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)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Directive 2007/36/EC of the European Parliament and of the Council[(3)] 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.

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

(3) In its communication of 12 December 2012 entitled 'Action Plan: European company law and corporate governance — a modern legal framework for more engaged shareholders and sustainable companies', the Commission announced a number of actions in the area of corporate governance, in particular to encourage long-term shareholder engagement and to enhance transparency between companies and investors.

(4) Shares of listed companies are often held through complex chains of intermediaries which render the exercise of shareholder rights more difficult and may act as an obstacle to shareholder engagement. Companies are often unable to identify their shareholders.

The identification of shareholders is a prerequisite to direct communication between the shareholders and the company and therefore essential to facilitating the exercise of shareholder rights and shareholder engagement. This is particularly relevant in cross-border situations and when using electronic means. Listed companies should therefore have the right to identify their shareholders in order to be able to communicate with them directly. Intermediaries should be required, upon the request of the company, to communicate to the company the information regarding shareholder identity. However, Member States should be allowed to exclude from the identification requirement shareholders holding only a small number of shares.

(5) In order to achieve that objective, a certain level of information on shareholder identity needs to be transmitted to the company. That information should include at least the name and contact details of the shareholder and, where the shareholder is a legal person, its registration number or, if no registration number is available, a unique identifier, such as the Legal Entity Identifier (LEI code), and the number of shares held by the shareholder as well as, if requested by the company, the categories or classes of shares held and the date of their acquisition. The transmission of less information would be insufficient to allow the company to identify its shareholders in order to communicate with them.

(6) Under this Directive, the personal data of shareholders should be processed to enable the company to identify its existing shareholders in order to communicate directly with them, with a view to facilitating the exercise of shareholder rights and shareholder engagement with the company. This is without prejudice to Member State law providing for processing of the personal data of shareholders for other purposes, such as to enable shareholders to cooperate with each other.

(7) In order to enable the company to communicate directly with its existing shareholders with a view to facilitating the exercise of shareholder rights and shareholder engagement, the company and the intermediaries should be allowed to store personal data relating to the shareholders for as long as they remain shareholders. However, companies and intermediaries are often not aware that a person has ceased to be a shareholder unless they have been informed by the person or have obtained that information through a new shareholder identification exercise, which often takes place only once a year in relation to the annual general meeting or other important events such as takeover bids or mergers. Companies and intermediaries should therefore be allowed to store personal data until the date on which they have become aware of the fact that a person has ceased to be a shareholder and for a maximum period of 12 months after becoming aware of that fact. This is without prejudice to the fact that the company or intermediary may need to store the personal data of persons who have ceased to be shareholders for other purposes, such as ensuring adequate records for the purposes of keeping track of succession in title of the shares of a company, maintaining necessary records in respect of general meetings, including in relation to the validity of its resolutions, fulfilling by the company of its obligations in respect of the payment of dividends or interest relating to shares or any other sums to be paid to former shareholders.

(8) The effective exercise of shareholder rights depends to a large extent on the efficiency of the chain of intermediaries maintaining securities accounts on behalf of shareholders or of other persons, especially in a cross-border context. In the chain of intermediaries, especially when the chain involves many intermediaries, information is not always passed from the company to its shareholders and shareholders' votes are not always correctly transmitted to the company. This Directive aims to improve the transmission of information along the chain of intermediaries to facilitate the exercise of shareholder rights.

(9) In view of their important role, intermediaries should be obliged to facilitate the exercise of rights by shareholders, whether shareholders exercise those rights themselves or nominate a third person to do so. When shareholders do not want to exercise the rights themselves and have nominated the intermediary to do so, the latter should exercise those rights upon the explicit authorisation and instruction of the shareholders and for their benefit.

(10) It is important to ensure that shareholders who engage with an investee company by voting know whether their votes have been correctly taken into account. Confirmation of receipt of votes should be provided in the case of electronic voting. In addition, each shareholder who casts a vote in a general meeting should at least have the possibility to verify after the general meeting whether the vote has been validly recorded and counted by the company.

(11) In order to promote equity investment throughout the Union and to facilitate the exercise of rights related to shares, this Directive should establish a high degree of transparency with regard to charges, including prices and fees, for the services provided by intermediaries. Discrimination between the charges levied for the exercise of shareholder rights domestically and on a cross-border basis is a deterrent to cross-border investment and the efficient functioning of the internal market and should be prohibited. Any differences between the charges levied for the domestic and the cross-border exercise of shareholder rights should be allowed only if they are duly justified and reflect the variation in actual costs incurred for delivering the services by intermediaries.

(12) The chain of intermediaries may include intermediaries that have neither their registered office nor their head office in the Union. Nevertheless, the activities carried out by third-country intermediaries could have effects on the long-term sustainability of Union companies and on corporate governance in the Union. Moreover, in order to achieve the objectives pursued by this Directive, it is necessary to ensure that information is transmitted throughout the chain of intermediaries. If third-country intermediaries were not subject to this Directive and did not have the same obligations relating to the transmission of information as Union intermediaries, the flow of information would risk being interrupted. Third-country intermediaries which provide services with respect to shares of companies that have their registered office in the Union and the shares of which are admitted to trading on a regulated market situated or operating within the Union should therefore be subject to the rules on shareholder identification, transmission of information, facilitation of shareholder rights, and transparency and

non-discrimination of costs to ensure the effective application of the provisions on shares held via such intermediaries.

(13) This Directive is without prejudice to national law regulating the holding and ownership of securities and arrangements maintaining the integrity of securities and does not affect the beneficial owners or other persons who are not shareholders under the applicable national law.

(14) Effective and sustainable shareholder engagement is one of the cornerstones of the corporate governance model of listed companies, which depends on checks and balances between the different organs and different stakeholders. Greater involvement of shareholders in corporate governance is one of the levers that can help improve the financial and non-financial performance of companies, including as regards environmental, social and governance factors, in particular as referred to in the Principles for Responsible Investment, supported by the United Nations. In addition, greater involvement of all stakeholders, in particular employees, in corporate governance is an important factor in ensuring a more long-term approach by listed companies that needs to be encouraged and taken into consideration.

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

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

(17) Institutional investors and asset managers should therefore be more transparent as regards their approach to shareholder engagement. They should either develop and publicly disclose a policy on shareholder engagement or explain why they have chosen not to do so. The policy on shareholder engagement should describe how institutional investors and asset managers integrate shareholder engagement in their investment strategy, which different engagement activities they choose to carry out and how they do so. The engagement policy should also include policies to manage actual or potential conflicts of interests, in particular situations in which the institutional investors or asset managers or their affiliated undertakings have significant business relationships with

the investee company. The engagement policy or the explanation should be publicly available online.

(18) Institutional investors and asset managers should publicly disclose information about the implementation of their engagement policy and in particular how they have exercised their voting rights. However, with a view to reducing the possible administrative burden, investors should be able to decide not to publish every vote cast if the vote is considered to be insignificant due to the subject matter of the vote or to the size of the holding in the company. Such insignificant votes may include votes cast on purely procedural matters or votes cast in companies where the investor has a very minor stake compared to the investor's holdings in other investee companies. Investors should set their own criteria regarding which votes are insignificant on the basis of the subject matter of the vote or the size of the holding in the company, and apply them consistently.

(19) A medium to long-term approach is a key enabler of responsible stewardship of assets. The institutional investors should therefore disclose to the public, annually, information explaining how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities and how those elements contribute to the medium to long-term performance of their assets. Where they make use of an asset manager, either through discretionary mandates involving the management of assets on an individual basis or through pooled funds, institutional investors should disclose to the public certain key elements of the arrangement with the asset manager, in particular how it incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities, how it evaluates the asset manager's performance, including its remuneration, how it monitors portfolio turnover costs incurred by the asset manager and how it incentivises the asset manager to engage in the best medium to long-term interest of the institutional investor. This would contribute to a proper alignment of interests between the final beneficiaries of institutional investors, the asset managers and the investee companies and potentially to the development of longer-term investment strategies and longer-term relationships with investee companies involving shareholder engagement.

(20) Asset managers should give information to the institutional investor that is sufficient to allow the latter to assess whether and how the manager acts in the best long-term interests of the investor and whether the asset manager pursues a strategy that provides for efficient shareholder engagement. In principle, the relationship between the asset manager and the institutional investor is a matter for bilateral contractual arrangements. However, although big institutional investors may be able to request detailed reporting from the asset manager, especially if the assets are managed on the basis of a discretionary mandate, for smaller and less sophisticated institutional investors it is crucial to set a minimum set of legal requirements, so that they can properly assess, and hold to account, the asset manager. Therefore, asset managers should be required to disclose to institutional investors how their investment strategy and the implementation thereof contribute to the medium to long-term performance of the assets of the institutional investor or of the fund. That disclosure should cover

reporting on the key material medium to long-term risks associated with the portfolio investments, including corporate governance matters and other medium to long-term risks. That information is key to allowing the institutional investor to assess whether the asset manager carries out a medium to long-term analysis of the equity and the portfolio which is a key enabler of efficient shareholder engagement. As those medium to long-term risks will impact the returns of the investors, more effective integration of those matters into investment processes may be crucial for institutional investors.

(21) Moreover, asset managers should disclose to institutional investors the composition, turnover and turnover costs of their portfolio as well as their policy on securities lending. The level of portfolio turnover is a significant indicator of whether an asset manager's processes are fully aligned with the identified strategy and interests of the institutional investor and indicates whether the asset manager holds equities for a period of time that enables it to engage with the company in an effective way. High portfolio turnover may be an indicator of a lack of conviction in investment decisions and momentum-following behaviour, neither of which is likely to be in the institutional investor's best interests in the long term, especially as an increase in turnover raises the costs faced by the investor and can influence systemic risk. On the other hand, unexpectedly low turnover may signal inattention to risk management or a drift towards a more passive investment approach. Securities lending can cause controversy in the area of shareholder engagement under which the investors' shares are in effect sold, subject to a buyback right. Sold shares have to be recalled for engagement purposes, including voting at the general meeting. It is therefore important that the asset manager reports on its policy on securities lending and how it is applied to fulfil its engagement activities, particularly at the time of the general meeting of the investee company.

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

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

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

(25) Many institutional investors and asset managers use the services of proxy advisors who provide research, advice and recommendations on how to vote in general meetings of listed companies. While proxy advisors play an important role in corporate governance

by contributing to reducing the costs of the analysis related to company information, they may also have an important influence on the voting behaviour of investors. In particular, investors with highly diversified portfolios and many foreign shareholdings rely more on proxy recommendations.

(26) In view of their importance, proxy advisors should be subject to transparency requirements. Member States should ensure that proxy advisors that are subject to a code of conduct effectively report on their application of that code. They should also disclose certain key information relating to the preparation of their research, advice and voting recommendations and any actual or potential conflicts of interests or business relationships that may influence the preparation of the research, advice and voting recommendations. That information should remain publicly available for a period of at least three years in order to allow institutional investors to choose the services of proxy advisors taking into account their performance in the past.

(27) Third-country proxy advisors which have neither their registered office nor their head office in the Union may provide analysis with respect to Union companies. In order to ensure a level playing field between Union and third-country proxy advisors, this Directive should also apply to third-country proxy advisors which carry out their activities through an establishment in the Union, regardless of the form of that establishment.

(28) Directors contribute to the long-term success of the company. The form and structure of directors' remuneration are matters primarily falling within the competence of the company, its relevant boards, shareholders and, where applicable, employee representatives. It is therefore important to respect the diversity of corporate governance systems within the Union, which reflect different Member States' views about the roles of companies and of bodies responsible for the determination of the remuneration policy and of the remuneration of individual directors. Since remuneration is one of the key instruments for companies to align their interests and those of their directors and in view of the crucial role of directors in companies, it is important that the remuneration policy of companies is determined in an appropriate manner by competent bodies within the company and that shareholders have the possibility to express their views regarding the remuneration policy of the company.

(29) In order to ensure that shareholders have an effective say on remuneration policy, they should be granted the right to hold a binding or advisory vote on the remuneration policy, on the basis of a clear, understandable and comprehensive overview of the company's remuneration policy. The remuneration policy should contribute to the business strategy, long-term interests and sustainability of the company and should not be linked entirely or mainly to short-term objectives. Directors' performance should be assessed using both financial and non-financial performance criteria, including, where appropriate, environmental, social and governance factors. The remuneration policy should describe the different components of directors' pay and the range of their relative proportions. It can be designed as a frame within which the pay of directors is to be held. The remuneration policy should be publicly disclosed, without delay, after the vote by the shareholders at the general meeting.

(30) In exceptional circumstances, companies may need to derogate from certain rules in the remuneration policy such as criteria for fixed or variable remuneration. Therefore, Member States should be able to allow companies to apply such temporary derogation to the applicable remuneration policy if they specify in their remuneration policy how it would be applied in certain exceptional circumstances. Exceptional circumstances should only cover situations where the derogation from the remuneration policy is necessary to serve the long-term interests and sustainability of the company as a whole or assure its viability. The remuneration report should include information on remuneration awarded under such exceptional circumstances.

(31) To ensure that the implementation of the remuneration policy is in line with that policy, shareholders should be granted the right to vote on the company's remuneration report. In order to ensure corporate transparency, and accountability of the directors, the remuneration report should be clear and understandable and should provide a comprehensive overview of the remuneration of individual directors during the most recent financial year. Where the shareholders vote against the remuneration report, the company should explain, in the following remuneration report, how the vote of the shareholders was taken into account. However, for small and medium-sized companies, Member States should be able to provide, as an alternative to the vote on the remuneration report, for the remuneration report to be submitted to shareholders only for discussion in the annual general meeting as a separate item of the agenda. If a Member State uses this possibility, the company should explain, in the following remuneration report, in what manner the discussion at the general meeting was taken into account.

(32) In order to provide shareholders with easy access to the remuneration report, and to enable potential investors and stakeholders to be informed of directors' remuneration, the remuneration report should be published on the company's website. This should be without prejudice to the possibility of Member States also to require the publication of the report by other means, for example as part of the corporate governance statement or management report.

(33) The disclosure of individual directors' remuneration and the publication of the remuneration report are intended to provide increased corporate transparency and increased accountability of directors, as well as better shareholder oversight over directors' remuneration. This creates a necessary prerequisite for the exercise of shareholder rights and shareholder engagement in relation to remuneration. In particular, the disclosure of such information to shareholders is necessary to enable them to assess directors' remuneration and to express their views on the modalities and level of directors' pay as well as on the link between pay and performance of each individual director, in order to remedy potential situations in which the amount of remuneration of a director is not justified on the basis of his or her individual performance and the performance of the company. Publication of the remuneration report is necessary in order to enable not only shareholders, but also potential investors and stakeholders to assess directors' remuneration, to what extent that remuneration is linked to the performance of the company and how the company implements its remuneration policy

in practice. The disclosure and publication of anonymised remuneration reports would not allow the achievement of those objectives.

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

(35) In particular, in order to prevent the circumvention of the requirements laid down by this Directive by the company, to avoid any conflicts of interests and to ensure loyalty of the directors to the company, it is necessary to provide for the disclosure and the publication of the remuneration awarded or due to individual directors not only from the company itself, but also from any undertaking belonging to the same group. If remuneration awarded or due to individual directors by undertakings belonging to the same group as the company were excluded from the remuneration report, there would be a risk that companies try to circumvent the requirements laid down by this Directive by providing directors with hidden remuneration via a controlled undertaking. In such a case, shareholders would not have a full and reliable picture of the remuneration granted to the directors by the company and the objectives pursued by this Directive would not be achieved.

(36) In order to provide a complete overview of directors' remuneration, the remuneration report should also disclose, where applicable, the amount of remuneration granted on the basis of the family situation of individual directors. The remuneration report should therefore also cover, where applicable, remuneration components such as family or child allowance. However, because personal data which refer to the family situation of individual directors or special categories of personal data within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council[(4)] are particularly sensitive and require specific protection, the report should disclose only the amount of the remuneration and not the ground on which it was granted.

(37) Under this Directive, personal data included in the remuneration report should be processed for the purposes of increasing corporate transparency as regards directors' remuneration with the view to enhancing directors' accountability and shareholder oversight of directors' remuneration. This is without prejudice to Member State law providing for the processing of the personal data of directors for other purposes.

(38) It is essential to assess the remuneration and the performance of directors not only annually but also over an appropriate time period to enable shareholders, potential investors and stakeholders to assess properly whether the remuneration rewards long-term performance and to measure the middle-to-long-term evolution in directors' performance and remuneration, in particular in relation to company performance. In many cases, it is possible only after several years to evaluate whether the remuneration granted was in line with the long-term interests of the company. In particular the granting of long-term incentives may cover periods of up to seven to ten years and may be combined with deferral periods of several years.

(39) It is also important to be able to assess the remuneration of a director over the entire period of his or her directorship on a particular company's board. In the Union, directors

remain on a company board for a period of six years on average, although in some Member States that period exceeds eight years.

(40) In order to limit interference with the directors' rights to privacy and to the protection of their personal data, public disclosure by companies of directors' personal data included in the remuneration report should be limited to 10 years. That period is consistent with other periods laid down by Union law related to the public disclosure of corporate governance documents. For example, under Article 4 of Directive 2004/109/EC of the European Parliament and the Council[(5)], the management report and the corporate governance statements must remain publicly available as part of the annual financial report for at least 10 years. There is a clear interest in having various types of corporate governance reports, including the remuneration report, available for 10 years, so as to provide the overall state of a company to shareholders and stakeholders.

(41) At the end of the 10-year period, the company should remove any personal data from the remuneration report or cease to disclose the remuneration report publicly as a whole. Following that period access to such personal data could be necessary for other purposes, such as in order to exercise legal actions. The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by the Treaties, in particular Article 153(5) of the Treaty on the Functioning of the European Union, general principles of national contract and labour law, Union and national law regarding involvement and the general responsibilities of the administrative, management and supervisory bodies of the company concerned, and the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs. The provisions on remuneration should also, where applicable, be without prejudice to national law on the representation of employees in the administrative, management or supervisory body.

(42) Transactions with related parties may cause prejudice to companies and their shareholders, as they may give the related party the opportunity to appropriate value belonging to the company. Thus, adequate safeguards for the protection of companies' and shareholders' interests are of importance. For this reason Member States should ensure that material related party transactions are submitted to approval by the shareholders or by the administrative or supervisory body according to procedures that prevent the related party from taking advantage of its position and provide adequate protection for the interests of the company and of the shareholders who are not a related party, including minority shareholders.

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

(44) Companies should publicly announce material transactions no later than at the time of the conclusion of the transaction, identifying the related party, the date and the value of

the transaction and any other information that is necessary to assess the fairness of the transaction. Public disclosure of such transaction, for example on a company's website or by other easily available means, is needed in order to allow shareholders, creditors, employees and other interested parties to be informed of potential impacts that such transactions may have on the value of the company. The precise identification of the related party is necessary to better assess the risks implied by the transaction and to enable challenges to the transaction, including by means of legal action.

(45) This Directive sets up transparency requirements for companies, institutional investors, asset managers and proxy advisors. Those transparency requirements are not intended to require companies, institutional investors, asset managers or proxy advisors to disclose to the public certain specific pieces of information the disclosure of which would be seriously prejudicial to their business position or, where they are not undertakings with a commercial purpose, to the interest of their members or beneficiaries. Such non-disclosure should not undermine the objectives of the disclosure requirements laid down in this Directive.

(46) In order to ensure uniform conditions for the implementation of the provisions on shareholder identification, transmission of information and facilitation of the exercise of shareholder rights, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(6)].

(47) In particular, the Commission implementing acts should specify the minimum standardisation requirements as regards formats to be used and deadlines to be complied with. Empowering the Commission to adopt implementing acts allows those requirements to be kept up to date with market and supervisory developments and to prevent diverging implementation of the provisions across Member States. Such diverging implementation could result in the adoption of incompatible national standards, increasing the risks and costs of cross-border operations and thus jeopardising their effectiveness and efficiency and resulting in additional burdens for intermediaries.

(48) In exercising its implementing powers in accordance with this Directive, the Commission should take into account the relevant market developments and, in particular, existing self-regulatory initiatives such as, for example, Market Standards for Corporate Actions Processing and Market Standards for General Meetings, and should encourage the use of modern technologies in communication between companies and their shareholders, including through intermediaries and, where appropriate, other market participants.

(49) In order to ensure a more comparable and consistent presentation of the remuneration report, the Commission should adopt guidelines to specify its standardised presentation. Existing Member State practices as regards the presentation of the information included in the remuneration report are very different and, as a result, they provide an uneven level of transparency and protection for shareholders and investors. The result of the divergence of practices is that shareholders and investors are, in particular in the case of cross-border investments, subject to difficulties and costs when they want to

understand and monitor the implementation of the remuneration policy and engage with the company on that specific issue. The Commission should consult Member States, as appropriate, before adopting its guidelines.

(50) In order to ensure that the requirements set out in this Directive or the measures implementing this Directive are applied in practice, any infringement of those requirements should be subject to penalties. To that end, penalties should be sufficiently dissuasive and proportionate.

(51) Since the objectives of this Directive cannot be sufficiently achieved by the Member States in view of the international nature of the Union equity market and action by Member States alone is likely to result in different sets of rules, which may undermine or create new obstacles to the functioning of the internal market, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(52) This Directive should be applied in compliance with Union data protection law and the protection of privacy as enshrined in the Charter of Fundamental Rights of the European Union. Any processing of the personal data of natural persons under this Directive should be undertaken in accordance with Regulation (EU) 2016/679. In particular, data should be kept accurate and up to date, the data subject should be duly informed about the processing of personal data in accordance with this Directive and should have the right of rectification of incomplete or inaccurate data as well as right to erasure of personal data. Moreover, any transmission of information regarding shareholder identity to third-country intermediaries should comply with the requirements laid down in Regulation (EU) 2016/679.

(53) Personal data under this Directive should be processed for the specific purposes set out in this Directive. The processing of those personal data for purposes other than the purposes for which they were initially collected should be carried out in accordance with Regulation (EU) 2016/679.

(54) This Directive is without prejudice to the provisions laid down in any sector-specific Union legislative act regulating specific types of company or specific types of entity, such as credit institutions, investments firms, asset managers, insurance companies and pension funds. The provisions of any sector-specific Union legislative act should be considered to be *lex specialis* in relation to this Directive and should prevail over this Directive to the extent that the requirements provided by this Directive contradict the requirements laid down in any sector-specific Union legislative act. However, the specific provisions of a sector-specific Union legislative act should not be interpreted in a way that undermines the effective application of this Directive or the achievement of its general aim. The mere existence of specific Union rules in a particular sector should not exclude the application of this Directive. Where this Directive provides for more specific provisions or adds requirements to the provisions laid down in any sector-

specific Union legislative act, the provisions laid down by any sector-specific Union legislative act should be applied in conjunction with those of this Directive.

(55) This Directive does not prevent Member States from adopting or maintaining in force more stringent provisions in the field covered by this Directive to further facilitate the exercise of shareholder rights, to encourage shareholder engagement and to protect the interests of minority shareholders, as well as to fulfil other purposes such as the safety and soundness of credit and financial institutions. Such provisions should not, however, hamper the effective application of this Directive or the achievement of its objectives, and should, in any event, comply with the rules laid down in the Treaties.

(56) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[(7)], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(57) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[(8)] and delivered an opinion on 28 October 2014[(9)],

HAVE ADOPTED THIS DIRECTIVE:

(**1**) OJ C 451, 16.12.2014, p. 87.

(**2**) Position of the European Parliament of 14 March 2017 (not yet published in the Official Journal) and decision of the Council of 3 April 2017.

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

(**4**) 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).

(**5**) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

(**6**) 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).

(**7**) OJ C 369, 17.12.2011, p. 14.

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

(**9**) OJ C 417, 21.11.2014, p. 8.