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Committee on Legal Affairs

2014/0121(COD)

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DRAFT REPORT

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))

Committee on Legal Affairs

Rapporteur: Sergio Gaetano Cofferati

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ¶ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2014)0213),
 - having regard to Article 294(2) and Articles 50 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0147/2014),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 9 July 2014,¹
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A8-0000/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The financial crisis has revealed that shareholders in many cases supported

Amendment

(2) *Although they do not own corporations, which are separate legal*

¹ OJ C 451, 16.12.2014, p. 87.

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.

entities beyond their full control, shareholders play a relevant role in the governance of those corporations. The financial crisis has revealed that shareholders in many cases supported managers' excessive short-term risk taking. Moreover, there is clear evidence that the current engagement by institutional investors and asset managers *in investee companies* is inadequate *and too much focused on short-term returns*, which *leads* to suboptimal corporate governance and performance of listed companies.

Or. en

Amendment 2

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) In order to steer companies towards decision-making processes that focus on their long term financial and non-financial sustainability and performance, it is important to provide also for legislative measures that complement this Directive and foster and encourage stakeholders' involvement, and in particular employees' involvement.

Or. en

Amendment 3

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(7) In order to promote equity investment throughout the Union and the exercise of

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

rights related to shares, this Directive should *establish a high degree of transparency with regard to prices, fees and charges for services provided by intermediaries*. *In order to* prevent price discrimination of cross-border as opposed to purely domestic share holdings, *any differences in the charges levied between domestic and cross-border exercise of rights should be duly justified and should reflect the variation in actual costs incurred for delivering the services provided by intermediaries*. Third country intermediaries which have established a branch in the Union should be subject to the rules on shareholder identification, transmission of information, facilitation of shareholder rights and transparency of prices, fee and charges to ensure effective application of the provisions on shares held via such intermediaries;

Or. en

Amendment 4

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 *a relevant element* of listed companies' corporate governance model, which depends on checks and balances between the different organs and different stakeholders. *Proper involvement of stakeholders, in particular employees, should be considered an element of utmost importance in developing a balanced European framework on corporate governance.*

Or. en

Amendment 5

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 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**.

Amendment

(9) Institutional investors and asset managers are **often** important shareholders of listed companies in the Union and therefore can play **a significant** role in the corporate governance of these companies, but also more generally with regard to the strategy and long-term performance of these companies. However, the experience of the last years has shown that institutional investors and asset managers often do not engage **properly** with companies in which they hold shares and evidence shows that capital markets exert pressure on companies to perform in the short term, which **jeopardizes long-term financial and non-financial performance of companies and leads, among several other negative consequences**, to a suboptimal level of investments, **for example** in research and development to the detriment **of** long-term performance of the companies.

Or. en

Amendment 6

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Long-term shareholding provides more stability for companies and usually encourages them to focus their strategies on long-term financial and non-financial performance. In order to encourage positive and long-term shareholder engagement, mechanisms incentivising

long-term shareholding should be put in place.

Or. en

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 investment strategies and their engagement policy and the implementation thereof. Public disclosure of such information **would** have a positive impact on investor awareness, enable ultimate beneficiaries such as future pensioners optimise investment decisions, facilitate the dialogue between companies and their shareholders, **enhance** shareholder engagement and strengthen companies' accountability to **stakeholders and** civil society.

Or. en

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 investment strategy, monitor investee companies, conduct dialogues with investee companies and exercise voting

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 **their stakeholders,**

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.***

and exercise voting rights. Such engagement policy should include policies to manage actual or potential conflicts of interests, such as the provision of financial services by the institutional investor or asset manager, or companies affiliated to them, to the investee company. This policy, its implementation and the results thereof should be publicly disclosed ***and sent to the institutional investors' clients*** on an annual basis.

Or. en

Amendment 9

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

Amendment

(12) Institutional investors should annually disclose to the public how their investment strategy is aligned with the profile and duration of their liabilities and how it contributes to the medium to long-term performance of their assets. Where they make use of asset managers, either through discretionary mandates involving the management of assets on an individual basis or through pooled funds, they should disclose to the public the main elements of the arrangement with the asset manager with regard to a number of issues, such as whether it incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, whether it incentivises the asset manager to make investment decisions based on medium to long-term company

performance and to engage with companies, how it evaluates the asset managers performance, the structure of the consideration for the asset management services and the targeted portfolio turnover. This would contribute to a proper alignment of interests between the final beneficiaries of institutional investors, the asset managers and the investee companies and potentially to the development of longer-term investment strategies and longer-term relationships with investee companies involving shareholder engagement.

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.

Or. en

Amendment 10

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

Amendment

(13) Asset managers should be required to **publicly** disclose how their investment strategy and the implementation thereof is in accordance with the asset management arrangement and how the investment strategy and decisions contributes to medium to long-term performance of the assets of the institutional investor. Moreover, they should **publicly** disclose **the portfolio turnover**, whether they make investment decisions on the basis of judgements about medium-to long-term performance of the investee company and whether the asset manager uses proxy advisors for the purpose of their engagement activities. **Further information should be disclosed by the asset managers directly to the institutional investors, including information on the portfolio composition, on the portfolio turnover costs, on conflicts of interest which have arisen and how they have**

shareholder engagement.

been dealt with. 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.

Or. en

Amendment 11

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 **ensure** that their voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them and are not affected by any existing or potential conflict of interest or business relationship. ***Proxy advisors should adopt and follow a code of conduct. Departures from the code should be declared and explained, together with any alternative solutions that have been adopted. Proxy advisors should report on the application of their code of conduct on a yearly basis.*** They should disclose certain key information related to the preparation of their voting recommendations and any actual or potential conflict of interest or business relationships that may influence the preparation of the voting recommendations.

Or. en

Amendment 12

Proposal for a directive Recital 15

Text proposed by the Commission

(15) Since remuneration is one of the key instruments for companies to align their interests and those of their directors and in view of the crucial role of directors in companies, it is important that the remuneration policy of companies is determined in an appropriate manner. Without prejudice to the provisions on remuneration of Directive 2013/36/EU of the European Parliament and of the Council¹⁷ ***listed companies and their shareholders should have the possibility to define the remuneration policy of the directors of their company.***

¹⁷ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (OJ L 176, 27.6.2013, p. 338..)

Amendment

(15) Since remuneration is one of the key instruments for companies to align their interests and those of their directors and in view of the crucial role of directors in companies, it is important that the remuneration policy of companies is determined in an appropriate manner, without prejudice to the provisions on remuneration of Directive 2013/36/EU of the European Parliament and of the Council.¹⁷ ***Directors' performance should be assessed using both financial and non-financial criteria, including environmental, social and governance factors.***

¹⁷ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (OJ L 176, 27.6.2013, p. 338).

Or. en

Amendment 13

Proposal for a directive Recital 16

Text proposed by the Commission

(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

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.

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. ***Employees should be entitled, via their representatives, to express a view on the remuneration policy before it is submitted to shareholders.*** The approved remuneration policy should be publicly disclosed without delay.

Or. en

Amendment 14

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 order to ensure accountability of directors the remuneration report should be clear and understandable and should provide a comprehensive overview of the remuneration granted to individual directors in the last financial year. Where the shareholders vote against the remuneration report, the ***company should, where necessary, enter into a dialogue with the shareholders in order to identify the reasons for rejection.*** The company should explain in the next remuneration report how the vote of the shareholders has been taken into account. ***Employees should be entitled, via their representatives, to express a view on the remuneration report***

before it is submitted to shareholders.

Or. en

Amendment 15

Proposal for a directive

Recital 18

Text proposed by the Commission

(18) In order to provide shareholders easy access to all relevant corporate governance information the remuneration report should be part of the corporate governance statement that listed companies should publish in accordance with article 20 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013¹⁸.

¹⁸ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19)

Amendment

(18) In order to provide **stakeholders**, shareholders **and civil society** easy access to all relevant corporate governance information the remuneration report should be part of the corporate governance statement that listed companies should publish in accordance with article 20 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013¹⁸.

¹⁸ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Or. en

Amendment 16

Proposal for a directive

Recital 19

Text proposed by the Commission

(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 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

Amendment

(19) Transactions with related parties may cause prejudice to companies, as they may give the related party the opportunity to appropriate value belonging to the company. Thus, adequate safeguards for the protection of **companies'** interests are of importance. For this reason Member States should ensure that 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 **prevented from having a determining role in the** 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 **latest at the** time of the conclusion of 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 **company**. 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 percent of the assets, and to request from shareholders an advance exemption from the obligation to produce an independent third party report for recurrent transactions above 1 percent of the assets, under certain conditions, in order to facilitate the conclusion of such transactions by companies.

transactions by companies.

Or. en

Amendment 17

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 1995¹⁹ it is necessary to strike a balance between the facilitation of the exercise of shareholders' rights and the right to privacy and the protection of personal data. The identification information on shareholders should be limited to the name and contact details of the corresponding shareholders. This information should be accurate and kept up-to-date, and intermediaries as well as companies should allow for rectification or erasure of all incorrect or incomplete data. This identification information on shareholders should not be used for any other purpose than the facilitation of the exercise of shareholder rights.

¹⁹ 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

(20) In view of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995¹⁹ 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, ***and the number of shares owned and voting rights held by***, the corresponding shareholders. This information should be accurate and kept up-to-date, and intermediaries as well as companies should allow for rectification or erasure of all incorrect or incomplete data. This identification information on shareholders should not be used for any other purpose than the facilitation of the exercise of shareholder rights, ***of shareholder engagement and of the dialogue between the company and the shareholder.***

¹⁹ 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).

Or. en

Amendment 18

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 Council.***²⁰

Amendment

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

²⁰ ***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).***

Or. en

Amendment 19

Proposal for a directive

Article 1 – point 1 – point a

Directive 2007/36/EC

Article 1 – paragraph 1

Text proposed by the Commission

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

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

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

It also establishes ***specific*** requirements for intermediaries ***in order to facilitate*** shareholders' ***engagement***, creates transparency on the ***activities*** of certain types of investors, ***of asset managers and proxy advisors and lays down certain responsibilities*** for shareholders' ***general meetings in listed*** companies' ***corporate governance***.

Or. en

Justification

This wording is more appropriate with regard to the objectives and the specific provisions of the proposed Directive.

Amendment 20

Proposal for a directive

Article 1 – point 1 – point a a (new)

Directive 2007/36/EC

Article 1 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(aa) The following paragraph is added:

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

Or. en

Justification

It is important that the possible exclusions foreseen in Article 1(3) of Directive 2007/36/EC do not apply to Chapter 1(b).

Amendment 21

Proposal for a directive

Article 1 – point 1 – point b

Directive 2007/36/EC

Article 1 – paragraph 3 b (new)

Text proposed by the Commission

(b) The following paragraph 4 is added:
“4. Chapter 1b 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

(b) The following paragraph is added:
“**3b.** Chapter 1B 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.”

Or. en

Amendment 22

Proposal for a directive

Article 1 – point 2 – point d

Directive 2007/36/EC

Article 2 – point d (new)

Text proposed by the Commission

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

Amendment

(d) 'intermediary' means a legal person that has its registered office, central administration or principal place of business in the European Union and maintains securities accounts for clients, ***including central securities depositories (CSDs) within the meaning of point 1 of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council***^{8 a};

^{8 a} Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 del 28.8.2014, p. 1).

Or. en

Justification

It is appropriate to clarify that Central Security Depositories are included in the definition of "intermediaries".

Amendment 23

Proposal for a directive

Article 1 – point 2 – point f

Directive 2007/36/EC

Article 2 – point f (new)

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 Council²² and an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council²³ 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;

²² *Directive 2002/83/EC of the European*

Amendment

(f) 'institutional investor' means an undertaking carrying out activities of life assurance within the meaning of Article 2(3) **and of reinsurance within the meaning of point 7 of Article 13** of Directive **2009/138/EC** of the European Parliament and of the Council²² and not excluded pursuant to **Articles 3 or 10** of Directive 2009/138/EC and an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council²³ 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;

²² *Directive 2009/138/EC of the European*

Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1).

²³ 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).

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)

²³ 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).

Or. en

Justification

In the definition of 'institutional investor' it is necessary to refer to 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).

Amendment 24

Proposal for a directive

Article 1 – point 2 – point g

Directive 2007/36/EC

Article 2 – point g (new)

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 Council²⁴ 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 Council²⁵ 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 Council²⁶; or an investment company authorised in accordance with Directive 2009/65/EC,

Amendment

(g) 'asset manager' means an investment firm as defined in point (1) of Article 4(1) of Directive **2014/65/EC** of the European Parliament and of the Council²⁴ 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 Council²⁵ 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 Council²⁶; 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;

²⁴ *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).*

²⁵ 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).

²⁶ 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).

provided that it has not designated a management company authorised under that Directive for its management;

²⁴ *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).*

²⁵ 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).

²⁶ 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).

Or. en

Justification

In the definition of 'asset manager' it is necessary to refer to 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).

Amendment 25

Proposal for a directive
Article 1 – point 2 – point h
Directive 2007/36/EC
Article 2 – point h (new)

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

Amendment

(h) 'shareholder engagement' means the monitoring by a shareholder alone or together with other shareholders, of companies on matters such as strategy, **financial and non-financial** performance, risk, capital structure, **social and environmental impact** and corporate governance, having a dialogue with companies **and their stakeholders** on these matters and voting at the general **meetings**.

Or. en

Justification

It is important to stress in the definition of 'shareholder engagement' that adequate consideration should be given to non-financial performances and social and environmental aspects.

Amendment 26

Proposal for a directive
Article 1 – point 2 – point 1
Directive 2007/36/EC
Article 2 – point 1 (new)

Text proposed by the Commission

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

Amendment

(l) 'Director' means

- any member of the administrative, management or supervisory bodies of a company
- **chief executive officers and deputy chief executive officers, even where they are not members of administrative, management or supervisory bodies.**

Or. en

Justification

Considering that CEOs or deputy-CEOs are not necessarily members of the administrative, management or supervisory bodies of a company, it is useful to amend the definition of 'directors' in order to include these positions in the provisions of this Directive regarding remuneration.

Amendment 27

Proposal for a directive

Article 1 – point 2a (new)

Directive 2007/36/EC

Article 2 – paragraph 2 (new)

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

Considering that CEOs or deputy-CEOs are not necessarily members of the administrative, management or supervisory bodies of a company, it is useful to amend the definition of 'directors' in order to include these positions in the provisions of this Directive regarding remuneration.

Amendment 28

Proposal for a directive

Article 1 – point 2 – point 1 a (new)

Directive 2007/36/EC

Article 2 – point 1a (new)

Text proposed by the Commission

Amendment

(1a) 'average remuneration of employees' means the average full-time remuneration

of employees of the company, excluding directors, taking into account the remuneration of part-time employees on full-time equivalent terms;

Or. en

Justification

The average full-time remuneration of employees of the company should include the remuneration of part-time employees on full time equivalent terms.

Amendment 29

Proposal for a directive
Article 1 – point 2 a (new)
Directive 2007/36/EC
Article 2 a (new)

Text proposed by the Commission

Amendment

(2 a) After Article 2, the following Article is inserted:

"Article 2a

Data protection

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

Or. en

Justification

National rules implementing Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data should be fully respected when processing personal data in accordance with provisions foreseen in this Directive.

Amendment 30

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Chapter IA (new) – title

Text proposed by the Commission

Identification of shareholders, transmission of information **and** facilitation of exercise of shareholder rights

Amendment

Identification of shareholders, transmission of information, facilitation of exercise of shareholder rights **and support for long-term shareholding**

Or. en

Amendment 31

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3a (new) – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that, on the request of the company, the intermediary communicates without undue delay to the company the **name and** contact details **of the shareholders** and, where the shareholders are legal persons, their unique identifier where available. Where there is more than one intermediary in a holding chain, the request of the company **and the identity and contact details of the shareholders** shall **be transmitted between intermediaries** without undue delay.

Amendment

2. Member States shall ensure that, on the request of the company, the intermediary communicates without undue delay to the company the **names of shareholders**, their contact details, **the number of shares owned and voting rights held by them**, and, where the shareholders are legal persons, their unique identifier where available. Where there is more than one intermediary in a holding chain, the request of the company **shall be transmitted between intermediaries without undue delay. The intermediary having the information on shareholders referred to in the first sentence shall transmit it** without undue delay **directly to the company.**

Member States may provide that CSDs are to be responsible for collecting the information referred to in the first sentence of the first paragraph and for

providing it directly to the company.

Or. en

Justification

In order to limit the transmission of personal data of shareholders, it is appropriate to establish that the intermediary which has the information on shareholder's identity transmits it directly to the company.

Amendment 32

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3 a (new) – 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 ***where the information on them referred to in paragraph 2 has been*** transmitted ***to the company*** 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, ***of his engagement and of the dialogue between the company and the shareholder or between the 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 ***6*** months after ***the person ceases to be a shareholder***.

Or. en

Justification

It is appropriate to better clarify the possible use by companies and shareholders of the information deriving from the shareholders' identification.

Amendment 33

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3a (new) – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that companies which have identified their shareholders make available to a shareholder, upon request, the information referred to in paragraph 2 relating to all identified shareholders which hold more than 0,5% of the shares. Shareholders receiving this list shall not disclose it and shall use it only to contact other shareholders on company-related matters.

Member States shall allow companies to charge a fee for making such a list available to a shareholder. The fee shall be reasonable, its calculation method shall be transparent and non-discriminatory and it shall in no case be higher than one third of the actual costs incurred by the company in order to identify the shareholders.

Or. en

Justification

In order to foster the engagement of shareholders, it is appropriate to foresee the possibility for them to receive from the company a list of significant shareholders, where available following the identification of shareholders by the company. This list shall be used only for the dialogue between shareholders on company-related issues. Considering that companies incur in costs in order to identify shareholders, it is appropriate to foresee the possibility for the company to charge a fee to make the list of significant shareholders available.

Amendment 34

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3a (new) – 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 ***to the company the information on shareholders referred to in paragraph 2, nor a company that makes available to*** a shareholder ***the list referred to in paragraph 3(a), is*** considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

Or. en

Justification

Change necessary following new proposed Paragraph 3(a).

Amendment 35

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3a (new) – 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 the transmission and the deadlines to be complied with. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in***

Amendment

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

Article 14a (2).

Or. en

Amendment 36

Proposal for a directive

Article 1 – point 3 – introductory words

Directive 2007/36/EC

Article 3b (new) – paragraph 1

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 if a company **does not** 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:

Or. en

Amendment 37

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3 b (new) – paragraph 2

Text proposed by the Commission

2. Member States shall require companies to provide and deliver the information to the intermediary related to the exercise of rights flowing from shares in accordance with paragraph 1 in a standardised and timely manner.

Amendment

2. Member States shall require companies to provide and deliver the information to the intermediary related to the exercise of rights flowing from shares in accordance with paragraph 1 in a standardised and timely manner. ***At the request of the intermediary, the information shall be provided in English.***

Or. en

Justification

It is appropriate that, at the request of the intermediary, the information provided by the company to the shareholder is in English. This element is important in order to foster cross-border engagement and exercise of voting rights.

Amendment 38

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3b (new) – 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 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).**

Amendment

5. The Commission shall be empowered to adopt **delegated acts, in accordance with Article 14aa**, to specify the requirements to transmit information laid down in paragraphs 1 to 4 as regards the content to be transmitted, the deadlines to be complied with and the types and format of information to be transmitted.

Or. en

Amendment 39

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3c (new) – 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**

Amendment

3. The Commission shall be empowered to adopt **delegated acts, in accordance with Article 14aa**, 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

implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a(2).

complied with.

Or. en

Amendment 40

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3d (new) – 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 ***separately for each service*** referred to in this chapter.

Amendment

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

Or. en

Amendment 41

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3d (new) – 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 differences in the charges levied between domestic and cross-border exercise of rights shall be duly justified ***and shall reflect the variation in actual costs incurred for delivering the services.***

Justification

In order to foster shareholders' engagement and the exercise of voting rights in cross border situations, it is important to set up a very high degree of transparency with regard to fees and charges that may be levied by an intermediary and to ensure that differences in charges levied between domestic and cross-border exercise of voting rights are duly justified and reflect a variation in the actual costs.

Amendment 42

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3 e a (new)

Text proposed by the Commission

Amendment

Article 3 ea

Support for long-term shareholding

Member States shall put in place a mechanism in order to promote shareholding on a long-term basis and foster long-term shareholders. Member States shall define the qualifying period in order to be considered a long term shareholder, but this period shall not be less than two years.

The mechanism referred to in the first subparagraph shall include one or more of the following advantages for long term shareholders:

- additional voting rights;***
- tax incentives;***
- loyalty dividends;***
- loyalty shares.***

Justification

Short-term shareholding is one of the main barriers for a proper shareholders' engagement and for a stronger focus by shareholders on the long-term performance and sustainability of investee companies. It is therefore appropriate that Member States put in place adequate mechanisms in order to foster long-term shareholding.

Amendment 43

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

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

Text proposed by the Commission

Amendment

(ca) to conduct a dialogue with investee companies' stakeholders;

Or. en

Justification

Dialogue with investee companies' stakeholders can provide institutional investors and asset managers with useful information for a fully comprehensive evaluation of the companies' performance and development.

Amendment 44

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3 f (new) – 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***

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

which they hold shares, 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.

clients with the information referred to in the first sentence.

Or. en

Justification

It is appropriate to ensure a high degree of transparency of institutional investors, in particular towards their clients, and of asset managers with regard to their engagement policy.

Amendment 45

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

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

Text proposed by the Commission

Amendment

3a. Institutional investors and asset managers shall publicly disclose, for each company in which they hold shares, whether and how they cast their votes in the general meetings of the companies concerned and provide an explanation for their voting behaviour. Where an asset manager casts votes on behalf of an institutional investor, the institutional investor shall make a reference as to where such voting information has been published by the asset manager. The information referred to in this paragraph shall at least be available, free of charge, on the company's website. If, in exceptional cases, the information on votes cast is very extensive, the disclosure obligation may be complied with by

disclosing an accurate summary of that information.

Or. en

Justification

In case an institutional investor or an asset manager holds shares in hundreds or thousands of different companies, it might be difficult and counterproductive to provide together the required information on votes cast. It is therefore appropriate, in this case, to provide for the possibility to disclose the information in the form of an accurate summary.

Amendment 46

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3f (new) – 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

Or. en

Justification

In order to ensure an effective level playing field in the application of this Directive, all institutional investors and asset managers should be obliged to develop an engagement policy and to disclose its implementation and results.

Amendment 47

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3g (new) – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Or. en

Justification

It is appropriate to ensure a high degree of transparency of institutional investors, in particular towards their clients, with regard to how their investment strategy is aligned with the profile and duration of their liabilities and how it contributes to the medium to long-term performance of their assets.

Amendment 48

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3h (new) – paragraph 1

Text proposed by the Commission

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

Amendment

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

assets of the institutional investor.

Or. en

Justification

The implementation of the arrangement between asset managers and institutional investors is of paramount importance in order to understand the extent to which investment strategy and its application contributes to the medium to long-term performance. Therefore some information should be disclosed by the asset managers to the public, and therefore be available also to the institutional investors' clients. However, more sensitive information should be disclosed only to the institutional investors.

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2007/36/EC

Article 3h (new) – paragraph 2

Text proposed by the Commission

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

Amendment

2. Member States shall ensure that asset managers **publicly** disclose on a half-yearly basis all of the following information **regarding the previous period**:

Or. en

Amendment 50

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

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

Text proposed by the Commission

(a) whether or not, and if so how, they **make** investment decisions on the basis of judgements about medium-to long-term performance of the investee company, including non-financial performance;

Amendment

(a) whether or not, and if so how, they **have made** investment decisions on the basis of judgements about medium-to long-term performance of the investee company, including non-financial performance;

Amendment 51

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3h (new) – 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*

Or. en

Amendment 52

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3h (new) – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) portfolio turnover costs; *deleted*

Or. en

Amendment 53

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3h (new) – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) whether or not, and if so, what actual or potential conflicts of interest have arisen in connection with engagement *deleted*

activities and how the asset manager has dealt with them;

Or. en

Amendment 54

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

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

Text proposed by the Commission

(g) whether or not, and if so how, the asset manager *uses* proxy advisors for the purpose of *their* engagement activities.

Amendment

(g) whether or not, and if so how, the asset manager *has used* proxy advisors for the purpose of *his* engagement activities.

Or. en

Amendment 55

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

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

Text proposed by the Commission

Amendment

2a. The information referred to in paragraphs 1 and 2 shall be published on the company's website and shall remain available, free of charge, for at least three years after the date of publication.

Or. en

Amendment 56

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC
Article 3h (new) – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall ensure that asset managers disclose to the institutional investor with which they have entered into the arrangement referred to in Article 3g(2) on a half-yearly basis all of the following information regarding the previous period:

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

(b) portfolio turnover costs;

(c) whether or not actual or potential conflicts of interest have arisen in connection with engagement activities, and, if they did arise, what they were, and how the asset manager has dealt with them.

Or. en

Amendment 57

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3h (new) – 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**(b)** 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.

Or. en

Amendment 58

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3i (new) – 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 **ensure** that their voting recommendations are accurate and reliable, based on a thorough analysis of all the information that is available to them **and are developed in the sole interest of their clients.**

Or. en

Amendment 59

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3i (new) – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

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

years after the date of publication.

Or. en

Justification

Codes of conducts can play an important role in order to ensure a proper preparation of voting recommendations by proxy advisors. For this reason it is appropriate that proxy advisors refer to a code of conduct which they apply.

Amendment 60

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3i (new) – paragraph 2 – subparagraph 1 – introductory wording

Text proposed by the Commission

Amendment

2. Proxy advisors shall on an annual basis publicly disclose all of the following information in relation to the preparation of their voting recommendations:

2. **Member States shall ensure that** proxy advisors shall on an annual basis publicly disclose all of the following information in relation to the preparation of their voting recommendations:

Or. en

Amendment 61

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3i (new) – paragraph 2 – subparagraph 1 – 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 have dialogues with the companies which are the object of their voting recommendations **and their stakeholders**, and, if so, the extent and nature thereof;

Or. en

Amendment 62

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3i (new) – paragraph 2 – subparagraph 1 – point e

Text proposed by the Commission

(e) the total number of staff involved in the preparation of the voting recommendations;

Amendment

(e) the total number **and the qualifications** of staff involved in the preparation of the voting recommendations;

Or. en

Amendment 63

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3i (new) – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 64

Proposal for a directive

Article 1 – point 3

Directive 2007/36/EC

Article 3i (new) – 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**

Amendment

3. Member States shall ensure that proxy advisors identify and disclose without undue delay to their clients any actual or

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.”

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.”

Or. en

Amendment 65

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9a (new) – paragraph 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.

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

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. ***Any change to the policy shall be approved by the shareholders and*** the policy shall be submitted for approval by the shareholders at least every three years.

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

In cases where a remuneration policy has been adopted and shareholders have rejected the draft new policy submitted to them within the three year limit

established in the first subparagraph, the company may, while reworking the draft and for a period of no longer than one year, pay remuneration to its directors in accordance with the expired policy.

Or. en

Justification

It is important to establish specific procedures in case the proposed remuneration policy is not approved by the general meeting of shareholders.

Amendment 66

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9a (new) – 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 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 *ratios respectively* between the average remuneration of *executive* directors and the average remuneration of *employees and between the average remuneration of non-executive* directors and *the average remuneration of employees and why those ratios are considered appropriate.*

Or. en

Justification

It is appropriate to differentiate between remuneration of executive and non-executive directors, considering their different roles, responsibilities and subsequent remuneration arrangements.

Amendment 67

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

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

Text proposed by the Commission

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

Amendment

For variable remuneration, the policy shall indicate the financial and non-financial performance criteria to be used and explain how they contribute to the long-term interests and sustainability of the company, and the methods to be applied to determine to which extent the performance criteria have been fulfilled; it shall specify the deferral periods, vesting periods for share-based remuneration and retention of shares after vesting, and information on the possibility of the company to reclaim variable remuneration. ***Member States shall ensure that value of shares is neither the sole element nor a decisive part of the financial performance criteria. Member States shall ensure that share-based remuneration does not represent the most substantive part of directors' variable remuneration.***

Or. en

Justification

In order to ensure a proper and comprehensive evaluation of the company's performance in defining the variable remuneration, it is important that several financial criteria are taken into consideration and that shares' value is not the decisive one.

Amendment 68

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 69

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

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

Text proposed by the Commission

Amendment

Employees shall be entitled, via their representatives, to express a view on the remuneration policy before it is submitted to shareholders.

Or. en

Justification

It is appropriate to foresee the possibility for the workforce to express its view on the company's proposed remuneration policy.

Amendment 70

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC
Article 9a (new) – paragraph 3 – subparagraph 5

Text proposed by the Commission

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.

Amendment

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 views of shareholders on the policy and report in the previous years.

Or. en

Amendment 71

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9a (new) – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that after approval by the shareholders the policy is made public without delay and available on the company's website at least as long as it is applicable.

Amendment

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

Or. en

Amendment 72

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9b (new) – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the company draws up a clear and understandable remuneration report,

Amendment

1. Member States shall ensure that the company draws up a clear and understandable remuneration report,

providing a comprehensive overview of the remuneration, including all benefits in whatever form, granted to individual directors, including to newly recruited and former directors, in the last financial year. It shall, where applicable, contain all of the following elements:

(a) the total remuneration awarded *or paid* split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration is linked to long-term performance and information on how the performance criteria were applied;

(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*;

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

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

(e) information on the use of the possibility to reclaim variable remuneration;

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

providing a comprehensive overview of the remuneration, including all benefits in whatever form, granted, *in accordance with the remuneration policy referred to in Article 9a*, to individual directors, including to newly recruited and former directors, in the last financial year. It shall, where applicable, contain all of the following elements:

(a) the total remuneration awarded, *paid or due* split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration is linked to long-term performance and information on how the performance criteria were applied;

(aa) the ratio between the average remuneration awarded, paid or due to executive directors and the average remuneration of employees during the last financial year and the ratio between the average remuneration awarded, paid or due to non-executive directors and the average remuneration of employees during the last financial year;

(b) the relative change of the remuneration of *executive directors and of non-executive* directors over the last three financial years, *their* relation to the development of the *general performance* of the company and to change in the average remuneration of employees *in the same period*;

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

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

(e) information on the use of the possibility to reclaim variable remuneration;

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

role of the remuneration committee.

appropriate, on the role of the remuneration committee.

Or. en

Justification

It is appropriate to differentiate between remuneration of executive and non-executive directors, considering their different roles, responsibilities and subsequent remuneration arrangements.

Amendment 73

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9b (new) – 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 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.

Amendment

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 remuneration report the company shall, ***where necessary, enter into a dialogue with the shareholders in order to identify the reasons for the rejection. The company shall explain in the next remuneration report how*** the vote of the shareholders has been taken into account.
Employees shall be entitled, via their representatives, to express a view on the remuneration report before it is submitted to shareholders.

Or. en

Justification

In case shareholders vote against a remuneration report, the company should engage with shareholders, if needed, in order to understand the reasons for the negative vote. It is appropriate to foresee the possibility for the workforce to express its view on the company's

remuneration report.

Amendment 74

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9b (new) – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The provisions on remuneration in this Article and in Article 9(a) 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.

Or. en

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 the latter. Furthermore, this Directive should have no impact on the rules on employee representation on boards which exist in a number of Member States.

Amendment 75

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9b (new) – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission shall be empowered to adopt ***implementing acts*** to specify the standardised presentation of the information laid down in paragraph 1 of this Article. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14a (2).***

4. The Commission shall be empowered to adopt ***delegated acts, in accordance with Article 14aa***, to specify the standardised presentation of the information laid down in paragraph 1 of this Article.

Amendment 76

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9c (new) – 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

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 **latest 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, confirming that the transaction is fair and reasonable from the perspective of the **company and providing an explanation of the evaluations the assessment is based on**. The announcement shall contain information on the nature of the related party relationship, the name of the related party, the amount of the transaction and any other information necessary to assess the transaction.

Or. en

Justification

The main objective of the proposed measures on related party transactions should be to ensure that these transactions are not used by the related party to appropriate value belonging to the company.

Amendment 77

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9c (new) – paragraph 1 – subparagraph 2

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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

Member States **shall** 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, **Member States shall ensure that that shareholder is prevented from having a determining role in the vote.**

Or. en

Justification

It is important to strike the right balance in the definition of the provisions regarding related party transactions, in order to prevent related parties from taking advantage of their position but to avoid at the same time to give too power, with regard to these operations, to minority shareholders.

Amendment 78

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9c (new) – 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**

Amendment

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, **Member States shall ensure**

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.

that that shareholder is prevented from having a determining role in the 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.

Or. en

Amendment 79

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9c (new) – 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, *Member States shall ensure that that shareholder is prevented from having a determining role in the vote.*

Or. en

Amendment 80

Proposal for a directive

Article 1 – point 4

Directive 2007/36/EC

Article 9c (new) – paragraph 3

Text proposed by the Commission

3. Transactions with the same related party that have been concluded during the previous 12 months period and have not been approved by shareholders shall be aggregated for the purposes of application of **paragraph 2**. If the value of these aggregated transactions exceeds 5% of the assets, the transaction by which this threshold is exceeded and any subsequent transactions with the same related party shall be submitted to a shareholder vote and may only be unconditionally concluded after shareholder approval.

Amendment

3. Transactions with the same related party that have been concluded during the previous 12 months period and have not been approved by shareholders shall be aggregated for the purposes of application of **paragraphs 1 and 2**. If the value of these aggregated transactions exceeds 5% of the assets, the transaction by which this threshold is exceeded and any subsequent transactions with the same related party shall be submitted to a shareholder vote and may only be unconditionally concluded after shareholder approval.

Or. en

Amendment 81

Proposal for a directive

Article 1 – point 5

Directive 2007/36/EC

Chapter IIA (new) – title

Text proposed by the Commission

Implementing acts and penalties

Amendment

Delegated acts and penalties

Or. en

Amendment 82

Proposal for a directive

Article 1 – point 5

Directive 2007/36/EC

Article 14 a (new)

Text proposed by the Commission

Article 14 a

Committee procedure

Amendment

deleted

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC²⁸. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Were reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

²⁸ *Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45). OJ L 191, 13.7.2001, p. 45*

Or. en

Amendment 83

Proposal for a directive
Article 1 – paragraph 1 – point 5
Directive 2007/36/EC
Article 14 a a (new)

Text proposed by the Commission

Amendment

Article 14 aa (new)

Exercise of delegated powers

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

2. The power to adopt delegated acts referred to in Articles 3a(5), 3b(5), and 3c(3) and Article 9b shall be conferred on the Commission for an indeterminate period of time from ...*.

3. The delegation of power referred to in Articles 3a(5), 3b(5), and 3c(3) and Article 9b may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power

specified in that decision. It shall take effect the day following the publication of that decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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

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

Or. en

Justification

Considering the tasks conferred to the Commission in this Directive on the specific definition of procedural elements with regard to shareholders' identification, facilitation of exercise of voting rights, transmission of information and remuneration report, it is appropriate to use delegated acts instead of implementing acts. This choice ensures a more proper involvement of the Parliament in the procedure.

EXPLANATORY STATEMENT

The Commission's proposal for a Directive amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EC as regards certain elements of the corporate governance statement was published in April 2014.¹ It was presented together with the Proposal for a Directive on single-member private limited liability companies (SUP)² and the Recommendation on the quality of corporate governance reporting ('comply or explain' principle)³. The revision of the shareholders' rights Directive is part of the initiatives foreseen in the Commission's Action Plan "European Company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies"⁴, which was launched after a series of consultations on corporate governance issues⁵.

The proposal aims "to contribute to the long-term sustainability of EU companies, to create an attractive environment for shareholders and to enhance cross-border voting by improving the efficiency of the equity investment chain in order to contribute to growth, jobs creation and EU competitiveness. It also [...] contributes to a more long-term perspective of shareholders which ensures better operating conditions for listed companies"⁶.

In order to reach these objectives, the proposal defines several different instruments. The most important provisions proposed are the following ones:

- I. Possibility for companies to identify their shareholders, facilitation of transmission of relevant information between the company and shareholders and of the exercise of shareholders rights;
- II. Transparency provisions for institutional investors, asset managers and proxy advisors (including disclosure by institutional investors and asset managers of their engagement policy, investment strategy and of significant elements of the arrangements between them);
- III. New rules on directors' remuneration, which include a "Say on Pay" by shareholders' general meeting on the company's remuneration policy (every three years – binding vote) and report (every year – advisory vote), a stronger link between the company's performances and the remuneration of directors, more transparency on the criteria used to assess directors' performances and on the remuneration awarded or due to directors.
- IV. New rules on Related party Transactions (RPTs), including public disclosure of

¹ COM(2014) 213 final

² COM(2014) 212 final

³ Commission Recommendation 2014/208/EU

⁴ COM(2012) 740 final

⁵ In particular two Green papers: "Corporate governance in financial institution", COM(2010) 284 final, and "The EU corporate governance framework", COM(2011) 164 final.

⁶ Proposal for a Directive amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EC as regards certain elements of the corporate governance statement was published in April 2014, p. 2.

important transactions, an independent opinion about their fairness and ex-ante approval by shareholders' general meeting of most relevant RPTs

- General approach to corporate governance

It is important to support the Commission's objective of promoting long-termism and sustainable European companies, improving stability and boosting long-term investment. Laws on corporate governance and company law will inevitably play an important role in order to achieve this target, considering that they define the institutional framework, which shapes decisions affecting companies' strategies, investment policy, remuneration etc. They determine inter alia who the corporate decision-makers are, what duties and responsibilities they have and to whom and to what extent they are accountable.

The proposed revision of the shareholders' rights Directive can play a useful role in improving corporate governance of European listed companies. However, further and ambitious complementary measures are needed in order to overcome the shortcomings in the European framework on corporate governance, above all with regards to the short term approach investors and companies take too often. Shareholders' involvement alone cannot solve all the identified shortcomings, e.g. short-term perspective, excessive focus on dividends and shares' value, externalisation of social and environmental risks... Furthermore, as a matter of law, shareholders are not owners of companies. Shareholders own shares and play a relevant role in companies' corporate governance, but are one among many stakeholders. Further involvement of other stakeholders such as consumers, local communities and above all employees would highly contribute to improve corporate governance and to steer companies' strategies towards long-term competitiveness and financial and non-financial sustainability. Employees, for example, care deeply about the competitiveness and sustainability of their firm because they will personally face harsh consequences if their company does not perform well. For this reason they naturally favour decisions that value stability and long-term growth. Companies which properly involve stakeholders such as employees, consumers and local communities will therefore take decisions more attuned to long-term sustainability and economic success than those run exclusively in the interests of shareholders.

Considering that the Commission has not yet proposed to strengthen stakeholders' role in European corporate governance, it is important to open a broader discussion on future corporate governance in the European Union, aside from the simple analysis and discussion of the Commission's proposal. This broader discussion should include the consideration of a stronger involvement of stakeholders, above all employees, in the decision making processes, with the objective of fostering companies' focus on long-term performances and sustainability.

- Principal adjustments to the Commission's proposal

In order to better achieve the objectives of the proposal, notably to steer companies and shareholders towards sustainability and long-termism, to foster shareholders' engagement and to promote transparency of institutional investors, asset managers and proxy advisors, it is appropriate to propose some changes and additions to the Commission's proposal.

Summary of the principal changes proposed:

1) Data protection.

It is important to ensure that any processing of personal data is done in accordance with national rules implementing Directive 95/46/EC. It is furthermore appropriate, in order to limit the transmission of personal data of shareholders, to provide for some adjustments to the proposed procedure for the identification of shareholders. In particular, the intermediary holding the information on shareholder's identity should transmit it directly to the company (and not pass it through the intermediary chain).

2) Identification of shareholders

In order to foster shareholders' engagement, it is appropriate to provide them with the possibility to receive, where available, a list of significant shareholders from the company. This list shall only be used for the dialogue between shareholders on company-related issues. Considering that companies incur in costs in order to identify shareholders, it is appropriate to provide the company with the possibility to charge a fee when making the list of significant shareholders available.

3) Transmission of information and fees

In order to foster cross-border engagement and the exercise of voting rights by shareholders it is important to ensure, amongst others, that:

- in the context of the transmission of information by the company to the shareholder through the intermediary chain, the company provides the information in English, at the request of the intermediary;
- fees and charges levied by intermediaries are transparent and non-discriminatory. Any differences in the charges levied between domestic and cross-border exercise of rights should reflect the variation in the actual costs incurred for delivering the service.

4) Support for long-term shareholding

Short-term shareholding is one of the main barriers for a proper engagement and for a stronger focus by shareholders on the long-term performance and sustainability of investee companies. It is therefore of utmost importance that Member States put appropriate mechanisms in place in order to foster long-term shareholding.

5) Further transparency for institutional investors, asset managers and proxy advisors

It is important to maintain and strengthen the transparency provisions contained in the Commission's proposal with regard to institutional investors, asset managers and proxy advisors. In this context it is appropriate, between other proposals, to ensure that all institutional investors and asset managers develop an engagement policy and to provide for the mandatory reference by proxy advisor to a code of conduct.

6) Remuneration policy and report

The definition of a correct and sustainable remuneration policy for directors and its proper implementation are key elements in order to ensure that companies are appropriately managed and focus on their long-term interests and sustainability.

On this issue the proposal of the Commission contains important provisions, which should not be watered down, but clarified and reinforced on some aspects. Employees should be entitled to express a view on the proposed remuneration policy and on the remuneration report, via

their representatives. In order to ensure that directors focus on the company's overall long-term performance, it is appropriate that criteria other than the shares' value are taken adequately into consideration when evaluating directors' performances.

7) Related party transactions

European measures on related party transactions are necessary. If not properly operated and controlled, these transactions might be used by the related party to appropriate value belonging to the company. It is therefore necessary to establish for these transactions higher transparency and effective safeguards against abuses. The provisions should however be appropriate for all the different corporate governance systems and ownership structures in the different Member States.

8) Delegated acts

Considering the important tasks conferred to the Commission in this Directive on the specific definition of procedural elements with regard to shareholders' identification, facilitation of exercise of voting rights, transmission of information and remuneration report, it is appropriate to use delegated acts instead of implementing acts.