ROADMAP			
TITLE OF THE INITIATIVE	Revision of the shareholders' rights Directive (2007/36/EC)		
LEAD DG – RESPONSIBLE UNIT	MARKT.F2	**DATE OF ROADMAP**	02 / 2013
This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.			

A. Context and problem definition

(1) What is the political context of the initiative?

(2) How does it relate to past and possible future initiatives, and to other EU policies?

(3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?

(1) Corporate governance defines relationships between a company's management, its board, its shareholders and its other stakeholders. It determines the way companies are managed and controlled. An effective corporate governance framework is of crucial importance because well-run companies are likely to be more competitive and more sustainable in the long term. Shareholders have a crucial role to play in promoting better governance of companies. By doing this they act in both the interest of the company and their own interest.

However, the past few years have highlighted shortcomings in this area. In particular, there is a perceived lack of shareholder interest in holding management accountable for their decisions and actions, compounded by the fact that many shareholders appear to hold their shares for only a short period of time. If the majority of shareholders remain passive, do not seek interaction with the company and do not vote, the functioning of the current corporate governance system is less effective. In such circumstances, no corrective action can be expected from the shareholders' side and supervision of management rests entirely on the shoulders of the (supervisory) board.

There is therefore a perceived need to encourage shareholders to engage more in corporate governance. Shareholders should be offered more possibilities to oversee remuneration policy and related party transactions. In addition, a limited number of obligations should be imposed on institutional investors, asset managers and proxy advisors to bring about effective engagement.

(2) The initiative is part of the Action Plan on company law and corporate governance adopted by the Commission on 12 December 2012. It follows various Green Papers and consultation exercises the Commission conducted over the last two years, most notably the Commission Green Paper on corporate governance in financial institutions of 2010 and the Green Paper on the EU framework of corporate governance of 2011[1]. It will form a package together with the planned recommendation on enhancing the corporate governance framework which aims in particular at improving the quality of corporate governance reporting and namely the explanations given by companies departing from corporate governance codes.

(3) The Green Papers were part of a broader analysis to explore how the corporate governance framework functioned on the ground. The lessons drawn from these exercises feed into this initiative. In other words, this initiative is one of the fruits of the two-year analysis period. No formal evaluation of the application of the existing shareholders' rights directive has taken place; however, the planned revision aims in particular at extending the current scope of the directive (by giving shareholders additional rights and requiring more transparency from institutional investors).

What are the main problems which this initiative will address?

The initiative will have four main lines of action tackling an equal number of underlying problems:

1. Research conducted by DG MARKT leading to and following the 2010 and 2011 Commission Green Papers on corporate governance showed that there is a need for improving the transparency of voting and engagement policies adopted by institutional investors, including asset management firms, and the execution of these policies. Too often, these actors, who play an important role in corporate governance, either don't have a voting policy or they don't disclose it in a way that is easily accessible by third parties.

2. Executive remuneration has been the topic of much discussion in recent years. The European Commission believes that companies could benefit from remuneration policies which stimulate longer term value creation and provide a real link between pay and performance. Poor remuneration policies and/or incentive structures lead to

unjustified transfers of value from companies and their shareholders and other stakeholders to executives. Therefore, shareholders should be enabled to exercise better oversight of remuneration policies for directors of listed companies and of the implementation those policies. Currently, not all Member States give shareholders the right to vote on the remuneration policy and/or report, and disclosed information of companies in different Member States is not easily comparable.

3. Related party transactions, i.e. dealings where the company contracts with its directors or controlling shareholders, may cause prejudice to the company and its minority shareholders, as they give the related party the opportunity to appropriate value belonging to company. Thus, adequate safeguards for the protection of shareholders' interests are of great importance. Current EU rules require companies to include in their annual accounts a note on transactions entered into with related parties, stating the amount and the nature of the transaction and other necessary information. The 2011 Green Paper asked a question about the need for more protection against related party transactions. A considerable proportion of respondents called for stronger safeguards, which is the position shared by the Commission following extensive research and consultations.

4. Institutional investors with highly diversified equity portfolios face practical difficulties in assessing in detail how they should vote on items on the agenda of general meetings of investee companies. They therefore make frequent use of the services of proxy advisors, such as voting advice, proxy voting and corporate governance ratings. A consequence is that, proxy advisors' influence on voting is substantial. Moreover, institutional investors rely more heavily on voting advice for their investments in foreign companies than for investments in their home markets. As a consequence, the influence of proxy advisors would be greater in markets with a high percentage of international investors. During the preparation of the 2011 Green Paper, investors and investee companies shared their concerns that proxy advisors were not sufficiently transparent about the methods applied in preparation of the advice. More specifically, it was pointed out that the analytical methodology fails to take into account firm-specific characteristics and/or characteristics of national legislation and best corporate governance practices. Another concern is that proxy advisors are subject to conflicts of interest, such as when they also act as corporate governance consultants to investee companies. Conflicts of interest also arise when a proxy advisor advises on shareholder resolutions proposed by (one of) its clients.

Who will be affected by it?

Institutional investors, shareholders in general, asset managers, proxy advisors, directors of listed companies, certain public authorities.

Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better?

EU action is justified on grounds of subsidiarity as a coherent approach is needed on the issues described. The integration of the EU capital market is far advanced, and national initiatives fall short of providing the necessary tools. Investment takes place more and more on a cross-border basis and listed companies have an increasing proportion of foreign shareholders. In this situation there is need for a level-playing field at EU level, as national initiatives only cannot tackle the problem. For example, the current national rules on disclosure of remuneration require very different presentation of remuneration reports, which makes it difficult for international investors to understand the information provided. Similarly, national rules on related party transactions are very different and do not offer a comparable level of protection to minority shareholders.

B. Objectives of the initiative

What are the main policy objectives?

The main global objective is to make shareholders more engaged and companies more sustainable from a corporate governance perspective. This implies as more specific objectives to increase shareholder control over management and to encourage institutional investors to take more into account long-term perspectives.

There are four main operational objectives:

1. One of the operational objectives is to improve disclosure of voting policies by institutional investors in order to raise investor awareness on corporate governance, enable ultimate investors to optimise investment decisions, facilitate a dialogue between investors and companies and encourage shareholder engagement.

2. As remuneration is one of the key incentives for companies' directors, it is important for shareholders to exercise a better oversight on remuneration policies and individual remuneration of directors. The initiative will therefore aim at achieving harmonisation of disclosure requirements and at granting a mandatory shareholder vote on the remuneration policy and the remuneration report, containing an overview of the manner in which the remuneration policy has been implemented.

3. With a view to improving shareholder control over management, it is crucial to enhance the shareholder

oversight on related party transactions. There is a need to ensure better transparency of such transactions and to grant shareholders a right of approval for most significant transactions.

4. As regards proxy advisors, the objective is to require them to be more transparent as regards the methodology applied for the preparation of their advice and their possible conflicts of interests.

Do the objectives imply developing EU policy in new areas?

The policy tools needed to fulfil the objectives are firmly rooted in the existing legal framework. In order to make a difference, however, they will tackle areas which have so far not been exhaustively dealt with by the Community acquis (see for example the initiative related to proxy advisors).

C. Options

(1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered?

(2) What legislative or 'soft law' instruments could be considered?

(3) How do the options respect the proportionality principle?

(1) The policy options – apart from the "no action" option – include rules to regulate disclosure of voting and engagement policies as well as voting records by institutional investors, improvements related to the transparency on remuneration policies and individual remuneration of directors, granting shareholders the right to vote on the remuneration policy and the remuneration report, improvements to the control over related party transactions, rules enhancing the transparency and conflict of interest rules applicable to proxy advisors.

(2) The initiative could take the form of a legislative instrument amending Directive 2007/36/EC, possibly supplemented by more detailed level 2 measures. Alternative instrument options will be carefully examined during the detailed impact analysis.

(3) In the analysis of options due account will be given to the need to favour the least restrictive approach achieving optimal results to attain the objectives described above under B.).

D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

The benefits, which are described in detail under B.), can be summarised in a better functioning of the corporate governance framework in which all actors in the chain take more responsibilities and ultimately improve the way companies are run. The main costs will be produced by additional compliance requirements, particularly related to an enhanced transparency and disclosure.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

The options are not expected to have a significant impact on simplification, on relations with other countries or implementation arrangements. They will also not be particularly difficult to transpose for certain Member States. Some of the options will entail considerable administrative burden on the respective market participants, especially the ones related to transparency requirements and reporting obligations. However, there should be no additional burden linked to compliance or supervision.

(1) Will an IA be carried out for this initiative and/or possible follow-up initiatives?

(2) When will the IA work start?

(3) When will you set up the IA Steering Group and how often will it meet?

(4) What DGs will be invited?

(1) Yes. The impact assessment will be done together for the package (the revision of the shareholders' rights directive and the recommendation on enhancing corporate governance framework).

(2) Work on the IA started in Autumn 2012.

(3) The IA Steering Group has been set up and the first meeting will take place on 28 February. . Two more meetings will take place in April and June.

(4) We have invited SG, LS, ENTR, EMPL, ECFIN, COMP, SANCO, JUST and TAXUD.

(1) Is any option likely to have impacts on the EU budget above € 5m?

(2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.

(1) No.

(2) Not applicable.

E. Evidence base, planning of further work and consultation

(1) What information and data are already available? Will existing IA and evaluation work be used?

(2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?

(3) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?

(4) Is any particular communication or information activity foreseen? If so, what, and by when?

(1) Extensive information has already been gathered through two exhaustive public consultation exercises (references in the context of the Green Papers published in 2010 and 2011. The Commission has received from a wide range of stakeholders hundreds of contributions to the various questions asked. On specific items such as remuneration, previous impact assessments can be used that had been produced for targeted earlier initiatives (e.g. in the context of CRD III/IV). On proxy advisors, ESMA has recently conducted a fact-finding exercise which will also feed into our work.

(2) The need for further information is assessed during the impact assessment phase. So far, we have identified no need to ask a contractor to provide us with specific elements, but we gather information internally, or through contacts with Member States or relevant stakeholders.

(3) Not applicable.

(4) The Action Plan on company law and corporate governance adopted by the Commission on 12 December 2012 and announcing the planned initiatives attracted moderate media attention but triggered numerous general and specific communication and information measures. The same is likely to happen in 2013 with the legislative initiative itself.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

The large consultations conducted so far (Green Paper on the EU corporate governance framework of 2011, but also Green Paper of 2010 on corporate governance in financial institutions and remuneration) have already yielded important information both on substance and on positions of the various stakeholders. No further public consultation is planned. Despite this wealth of material, well-targeted consultations of specific stakeholder groups or experts may still turn out to be necessary during the impact assessment stage. In particular, we have organised in January 2013 a number of informal discussion meetings with some representatives of different stakeholders groups (companies, investors, employees, consultants etc).which provided the opportunity to get views from different stakeholders on problems and appropriate solutions from their specific perspective.

[1] http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf and http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf#page=2.

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