Shareholders Rights Directive

In December 2012 the European Commission adopted the Action Plan on European Company Law and Corporate Governance. One of the issues the EC aims to tackle is increasing the long-term shareholder engagement. Therefore, the Commission will publish its proposals for a revised Shareholder Rights Directive (2007/36/EC) in March 2014 as part of the package of the Communication on Long-term investments. This current Directive ensures in particular that shareholders have timely access to the complete information relevant to general meetings and facilitates the exercise of voting rights by proxy.

The Commission argues that a more modern and efficient corporate governance framework is needed for European undertakings, investors and employees. They are of the opinion that the past years have highlighted some corporate shortcomings relating to companies' and their boards, shareholders (institutional investors and asset managers) and proxy advisors and they identified the following two problems:

- Insufficient engagement of shareholders
- Lack of adequate transparency

Moreover, they want to enhance the commitment of shareholders on long-term financing. To reach this objective, the following objectives need to be tackled according to the Commission, which they will do in the revised Directive:

- **Insufficient engagement of institutional investors and asset managers**
  According to the EC, institutional investors and their asset managers do not sufficiently focus on the real long-term performance of companies, which leads to suboptimal return for the beneficiaries of institutional investors and puts short-term pressure on companies.

  The EC want to increase the transparency of institutional investors and asset managers by requiring a policy on shareholder engagement. This would mean that institutional investors should disclose to the public their engagement policy, how it has been implemented and the results thereof. If they don't disclose this information a reasoned explanation should be given for this. Moreover, institutional investors will be required to disclose to the public how their equity investment strategy is aligned with the profile and duration of their liabilities and how the investment strategy and decisions contribute to medium to long-term performance of the assets.

- **Insufficient link between pay and performance of directors**
  The EC is of the opinion that the information disclosed by companies is not comprehensive or clear. Furthermore, shareholders often do not have sufficient tools to express their opinion on directors' remuneration.

The EC want to create a better link between pay and performance of directors by requiring listed companies to publish detailed and user-friendly information on the remuneration policy and on the individual remuneration. Shareholders get the right to approve the remuneration policy.

- **Lack of shareholder oversight on related party transactions**
  According to the EC, shareholders do not have access to sufficient information ahead of the planned transaction and do not have adequate tools to oppose those transactions.

  The EC will require that listed companies, with related party transactions representing more than 5% of the companies' assets or transactions, submit these transactions for approval by the shareholders. Listed companies shall publicly announce related party transactions that represent more than 1% of their assets at the time of the conclusion of the transaction.

- **Inadequate transparency of proxy advisors**
  The EC argues that the methodology used by proxy advisors to make their recommendations does not sufficiently take into account local market and regulatory conditions and they may provide services to issuers which may affect their independence.

  The EC will require proxy advisors to adopt measures to guarantee that their voting recommendations are reliable and based on a thorough analysis of all the information available and are not affected by potential conflict of interest. They will be required to publicly disclose certain key information which is used to prepare their recommendations.

- **Difficult and costly exercise of rights flowing from securities for investors**
  According to the EC, investors face difficulties in exercising the rights flowing from their securities, especially if the securities are held cross-border. Information is not passed to shareholders from companies or votes get lost. This leads to a risk of suboptimal and/or excessively short-term focused decisions.

  The EC will require Member States to provide a right for listed companies to identify their shareholders. If listed companies choose not to directly communicate with its shareholders, the information shall be transmitted to them by the intermediary.