



Meeting of the Expert Group on Technical Aspects of Corporate Governance Processes

European Commission, DG JUST

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I. ROLE AND TASKS OF THE EXPERT GROUP

Technical aspects of corporate governance

- Instruments, tools and technologies relevant for corporate governance, in particular for
 - **disclosures of corporate information**
 - **interaction with shareholders and other relevant stakeholders**
 - **board level interaction**
 - **any other relevant types of interaction**

Tasks of the Expert Group

- Assess current market practices
- Analyse challenges linked to technology and propose solutions
- Advise on preparation and implementation of policy initiatives to modernise and optimise corporate governance processes
- Assist the Commission in the early preparation of implementing acts to the revised Shareholder Rights Directive ('SRD2')
- Identify and assess relevant new approaches and emerging technologies
- Possibly other advice linked to corporate governance, capital markets and technologies used

Working arrangements

- Up to 8 meetings per year.
- Probably 3 meetings before end 2017
- First task – advice regarding the implementing acts to the revised Shareholder Rights Directive

II. OVERVIEW OF THE PROVISIONS OF THE DIRECTIVE (EU) 2017/828

Basic facts

- 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
- Entry in to force 10 June 2017
- Double transposition deadline :
 - **10 June 2019 – basic deadline**
 - **24 months after the adoption of implementing acts by the Commission - for the Articles 3a, 3b and 3c**
- The first Shareholder Rights Directive (Directive 2007/36/EC - 'SRD1') is still very relevant as regards basic shareholders rights cross-border

Background

- Rationale : to bring about more long-term focus in corporate governance and address shortcomings
- Main shortcomings identified:
 - **Short-termism in the investment universe**
 - **Insufficient oversight on directors' pay**
 - **Insufficient oversight of related party transactions**
 - **Interaction between companies and shareholders not effective or not possible in cross-border situations**

Facilitating interaction between companies and shareholders

- Right for companies to identify their shareholders (Article 3a)
 - **Possibility for Member States to exclude from identification shareholders holding no more than 0,5% of shares**
 - **Protection of personal data of shareholders**
- Obligation to transmit information through the chain of intermediaries (Article 3b)
 - **From companies to shareholders**
 - **From shareholders to companies**
- Obligation to facilitate the exercise of shareholder rights and confirmation of votes (Art 3c)
 - **Necessary arrangement to enable shareholders to exercise his rights or exercise of rights by the intermediary on behalf of the shareholder**
 - **Confirmation of votes received and of votes recorded and counted by the issuer**
- Proportionality, transparency of costs, non-discrimination (Article 3d)

Transparency of institutional investors, asset managers and proxy advisors

- Disclosure of the engagement policy (institutional investors and asset managers) (Article 3g)
 - **Description of the engagement policy**
 - **Annual implementation of the policy**
- Disclosure requirements for institutional investors (Article 3h)
 - **Main elements of the investment strategy**
 - **Key information about the mandates given to asset managers**
- Disclosure requirements for asset managers (Article 3i)
 - **Key information about the investment approach and the execution of the investor mandate**
- Transparency of proxy advisors (Article 3j)
 - **Report about code of conduct applied**
 - **Key information about the activities**

Remuneration Policy

- Requirement for companies to establish a remuneration policy as regards directors (Article 9a)
- Content of the policy:
 - **Need to contribute to the business strategy, long-term interests and sustainability of the company**
 - **Information on all components of remuneration**
 - **Indication of financial and non-financial performance criteria for award of the variable remuneration**
- Shareholder vote on the policy in the general meeting
 - **Binding or advisory vote**

Remuneration Report

- Requirement for companies to establish an annual remuneration report (Article 9b)
- Content of the report:
 - **Information on all benefits awarded or due to directors on individual basis**
 - **Total remuneration split by components, shares and share option grants, information on remuneration reclaimed,**
 - **Annual change of remuneration in comparison to the performance of the company and to the average remuneration of employees over the last 5 years**
- Shareholder vote on the report in the general meeting
 - **Possibility to replace the vote with a discussion in the general meeting in SMEs**
- Protection of personal data of directors

Related Party Transactions

- Requirement for companies to publicly announce material related party transactions (Article 9c)
- Requirement for companies to submit material related party transactions for approval by the shareholders or by the board
- Material transactions to be defined by Member States
- Optional fairness report
- Exemption of transactions concluded in the ordinary course of business and on normal market terms as well as several possibilities of exemption for Member States

III. EMPOWERMENTS TO THE COMMISSION

Commission implementing acts

- 3 empowerments to the Commission to adopt implementing acts under Articles 3a, 3b and 3c
- Deadline for adoption: before 10 September 2018
- Adoption by the Commission possible only after positive opinion of the European Securities Committee representing Member States
- Objective of the implementing acts:
 - **To ensure minimum standardisation in order to prevent diverging implementation resulting in incompatible national standards**
 - **To keep up with market and supervisory developments**
 - **To ensure interoperability in order to increase the efficiency and effectiveness of cross-border operations**
 - **To encourage the use of modern technologies**
 - **To take into account the relevant market developments, and in particular existing self-regulatory initiatives, such as Market Standards for General Meetings and Market Standards for Corporate Action Processing**

Article 3a – shareholder identification

- Implementing acts to specify minimum requirements to transmit the information regarding shareholder identify as regards:
 - **Format of information including security and interoperability**
 - **Format of the request including security and interoperability**
 - **Deadlines to be complied with**
- The information regarding shareholder identity is defined in Article 2(b)(j) as the information allowing the identity of a shareholder to be established, including at least:
 - **Name and contact details, including full address and e-mail address, for legal persons a registration number or a unique identifier such as legal entity identifier (LEI)**
 - **Number of shares held**
 - **Categories or classes of shares and the date from which the shares are held**

Article 3b – transmission of information

- The information to be transmitted is:
 - **The information which the company is required to provide to the shareholder to enable the shareholder to exercise rights flowing from the shares and which is directed to all shareholders in shares of that class**
 - **Where the information is available on the website of the company, the notice indicating where the information is available**
 - **The information from shareholders to the company related to the exercise of rights flowing from their shares**
- Implementing acts to specify minimum requirements to transmit the information as regards:
 - **Types of information**
 - **Format of information including security and interoperability**
 - **Deadlines to be complied with**

Article 3c – facilitation of the exercise of shareholder rights

- Implementing acts to specify minimum requirements to facilitate the exercise as regards
 - **Types of facilitation**
 - **Format of electronic confirmation of receipt of votes including security and interoperability**
 - **Format for the transmission of the confirmation that the votes have been validly recorded and counted through the chain of intermediaries including security and interoperability**
 - **Deadlines to be complied with**

Guidelines on the presentation of the remuneration report

- Guidelines to be adopted by the Commission
- No deadline specified
- Non-binding guidelines
- To specify the standardised presentation of the information in the remuneration report

DISCUSSION