

Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (Text with EEA relevance)

Article 1

Amendments to Directive 2007/36/EC

Directive 2007/36/EC is amended as follows:

- (1) Article 1 is amended as follows:
- (a) paragraphs 1 and 2 are replaced by the following:
1. This Directive establishes requirements in relation to the exercise of certain shareholder rights attached to voting shares in relation to general meetings of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State. It also establishes specific requirements in order to encourage shareholder engagement, in particular in the long term. Those specific requirements apply in relation to identification of shareholders, transmission of information, facilitation of exercise of shareholders rights, transparency of institutional investors, asset managers and proxy advisors, remuneration of directors and related party transactions.
2. The Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has its registered office, and references to the “applicable law” are references to the law of that Member State.
- For the purpose of application of Chapter Ib, the competent Member State shall be defined as follows:
- a. for institutional investors and asset managers, the home Member State as defined in any applicable sector-specific Union legislative act;
- b. for proxy advisors, the Member State in which the proxy advisor has its registered office, or, where the proxy advisor does not have its registered office in a Member State, the Member State in which the proxy advisor has its head office, or, where the proxy advisor has neither its registered office nor its head office in a Member State, the Member State in which the proxy advisor has an establishment.;
- (b) in paragraph 3, points (a) and (b) are replaced by the following:
- (a) undertakings for collective investment in transferable securities (UCITS) within the meaning of Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council⁽¹⁾;
- (b) collective investment undertakings within the meaning of point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council⁽²⁾;
- (c) the following paragraph is inserted:

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3a. The companies referred to in paragraph 3 shall not be exempted from the provisions laid down in Chapter Ib.;

(d) the following paragraphs are added:

5. Chapter Ia shall apply to intermediaries in so far they provide services to shareholders or other intermediaries with respect to shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.

6 Chapter Ib shall apply to:

- (a) institutional investors, to the extent that they invest directly or through an asset manager in shares traded on a regulated market;
- (b) asset managers, to the extent that they invest in such shares on behalf of investors; and
- (c) proxy advisors, to the extent that they provide services to shareholders with respect to shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.

7 The provisions of this Directive are without prejudice to the provisions laid down in any sector-specific Union legislative act regulating specific types of company or specific types of entity. Where this Directive provides for more specific rules or adds requirements compared to the provisions laid down by any sector-specific Union legislative act, those provisions shall be applied in conjunction with the provisions of this Directive..

(2) Article 2 is amended as follows:

(a) point (a) is replaced by the following:

(a) “regulated market” means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council⁽³⁾;

(b) the following points are added:

(d) “intermediary” means a person, such as an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU, a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽⁴⁾ and a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council⁽⁵⁾, which provides services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons;

(e) “institutional investor” means:

- (i) an undertaking carrying out activities of life assurance within the meaning of points (a), (b) and (c) of

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Article 2(3) of Directive 2009/138/EC of the European Parliament and of the Council⁽⁶⁾, and of reinsurance as defined in point (7) of Article 13 of that Directive provided that those activities cover life-insurance obligations, and which is not excluded pursuant to that Directive;

- (ii) an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council⁽⁷⁾ in accordance with Article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive;
- (f) “asset manager” means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU that provides portfolio management services to investors, an AIFM (alternative investment fund manager) as defined in point (b) of Article 4(1) of Directive 2011/61/EU that does not fulfil the conditions for an exemption in accordance with Article 3 of that Directive or a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC, or an investment company that is authorised in accordance with Directive 2009/65/EC provided that it has not designated a management company authorised under that Directive for its management;
- (g) “proxy advisor” means a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors’ voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights;
- (h) “related party” has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council⁽⁸⁾;
- (i) “director” means:
 - (i) any member of the administrative, management or supervisory bodies of a company;
 - (ii) where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officer;
 - (iii) where so determined by a Member State, other persons who perform functions similar to those performed under point (i) or (ii);
- (j) “information regarding shareholder identity” means information allowing the identity of a shareholder to be established, including at least the following information:

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- (i) name and contact details (including full address and, where available, email address) of the shareholder, and, where it is a legal person, its registration number, or, if no registration number is available, its unique identifier, such as legal entity identifier;
 - (ii) the number of shares held; and
 - (iii) only insofar they are requested by the company, one or more of the following details: the categories or classes of the shares held or the date from which the shares have been held..
- (3) The following Chapters are inserted:

CHAPTER Ia

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

Article 3a

Identification of shareholders

1 Member States shall ensure that companies have the right to identify their shareholders. Member States may provide for companies having a registered office on their territory to be only allowed to request the identification of shareholders holding more than a certain percentage of shares or voting rights. Such a percentage shall not exceed 0,5 %.

2 Member States shall ensure that, on the request of the company or of a third party nominated by the company, the intermediaries communicate without delay to the company the information regarding shareholder identity.

3 Where there is more than one intermediary in a chain of intermediaries, Member States shall ensure that the request of the company, or of a third party nominated by the company, is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the company or to a third party nominated by the company without delay by the intermediary who holds the requested information. Member States shall ensure that the company is able to obtain information regarding shareholder identity from any intermediary in the chain that holds the information.

Member States may provide for the company to be allowed to request the central securities depository or another intermediary or service provider to collect the information regarding shareholder identity, including from the intermediaries in the chain of intermediaries and to transmit the information to the company.

Member States may additionally provide that, at the request of the company, or of a third party nominated by the company, the intermediary is to communicate to the company without delay the details of the next intermediary in the chain of intermediaries.

4 The personal data of shareholders shall be processed pursuant to this Article in order to enable the company to identify its existing shareholders in order to communicate with them directly with the view to facilitating the exercise of shareholder rights and shareholder engagement with the company.

Without prejudice to any longer storage period laid down by any sector-specific Union legislative act, Member States shall ensure that companies and intermediaries do not store the personal data of shareholders transmitted to them in accordance with this Article for the purpose specified in this Article for longer than 12 months after they have become aware that the person concerned has ceased to be a shareholder.

Member States may provide by law for processing of the personal data of shareholders for other purposes.

5 Member States shall ensure that legal persons have the right of rectification of incomplete or inaccurate information regarding their shareholder identity.

6 Member States shall ensure that an intermediary that discloses information regarding shareholder identity in accordance with the rules laid down in this Article is not considered to be in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

7 By 10 June 2019, Member States shall provide the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽⁹⁾ with information on whether they have limited shareholder identification to shareholders holding more than a certain percentage of the shares or voting rights in accordance with paragraph 1 and, if so, the applicable percentage. ESMA shall publish that information on its website.

8 The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to transmit the information laid down in paragraph 2 as regards the format of information to be transmitted, the format of the request, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).

Article 3b

Transmission of information

1 Member States shall ensure that the intermediaries are required to transmit the following information, without delay, from the company to the shareholder or to a third party nominated by the shareholder:

- a the information which the company is required to provide to the shareholder, to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class; or
- b where the information referred to in point (a) is available to shareholders on the website of the company, a notice indicating where on the website that information can be found.

2 Member States shall require companies to provide intermediaries in a standardised and timely manner with the information referred to in point (a) of paragraph 1 or the notice referred to in point (b) of that paragraph.

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3 However, Member States shall not require that the information referred to in point (a) of paragraph 1 or the notice referred to in point (b) of that paragraph be transmitted or provided in accordance with paragraphs 1 and 2 where companies send that information or that notice directly to all their shareholders or to a third party nominated by the shareholder.

4 Member States shall oblige intermediaries to transmit, without delay, to the company, in accordance with the instructions received from the shareholders, the information received from the shareholders related to the exercise of the rights flowing from their shares.

5 Where there is more than one intermediary in a chain of intermediaries, information referred to in paragraphs 1 and 4 shall be transmitted between intermediaries without delay, unless the information can be directly transmitted by the intermediary to the company or to the shareholder or to a third party nominated by the shareholder.

6 The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to transmit information laid down in paragraphs 1 to 5 of this Article as regards the types and format of information to be transmitted, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).

Article 3c

Facilitation of the exercise of shareholder rights

1 Member States shall ensure that the intermediaries facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings, which shall comprise at least one of the following:

- a the intermediary makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights;
- b the intermediary exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for the shareholder's benefit.

2 Member States shall ensure that when votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the vote.

Member States shall ensure that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the company, unless that information is already available to them. Member States may establish a deadline for requesting such confirmation. Such a deadline shall not be longer than three months from the date of the vote.

Where the intermediary receives confirmation as referred to in the first or second subparagraph, it shall transmit it without delay to the shareholder or a third party nominated by the shareholder. Where there is more than one intermediary in the chain of intermediaries the confirmation shall be transmitted between intermediaries without

delay, unless the confirmation can be directly transmitted to the shareholder or a third party nominated by the shareholder.

- 3 The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to facilitate the exercise of shareholder rights laid down in paragraphs 1 and 2 of this Article as regards the types of the facilitation, the format of the electronic confirmation of receipt of the votes, the format for the transmission of the confirmation that the votes have been validly recorded and counted through the chain of intermediaries, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).

Article 3d

Non-discrimination, proportionality and transparency of costs

- 1 Member States shall require intermediaries to disclose publicly any applicable charges for services provided for under this Chapter separately for each service.
- 2 Member States shall ensure that any charges levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Any differences between the charges levied between domestic and cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services.
- 3 Member States may prohibit intermediaries from charging fees for the services provided for under this Chapter.

Article 3e

Third-country intermediaries

This Chapter also applies to intermediaries which have neither their registered office nor their head office in the Union when they provide services referred to in Article 1(5).

Article 3f

Information on implementation

- 1 Competent authorities shall inform the Commission of substantial practical difficulties in enforcement of the provisions of this Chapter or non-compliance with the provisions of this Chapter by Union or third-country intermediaries.
- 2 The Commission shall, in close cooperation with ESMA and the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽¹⁰⁾, submit a report to the European Parliament and to the Council on the implementation of this Chapter, including its effectiveness, difficulties in practical application and enforcement, while taking into account relevant market developments at the Union and international level. The report shall also address the appropriateness of the scope of application of this

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Chapter in relation to third-country intermediaries. The Commission shall publish the report by 10 June 2023.

CHAPTER Ib

TRANSPARENCY OF INSTITUTIONAL INVESTORS, ASSET MANAGERS AND PROXY ADVISORS

Article 3g

Engagement policy

1 Member States shall ensure that institutional investors and asset managers either comply with the requirements set out in points (a) and (b) or publicly disclose a clear and reasoned explanation why they have chosen not to comply with one or more of those requirements.

a Institutional investors and asset managers shall develop and publicly disclose an engagement policy that describes how they integrate shareholder engagement in their investment strategy. The policy shall describe how they monitor investee companies on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance, conduct dialogues with investee companies, exercise voting rights and other rights attached to shares, cooperate with other shareholders, communicate with relevant stakeholders of the investee companies and manage actual and potential conflicts of interests in relation to their engagement.

b Institutional investors and asset managers shall, on an annual basis, publicly disclose how their engagement policy has been implemented, including a general description of voting behaviour, an explanation of the most significant votes and the use of the services of proxy advisors. They shall publicly disclose how they have cast votes in the general meetings of companies in which they hold shares. Such disclosure may exclude votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

2 The information referred to in paragraph 1 shall be available free of charge on the institutional investor's or asset manager's website. Member States may provide for the information to be published, free of charge, by other means that are easily accessible online.

Where an asset manager implements the engagement policy, including voting, on behalf of an institutional investor, the institutional investor shall make a reference as to where such voting information has been published by the asset manager.

3 Conflicts of interests rules applicable to institutional investors and asset managers, including Article 14 of Directive 2011/61/EU, point (b) of Article 12(1) and point (d) of 14(1) of Directive 2009/65/EC and the relevant implementing rules, and Article 23 of Directive 2014/65/EU shall also apply with regard to engagement activities.

Article 3h

Investment strategy of institutional investors and arrangements with asset managers

1 Member States shall ensure that institutional investors publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of their assets.

2 Member States shall ensure that where an asset manager invests on behalf of an institutional investor, whether on a discretionary client-by-client basis or through a collective investment undertaking, the institutional investor publicly discloses the following information regarding its arrangement with the asset manager:

- a how the arrangement with the asset manager incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities;
- b how that arrangement incentivises the asset manager to make investment decisions based on assessments about medium to long-term financial and non-financial performance of the investee company and to engage with investee companies in order to improve their performance in the medium to long-term;
- c how the method and time horizon of the evaluation of the asset manager's performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities, and take absolute long-term performance into account;
- d how the institutional investor monitors portfolio turnover costs incurred by the asset manager and how it defines and monitors a targeted portfolio turnover or turnover range;
- e the duration of the arrangement with the asset manager.

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

3 The information referred to in paragraphs 1 and 2 of this Article shall be available, free of charge, on the institutional investor's website and shall be updated annually unless there is no material change. Member States may provide for that information to be available, free of charge, through other means that are easily accessible online.

Member States shall ensure that institutional investors regulated by Directive 2009/138/EC are allowed to include this information in their report on solvency and financial condition referred to in Article 51 of that Directive.

Article 3i

Transparency of asset managers

1 Member States shall ensure that asset managers disclose, on an annual basis, to the institutional investor with which they have entered into the arrangements

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referred to in Article 3h how their investment strategy and implementation thereof complies with that arrangement and contributes to the medium to long-term performance of the assets of the institutional investor or of the fund. Such disclosure shall include reporting on the key material medium to long-term risks associated with the investments, on portfolio composition, turnover and turnover costs, on the use of proxy advisors for the purpose of engagement activities and their policy on securities lending and how it is applied to fulfil its engagement activities if applicable, particularly at the time of the general meeting of the investee companies. Such disclosure shall also include information on whether and, if so, how, they make investment decisions based on evaluation of medium to long-term performance of the investee company, including non-financial performance, and on whether and, if so, which conflicts of interests have arisen in connection with engagements activities and how the asset managers have dealt with them.

- 2 Member States may provide for the information in paragraph 1 to be disclosed together with the annual report referred to in Article 68 of Directive 2009/65/EC or in Article 22 of Directive 2011/61/EU, or periodic communications referred to in Article 25(6) of Directive 2014/65/EU.

Where the information disclosed pursuant to paragraph 1 is already publicly available, the asset manager is not required to provide the information to the institutional investor directly.

- 3 Member States may where the asset manager does not manage the assets on a discretionary client-by-client basis, require that the information disclosed pursuant to paragraph 1 also be provided to other investors of the same fund at least upon request.

Article 3j

Transparency of proxy advisors

- 1 Member States shall ensure that proxy advisors publicly disclose reference to a code of conduct which they apply and report on the application of that code of conduct.

Where proxy advisors do not apply a code of conduct, they shall provide a clear and reasoned explanation why this is the case. Where proxy advisors apply a code of conduct but depart from any of its recommendations, they shall declare from which parts they depart, provide explanations for doing so and indicate, where appropriate, any alternative measures adopted.

Information referred to in this paragraph shall be made publicly available, free of charge, on the websites of proxy advisors and shall be updated on an annual basis.

- 2 Member States shall ensure that, in order to adequately inform their clients about the accuracy and reliability of their activities, proxy advisors publicly disclose on an annual basis at least all of the following information in relation to the preparation of their research, advice and voting recommendations:
- a the essential features of the methodologies and models they apply;
 - b the main information sources they use;
 - c the procedures put in place to ensure quality of the research, advice and voting recommendations and qualifications of the staff involved;
 - d whether and, if so, how they take national market, legal, regulatory and company-specific conditions into account;

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- e the essential features of the voting policies they apply for each market;
- f whether they have dialogues with the companies which are the object of their research, advice or voting recommendations and with the stakeholders of the company, and, if so, the extent and nature thereof;
- g the policy regarding the prevention and management of potential conflicts of interests.

The information referred to in this paragraph shall be made publicly available on the websites of proxy advisors and shall remain available free of charge for at least three years from the date of publication. The information does not need to be disclosed separately where it is available as part of the disclosure under paragraph 1.

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

4 This Article also applies to proxy advisors that have neither their registered office nor their head office in the Union which carry out their activities through an establishment located in the Union.

Article 3k

Review

1 The Commission shall submit a report to the European Parliament and to the Council on the implementation of Articles 3g, 3h and 3i, including the assessment of the need to require asset managers to publicly disclose certain information under Article 3i, taking into account relevant Union and international market developments. The report shall be published by 10 June 2022 and shall be accompanied, if appropriate, by legislative proposals.

2 The Commission shall, in close cooperation with ESMA, submit a report to the European Parliament and to the Council on the implementation of Article 3j, including the appropriateness of its scope of application and its effectiveness and the assessment of the need for establishing regulatory requirements for proxy advisors, taking into account relevant Union and international market developments. The report shall be published by 10 June 2023 and shall be accompanied, if appropriate, by legislative proposals..

(4) The following Articles are inserted:

Article 9a

Right to vote on the remuneration policy

1 Member States shall ensure that companies establish a remuneration policy as regards directors and that shareholders have the right to vote on the remuneration policy at the general meeting.

2 Member States shall ensure that the vote by the shareholders at the general meeting on the remuneration policy is binding. Companies shall pay remuneration to

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their directors only in accordance with a remuneration policy that has been approved by the general meeting.

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

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

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

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

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

5 Member States shall ensure that companies submit the remuneration policy to a vote by the general meeting at every material change and in any case at least every four years.

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

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

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

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

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The remuneration policy shall indicate the duration of the contracts or arrangements with directors and the applicable notice periods, the main characteristics of supplementary pension or early retirement schemes and the terms of the termination and payments linked to termination.

The remuneration policy shall explain the decision-making process followed for its determination, review and implementation, including, measures to avoid or manage conflicts of interests and, where applicable, the role of the remuneration committee or other committees concerned. Where the policy is revised, it shall describe and explain all significant changes and how it takes into account the votes and views of shareholders on the policy and reports since the most recent vote on the remuneration policy by the general meeting of shareholders.

- 7 Member States shall ensure that after the vote on the remuneration policy at the general meeting the policy together with the date and the results of the vote is made public without delay on the website of the company and remains publicly available, free of charge, at least as long as it is applicable.

Article 9b

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

- 1 Member States shall ensure that the company draws up a clear and understandable remuneration report, providing a comprehensive overview of the remuneration, including all benefits in whatever form, awarded or due during the most recent financial year to individual directors, including to newly recruited and to former directors, in accordance with the remuneration policy referred to in Article 9a.

Where applicable, the remuneration report shall contain the following information regarding each individual director's remuneration:

- a the total remuneration split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration complies with the adopted remuneration policy, including how it contributes to the long-term performance of the company, and information on how the performance criteria were applied;
- b the annual change of remuneration, of the performance of the company, and of average remuneration on a full-time equivalent basis of employees of the company other than directors over at least the five most recent financial years, presented together in a manner which permits comparison;
- c any remuneration from any undertaking belonging to the same group as defined in point (11) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council⁽¹¹⁾;
- 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 any deviations from the procedure for the implementation of the remuneration policy referred to in Article 9a(6) and on any derogations applied in accordance with Article 9a(4), including the explanation of the nature of the exceptional circumstances and the indication of the specific elements derogated from.

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2 Member States shall ensure that companies do not include in the remuneration report special categories of personal data of individual directors within the meaning of Article 9(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council⁽¹²⁾ or personal data which refer to the family situation of individual directors.

3 Companies shall process the personal data of directors included in the remuneration report pursuant to this Article for the purpose of increasing corporate transparency as regards directors' remuneration with the view to enhancing directors' accountability and shareholder oversight over directors' remuneration.

Without prejudice to any longer period laid down by any sector-specific Union legislative act, Member States shall ensure that companies no longer make publicly available pursuant to paragraph 5 of this Article the personal data of directors included in the remuneration report in accordance with this Article after 10 years from the publication of the remuneration report.

Member States may provide by law for processing of the personal data of directors for other purposes.

4 Member States shall ensure that the annual general meeting has the right to hold an advisory vote on the remuneration report of the most recent financial year. The company shall explain in the following remuneration report how the vote by the general meeting has been taken into account.

However, for small and medium-sized companies as defined, respectively, in Article 3(2) and (3) of Directive 2013/34/EU, Member States may provide, as an alternative to a vote, for the remuneration report of the most recent financial year to be submitted for discussion in the annual general meeting as a separate item of the agenda. The company shall explain in the following remuneration report how the discussion in the general meeting has been taken into account.

5 Without prejudice to Article 5(4), after the general meeting the companies shall make the remuneration report publicly available on their website, free of charge, for a period of 10 years, and may choose to keep it available for a longer period provided it no longer contains the personal data of directors. The statutory auditor or audit firm shall check that the information required by this Article has been provided.

Member States shall ensure that the directors of the company, acting within its field of competence assigned to them by national law, have collective responsibility for ensuring that the remuneration report is drawn up and published in accordance with the requirements of this Directive. Member States shall ensure that their laws, regulations and administrative provisions on liability, at least towards the company, apply to the directors of the company for breach of the duties referred to in this paragraph.

6 The Commission shall, with a view to ensuring harmonisation in relation to this Article, adopt guidelines to specify the standardised presentation of the information laid down in paragraph 1.

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Article 9c

Transparency and approval of related party transactions

- 1 Member States shall define material transactions for the purposes of this Article, taking into account:
- a the influence that the information about the transaction may have on the economic decisions of shareholders of the company;
 - b the risk that the transaction creates for the company and its shareholders who are not a related party, including minority shareholders.

When defining material transactions Member States shall set one or more quantitative ratios based on the impact of the transaction on the financial position, revenues, assets, capitalisation, including equity, or turnover of the company or take into account the nature of transaction and the position of the related party.

Member States may adopt different materiality definitions for the application of paragraph 4 than those for the application of paragraphs 2 and 3 and may differentiate the definitions according to the company size.

- 2 Member States shall ensure that companies publicly announce material transactions with related parties at the latest at the time of the conclusion of the transaction. The announcement shall contain at least information on the nature of the related party relationship, the name of the related party, the date and the value of the transaction and other information necessary to assess whether or not the transaction is fair and reasonable from the perspective of the company and of the shareholders who are not a related party, including minority shareholders.

- 3 Member States may provide for the public announcement referred to in paragraph 2 to be accompanied by a report assessing whether or not the transaction is fair and reasonable from the perspective of the company and of the shareholders who are not a related party, including minority shareholders, and explaining the assumptions it is based upon together with the methods used.

The report shall be produced by one of the following:

- a an independent third party;
- b the administrative or supervisory body of the company;
- c the audit committee or any committee the majority of which is composed of independent directors.

Member States shall ensure that the related parties do not take part in the preparation of the report.

- 4 Member States shall ensure that material transactions with related parties are approved by the general meeting or by the administrative or supervisory body of the company according to procedures which prevent the related party from taking advantage of its position and provide adequate protection for the interests of the company and of the shareholders who are not a related party, including minority shareholders.

Member States may provide for shareholders in the general meeting to have the right to vote on material transactions with related parties which have been approved by the administrative or supervisory body of the company.

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Where the related party transaction involves a director or a shareholder, the director or shareholder shall not take part in the approval or the vote.

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

- 5 Paragraphs 2, 3 and 4 shall not apply to transactions entered into in the ordinary course of business and concluded on normal market terms. For such transactions the administrative or supervisory body of the company shall establish an internal procedure to periodically assess whether these conditions are fulfilled. The related parties shall not take part in that assessment.

However, Member States may provide for companies to apply the requirements in paragraph 2, 3 or 4 to transactions entered into in the ordinary course of business and concluded on normal market terms.

- 6 Member States may exclude, or may allow companies to exclude, from the requirements in paragraphs 2, 3 and 4:
- a transactions entered into between the company and its subsidiaries provided that they are wholly owned or that no other related party of the company has an interest in the subsidiary undertaking or that national law provides for adequate protection of interests of the company, of the subsidiary and of their shareholders who are not a related party, including minority shareholders in such transactions;
 - b clearly defined types of transactions for which national law requires approval by the general meeting, provided that fair treatment of all shareholders and the interests of the company and of the shareholders who are not a related party, including minority shareholders, are specifically addressed and adequately protected in such provisions of law;
 - c transactions regarding remuneration of directors, or certain elements of remuneration of directors, awarded or due in accordance with Article 9a;
 - d transactions entered into by credit institutions on the basis of measures, aiming at safeguarding their stability, adopted by the competent authority in charge of the prudential supervision within the meaning of Union law;
 - e transactions offered to all shareholders on the same terms where equal treatment of all shareholders and protection of the interests of the company is ensured.

- 7 Member States shall ensure that companies publicly announce material transactions concluded between the related party of the company and that company's subsidiary. Member States may also provide that the announcement is accompanied by a report assessing whether or not the transaction is fair and reasonable from the perspective of the company and of the shareholders who are not a related party, including minority shareholders and explaining the assumptions it is based upon together with the methods used. The exemptions provided in paragraph 5 and 6 shall also apply to the transactions specified in this paragraph.

- 8 Member States shall ensure that transactions with the same related party that have been concluded in any 12-month period or in the same financial year and have not been subject to the obligations listed in paragraph 2, 3 or 4 are aggregated for the purposes of those paragraphs.
- 9 This Article is without prejudice to the rules on public disclosure of inside information as referred to in Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council⁽¹³⁾.
- (5) The following Chapter is inserted:

CHAPTER IIa

IMPLEMENTING ACTS AND PENALTIES

Article 14a

Committee procedure

- 1 The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC⁽¹⁴⁾. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹⁵⁾.
- 2 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 14b

Measures and penalties

Member States shall lay down the rules on measures and penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented.

The measures and penalties provided for shall be effective, proportionate and dissuasive. Member States shall, by 10 June 2019, notify the Commission of those rules and of those implementing measures and shall notify it, without delay, of any subsequent amendment affecting them..

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- (1) 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](#)).
- (2) 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](#)).²;
- (3) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([OJ L 173, 12.6.2014, p. 349](#)).²;
- (4) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([OJ L 176, 27.6.2013, p. 1](#)).
- (5) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 ([OJ L 257, 28.8.2014, p. 1](#)).
- (6) 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](#)).
- (7) Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) ([OJ L 354, 23.12.2016, p. 37](#)).
- (8) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ([OJ L 243, 11.9.2002, p. 1](#)).².
- (9) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ([OJ L 331, 15.12.2010, p. 84](#)).
- (10) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ([OJ L 331, 15.12.2010, p. 12](#)).².
- (11) 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](#)).
- (12) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([OJ L 119, 4.5.2016, p. 1](#)).
- (13) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ([OJ L 173, 12.6.2014, p. 1](#)).².
- (14) Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee ([OJ L 191, 13.7.2001, p. 45](#)).
- (15) 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](#)).².