



EUROPEAN COMMISSION

*Brussels, 19.9.2014
C(2014) 6502 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the proposal for a Directive on the encouragement of shareholder engagement {COM (2014) 213 final}.

The Commission is grateful that the Bundesrat supports its objective to strengthen shareholder engagement and improve the governance of European listed companies. Through long-term shareholder engagement, investors contribute to genuine value creation and improve the efficiency and competitiveness of our companies.

The Bundesrat is of the view that, as many shareholders seek short-term profits, the general meeting is not the right place to have a final say on the remuneration policy of the company. The Bundesrat believes the supervisory board, where workers are represented is the right forum to decide on remuneration.

The Commission does not want to weaken the involvement of the supervisory board in remuneration issues which, under the proposal would maintain its key role in proposing and implementing the remuneration policy. No remuneration policy can be set without a proposal by the supervisory board. An additional shareholder approval would introduce additional checks and balances and would therefore give additional legitimacy to the remuneration policy. The proposed Directive would foresee a legal obligation for Member States to ensure that the remuneration policy is in line with the long-term interests of the company.

As regards a compulsory limit to the ratio of variable pay, this proposal, contrary to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, does not intend to regulate the pay structure. The limitation on variable pay for banks has been necessitated by prudential considerations, the systemic importance of certain banks and the possible need for bail-out by taxpayers in case of failure. In ordinary companies, these reasons would not justify setting such limitation by the European legislator. Again, according to the proposal, Member States would have to decide on the ways in which they ensure that the remuneration policy is in line with the long-term interests of the company.

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President of the Bundesrat
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Finally, the Bundesrat opposes the approval by shareholders of related party transactions above 5% of the company's assets. The Bundesrat is of the view that such an approval would make mergers and acquisitions more difficult, where the company's management needs to act quickly.

The proposal is based on the consideration that such large transactions, which are rare in practice, may not sufficiently take the interests of (minority) shareholders into account, and (minority) shareholders should have a say. Direct approval right of such large and potentially abusive transactions represent best governance practice. An approval right by (minority) shareholders of very significant related party transactions may contribute to making institutional investors more responsible and improve engagement between investors and companies. This does not affect the involvement of shareholders in mergers and acquisitions, which according to applicable European rules are to be approved by shareholders in any event.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*