

THE REVISED SHAREHOLDERS' RIGHTS DIRECTIVE

BACKGROUND

- Problems revealed during the financial crisis
 - Shareholders supported managers' excessive short-term risk taking
 - Insufficient shareholder engagement
 - Insufficient transparency

THE COMMISSION'S AGENDA

Proposal for an amendment to the Shareholders' Rights Directive, COM(2014) 213

- Adopted on 3 April 2017

Shortcomings of the European corporate governance model → Identification of five specific objectives

- Increase the level and quality of engagement of shareholders
- Create better link between pay and performance of directors
- Enhance transparency and shareholder oversight on RPT
- Ensure reliability and quality of advice of proxy advisors
- Improve the cross-border exercise of shareholders' rights

WHAT IS IN THE DIRECTIVE?

- Identification of shareholders
- Facilitating the exercise of rights across borders
- Increased transparency of institutional investors
- Increased transparency of proxy advisors
- Say on pay
- Oversight on related parties transactions

IDENTIFICATION OF SHAREHOLDERS

- The purpose is to
 - Make shareholders known to the company
- Art. 3 a (1): Member States shall ensure that companies have the right to identify their shareholders
 - MS may limit it to shareholders owning more than 0,5% of the shares or voting rights
- Intermediaries are obliged to communicate without delay to the company the information regarding shareholder identity
 - Also where there is a chain of intermediaries
 - Whether or not they are located in the EU

EXERCISE OF RIGHTS ACROSS BORDERS

- Identification also necessary to:
 1. Secure transformation of information from the company to the shareholders
 2. Enable shareholders to exercise their rights
 - Either the shareholder or a third party, or
 - An intermediary (explicit authorisation & instruction)

DISCLOSURE BY INSTITUTIONAL INVESTORS AND ASSET MANAGERS (I)

- Art. 3 g: Institutional investors and asset managers must publish an engagement policy that is to include
 - How engagement is integrated in the investment strategy
 - How they monitor investee companies on a number of financial as well as non-financial issues
 - How they conduct dialogue with investee companies
 - How they exercise voting rights among other rights
 - How they cooperate with other shareholders
 - How they communicate with relevant stakeholders
 - How they manage conflicts of interest

DISCLOSURE BY INSTITUTIONAL INVESTORS AND ASSET MANAGERS (II)

- Institutional investors and asset managers shall disclose how their engagement policy has been implemented, including
 - A general description of voting behaviour
 - An explanation of the most significant votes
 - The use of proxy advisors
- Institutional investors and asset managers shall disclose how they have cast their votes
- The engagement policy and the engagement information must be disclosed on a comply or explain basis

TRANSPARENCY FOR PROXY ADVISORS

- Art. 3 j: 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, or apply a code of conduct but depart from any of its recommendations, they shall provide a clear and reasoned explanation why this is the case.
- Apply to 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
- Must disclose information on methodology, information sources, etc.

SAY ON PAY (I)

- Companies must establish a remuneration policy that describes
 - How the policy contributes to the company's business strategy, long-term interests and sustainability
 - The different components of fixed and variable remuneration and their relative proportion
 - How the pay and employment conditions of employees of the company are to be taken into account
- Additional requirements where a company awards variable remuneration or share-based remuneration
- The policy must be submitted to a binding vote at the general meeting
 - The vote can be made advisory only

SAY ON PAY (II)

- Companies must draw up a clear and understandable remuneration report, which provides a comprehensive overview of the remuneration awarded or due to individual directors
- Shareholders shall have the right to hold an advisory vote on the remuneration report
 - Member States may provide that for SMEs the remuneration report must be submitted to the general meeting for discussion

OVERSIGHT OF RELATED PARTY TRANSACTIONS (I)

- Member States must define material transactions, taking into account
 - the influence that the information about the transaction may have on the economic decisions of the company
 - the risk that the transaction creates for the company and its shareholders who are not a related party
- Member States must set one or more quantitative ratios based on the impact of the transaction
- Material transactions with related parties (RPT) must be disclosed at the time of the conclusion of the transaction at the latest
- The announcement may be accompanied by a fairness report

OVERSIGHT OF RELATED PARTY TRANSACTIONS (II)

- RPT must be approved by the general meeting or by the administrative or the supervisory body of the company
- Member States may approve for shareholder approval at the general meeting when the RPT has been approved by the administrative or the supervisory body of the company
- Ordinary transactions on market terms are excluded unless Member States decide otherwise
- Member States may provide for other exclusions, inclusive of intra-group transactions



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