

# SMI Summary sheet

## DIRECTIVE ON THE RIGHTS OF SHAREHOLDERS

### Reference elements:

Proposal of 9 April 2014 amending the following legislations:

Directive 2007/36/EC on the rights of shareholders

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:FR:PDF>

Directive 2013/34/EC on the obligations with regard to financial state and transparency

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0019:0076:FR:PDF>

The legislation is a revision of a previous Directive published on April the 3rd:

[http://www.consilium.europa.eu/en/press/press-releases/2017/04/03-shareholder-rights-eu-companies/?utm\\_source=dsms-auto&utm\\_medium=email&utm\\_campaign=Shareholders'+rights+in+EU+companies%3a+Council+for+mal+adoption](http://www.consilium.europa.eu/en/press/press-releases/2017/04/03-shareholder-rights-eu-companies/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Shareholders'+rights+in+EU+companies%3a+Council+for+mal+adoption)

Main rapporteur (Legal Case) [COFFERATI Sergio Gaetano](#)

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The proposed review stems from a consultation undertaken through two green papers ("Corporate governance in financial institutions" and "corporate governance framework in the EU").

### **Date(s) of entry into force: May 2017 with 24 Months or transposition**

The publication at Journal Officiel of European Union is planned for end of April 2017 and the entry into force will occur 20 days after. The States will have from 24 months after publication to transpose the legislation into national law. Some items will be followed by technical implementation standards that shall be published 15 month after the publication of the amended Directive

### **Presentation:**

This proposed Directive aims to encourage long-term investment by the shareholders and to increase transparency between investors and corporations.

It amends Directive 2007/36/EC which deals with the rights of shareholders to improve the governance of corporations listed on the European Union stock exchanges and strengthens their competitiveness and viability in the long term. It supervises the exercise of certain shareholders' rights on shares with voting rights particularly at General Meetings (GM). Its objective is the companies admitted for trading on a regulated market established or operating in the European Union and whose registered office is in a Member State. The proposal puts emphasis on non-resident shareholding which represents 44% of shares listed in the EU.

The proposal deals with five major topics:

- enables listed companies to identify their shareholders, to compel intermediaries to send information and to facilitate the exercise of shareholders' rights;
- the mandatory transparency of the voting, the commitment of the institutional investors and asset managers and certain aspects of the asset management contracts;
- the disclosure of the company's remuneration policy together with shareholders' voting rights;
- increased transparency and an independent opinion on the related parties' transactions, and the submission of the largest transactions for the shareholders' approval;
- the obligation, for the proxy advisers, to provide information on their working methods and to be capable of transparency where there are conflicts of interest;

On European Parliament initiative, amendments imposing obligation for companies to publically report on their tax payment in Europe, have been added.

**1: The proposal enables a listed company to identify its shareholders, to compel the intermediary to send information and to facilitate the investor exercising his rights.**

### **Identification of the shareholders (Section 1a Article 3a) concerning bearer shares:**

- the States make sure that the intermediaries offer companies the facility of identifying their shareholders so that they may exercise their rights;
- The introduction of the concept of undue delays, the obligation is to send the shareholder's name and contact details and the unique identifier (LEI type) if there is one.

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- Where there is a chain of intermediaries, the same concepts apply for transmission
- The intermediary must inform the shareholder if the company is in a position to identify him. He is described (article 2) as a legal person who holds securities accounts for his clients.
- Point 4 of Article 3 makes it possible to override banking secrecy. It provides that the States ensure that an intermediary is not considered to be infringing a restriction on passing on information provided contractually or by a legislative provision.
- The Commission shall lay down the formats and the deadlines by implementation decree.

#### **Sending information (article 3b):**

With regard to bearer shares, the intermediary must:

- inform the shareholder to enable him to exercise his rights stemming from the shares (OST, AG)
- this implies the company's obligation to provide the said information upstream
- The Commission shall lay down the formats and the deadlines by implementation decree.

#### **To facilitate the investor exercising his rights (Article 3c)**

- (1) the intermediary takes whatever measures are necessary to enable the shareholder to exercise his rights particularly with regard to AG.
- (2) in return, the issuer must confirm to the shareholder the vote cast
- The Commission shall lay down the formats and the deadlines by implementation decree.

#### **Transparency of the costs (Article 3d)**

- The intermediary has the right to fix a price the related services
- These prices must be "proportionate" and "non-discriminatory". In this way, any excess costs must be explained within the cross-border context

#### **Foreign country intermediary (Article 3e)**

- These rules shall apply to foreign intermediaries with a subsidiary or a branch within the EU.

### **2: To increase the commitment by the institutional investors and the asset managers:**

The institutional investors and the asset managers shall be obliged to draw up a **shareholder commitment policy** which should play a part in facilitating the management of conflicts of interest. In principle, they should **publish** their commitment policy, the way in which it was implemented and its results.

#### **The Commitment Policy must lay down (Article 3f) the way in which the investor:**

- integrates the "shareholders' commitment" (laid down in Article 2h) in the investment strategy;
- monitors the companies held (particularly non-financial performance);
- discusses with the companies held;
- exercises the voting right;
- uses proxy services;
- co-operates with other shareholders.

#### **Regulations on conflicts of interest must be provided for cases where:**

- the investor supplies financial products to the company held;
- there are board members common to both entities;
- the investor is affiliated to a company under an on-going takeover bid.

#### **Investment strategy (Article 3g)**

- An annual report on the investment strategy must be published at least on-line.
- It provides information on a whole series of elements stating whether the investment is made through an assets manager under a specific agreement with the institutional investor. It must show whatever influence it has on the investment policy, etc.

#### **Transparency of the asset managers (Article 3h)**

- Bound by the preceding article, every six months the asset manager gives a view of the way in which the investment strategy was complied with.

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- It goes into detail on the contents of the portfolio, the non-financial performances of the assets held, etc.

### **3 To strengthen the link between the directors' remuneration and performances** (Article 9 and ff):

The proposal aims at increasing the transparency of the remuneration policy and the actual remuneration of the board members by **granting shareholders an increased right to examine** this remuneration.

The shareholders shall have the right to comment on the remuneration policy and on the remuneration report. All the benefits granted to board members, in any form whatsoever, should be included in the remuneration policy and the remuneration report.

The proposal does not regulate the remuneration level; it leaves it up to the companies and their shareholders to decide.

### **4 To increase the shareholders right to examine transactions with related parties** (Articles 9 and ff):

The proposal requires listed companies to submit to shareholders for their approval transactions with related parties **representing more than 5% of the assets**, as well as those which could have a significant impact on the profits or the revenue. These transactions may not be entered into unconditionally without this approval.

Listed companies should publicly announce transactions with related parties of lesser importance but which represent **more than 1% of their assets**, at the time of carrying out transactions. A report written by an independent third party should accompany the announcement.

Member States shall be authorised to exclude transactions between listed companies and wholly-owned members of its group.

### **5 To increase the transparency of proxy advisers: Article 3i**

The proxy advisers must:

- make precise and reliable voting recommendations based on an in-depth analysis;
  - o publish each year the way in which the votes are cast (on-line and to maintain the publication for three years). This must mention the methods and models applied, the sources of information, the local regulatory elements taken into account, clarify discussions with the companies, the number of people assigned to the voting recommendations and the number of recommendations made during the previous year;
- report on potential conflicts of interest (commercial agreement, etc.).

#### **Current situation:**

9 April 2014 publication of the proposal

25 February 2015 proposal by the ECON Committee for the JURI Committee responsible for the legislation.

July 2015 extraordinary voting procedure in plenary to determine the version of the European Parliament

Trilog procedure on due course.

A revised compromise text has been issued during autumn 2016

Final revised Directive has been adopted on 2017 April the 3<sup>rd</sup>.

End of April 2017 Publication to Journal Officiel of European Union

17 May 2017 entry into force

#### **Next Stages**

29 September 2017 1<sup>st</sup> meeting of CG TECH (expert group in charge of defining guidance for technical implementations standards for few issues)

August 2018 technical implementation standards publication deadline for few issues (Corporate actions, general meeting, identification of shareholders...)

10 June May 2019 end of national transposition period

#### **For further information:**

#### **SGSS/SMI contact:**

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