other actors – such as employees, consumers and local communities – are also highly relevant. For companies to be well-run, there has to be respect for and active engagement from all stakeholders.

Regarding the logic of and reasoning behind the proposal, your rapporteur generally understands and supports the Commission line. There is a wide-spread short-termism which is irrational for most actors and which it would be sensible to try to reverse. Stimulating stronger shareholder engagement is one of several means to do that. The set of measures proposed by the Commission is not a panacea, but at least a reasonable step in the right direction.

Adjustments

On that general basis, your rapporteur believes that the proposal needs to be adjusted on seven important points:

1. A key to strong shareholder engagement is the dialogue between different shareholders on company-related matters. Owners need to talk to each other. In order to get more engagement, this dialogue should be promoted. The provisions on shareholder identification (Article 3a) should be expanded in order to take this aspect on board. When a company has identified its shareholders, any shareholder should have the possibility to turn to the company to get the contact details of the other shareholders. With those details, new dialogues can be started. If this useful mechanism is properly restricted, it should be fully in line with data protection rules.

2. Unjustified charges related to cross-border engagement are unfortunately quite common. Therefore, in order to safeguard the functioning of the internal market, it needs to be made

clear that all charges involved in the identification of shareholders, the transmission of information and the facilitation of the exercise of shareholder rights must never be differentiated on the basis of nationality (Article 3d).

3. Basic transparency should not be optional. In order to make sure that the legislation is reasonably efficient and that there is a level playing field, all institutional investors and asset managers should be obliged to develop an engagement policy and to be transparent about its application (Article 3f). This is a very basic demand which can easily be met by all actors which already run a solid and well-organised business operation.

4. On the same general theme, there should be more transparency around how asset managers deliver on mandates from institutional investors (Article 3h). In order not to create a black hole for anyone wanting to follow these key operations from the outside, all non-sensitive information should be disclosed to the public.

5. For a system with remuneration policies to be rational and meaningful, the policies cannot too often or too much be put to the side. Therefore, an exemption from a policy should be accepted only if it affects maximum amounts of remuneration and the situation is exceptional – for example if the company is in a leadership crisis (Article 9a). If a company has gone beyond a policy once and wants to do so again, it is reasonable that it presents a proposal for a revised policy to the shareholders.

6. With the aim of upholding transparency and maintaining a level playing field, the ratio between the remuneration of directors and employees should always be included in remuneration policies (Article 9a). This ratio will have to be interpreted differently depending on for example the business and geographical set-up of the company. However, it is always a useful metric which could and should be disclosed by all companies.

7. On related party transactions, the Commission's proposal is a little too ambitious (Article 9c). There should be a proper European minimum level to counter a problematic pattern of abusive transactions, but that level does not have to be very high. A bit of back-tracking is needed. In particular, it seems reasonable to let it be up to Member States, depending on national conditions and practices, to decide if the requirement to hold a shareholder vote is proportionate for all 5%+ related party transactions, or if it should apply only to transactions which are not concluded on market terms.

AMENDMENTS

Amendment 1

Proposal for a directive

Title

Text proposed by the Commission

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
amending Directive 2007/36/EC as regards
the encouragement of long-term
shareholder engagement **and** Directive
2013/34/EU as regards certain elements of
the corporate governance statement
(Text with EEA relevance)

Amendment

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, Directive
2013/34/EU **and Directive 2004/109/EC** as
regards certain elements of ***reporting***
(Text with EEA relevance)

Amendment 2

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) The financial crisis has revealed that
shareholders in many cases supported
managers' excessive short-term risk taking.
Moreover, there is clear evidence that the
current level of 'monitoring' of investee
companies and engagement by institutional
investors and asset managers is inadequate,
which may lead to suboptimal corporate
governance and performance of listed
companies.

Amendment

(2) The financial crisis has revealed that
shareholders in many cases supported
managers' excessive short-term risk taking.
Moreover, there is clear evidence that the
current level of 'monitoring' of investee
companies and engagement by institutional
investors and asset managers is inadequate,
which may lead to suboptimal corporate
governance and performance of listed
companies. ***This specific proposal should
have a broad focus to increase
transparency and to respect, and ensure
active engagement from, the stakeholders
concerned; hence other actors such as
employees, consumers and local
communities are highly relevant in the
overall context of stakeholder
involvement.***

Amendment 3

Proposal for a directive Recital 4

Text proposed by the Commission

(4) In order to further facilitate the exercise of shareholder rights and engagement between listed companies and shareholders, listed companies should have the possibility to have their shareholders identified and directly communicate with them. Therefore, this Directive should provide for a framework to ensure that shareholders can be identified.

Amendment

(4) In order to further facilitate the exercise of shareholder rights and engagement between listed companies and shareholders, listed companies should have the possibility to have their shareholders identified and directly communicate with them. Therefore, ***to improve transparency and dialogue***, this Directive should provide for a framework to ensure that shareholders can be identified. ***Provided that the objective of identifying shareholders is achieved, there should be some flexibility for Member States to maintain existing national systems, for example when it comes to identifying shareholders by means other than just through intermediaries.***

Amendment 4

Proposal for a directive Recital 7

Text proposed by the Commission

(7) In order to promote equity investment throughout the Union and the exercise of rights related to shares, this Directive should ***prevent price discrimination of cross-border as opposed to purely domestic share holdings by means of better disclosure of*** prices, fees and charges of services provided by intermediaries. Third country intermediaries which have established a branch in the Union should be subject to the rules on shareholder identification, transmission of information, facilitation of shareholder rights and transparency of

Amendment

(7) In order to promote equity investment throughout the Union and the exercise of rights related to shares, this Directive should ***demand that all*** prices, fees and ***other*** charges of services provided by intermediaries ***are transparent, non-discriminatory and proportional. Any variation in the charges levied between different service users should reflect a variation in actual costs incurred for delivering the services. In order to safeguard the integrity and functioning of the internal market, charges should not be differentiated on the basis of nationality.***

prices, fee and charges to ensure effective application of the provisions on shares held via such intermediaries;

Third country intermediaries which have established a branch in the Union should be subject to the rules on shareholder identification, transmission of information, facilitation of shareholder rights and transparency of prices, fee and charges to ensure effective application of the provisions on shares held via such intermediaries.

Amendment 5

Proposal for a directive Recital 8

Text proposed by the Commission

(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.

Amendment

(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: ***clients, suppliers, employees and the local community.***

Amendment 6

Proposal for a directive Recital 9

Text proposed by the Commission

(9) Institutional investors and asset managers are important shareholders of listed companies in the Union and therefore can play an important role in the corporate governance of these companies, but also more generally with regard to the strategy and long-term performance of these companies. However, the experience of the last years has shown that institutional investors and asset managers often do not engage with companies in

Amendment

(9) Institutional investors and asset managers are important shareholders of listed companies in the Union and therefore can play an important role in the corporate governance of these companies, but also more generally with regard to the strategy and long-term performance of these companies. However, the experience of the last years has shown that institutional investors and asset managers often do not engage with companies in

which they hold shares and evidence shows that capital markets exert pressure on companies to perform in the short term, which may lead to a suboptimal level of investments, for example in research and development to the detriment *to* long-term performance of both the companies and the investor.

which they hold shares and evidence shows that capital markets exert *strong* pressure on companies to perform *primarily* in the short term, which may lead to a suboptimal level of investments, for example in research and development, to the detriment *of* long-term performance of both the companies and the investor.

Amendment 7

Proposal for a directive Recital 10

Text proposed by the Commission

(10) Institutional investors and asset managers are often not transparent about investment strategies *and their engagement policy* and the implementation thereof. Public disclosure of such information *could* have a positive impact on investor awareness, enable ultimate beneficiaries such as future pensioners optimise investment decisions, facilitate the dialogue between companies and their shareholders, encourage shareholder engagement and strengthen companies' accountability to civil society.

Amendment

(10) Institutional investors and asset managers are often not transparent about *their engagement policies, their* investment strategies and the implementation *and results* thereof. Public disclosure of such information *would, in various ways*, have a positive impact on investor awareness, enable ultimate beneficiaries such as future pensioners optimise investment decisions, facilitate the dialogue between companies and their shareholders, encourage shareholder engagement and strengthen companies' accountability to civil society.

Amendment 8

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Therefore, institutional investors and asset managers should develop a policy on shareholder engagement, which determines, amongst others, how they integrate shareholder engagement in their

Amendment

(11) Therefore, institutional investors and asset managers should develop a policy on shareholder engagement, which determines, amongst others, how they integrate shareholder engagement in their

investment strategy, monitor investee companies, conduct dialogues with investee companies and exercise voting rights. Such engagement policy should include policies to manage actual or potential conflicts of interests, such as the provision of financial services by the institutional investor or asset manager, or companies affiliated to them, to the investee company. This policy, its implementation and the results thereof should be publicly disclosed on an annual basis. *Where institutional investors or asset managers decide not to develop an engagement policy and/or decide not to disclose the implementation and results thereof, they shall give a clear and reasoned explanation as to why this is the case.*

investment strategy, monitor investee companies, conduct dialogues with investee companies and exercise voting rights. Such engagement policy should include policies to manage actual or potential conflicts of interests, such as the provision of financial services by the institutional investor or asset manager, or companies affiliated to them, to the investee company. This policy, its implementation and the results thereof should be publicly disclosed on an annual basis. *If the information to be disclosed on voting is very extensive, there should in exceptional cases be an option to disclose a summary of that information. Furthermore, it should be possible for Member States to provide that if, in exceptional cases, the disclosure of a certain part of the information related to the engagement policy would be seriously prejudicial to the commercial position of the institutional investor, the asset manager or an investee company, the institutional investor or the asset manager could be allowed, if approved by the competent authority on the basis of clear criteria, to abstain from disclosing that part of the information.*

Amendment 9

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) To extend the idea of shareholder engagement companies should consider the creation of representative shareholder bodies (shareholder panels) to monitor the activities of fund managers. Such panels would consist of members elected by individual investors or current or future recipients of pensions managed by the

asset manager of the company.

Amendment 10

Proposal for a directive

Recital 12

Text proposed by the Commission

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

Amendment

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

be possible to disclose a summary of the information. Furthermore, it should be possible for Member States to provide that if, in exceptional cases, the disclosure of a certain part of the information related to these aspects of the investment strategy would be seriously prejudicial to the commercial position of the institutional investor or an asset manager, the institutional investor could be allowed, if approved by the competent authority on the basis of clear criteria, to abstain from disclosing that part of the information.

Amendment 11

Proposal for a directive Recital 13

Text proposed by the Commission

(13) Asset managers should be required to disclose *to institutional investors* how their investment strategy and the implementation thereof is in accordance with the asset management arrangement *and how the investment strategy and decisions contributes to medium to long-term performance of the assets of the institutional investor. Moreover, they* should disclose whether they make investment decisions on the basis of judgements about medium-to long-term performance of the investee company, *how their portfolio was composed and* the portfolio turnover, actual or potential conflicts of interest *and* whether the asset manager uses proxy advisors for the purpose of their engagement activities. This information would allow the institutional investor to better monitor the asset manager, *provide* incentives for a proper alignment of interests and for shareholder engagement.

Amendment

(13) Asset managers should be required to disclose how their investment strategy and the implementation thereof is in accordance with the asset management arrangement. *Asset managers* should disclose *to the public* whether they make investment decisions on the basis of judgements about medium-to long-term performance of the investee company, the portfolio turnover, actual or potential conflicts of interest, whether the asset manager uses proxy advisors for the purpose of their engagement activities *and, overall, how their investment strategy contributes to the medium- to long-term performance of the assets of the institutional investor. Asset managers should disclose to the institutional investor how their portfolio was composed and the portfolio turnover cost.* This information would allow *and encourage* the institutional investor, *and where applicable also stakeholders concerned in general,* to better monitor the asset

manager, *which would create* incentives for a proper alignment of interests and for shareholder engagement. *If an asset manager is obliged by other acts of Union law to disclose investment related information, the disclosure obligations in this context should not apply to information that is already covered in such acts. Furthermore, it should be possible for Member States to provide that if, in exceptional cases, the disclosure of a certain part of the information on these aspects of the investment strategy would be seriously prejudicial to the commercial position of the asset manager or an institutional investor, the asset manager could be allowed, if approved by the competent authority on the basis of clear criteria, to abstain from disclosing that part of the information.*

Amendment 12

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) In order to improve the information in the equity investment chain Member States should ensure that proxy advisors adopt and implement adequate measures to guarantee that their voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them and are not affected by any existing or potential conflict of interest or business relationship. They should disclose certain key information related to the preparation of their voting recommendations and any actual or potential conflict of interest or business relationships that *may* influence the preparation of the voting recommendations.

Amendment

(14) In order to improve the information in the equity investment chain Member States should ensure that proxy advisors adopt and implement adequate measures to guarantee that their voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them and are not affected by any existing or potential conflict of interest or business relationship. They should disclose certain key information related to the preparation of their voting recommendations and any actual or potential conflict of interest or business relationships that *could, if not properly dealt with*, influence the preparation of the voting

recommendations.

Amendment 13

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The remuneration policy for company directors should also contribute to the long-term growth of the company so that it corresponds to a more effective practice of corporate governance and is not linked entirely or largely to short-term investment objectives.

Amendment 14

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

(16) In order to ensure that shareholders have an effective say on the remuneration policy, they should be granted the right to approve the remuneration policy, ***on the basis of a*** clear, understandable and comprehensive ***overview of the company's remuneration policy, which*** should be aligned with the business strategy, objectives, values and long-term interests of the company and should incorporate measures to avoid conflicts of interest. Companies should only pay remuneration to their directors in accordance with a remuneration policy that has been approved by shareholders. The approved remuneration policy should be publicly disclosed without delay.

(16) In order to ensure that shareholders have an effective say on the remuneration policy, they should be granted the right to, ***by voting,*** approve the remuneration policy. ***The policy should, while taking company-specific aspects into account, be*** clear, understandable and comprehensive. ***It*** should be aligned with the business strategy, objectives, values and long-term interests of the company and should incorporate measures to avoid conflicts of interest. ***The policy should establish and explain the projected ratio between the adjustments in the remuneration of directors and the adjustments in the wages of employees other than directors. This would provide a useful indicator of the development of remuneration across the company.*** Companies should only pay

remuneration to their directors in accordance with a remuneration policy that has been **submitted to and** approved by shareholders. The approved remuneration policy should be publicly disclosed without delay.

Amendment 15

Proposal for a directive Recital 17

Text proposed by the Commission

(17) To ensure that the implementation of the remuneration policy is in line with the approved policy, shareholders should be granted the right to vote on the company's remuneration report. In order to ensure accountability of directors the remuneration report should be clear and understandable and should provide a comprehensive overview of the remuneration granted to individual directors in the last financial year. Where the shareholders vote against the remuneration report, the company should explain in the next remuneration report how the vote of the shareholders **has** been taken into account.

Amendment

(17) To ensure that the implementation of the remuneration policy is in line with the approved policy, shareholders should be granted the right to vote on the company's remuneration report **in the annual general meeting**. In order to ensure accountability of directors the remuneration report should be clear and understandable and should provide a comprehensive overview of the remuneration granted to individual directors in the last financial year **or still due**. Where the shareholders vote against the remuneration report, **there should be an open exchange of views where shareholders can clarify the reasons for the rejection**. The company should explain in the next remuneration report how the vote **and statements** of the shareholders **have** been taken into account.

Amendment 16

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Increased transparency regarding the activities of large companies, and in particular regarding profits made, taxes

on profit paid and subsidies received, is essential for ensuring the trust and facilitating the engagement of shareholders and other Union citizens in companies. Mandatory reporting in this area can therefore be seen as an important element of the corporate responsibility of companies to shareholders and society.

Amendment 17

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) There is a need to differentiate between procedures for establishing the remuneration of directors and systems of wage formation for employees. Consequently, the provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) TFEU, general principles of national contract and labour law, and the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs.

Justification

This is an adapted version of Recital 69 of Directive 2013/36/EU (CRD IV).

Amendment 18

Proposal for a directive Recital 18 b (new)

Text proposed by the Commission

Amendment

(18b) The provisions on remuneration should also, where applicable, be without prejudice to provisions on the representation of employees in the administrative, management and/or supervisory body as provided for by national law.

Justification

A relevant reference here is Art 91.13 of Directive 2013/36/EU.

Amendment 19

Proposal for a directive

Recital 19

Text proposed by the Commission

Amendment

(19) Transactions with related parties may cause prejudice to companies and their shareholders, as they may give the related party the opportunity to appropriate value belonging to the company. Thus, adequate safeguards for the protection of shareholders' interests are of importance. For this reason Member States should ensure that related party transactions representing more than 5 % of the companies' assets ***or transactions which can have a significant impact on profits or turnover*** should be submitted to a vote by the shareholders in a general meeting. Where the related party transaction involves a shareholder, this shareholder should be excluded from that vote. The company should not be allowed to conclude the transaction before the shareholders' approval of the transaction. For transactions with related parties that represent more than 1% of their assets companies should publicly announce such transactions at the time of the conclusion of

(19) Transactions with related parties may cause prejudice to companies and their shareholders, as they may give the related party the opportunity to appropriate value belonging to the company. Thus, adequate safeguards for the protection of shareholders' interests are of importance. For this reason Member States should ensure that related party transactions ***which are not concluded on standard terms in the ordinary course of business*** representing more than 5 % of the companies' assets should be submitted to a vote by the shareholders in a general meeting. Where the related party transaction involves a shareholder, this shareholder should be excluded from that vote. The company should not be allowed to conclude the transaction before the shareholders' approval of the transaction. For transactions with related parties that represent more than 1% of their assets companies should publicly announce such transactions ***no later than*** at the time of the

the transaction, **and accompany the announcement by a report from an independent third party assessing whether the transaction is on market terms and confirming that the transaction is fair and reasonable from the perspective of the shareholders, including minority shareholders**. Member States should be allowed to exclude transactions entered into between the company and its wholly owned subsidiaries. Member States should **also be able to** allow companies to request the advance approval by shareholders for certain clearly defined types of recurrent transactions above 5 percent of the assets, and to request from shareholders an advance exemption from the obligation **to produce an independent third party report** for recurrent transactions above 1 percent of the assets, **under certain conditions**, in order to facilitate the conclusion of such transactions by companies.

Amendment 20

Proposal for a directive Recital 20

Text proposed by the Commission

(20) In view of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995⁶ it is necessary to strike a balance between the facilitation of the exercise of shareholders' rights and the right to privacy and the protection of personal data. The identification information on shareholders should be limited to the name and contact details of the corresponding shareholders. This information should be accurate and kept up-to-date, and intermediaries as well as companies should allow for rectification or erasure of all incorrect or incomplete data. This identification information on shareholders should not be used for any

conclusion of the transaction. Member States should be allowed to exclude transactions entered into between the company and its wholly owned subsidiaries. Member States should allow companies to request the advance approval by shareholders for certain clearly defined types of recurrent transactions above 5 per cent of the assets, **under certain conditions**, and **should be able to allow companies** to request from shareholders an advance exemption from the **instant disclosure** obligation for recurrent transactions above 1 percent of the assets, **provided that all such transactions are disclosed at the end of the period of exemption**, in order to facilitate the conclusion of such transactions by companies.

Amendment

(20) In view of **Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and of** Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995⁶ it is necessary to strike a balance between the facilitation of the exercise of shareholders' rights and the right to privacy and the protection of personal data. The identification information on shareholders should be limited to the name and contact details of the corresponding shareholders. This information should be accurate and **should be** kept up-to-date **and safe**, and intermediaries as well as companies should allow for rectification or erasure of all

other purpose than the facilitation of the exercise of shareholder rights.

incorrect or incomplete data. This identification information on shareholders should not be used for any other purpose than the facilitation of the exercise of shareholder rights. ***In the information on the remuneration of individual directors, sensitive personal data on health and other categories referred to in Article 8 of Directive 95/46/EC should be excluded. The information should only be used to facilitate the exercise of shareholder rights and to allow for transparency and accountability regarding their performance as directors. Companies should take appropriate measures to limit public access to personal data, for example by removing direct links to such data on the website, when that data, a number of years after its initial disclosure, is no longer of key relevance for the facilitation of the exercise of shareholder rights.***

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

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

Amendment 21

Proposal for a directive Recital 20a (new)

Text proposed by the Commission

Amendment

(20a) In order to ensure that crucial communication mechanisms are run as efficiently as possible, the Commission should be given the power to adopt delegated acts, in accordance with Article 290 of the TFEU, to determine the specific requirements to be met regarding shareholder identification, transmission

of information and facilitation of the exercise of shareholder rights. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Amendment 22

Proposal for a directive Recital 21

Text proposed by the Commission

(21) In order to ensure uniform conditions for the implementation of the provisions on ***shareholder identification, transmission of information, facilitation of the exercise of shareholder rights*** and the remuneration report, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Amendment

(21) In order to ensure uniform conditions for the implementation of the provisions on the remuneration report, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Amendment 23

Proposal for a directive

Recital 22

Text proposed by the Commission

(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.

Amendment

(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 ***as included in national law***. To that end, penalties should be sufficiently dissuasive and proportionate.

Amendment 24

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point a – introductory part

Text proposed by the Commission

(a) ***In*** Paragraph 1, ***the following sentence is added***:

Amendment

(a) Paragraph 1 ***is amended as follows***:

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point a

Directive 2007/36/EC

Article 1 – paragraph 1 – subparagraph 2

Text proposed by the Commission

It also establishes requirements for ***intermediaries used by shareholders to ensure that shareholders can be identified, creates transparency on the engagement policies of certain types of investors and creates additional rights for shareholders to oversee companies.***

Amendment

This Directive establishes requirements in relation to the exercise of certain shareholder rights attaching to voting shares in relation to general meetings of companies which have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State. It also establishes requirements for the identification of

shareholders, *the transmission of information and the facilitation of the exercise of shareholder rights; enhances transparency rules for institutional investors, asset managers and proxy advisors*; and creates additional rights for shareholders to oversee companies.

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive 2007/36/EC

Article 1 – paragraph 4

Text proposed by the Commission

4. Chapter Ib shall apply to institutional investors and to asset managers to the extent that they invest, directly or through a collective investment undertaking, on behalf of institutional investors, in so far they invest in shares.

Amendment

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

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2007/36/EC

Article 2 – point f

Text proposed by the Commission

(f) ‘institutional investor’ means an undertaking carrying out activities of life assurance within the meaning of Article 2(1)(a) and not excluded pursuant to *article* 3 of Directive 2002/83/EC of the European Parliament and of the Council⁹ and an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council¹⁰

Amendment

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

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;

⁹ *Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1).*

¹⁰ 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).

within the scope of Directive 2003/41/EC of the European Parliament and of the Council¹⁰ 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;

⁹ *Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1)*

¹⁰ 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).

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2007/36/EC

Article 2 – point g

Text proposed by the Commission

(g) ‘asset manager’ means an investment firm as defined in point (1) of Article 4(1) of Directive **2004/39/EC** of the European Parliament and of the Council¹¹ providing portfolio management services to institutional investors, an AIFM (alternative investment fund manager) as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council¹² 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 Council¹³;

Amendment

(g) ‘asset manager’ means an investment firm as defined in point (1) of Article 4(1) of Directive **2014/65/EU** of the European Parliament and of the Council¹¹ providing portfolio management services to institutional investors, an AIFM (alternative investment fund manager) as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council¹² 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 Council¹³;

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;

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;

¹¹ *Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).*

¹¹ *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).*

¹² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

¹² Directive 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).

¹³ 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).

¹³ 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).

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2007/36/EC

Article 2 – point h

Text proposed by the Commission

(h) ‘shareholder engagement’ means the monitoring by a shareholder alone or together with other shareholders, of companies on matters such as strategy, performance, risk, capital structure and corporate governance, having a dialogue

Amendment

(h) ‘shareholder engagement’ means the monitoring by a shareholder, alone or together with other shareholders ***in an informal or formal grouping***, of companies on matters such as strategy, performance, ***agenda-setting***, risk, capital

with companies on these matters and voting at *the* general *meeting*.

structure, *human resources* and corporate governance, having a dialogue with companies, *and where relevant with other stakeholders involved*, on these matters and voting at general *meetings, and other activities related to such monitoring efforts*.

Justification

Shareholder engagement is not always about only having a dialogue with the company. It could also be about talking to the employees (or their representatives), to NGOs involved on issues related to the company's business or to other stakeholders.

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2007/36/EC

Article 2 – point 1

Text proposed by the Commission

(1) **'Director'** means any member of the administrative, management or supervisory bodies of a company;

Amendment

(1) **'director'** means any member of the administrative, management or supervisory bodies of a company, *or, if and to the extent that such bodies do not exist, an individual in a similar position*;

Justification

In some Member States, a definition centered only on formal bodies would not cover all individuals who should reasonably be seen as directors. This for example applies to a CEO in a system where there is no formal management body.

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2007/36/EC

Article 2 – point j a (new)

Text proposed by the Commission

Amendment

(ja) ‘stakeholder’ means any individual, group, organisation or local community that is affected by or otherwise has an interest in the operation and performance of a company;

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 2 a (new)

Directive 2007/36/EC

Article 2 a (new)

Text proposed by the Commission

Amendment

2a. The following Article is inserted:

“Article 2a

Data protection

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

Justification

This general provision, which would cover the Shareholder Right Directive as a whole, aims to underline that data protection rules should, whenever applicable, be fully respected.

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Chapter IA – article 3 a – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that ***intermediaries offer to*** companies the possibility to have their shareholders

1. Member States shall ensure that companies ***have*** the possibility to have

identified.

their shareholders identified.

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Chapter IA – article 3 a – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The contact details to be communicated shall consist only of the physical address, the e-mail address, the number of shares owned and the voting rights held.

Member States may provide that shareholders which have been identified shall have the possibility not to communicate with the relevant company. In that case, a mechanism shall be put in place to enable shareholders to easily make this wish known to the company.

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) Member States shall ensure that companies which have identified their shareholders make available to a shareholder, upon request, a list of the names and contact details of all identified shareholders which hold more than 0,5% of the shares.

Member States may allow companies to charge a fee for making such a list available to a shareholder. The fee and its calculation method shall be transparent

and non-discriminatory. Companies shall ensure that even if all shareholders request a list, the accumulated revenue from charging the fee is not higher than 50% of the actual costs incurred in relation to identifying the shareholders.

Justification

A key factor in well-functioning shareholder engagement is the dialogue between different shareholders on company matters. To facilitate such dialogue, it would make sense if shareholders could get the contact details of other shareholders, where available, from the company. The 0,5% limit is there to protect privacy.

Since companies incur costs for having the shareholders identified, it is reasonable if shareholders making use of lists cover part of the actual costs for identification.

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3a – paragraph 3

Text proposed by the Commission

3. Shareholders shall be duly informed by their intermediary that their name and contact details may be transmitted for the purpose of identification in accordance with this article. This information may only be used for the purpose of facilitation of the exercise of the rights of the shareholder. The company and the intermediary shall ensure that natural persons are able to rectify or erase any incomplete or inaccurate data and shall not conserve the information relating to the shareholder for longer than **24 months** after receiving it.

Amendment

3. Shareholders shall be duly informed by their intermediary that their name and contact details may be transmitted for the purpose of identification in accordance with this article. This information may only be used for the purpose of facilitation of the exercise of the rights of the shareholder. ***Shareholders receiving a list shall not disclose it. They shall only use it for contacting other shareholders on company-related matters.*** The company and the intermediary shall ensure that natural ***and legal*** persons are able to rectify or erase any incomplete or inaccurate data and shall not conserve the information relating to the shareholder for longer than ***four years*** after receiving it.

Justification

Shareholders getting a list should adhere to strict rules. In order for the mechanism in this Article to function properly, the list must not be dispersed and can only be used for starting dialogues with other shareholders. Moreover, all shareholders, not only natural persons, should be able to make corrections to the identification information.

Amendment 37

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3a – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that an intermediary that reports the name and contact details of a shareholder is **not** considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

Amendment

4. Member States shall ensure that **neither** an intermediary that reports the name and contact details of a shareholder, **nor a company that makes available a list of identified shareholders to a shareholder**, is considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

Justification

Adaption to reflect previous changes to the Article.

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3a – paragraph 5

Text proposed by the Commission

5. The Commission shall be empowered to adopt **implementing** acts to specify the requirements to transmit the information laid down in paragraphs 2 and 3 **including** as regards the information to be transmitted, the format of the request and

Amendment

5. The Commission shall be empowered to adopt **delegated** acts **in accordance with Article -14a** to specify the requirements to transmit the information laid down in paragraphs 2, **2a** and 3 as regards the information to be transmitted, the format of

the transmission and the deadlines to be complied with. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a (2).***

the request and the transmission and the deadlines to be complied with.

Justification

Since the task given to the Commission in this case is quite extensive, delegated acts are more appropriate than implementing acts. Delegated acts also make sure that Parliament gets substantial influence on the procedure.

Amendment 39

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3b – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that ***if*** a company ***chooses*** not ***to*** directly communicate with its shareholders, the information related to their shares shall be transmitted to them or, in accordance with the instructions given by the shareholder, to a third party, by the intermediary without undue delay in ***all of*** the following cases:

Amendment

1. Member States shall ensure that ***insofar as*** a company ***does*** not directly communicate with its shareholders, the information related to their shares shall be ***made available via the company's website, and shall be*** transmitted to them or, in accordance with the instructions given by the shareholder, to a third party, by the intermediary without undue delay in the following cases:

Amendment 40

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3b – paragraph 5

Text proposed by the Commission

5. The Commission shall be empowered to adopt ***implementing*** acts to specify the requirements to transmit information laid

Amendment

5. The Commission shall be empowered to adopt ***delegated*** acts ***in accordance with Article -14a*** to specify the requirements to

down in paragraphs 1 to 4 **including** as regards the content to be transmitted, the deadlines to be complied with and the types and format of information to be transmitted. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a (2).**

transmit information laid down in paragraphs 1 to 4 as regards the content to be transmitted, the deadlines to be complied with and the types and format of information to be transmitted.

Justification

Since the task given to the Commission in this case is quite extensive, delegated acts are more appropriate than implementing acts. Delegated acts also make sure that Parliament gets substantial influence on the procedure.

Amendment 41

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3c – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that companies confirm the votes cast in general meetings by or on behalf of shareholders. In case the intermediary casts the vote, it shall transmit the voting confirmation to the shareholder. Where there is more than one intermediary in the holding chain the confirmation shall be transmitted between intermediaries without undue delay.

Amendment

2. Member States shall ensure that companies, **at the request of shareholders**, confirm the votes cast in general meetings by or on behalf of shareholders. In case the intermediary casts the vote, it shall transmit the **requested** voting confirmation to the shareholder. Where there is more than one intermediary in the holding chain the **requested** confirmation shall be transmitted between intermediaries without undue delay.

Member States may provide that confirmation of the votes cast may be published by companies on their websites after the general meeting.

Justification

The costs and significant burden that would result from notifying all the shareholders who had cast a vote would be disproportionately high, particularly in the case of general meetings. Confirmation should therefore be transmitted only where shareholders request it.

Companies should also have the option of publishing confirmation of the votes cast on their websites.

Amendment 42

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3c – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt **implementing** acts to specify the requirements to facilitate the exercise of shareholder rights laid down in paragraphs 1 and 2 of this Article **including** as regards the type and content of the facilitation, the form of the voting confirmation and the deadlines to be complied with. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a(2).**

Amendment

3. The Commission shall be empowered to adopt **delegated** acts to specify the requirements to facilitate the exercise of shareholder rights laid down in paragraphs 1 and 2 of this Article as regards the type and content of the facilitation, the form of the voting confirmation and the deadlines to be complied with.

Justification

Since the task given to the Commission in this case is quite extensive, delegated acts are more appropriate than implementing acts. Delegated acts also make sure that Parliament gets substantial influence on the procedure.

Amendment 43

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3d – paragraph 1

Text proposed by the Commission

1. Member States shall **allow** intermediaries **to charge prices or fees for the service to be provided under this chapter. Intermediaries shall** publicly disclose prices, fees and any other charges

Amendment

1. Member States shall **ensure that** intermediaries publicly disclose, **separately for each service, the** prices, fees and any other charges for **all services** referred to in this chapter **that are not offered free of**

separately for *each service* referred to in this chapter. **charge.**

Justification

It needs to be clarified that all charges should be disclosed.

Amendment 44

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3d – paragraph 2

Text proposed by the Commission

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 proportional. Any **differences** in the charges levied between **domestic and cross-border exercise of rights shall be duly justified.**

Amendment

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 proportional. Any **variation** in the charges levied between **different service users shall reflect a variation in actual costs incurred for delivering the services. Charges shall not be differentiated on the basis of nationality.**

Justification

The reference to actual costs incurred is a way to clarify what non-discriminatory and proportional means in operational terms. Furthermore, in order to safeguard the integrity and functioning of the internal market, it needs to be specifically pointed out that charges must never be differentiated on the basis of nationality.

Amendment 45

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3f – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) to conduct dialogue and cooperate with other stakeholders of the investee companies.

Amendment 46

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3f – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the institutional investor or the asset manager, or other companies affiliated to them, offer financial products to or have other commercial relationships with the investee company;

(a) the institutional investor or the asset manager, or other companies affiliated to them, ***or a proxy advisor involved***, offer financial products to or have other commercial relationships with the investee company;

Amendment 47

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3f – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that institutional investors and asset managers publicly disclose on an annual basis their engagement policy, how it has been implemented and the results thereof. The information referred to in the first sentence shall at least be available on the ***company's*** website. Institutional investors and asset managers shall, for each company in which they hold shares, disclose if and how they cast their votes in the general meetings of the companies concerned and provide an

3. Member States shall ensure that institutional investors and asset managers publicly disclose on an annual basis their engagement policy, how it has been implemented and the results thereof. The information referred to in the first sentence shall at least be available, ***free of charge and in a prominent position***, on the ***institutional investor's and asset manager's*** website. Institutional investors and asset managers shall, for each company in which they hold shares,

explanation for their voting behaviour. Where an asset manager casts votes on behalf of an institutional investor, the institutional investor shall make a reference as to where such voting information has been published by the asset manager.

disclose if and how they cast their votes in the general meetings of the companies concerned and provide an explanation for their voting behaviour. Where an asset manager casts votes on behalf of an institutional investor, the institutional investor shall make a reference as to where such voting information has been published by the asset manager. ***If, in exceptional cases, the information on voting is very extensive, the disclosure obligation in that regard may be complied with by disclosing an accurate summary of that information.***

Justification

It is important that the information can be accessed free of charge. Moreover, where investors and managers are engaged in hundreds or thousands of companies, there should exceptionally be a possibility for them to summarize the voting information.

Amendment 48

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3f – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States may provide that, in exceptional cases, an institutional investor or an asset manager may be allowed, if approved by the competent authority, to abstain from disclosing a certain part of the information to be disclosed under this Article if that part relates to impending developments or matters in the course of negotiation and the disclosure of it would be seriously prejudicial to the commercial position of the institutional investor, the asset manager or an investee company.

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3f – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Justification

In order to make sure that the legislation is reasonably efficient and that there is a level playing field, all institutional investors and asset managers should be obliged to develop an engagement policy and to be transparent about its application. This is a very basic demand which can easily be met by all actors which already run a solid and well-organised business operation.

Amendment 50

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3g – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that institutional investors disclose to the public how their equity investment strategy (“investment strategy”) is aligned with the profile and duration of their liabilities and how it contributes to the medium to long-term performance of their assets. The information referred to in the first sentence shall at least be available on the **company's** website as long as it is applicable.

1. Member States shall ensure that institutional investors disclose to the public how their equity investment strategy (“investment strategy”) is aligned with the profile and duration of their liabilities and how it contributes to the medium to long-term performance of their assets. The information referred to in the first sentence shall at least be available, **free of charge**, on the **institutional investor's** website as long as it is applicable.

Amendment 51

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3g – paragraph 2 – point e

Text proposed by the Commission

(e) the targeted portfolio turnover or turnover range, the method used for the turnover calculation, and whether any procedure is established when this is exceeded by the asset manager;

Amendment

(e) **were applicable**, the targeted portfolio turnover or turnover range, the method used for the turnover calculation, and whether any procedure is established when this is exceeded by the asset manager;

Amendment 52

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3g – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If, in exceptional cases, an institutional investor makes use of a very large number of asset managers, the disclosure obligation in this Article may be complied with by disclosing an accurate summary of the information required.

Amendment 53

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3g – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States may provide that, in

exceptional cases, an institutional investor may be allowed, if approved by the competent authority, to abstain from disclosing a certain part of the information to be disclosed under this Article if that part relates to impending developments or matters in the course of negotiation and the disclosure of it would be seriously prejudicial to the commercial position of the institutional investor or an asset manager.

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3g – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

Justification

All institutional investors and asset managers should publish these aspects of their investment strategy. To leave it to the individual firm to decide whether to comply or explain why they decided not to publish certain aspects of their investment strategy undermines the effectiveness of this article and distorts the level playing field between the different asset managers and institutional investors.

Amendment 55

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that asset managers disclose ***on a half-yearly basis to the institutional investor with which they have entered into the arrangement referred to in Article 3g(2)*** how their investment strategy and implementation thereof complies with ***that arrangement and how the investment strategy and implementation thereof contributes to medium to long-term performance of the assets of the institutional investor.***

1. Member States shall ensure that asset managers disclose, ***as specified in paragraphs 2 and 2a***, how their investment strategy and implementation thereof complies with ***the arrangement referred to in Article 3g(2).***

Justification

The set of changes to this Article aims at enhancing transparency. The public should be able to follow how asset managers deliver on mandates from investors (Art 3g). Still, information which could be sensitive, and is not needed for the public to assess the long-term perspective or aspects of shareholder engagement, should only be disclosed to the investor. Such disclosure is particularly useful when there is an imbalance between big asset managers and small institutional investors.

Amendment 56

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Member States shall ensure that asset managers disclose to the ***institutional investor on a half-yearly basis*** all of the following information:

2. Member States shall ensure that asset managers ***annually*** disclose to the ***public*** all of the following information:

Amendment 57

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) how the portfolio was composed and provide an explanation of significant changes in the portfolio in the previous period;

deleted

Amendment 58

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) portfolio turnover costs;

deleted

Amendment 59

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) their policy on securities lending and the implementation thereof;

deleted

Amendment 60

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(ga) how, overall, the investment strategy and implementation thereof contributes to

the medium- to long-term performance of the assets of the institutional investor.

Amendment 61

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

(a) how the portfolio was composed and provide an explanation of significant changes in the portfolio in the previous period;

(b) portfolio turnover costs;

(c) their policy on securities lending and the implementation thereof.

Amendment 62

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 3

Text proposed by the Commission

Amendment

3. The information disclosed pursuant to paragraph 2 shall be provided free of charge and, in case the asset manager does not manage the assets on a discretionary client-by-client basis, it shall also be provided to other investors on request.

3. The information disclosed pursuant to paragraph 2 shall ***at least be available, free of charge, on the asset manager's website. The information disclosed pursuant to paragraph 2a shall*** be provided free of charge and, in case the asset manager does not manage the assets on a discretionary

client-by-client basis, it shall also be provided to other investors on request.

Amendment 63

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. If an asset manager is obliged by other acts of Union law to disclose investment related information, this Article shall not apply to information that is already covered in such acts.

Amendment 64

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Member States may provide that, in exceptional cases, an asset manager may be allowed, if approved by the competent authority, to abstain from disclosing a certain part of the information to be disclosed under this Article if that part relates to impending developments or matters in the course of negotiation and the disclosure of it would be seriously prejudicial to the commercial position of the asset manager or an institutional investor.

Amendment 65

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3i – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that proxy advisors adopt and implement adequate measures to guarantee that their voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them.

Amendment

1. Member States shall ensure that proxy advisors adopt and implement adequate measures to guarantee that their voting recommendations are accurate and reliable, ***that they are*** based on a thorough analysis of all the information that is available to them, ***that they are developed only in the best interest of the client and that they are made available in good time before the vote.***

Justification

A key problem regarding proxy advisors is that some of them sometimes tend to work for different stakeholders at the same time. This is not reasonable. It therefore needs to be underlined that the proxy advisors – when preparing voting recommendations for institutional investors or asset managers – should exclusively work in the interest of those clients.

Amendment 66

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3i – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) whether they seek to comply with a code of conduct, or any similar arrangement, and, if so, which one and where information about it can be found;

Justification

Whether or not a code of conduct is used is highly relevant in this context.

Amendment 67

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3i – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the organisational arrangements in place to identify and avoid any potential or actual conflict of interest;

Amendment 68

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3i – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) whether they ***have dialogues*** with the companies which are the object of their voting recommendations, and, if so, the extent and nature ***thereof***;

(d) whether they ***communicate*** with the companies which are the object of their voting recommendations, and, if so, the extent and nature ***of that communication***;

Amendment 69

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3i – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

That information shall be published on their website and remain available for at least ***three*** years from the day of publication.

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

Amendment 70

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3i – paragraph 3

Text proposed by the Commission

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

Amendment

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

Justification

See the justification of the amendment on paragraph 1. When preparing voting recommendations, proxy advisors should only work in the interest of their clients. The proxy advisors often have a dialogue with the companies, but should not have any specific obligations towards them.

Amendment 71

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9a – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall ensure that shareholders have the right to vote on the remuneration policy as regards directors. Companies shall only pay remuneration to their directors in accordance with a remuneration policy that has been approved by shareholders. The policy shall be submitted for approval by the shareholders at least every three years.

Amendment

1. Member States shall ensure that shareholders have the right to vote **at the general meeting** on the remuneration policy as regards directors. Companies shall only pay remuneration to their directors in accordance with a remuneration policy that has been approved by shareholders. The policy shall be submitted for approval by the shareholders **in the event of a proposed**

change to the policy and, as long as no change is proposed, at least every three years.

Amendment 72

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9a – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In cases where no remuneration policy has been implemented previously and shareholders reject the draft policy submitted to them, the company may, while reworking the draft and for a period of no longer than one year before the draft is adopted, pay remuneration to its directors in accordance with existing practices. In cases where there is an existing remuneration policy and shareholders reject a draft policy submitted to them in line with subparagraph 1, the company may, while reworking the draft and for a period of no longer than one year before the draft is adopted, pay remuneration to its directors in accordance with the existing policy.

Justification

For the sake of clarity, it needs to be sorted out what happens if draft policies are rejected by shareholders.

Amendment 73

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9a – paragraph 1 – subparagraph 2

Text proposed by the Commission

Companies may, in **case of recruitment of new board members**, decide to pay remuneration to an individual director outside the approved policy, **where the remuneration package of the individual director has received prior approval by shareholders on the basis of information on the matters referred to in paragraph 3**. The remuneration may be awarded provisionally pending approval by the shareholders.

Amendment

Companies may in **exceptional cases, when recruiting new directors**, decide to pay remuneration to an individual director outside the approved policy. The remuneration may be awarded provisionally pending approval by the shareholders **at the next general meeting. However, this option of making a derogation may only be used once in the application of an approved policy**.

Justification

In order for a system with remuneration policies to be rational and meaningful, the policies cannot too often or too much be put to the side. Therefore, an exemption from a policy should only be accepted if it affects maximum amounts of remuneration and the situation is exceptional – for example if the company is in a leadership crisis. If a company has gone beyond a policy once and wants to do so again, it is reasonable that it presents a proposal for a revised policy to the shareholders.

Amendment 74

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9a – paragraph 3 – subparagraph 1

Text proposed by the Commission

The policy shall explain how it contributes to the long-term interests and sustainability of the company. It shall **set** clear **criteria** for the award of fixed and variable remuneration, **including all benefits in whatever form**.

Amendment

The policy shall explain how it contributes to **the company strategy and to** the long-term interests and sustainability of the company. It shall **establish** clear **and comprehensive provisions** for the award of **all types of** fixed and variable remuneration.

Amendment 75

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9a – paragraph 3 – subparagraph 2

Text proposed by the Commission

The policy shall indicate the maximum **amounts** of total remuneration that can be **awarded**, and the corresponding relative proportion of the different components of fixed and variable remuneration. It shall explain how the pay and employment conditions of employees of the company were taken into account when setting the policy **or directors' remuneration by explaining** the ratio between the average remuneration of directors and the average remuneration of **full time** employees of the company other than directors and why this ratio is considered appropriate. **The policy may exceptionally be without a ratio in case of exceptional circumstances. In that case, it shall explain why there is no ratio and which measures with the same effect have been taken.**

Amendment

The policy shall, **at least**, indicate the maximum **levels** of total remuneration that can be **applied**, and the corresponding relative proportion of the different components of fixed and variable remuneration. It shall explain how the pay and employment conditions of employees of the company were taken into account when setting the policy. **In this context, Member States shall ensure that the policy explains the projected ratio between the average annual percentage change in the remuneration of directors and the average annual percentage change in the full time remuneration of employees of the company other than directors and why this ratio is considered appropriate. Moreover, Member States may provide that the policy shall explain the ratio between the average remuneration of directors and the average full time remuneration of employees of the company other than directors and why this ratio is considered appropriate. When calculating those ratios, the remuneration of part time employees shall be included on full time equivalent terms. Member States may also establish a maximum limit for the ratio between the average remuneration of directors and the average full time remuneration of employees.**

Amendment 76

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9a – paragraph 3 – subparagraph 4 a (new)

Text proposed by the Commission

Amendment

The policy shall clarify the company's procedures for taking decisions on remuneration of directors, including, where applicable, the role and functioning of the remuneration committee.

Justification

Shareholders quite often find it difficult to follow and understand the decision-making procedures regarding remuneration. More clarity and transparency on this would therefore be useful.

Amendment 77

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9a – paragraph 3 – subparagraph 5

Text proposed by the Commission

Amendment

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

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

Amendment 78

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9b – paragraph 1 – point b

Text proposed by the Commission

(b) the relative change of the remuneration of directors over the last three financial years, its relation to the development of the value of the company and to change in the average remuneration of **full time** employees of the company other than directors;

Amendment

(b) the relative change of the remuneration of directors over the last three financial years, its relation to the development of the value **and general performance** of the company and to change in the average **full-time** remuneration of employees of the company other than directors, **where the remuneration of part-time employees is included on full-time equivalent terms**;

Justification

Not only the development of the value is relevant in this regard, but also of other aspects of the performance. Furthermore, in some companies, part time employees are a substantial part of the workforce. Thus, for this information to be accurate, the wages of these employees should be included on full time terms.

Amendment 79

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9b – paragraph 1 – point c

Text proposed by the Commission

(c) any remuneration received by directors of the company from any undertaking belonging to the same group;

Amendment

(c) any remuneration received by **or still due to** directors of the company from any undertaking belonging to the same group;

Amendment 80

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC
Article 9b – paragraph 1 – point d

Text proposed by the Commission

(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;

Amendment

(d) the number of shares and share options granted, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof;

Amendment 81

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC
Article 9b – paragraph 1 – point f

Text proposed by the Commission

(f) information on how the remuneration of directors was established, including on the role of the remuneration committee.

Amendment

(f) information on how the remuneration of directors was established, including, **where applicable**, on the role of the remuneration committee.

Amendment 82

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC
Article 9b – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) in Member States applying provisions on the ratio between the average remuneration of directors and the average full time remuneration of employees, information on the current ratio and on how the ratio has developed over the last three financial years.

Amendment 83

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9b – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that ***the right to privacy of natural persons is protected in accordance with Directive 95/46/EC when personal data of the director are processed.***

Amendment

2. Member States shall ensure that ***information on the remuneration of individual directors is only disclosed in order to facilitate the exercise of shareholder rights and to allow for transparency and accountability regarding their performance as directors. Sensitive data on health and other categories referred to in Article 8 of Directive 95/46/EC shall not be disclosed. Companies shall take appropriate measures to limit public access to personal data when such data, a number of years after its initial disclosure, is no longer of key relevance for the facilitation of the exercise of shareholder rights.***

Justification

This is to further clarify which specific implications Directive 95/46 would reasonably have. Limiting public access to personal data should not be about erasing such data, but for example about taking out direct links to it on the company website.

Amendment 84

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9b – paragraph 3

Text proposed by the Commission

3. Member States ***shall ensure*** that shareholders have the right to vote on the remuneration report of the past financial year during the annual general meeting. Where the shareholders vote against the

Amendment

3. Member States ***may provide*** that shareholders ***shall*** have the right to vote on the remuneration report of the past financial year during the annual general meeting. Where the shareholders vote

remuneration report the company shall explain in the next remuneration report ***whether or not and, if so***, how, the vote of the shareholders ***has*** been taken into account.

against the remuneration report ***there shall, immediately after the vote, be an open exchange of views where shareholders can clarify the reasons for the rejection.*** The company shall explain in the next remuneration report how the vote ***and statements*** of the shareholders ***have*** been taken into account.

Justification

A no vote from shareholders should always be taken seriously by the company. Passivity is not acceptable. The company should work actively to sort out what shareholders believe is wrong and to make the necessary corrections.

Amendment 85

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9b – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The provisions on remuneration in this Article and Article 9a shall be without prejudice to national systems of wage formation for employees and, where applicable, to national provisions on the representation of employees on boards.

Justification

It needs to be made clear that there is a difference between procedures for establishing the remuneration of directors and systems of wage formation for employees. This Directive should not interfere with those systems. Furthermore, this Directive should have no impact on the rules on employee representation on boards which exist in a number of Member States.

Amendment 86

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9c – paragraph 1– subparagraph 1

Text proposed by the Commission

1. Member States shall ensure that companies, in case of transactions with related parties that represent more than 1% of their assets, publicly announce such transactions at the time of the conclusion of the transaction, ***and accompany the announcement by a report from an independent third party assessing whether or not it is on market terms and confirming that the transaction is fair and reasonable from the perspective of the shareholders, including minority shareholders.*** The announcement shall contain information on the nature of the related party relationship, the name of the related party, the amount of the transaction and any other information necessary to assess the transaction

Amendment 87

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9c – paragraph 1– subparagraph 2

Text proposed by the Commission

Member States may provide that companies can request their shareholders to exempt them from the requirement of subparagraph 1 ***to accompany the announcement of the transaction with a related party by a report from an independent third party*** in case of clearly defined types of recurrent transactions with an identified related party in a period of not longer than 12 months after granting the exemption. Where the related party transactions involve a shareholder, this shareholder shall be excluded from the vote on the advance exemption.

Amendment

1. Member States shall ensure that companies, in case of transactions with related parties that represent more than 1% of their assets, publicly announce such transactions ***no later than*** at the time of the conclusion of the transaction. The announcement shall contain information on the nature of the related party relationship, the name of the related party, the amount of the transaction and any other information necessary to assess the transaction.

Amendment

Member States may provide that companies can request their shareholders to exempt them from the ***disclosure*** requirement of subparagraph 1 in case of clearly defined types of recurrent transactions with an identified related party in a period of not longer than 12 months after granting the exemption. Where the related party transactions involve a shareholder, this shareholder shall be excluded from the vote on the advance exemption. ***As soon as the period for the advanced exemption has expired, the company shall publicly announce, with the same information content as in***

subparagraph 1, all transactions that have been carried out under the exemption.

Justification

This option of simplifying the handling of standard related party transactions should be made available to companies in all Member States.

Amendment 88

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9c – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Member States shall ensure that transactions with related parties representing more than 5% of the companies' assets ***or transactions which can have a significant impact on profits or turnover*** are submitted to a vote by the shareholders in a general meeting. Where the related party transaction involves a shareholder, this shareholder shall be excluded from that vote. The company shall not conclude the transaction before the shareholders' approval of the transaction. The company may however conclude the transaction under the condition of shareholder approval.

Amendment

2. Member States shall ensure that transactions ***which are not concluded on standard terms in the ordinary course of business*** with related parties representing more than 5% of the companies' assets are submitted to a vote by the shareholders in a general meeting. Where the related party transaction involves a shareholder, this shareholder shall be excluded from that vote. The company shall not conclude the transaction before the shareholders' approval of the transaction. The company may however conclude the transaction under the condition of shareholder approval.

Justification

While this general provision makes sense in theory, it would be very cumbersome to implement in practice. The uncertainty that it would engender would not be proportionate to the benefits of including it.

Amendment 89

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2007/36/EC

Article 9c – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States *may* provide that companies can request the advance approval by shareholders of the transactions referred to in subparagraph 1 in case of clearly defined types of recurrent transactions with an identified related party in a period of not longer than 12 months after the advance approval of the transactions. Where the related party transactions involve a shareholder, this shareholder shall be excluded from the vote on the advance approval.

Amendment

Member States *shall* provide that companies can request the advance approval by shareholders of the transactions referred to in subparagraph 1 in case of clearly defined types of recurrent transactions with an identified related party in a period of not longer than 12 months after the advance approval of the transactions. Where the related party transactions involve a shareholder, this shareholder shall be excluded from the vote on the advance approval.

Justification

Also in this case, the option of simplifying the handling of standard related party transactions should be made available to companies in all Member States.

Amendment 90

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2007/36/EC

Chapter IIA – title

Text proposed by the Commission

CHAPTER IIA
IMPLEMENTING ACTS AND
PENALTIES

Amendment

CHAPTER IIA
DELEGATED ACTS, IMPLEMENTING
ACTS AND PENALTIES

Amendment 91

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2007/36/EC

Article -14a (new)

Article -14a

Exercise of delegated powers

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.**
 - 2. The power to adopt delegated acts referred to in Article 3a(5), Article 3b(5) and Article 3c(3) shall be conferred on the Commission for an indeterminate period of time from ...*.**
 - 3. The delegation of power referred to in Article 3a(5), Article 3b(5) and Article 3c(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of that decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.**
 - 4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.**
 - 5. A delegated act adopted pursuant to Article 3a(5), Article 3b(5) and Article 3c(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.**
-

** OJ: Please insert the date of entry into force of this Directive.*

Amendment 92

Proposal for a directive
Article 2 – paragraph -1 (new)
Directive 2013/34/EU
Article 18 a (new)

Text proposed by the Commission

Amendment

The following Article is inserted:

“Article 18a

Additional disclosure for large undertakings

In the notes to the financial statements, large undertakings shall, in addition to the information required under Articles 16, 17, 18 and any other provisions of this Directive, publicly disclose information in respect of the following matters, specifying by Member State and by third country in which it has a subsidiary:

- a) name(s), nature of activities and geographical location;*
- b) turnover;*
- c) number of employees on a full time equivalent basis;*
- d) profit or loss before tax;*
- e) tax on profit or loss;*
- f) public subsidies received.*

2. Undertakings whose average number of employees on a consolidated basis during the financial year does not exceed 500 and, on their balance sheet dates, do not exceed on a consolidated basis either a balance sheet total of €86 million or a net turnover of €100 million shall be exempt from the obligation set out in paragraph 1

of this Article.

3. The obligation set out in paragraph 1 of this Article shall not apply to any undertaking governed by the law of a Member State whose parent undertaking is subject to the laws of a Member State and whose information is included in the information disclosed by that parent undertaking in accordance with paragraph 1 of this Article.

4. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC*.

5. The Commission shall conduct a general assessment as regards potential negative economic consequences of the public disclosure of the information referred to in paragraph 1, including the impact on competitiveness and investment. The Commission shall submit its report to the European Parliament and to the Council by 1 July 2016.

In the event that the Commission report identifies significant negative effects, the Commission shall consider making an appropriate legislative proposal for an amendment of the disclosure obligations set out in paragraph 1 and may decide to defer those obligations. The Commission shall review the necessity to extend deferral annually.

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

Amendment 93

Proposal for a directive

Article 2 a (new)

Directive 2004/109/EC

Article 16 a (new)

Text proposed by the Commission

Amendment

Article 2a

Amendments to Directive 2004/109/EC

Directive 2004/109/EC is amended as follows:

The following Article is inserted:

"Article 16a

Additional disclosure for issuers

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

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

b) turnover;

c) number of employees on a full time equivalent basis;

d) profit or loss before tax;

e) tax on profit or loss;

f) public subsidies received.

2. The obligation set out in paragraph 1 of this article shall not apply to any issuer governed by the law of a Member State whose parent company is subject to the laws of a Member State and whose information is included in the information disclosed by that parent company in accordance with paragraph 1 of this article.

3. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC

and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the issuer concerned.

4. The Commission shall conduct a general assessment as regards potential negative economic consequences of the public disclosure of the information referred to in paragraph 1, including the impact on competitiveness and investment. The Commission shall submit its report to the European Parliament and to the Council by 1 July 2016."

In the event that the Commission report identifies significant negative effects, the Commission shall consider making an appropriate legislative proposal for an amendment of the disclosure obligations set out in paragraph 1 and may decide to defer those obligations. The Commission shall review the necessity to extend deferral annually."

PROCEDURE

Title	Amendment to Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and to Directive 2013/34/EU as regards certain elements of the corporate governance statement
References	COM(2014)0213 – C7-0147/2014 – 2014/0121(COD)
Committee responsible Date announced in plenary	JURI 16.4.2014
Opinion by Date announced in plenary	ECON 16.4.2014
Rapporteur Date appointed	Olle Ludvigsson 22.7.2014
Discussed in committee	8.12.2014 26.1.2015
Date adopted	24.2.2015
Result of final vote	+: 38 –: 16 0: 5
Members present for the final vote	Burkhard Balz, Hugues Bayet, Pervenche Berès, Udo Bullmann, Esther de Lange, Fabio De Masi, Anneliese Dodds, Markus Ferber, Jonás Fernández, Elisa Ferreira, Sven Giegold, Neena Gill, Sylvie Goulard, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Cătălin Sorin Ivan, Petr Ježek, Othmar Karas, Georgios Kyrtos, Philippe Lamberts, Werner Langen, Sander Loones, Bernd Lucke, Olle Ludvigsson, Ivana Maletić, Fulvio Martusciello, Costas Mavrides, Bernard Monot, Luděk Niedermayer, Patrick O’Flynn, Stanisław Ożóg, Dimitrios Papadimoulis, Dariusz Rosati, Alfred Sant, Molly Scott Cato, Peter Simon, Renato Soru, Theodor Dumitru Stolojan, Paul Tang, Sampo Terho, Ramon Tremosa i Balcells, Ernest Urtegas, Marco Valli, Tom Vandenkendelaere, Cora van Nieuwenhuizen, Miguel Viegas, Steven Woolfe, Pablo Zalba Bidegain, Marco Zanni, Sotirios Zarianopoulos
Substitutes present for the final vote	Ashley Fox, Eva Kaili, Syed Kamall, Barbara Kappel, Thomas Mann, Siegfried Mureşan, Eva Paunova
Substitutes under Rule 200(2) present for the final vote	Gesine Meissner