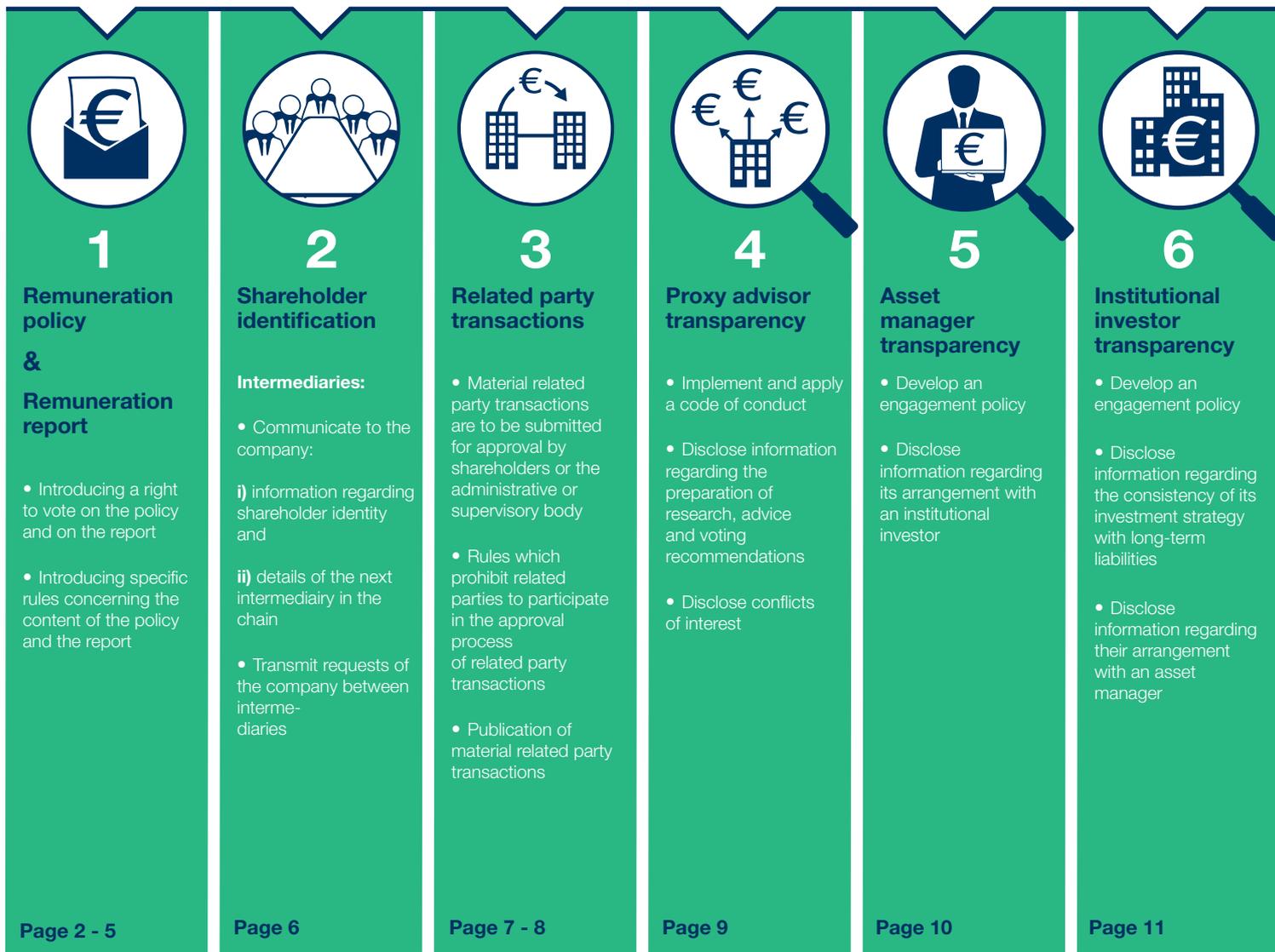


# Amendments to Shareholders Rights Directive

2007/36/EC.

## The six parts of this directive



## Timeline



# 1.1



## Remuneration policy

### Right to vote

Member States shall ensure that companies submit their remuneration policy to a vote by the general meeting at every material change and in any case at least every four years.  
(Article 9a(1 to 5))

#### Binding vote

Member States shall ensure that the vote by the shareholders at the general meeting on the remuneration policy is binding.  
(Article 9a(2))

or

#### Advisory vote

Member States may provide for the vote at the general meeting on the remuneration policy to be advisory.  
(Article 9a(3))

→ Policy

Pay only in accordance with the approved policy

Pay only in accordance with the policy that has been submitted

#### Policy not approved

Where an approved remuneration policy exists and the general meeting does not approve the proposed new policy, the company shall continue to pay remuneration to its directors in accordance with the existing approved policy and shall submit a revised policy for approval at the following general meeting.  
(Article 9a(2))

#### No policy

Where no remuneration policy has been approved and the general meeting does not approve the proposed policy, the company may continue to pay remuneration to its directors in accordance with its existing practices and shall submit a revised policy for approval at the following general meeting.  
(Article 9a(2))

#### Exception: temporary derogation from the policy

Member States may allow companies, in exceptional circumstances, to temporarily derogate from the remuneration policy, provided that the policy includes the procedural conditions under which the derogation can be applied and specifies the elements of the policy from which a derogation is possible.  
(Article 9a(4))

→ Individual pay

### Existing regulations

- Section 2:135 (1, 4 and 5) Dutch Civil Code (“DCC”)
- Principle 3.1 and 3.2 Dutch Corporate Governance Code 2016 (“CGC 2016”)
- Best practice 3.1.1 and 3.2.1 CGC 2016

# 1.2



## Content of the remuneration policy

### Eight elements (Article 9a(6))

1

#### Goal of the remuneration policy

The policy shall contribute to the company's business strategy and long-term interests and sustainability and shall explain how it does so.

2

#### Components

The policy shall be clear and understandable and describe the different components of fixed and variable remuneration, including all bonuses and other benefits in whatever form and indicate their relative proportion.

3

#### Variable remuneration

Where a company awards variable remuneration, the policy shall set clear, comprehensive and varied criteria for the award of the variable remuneration. It shall indicate the financial and non-financial performance criteria, including, where appropriate, criteria relating to corporate social responsibility, and explain how they contribute to the objectives, and the methods to be applied to determine to which extent the performance criteria have been fulfilled. It shall specify information on any deferral periods.

4

#### Share-based remuneration

Where the company awards share-based remuneration, the policy shall specify vesting periods and where applicable retention of shares after vesting and explain how the share based remuneration contributes to the objectives.

5

#### Claw back

The policy shall specify information on the possibility for the company to reclaim variable remuneration.

6

#### Contract, pension and termination

The policy shall indicate the duration of the contracts or arrangements with directors and the applicable notice periods, the main characteristics of supplementary pension or early retirement schemes and the terms of the termination and payments linked to termination.

7

#### Pay of employees

The policy shall explain how the pay and employment conditions of employees of the company were taken into account when establishing the policy.

8

#### Decision-making process

The policy shall explain the decision-making process followed for its determination, review and implementation, including measures to avoid or manage conflicts of interests and, where applicable, the role of the remuneration committee or other committees concerned. Where the policy is revised, it shall describe and explain all significant changes and how it takes into account the votes and views of shareholders on the policy and reports since the most recent vote on the remuneration policy by the general meeting of shareholders.

### Existing regulations

- Section 2:383c - e DCC
- Section 2:391(2) BW
- Principle 3.1 CGC 2016
- Best practice 3.1.2 CGC 2016

# 1.3



## Remuneration report

### Vote on the remuneration report

(Article 9b(4))

### Is the company Small or Medium?

(Defined in Article 3(2) and (3) of Directive 2013/34/EU)

**NO**

**YES**

#### Large

Member States shall ensure that the annual general meeting has the right to hold an advisory vote on the remuneration report of the most recent financial year. The company shall explain in the following remuneration report how the vote by the general meeting has been taken into account.

#### Small and Medium

Member States may provide, as an alternative to a vote, for the remuneration report of the most recent financial year to be submitted for discussion in the annual general meeting as a separate item of the agenda. The company shall explain in the following remuneration report how the discussion in the general meeting has been taken into account.

### Publicly available for 10 years

After the general meeting the company shall make the remuneration report publicly available on its website, free of charge, for a period of 10 years, and may choose to keep it available for a longer period provided it no longer contains the personal data of directors.  
(Article 9b(5))

### Role of the auditor or audit firm

The statutory auditor or audit firm shall check that the information required has been provided.

### Liability of directors

Member States shall ensure that the directors of the company, acting within their field of competence assigned to them by national law, have collective responsibility for ensuring that the remuneration report is drawn up and published in accordance with the requirements of the Directive. Member States shall ensure that their laws, regulations and administrative provisions on liability, at least towards the company, apply to the directors of the company for breach of the duties referred to in this paragraph.

## Existing regulations

Section 2:135(5a) DCC

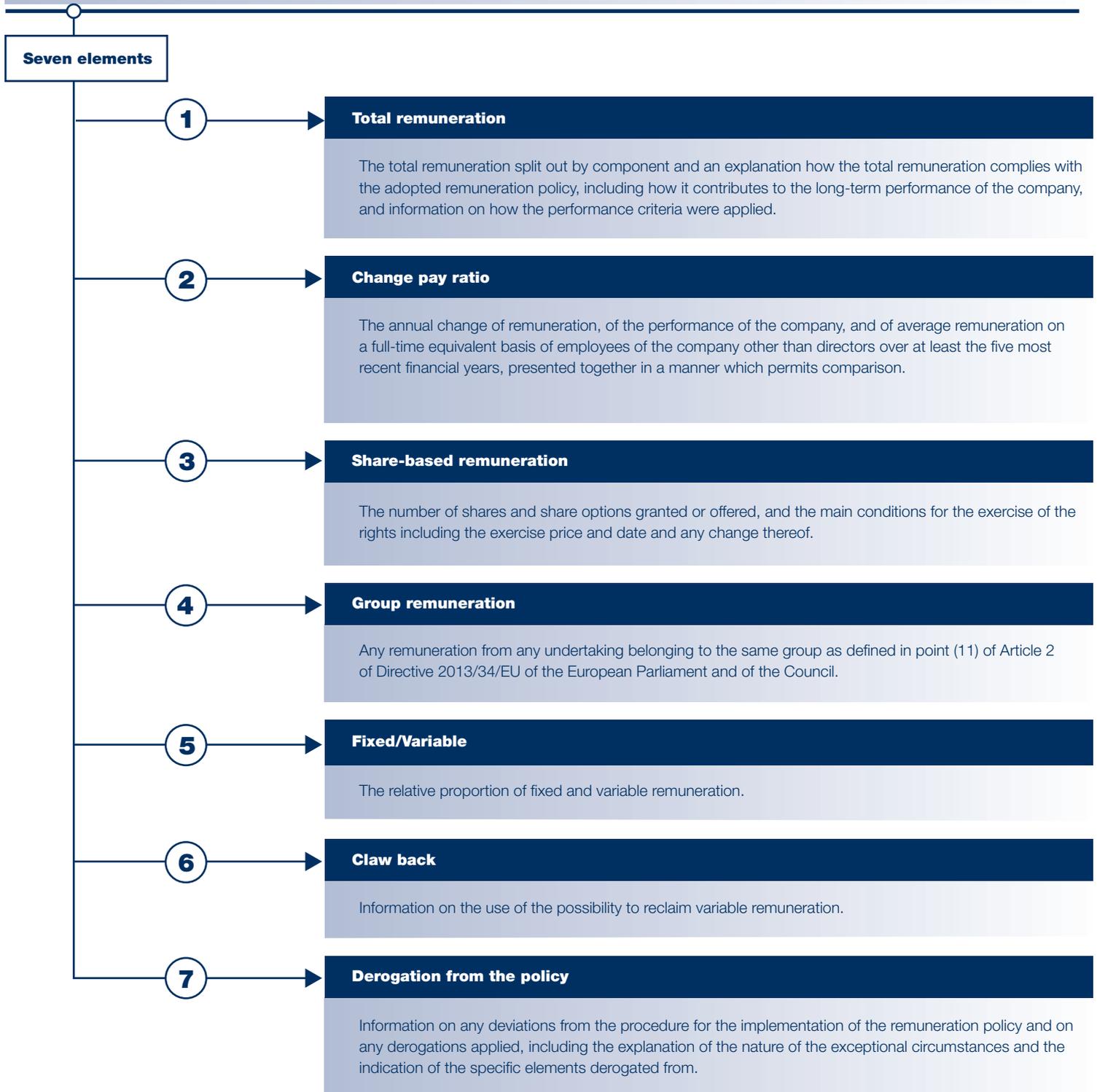
# 1.4



## Content of the remuneration report

### Clear and understandable

Member States shall ensure that the company draws up a clear and understandable remuneration report, providing a comprehensive overview of the remuneration, including all benefits in whatever form, awarded or due during the most recent financial year to individual directors, including to newly recruited and to former directors, in accordance with the remuneration policy. (Article 9b(1)(a-f))



**The EU commission shall adopt new guidelines**

### Existing regulations

Section 2:383c - e DCC | Section 2:391(2) DCC | Principle 3.4 and best practice 3.4.1 CGC 2016

# 2



## Shareholder identification

### Scope of the Directive

Chapter 1a applies to intermediaries in so far they provide services to shareholders or other intermediaries 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.

(Article 1(5))

### Definition

An intermediary is a person such as an investment firm as defined in MiFID II, a credit institution as defined in the Capital Requirements Regulation and a central securities depository as defined in the CSD Regulation, which provides services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons. (Article 2(d))

### Request of the company to identify shareholders

(Article 3a)

#### In case of one intermediary

**Obligation** to communicate the information regarding shareholder identity to the company (Article 3a(2))

#### In case of more than one intermediary

**Obligations to:**

- Transmit the request of the company between intermediaries
- Transmit the information regarding shareholder identity to the company
- Transmit the details of the next intermediary in the chain to the company (Article 3a(3))

#### In case of a request to a central securities depository / another intermediary / service provider

**Obligations to:**

- Collect the information regarding shareholder identity, including from intermediaries in the chain
- Transmit the information to the company (Article 3a(3))

### Existing regulations

- Section 49a-49e Securites Giro Act
- Section 2:85 DCC
- Section 3(2b) Money Laundering and Terrorist Financing (Prevention) Act
- Personal Data Protection Act

### Future

- **UBO register**  
Register with information on UBO's of all entities
- **Central register for shareholders**  
Register with information on shares and shareholders of private companies and non-listed public limited companies

# 3



## Related party transaction

### Related party?

Defined by accounting standards, currently IAS 24 (Article 9a)

**YES**

### Material transaction?

- Qualitative and quantitative criteria, to be determined by the Member States.
- Criteria must take into account:
  - (i) the influence information on the transaction may have on economic decisions of company shareholders;
  - (ii) the transaction risk for the company and its non-related party shareholders (including minority shareholders); and
  - (iii) one or more quantitative ratios based on the impact of the transaction (e.g. on revenues, assets, capitalization, etc.) or ratios taking into account the nature of the transaction and the position of the related party.
- Member states may adopt different materiality definitions for the use of the decision making rules and for the use of publication rules and these definitions may differ according to company size.  
(Article 9c (1))

### Transaction in the ordinary course of business?

- Check whether transactions are
  - (i) in the ordinary course of business; and
  - (ii) concluded on normal market terms.
- Administrative or supervisory body shall establish an internal procedure to periodically assess whether conditions (i) and (ii) are fulfilled. Related parties will not be involved in that assessment.
- Member States may decide to apply the decision making and publication rules to transactions in the ordinary course of business and on normal market terms.  
(Article 9c (5))

**YES**

**NO**

### Decision making rules

- Approval rights for: (a) general meeting or (b) administrative or supervisory body of the company. Member States may provide the right to shareholders to vote on the transaction after the administrative or supervisory body has given its approval.
- Procedures must prevent the related party from taking advantage of its position and must provide adequate protection to the company and non-related shareholders.
- In case of a related party transaction with a director or shareholder, that director or shareholder may not take part in the approval or the vote. Member States may however allow the participation of a shareholder, if national legislation provides for appropriate safeguards applicable before or during the voting process to protect the interests of the company and non-related shareholders. Approval of transaction should be prevented when the majority of the shareholders or the majority of the independent directors oppose the transaction.
- Transactions concluded with the same related party within 12 months or one financial year that are not subject to these rules are aggregated for the purpose of this provision.  
(Article 9c(4, 8))

### Publication rules

- Public announcement of the material transaction must be made at the latest at conclusion of the transaction. Announcement shall at least contain:
  - (i) the nature of the related party transaction relationship;
  - (ii) the name of the related party;
  - (iii) the date and value of the transaction; and
  - (iv) other information necessary to assess the fairness of the transaction from the perspective of the company and non-related shareholders.
- Material transactions between a related party of the company and the company's subsidiary are also publicly announced.
- Members States may provide for a duty to accompany the public announcement by a fairness assessment report. Related parties will not take part in drawing up the report. The report has to be produced by either: (a) an independent third party; (b) the administrative or supervisory body; or (c) the audit committee or any committee the majority of which is composed of independent directors.
- Transactions concluded with the same related party within 12 months or one financial year that are not subject to these rules are aggregated for the purpose of this provision.  
(Article 9c (2, 3, 7, 8))

### Exclusions from Publication and Decision making rules - optional for Member States to adopt

See next page for the exclusions

## Exclusions from Publication and Decision making rules - optional for Member States to adopt

- Transactions between the company and one or more subsidiaries, provided they are (i) wholly owned; (ii) no other related party of the company has an interest in the subsidiary; or (iii) national law provides for adequate protection of the interests of the company, the subsidiary and the non- related shareholders of the company.
- Clearly defined types of transactions for which national law requires approval by the general meeting, provided that fair treatment of all shareholders and the interests of the company and non-related shareholders are specifically addressed and adequately protected.
- Transactions regarding (elements of) the remuneration of directors, awarded in conformity with the company's remuneration policy.
- Transactions concluded by credit institutions based on measures by the competent prudential supervision authority, aimed to safeguard the stability of the credit institution.
- Transactions offered to all shareholders on the same terms where all shareholders are treated equal and the interests of the company are protected.  
(Article 9c (6))

### Existing regulations

- **Conflict of interest rules for directors (2:129/129a/239/239a DCC), supervisory boards (2:140/250 DCC), see also principle 2.7 CGC 2016**
- **Written documentation of agreements between the sole shareholders and the company represented by the sole shareholders (2:137/247 DCC)**
- **Shareholder approval for certain material decisions (2:107a DCC) – only for publicly held companies**

# 4



## Proxy advisor transparency

### Definition

A legal person that analyses the corporate disclosures and other information of listed companies with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights.

(Article 2(g))

### Scope of the Directive

These provisions apply to the extent that the proxy advisor provides services to shareholders with respect to shares of companies which have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State.

(Article 1(6)(c))

### Requirement 1

The proxy advisor publicly discloses reference to a code of conduct or provides an explanation why this is not the case. (Article 3j(1))

Does the Proxy advisor have a code of conduct?

**NO**

The proxy advisor needs to provide a clear and reasoned explanation why this is the case.

**YES**

Does the proxy advisor apply all provisions of its own code of conduct?

**NO**

The proxy advisor has to

- Declare which parts it departs from
- Explain reasons for doing so
- Indicate, where appropriate, any alternative measures adopted.

**YES**

No further actions required.

### Requirement 2

The proxy advisor publicly discloses on an annual basis the following information:

- Essential features of methodologies and models
- Main information sources it uses
- Procedures put in place to ensure quality of research, advice and voting recommendations and qualifications of the staff involved
- Whether and how it takes certain conditions into account
- Essential features of the voting policies it applies for each market
- Whether it has dialogues with the companies which are the object of its research, advice or voting recommendations and with the stakeholders of the company
- Policy regarding prevention and management of potential conflicts of interests.

(Article 3j(2))

### Requirement 3

The proxy advisor identifies and discloses any conflict of interest or business relationship that may influence the preparation of its research, advice or voting recommendation and the actions it has undertaken to eliminate, mitigate or manage the conflict of interest.

(Article 3j(3))

### Existing regulations

In 2014, proxy advisors developed a code of conduct in response to an ESMA recommendation. The recommendation came about due to concerns from stakeholders regarding the independence of proxy advisors and the accuracy and reliability of their advice.

# 5



## Asset manager transparency

### Definition

For the definition of an asset manager under this Directive, see Article 2(f)

#### Scope of the directive

The provisions apply to asset managers to the extent that they invest in shares traded on a regulated market on behalf of investors.

(Article 1(6)(b))

### Requirement 1

The asset manager shall develop and publicly disclose an engagement policy and how this engagement policy has been implemented, or publicly disclose an explanation why they have chosen not to comply.

(Article 3g(1)(a-b))

Does the asset manager have an engagement policy?

**NO**

Not complying with the provisions regarding the engagement policy is allowed, if the asset manager publicly discloses a clear and reasoned explanation why it has chosen not to comply.  
(Article 3g(1))

**YES**

#### The engagement policy describes how the asset manager:

- integrates shareholder engagement in its investment strategy;
- monitors investee companies on relevant matters;
- conducts dialogues with investee companies;
- exercises voting rights and other rights attached to shares;
- cooperates with other shareholders;
- communicates with relevant stakeholders of the investee companies; and
- manages actual and potential conflicts of interests in relation to its engagement.

(Article 3g(1)(a))

The asset manager shall publicly disclose how this engagement policy has been implemented.

(Article 3g(1)(b))

### Requirement 2

The asset manager discloses to the institutional investor with which it has entered into an arrangement how its investment strategy and implementation thereof complies with that arrangement and contributes to the medium to long-term performance of the assets of the institutional investor / fund.

(Article 3i(1))

#### This shall include reporting on:

- key material medium-to long-term risks associated with the investments;
- portfolio composition, turnover and turnover costs;
- the use of proxy advisors;
- policy on securities lending and how it is applied to fulfill its engagement activities if applicable;
- information on whether it makes investment decisions based on evaluation of medium to long-term performance of the investee company; and
- potential conflicts of interest that have arisen in connection with engagements activities and how the asset manager has dealt with them.

(Article 3i(1))

### Existing regulations

In accordance with the CGC 2016, asset managers should post annually, in any event on their website, their policy on the exercise of the voting rights for shares they hold in listed companies.

# 6



## Institutional investor transparency

### Definition

For the definition of an institutional investor under this Directive, see Article 2(e)

### Scope of the Directive

These provisions apply to institutional investors to the extent that they invest directly or through an asset manager in shares traded on a regulated market.  
(Article 1(6)(a))

### Requirement 1

The institutional investor shall develop and publicly disclose an engagement policy and how this engagement policy has been implemented, or disclose a clear and reasoned explanation why it has chosen not to comply.  
(Article 3g(1))

Does the institutional investor have an engagement policy?

**NO**

**The institutional investor** publicly disclose a clear and reasoned explanation why they have chosen not to comply.  
(Article 3g(1))

**YES**

#### The engagement policy describes how the institutional investor:

- integrates shareholder engagement in its investment strategy;
- monitors investee companies on relevant matters;
- conducts dialogues with investee companies;
- exercises voting rights and other rights attached to shares;
- cooperates with other shareholders;
- communicates with relevant stakeholders of the investee companies;
- manages actual and potential conflicts of interests in relation to its engagement.

(Article 3g(1)(a))

Institutional investors shall publicly disclose how this engagement policy has been implemented.  
(Article 3g(1)(b))

### Requirement 2

The institutional investor publicly discloses how the main elements of its equity investment strategy are consistent with the profile and duration of its liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of its assets.  
(Article 3h(1))

### Requirement 3

When an asset manager invests on behalf of an institutional investor, the institutional investor publicly discloses a list of information regarding its arrangement with the asset manager.  
(Article 3h(2))

#### The institutional investor publicly discloses the following information regarding its arrangement with the asset manager:

- incentives for alignment of the asset manager with the institutional investors profile and how it incentivizes investment decisions based on medium to long-term performances;
  - how the method, time horizon and remuneration of the asset manager's services are in line with the profile and duration of long-term liabilities of the institutional investor
  - the monitoring of the asset manager's turnover cost; and
  - the duration of the arrangement.
- (Article 3h(2))

### Existing regulations

In accordance with the CGC 2016, institutional investors should post their policy on the exercise of the voting rights for shares they hold in listed companies. Institutional investors should report on how they implemented their policy on the exercise of the voting rights in the relevant financial year. In addition, they should report how they have voted as shareholders at general meetings.