Shareholders' rights in EU companies: Council formal adoption

The Council today adopted a directive aimed at strengthening shareholders' engagement in big European companies.

The directive will encourage transparent and active engagement by shareholders of listed companies by reviewing the current Shareholders' Rights Directive (2007/36/EC).

The financial crisis revealed that shareholders in many cases supported managers' excessive short-term risk taking. The revised directive is intended to redress this situation and contribute to the sustainability of companies, which will result in growth and job creation.

The new directive establishes specific requirements in order to encourage shareholder long-term engagement and increase transparency. These requirements apply to:

- remuneration of directors
- identification of shareholders
- facilitation of exercise of shareholders rights
- transmission of information
- transparency for institutional investors, asset managers and proxy advisors
- related party transactions

Oversight over directors' remuneration

Shareholders will have the right to vote on the remuneration policy of the directors of their company.

Under the new rules, remuneration policy should contribute to the business strategy, long-term interests and sustainability of the company and should not be linked 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.

Remuneration policy will also have to be publicly disclosed without delay after the vote by the shareholders at the general meeting.

Identification of shareholders

The new directive will ensure that companies are able to identify their shareholders and obtain information regarding shareholder identity from any intermediary in the chain that holds the information. The purpose is to facilitate the exercise of shareholder rights and their engagement with the company.

Member states may provide that companies in their territory are only allowed to request identification with respect to shareholders holding more than a certain percentage of shares or voting rights which will not exceed 0,5%.

Facilitation of shareholders rights

Intermediaries will have to facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings.

They will also have the obligation to deliver to shareholders, in a standardised and timely manner, all information from the company that will enable the appropriate exercise of their rights.

Furthermore, they will have to publicly disclose any charges related to the new rules.

Transparency for institutional investors, asset managers and proxy advisors
The new requirements will help institutional investors and asset managers to be more transparent in their approach to shareholder engagement. They will have either to develop and publicly disclose a policy on shareholder engagement or explain why they have chosen not to do so.

This policy will describe how they integrate shareholder engagement in their investment strategy and the engagement activities they carry out.

It will also include policies to manage actual or potential conflicts of interests, in particular in a situation where the institutional investors or asset managers or their affiliated undertakings have significant business relationship with the investee company.

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 a reduction in the costs of the analysis related to company information, they may also have an important influence on voting behaviour of investors.

In view of their importance, proxy advisors will be subject to transparency requirements and will be subject to a code of conduct.

**Related party transactions**

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.

For this reason, the new directive provides that material related party transactions should be submitted to approval by the shareholders or the administrative or supervisory body to provide adequate protection for the interests of the company.

Companies will have to announce publicly material transactions at the time of the conclusion of the transaction at the latest, with all the information needed to assess the fairness of the transaction.

**Next steps**

The new directive will be published in the EU's Official Journal.

Member states will have up to two years to incorporate the new provisions into domestic law.

- Directive amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement
- Statements by delegations

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