

## Position on the Proposal for a Shareholder Directive COM(2014) 2013

September, 2014

---

### General remarks

Eurosif, the European Sustainable Investment Forum, welcomes the revision of the Shareholder Rights Directive and fully endorses its overarching objectives. In order to contribute to build sustainable EU companies, it is of utmost importance that shareholders are encouraged to adopt longer-term perspectives and play a more proactive role in exercising their rights with investee companies.

We therefore particularly **welcome** the efforts of this Proposal:

- **To increase the level and quality of engagement by institutional investors** (and asset managers). Promoting long-term oriented shareholder engagement (incl. voting) should be regarded as a way for mitigating future corporate governance failures and excessive short-termism.
- **To promote an environment where shareholders can smoothly and efficiently exercise their rights.** As part of this, improving the transparency and the efficiency of the cross-border voting chain is essential. We welcome the efforts of this Proposal to support this objective but wonder whether the Proposal alone will be sufficient. We later highlight the need to tackle some operational blockages and impediments along the voting chain as a key success factor.
- **To highlight the importance of taking non-financial performance into account when taking a long-term perspective.** Non-financial factors (such as Environmental, Social and Governance / “ESG” factors) have a key role to play in promoting long-term oriented behaviours and cannot/should not be decoupled from this.
- **To emphasize the role of institutional investors (asset owners) in this agenda.** As holders of some of the largest pools of investment capital with the greatest potential impact on industry practices, pension funds in particular are well-positioned to effect change and encourage corporations (incl. financial institutions) to move towards more long-term oriented, sustainable behaviour. Because they represent long-term beneficiaries who have a natural interest in preserving the wealth in their investment portfolios, pension plan trustees also tend to focus on longer-term issues. Progress will require more of these investors to abandon conventional approaches to investing to incorporate more considerations of non-financial factors and become more proactive in engaging with the companies they own. **Ownership and power imply responsibility from institutional investors and the Proposal seems to take note of this.**

Eurosif also takes note that this proposal is part of a broader set of EU measures and initiatives aiming to foster more long-term oriented and responsible investment practices, such as the adoption of the Non-financial and Diversity Information Disclosure Directive or the Communication on Long-term Financing of the European Economy.



That being said, Eurosif would like to highlight a few key areas that deserve attention by the Parliament and the Council. To make the Directive fully effective, Eurosif contends that:

- **Most of the objectives (and provisions) of the text cannot be decoupled from the need to address operational barriers and deficiencies to EU cross-border voting** including the absence of common frameworks for voting practices or lack application of existing rules in some instances (e.g. blocking of shares). Issuers and investors have over the past few years lost control on the custody chain. Custodian and sub-custodian have, over time, taken a prominent role in the investment chain from this point of view (including also from a shareholder identification perspective). While this Proposal may not be the right vehicle to address all these issues, co-legislators need to keep this in mind.
- **Some of the detailed disclosure requirements of Articles 3g and 3h appear unnecessary to Eurosif** (see detailed comments section in this document). While Eurosif has been a long-standing advocate of transparency and disclosure as catalysts for change and accountability, we have some concerns about some specific requirements. For instance, we believe that reporting requirements by asset managers should be annually and not semi-annually.
- While we fully welcome the proposal to mandate the disclosure on a comply-or-explain basis of the engagement (and voting) policy of investors and the disclosure of voting results but have **concerns about the practicalities around the disclosure regime**. For instance, we believe that pooled funds and institutional mandates should be differentiated in the Proposal and that investors should not be mandated to systematically disclose their voting rationale for all their votes.
- **The revision of the Directive needs to create clarity and uniformity regarding disclosure of lending/borrowing positions and the effect of lending on the voting rights**. Securities lending adds complexities when drawing up the shareholder base of a given issuer. Sometimes the custodian is simply unable to relocate its client's shares, preventing the latter to exercise his/her shareholder rights at the general meeting. Eurosif believes that the lending process should become subject to the same visibility and safeguards as any other transaction conducted on an owner's or beneficiary's behalf in a securities account<sup>1</sup>. Eurosif is also in favour of designing new legislative ways in which lenders might be able to retain their voting rights, while still benefiting from the income attributable to their securities loans. Currently, lenders are forced to choose between their loan fees and fiduciary duties to vote their shares, knowing that securities lending contributes significantly to the efficiency of market operations.
- **The regulation should ensure that costs remain affordable**. In particular that the level of fees levied alongside the voting chain does not represent a barrier to vote. Regarding disclosure, some of the provisions in the Proposal could be subject to minimum thresholds. While encouraging changes in practices, well-thought thresholds would ensure that the Proposal requirements do not result in disproportionate reporting

---

<sup>1</sup> See for more details ICGN Securities Lending Code of Best Practice, July 2007. [www.icgn.org](http://www.icgn.org)



costs for investors, for examples when these need to report their positions in a given company.

- **The allocation of costs also deserves further thoughts** in order to support the objectives of the Proposal. For instance, to avoid the free rider issue, the cost of voting should not only borne by those who vote but by all shareholders, even if these are not voting.
- Some of the requirements included in the Proposal cover very complex processes. To ensure effective, practical, workable and uniform conditions for the implementation of the provisions, the Commission could establish an expert group that should be consulted in relation to the preparation of the implementing acts.



## **Detailed comments and amendments to the Proposal**

### ***Article 1 – Definitions***

(d) Intermediaries: Eurosif would like to see a definition covering other components (intermediaries) of the voting chain that may not be holding securities accounts but may play an essential role in that chain. This is the case for instance in some Member States for notaries (e.g. Austria) or proxy advisory firms and voting facilitators. These other intermediaries should be in scope.

### ***Article 3a – Identification of shareholders***

Eurosif fully supports the principle underlying this article and has been a long standing advocate of allowing issuers to know who their shareholders are at any moment so that they can communicate with them efficiently<sup>2</sup>. In the current Proposal however, we would like to highlight that:

- This requirement may often prove unpractical unless, as mentioned in the general section of this document, some “fixes” are brought to the securities handling chain;
- The co-legislators should enforce mechanisms to ensure that the costs of identification remain reasonable. As highlighted in the general section of this document, issuers and institutional shareholders are heavily dependent on existing market infrastructure and intermediaries, in particular custodian banks. Similarly to other EU regulation where dependency to market infrastructure is high (e.g. roaming), the co-legislators should explore regulation to guarantee affordable pricing of identification-related services. Such regulation would ensure that costs do not act as inhibitors to issuer-shareholder dialogue and the exercise of voting rights;
- Some EU-wide regulation around proof of ownership should be implemented as the identification of shareholders also requires this, which is missing from the proposal;
- Eurosif recommends implementing minimum thresholds when shareholders have to declare or report their position. Typically, an institutional investor or an asset management firm (e.g. via the pooled funds it manages) are shareholders of hundreds if not thousands of companies. Maintaining a reporting of consolidated positions in a given company across investments can be operationally complex and costly and these costs might in turn have to be borne by end investors. This would also maintain the privacy of smaller retail investors. France and The Netherlands for instance have identification regulations that apply to investors beyond a specific share-ownership threshold.
- Paragraph 3 of Art. 3a should offer to legal persons (e.g. UCITS, asset management firms, etc.), and not only natural persons, should be entitled to “rectify or erase any incomplete or inaccurate data and shall not conserve the information relating to the shareholder for longer than 24 months after receiving it”.

### ***Article 3b – Transmission of information***

---

<sup>2</sup> See Public Policy Position Paper related to Sustainable and Responsible Investment (“SRI”), April 2009.



Eurosif believes that the first sentence of the paragraph can be seen as paradoxical in the context of the Proposal and should be changed. Indeed, in the spirit of the current Proposal, companies should be encouraged to initiate a direct communication with their shareholders. The paragraph may be therefore revised to reflect this.

### ***Article 3c – Facilitation of the exercise of shareholder rights***

Eurosif very much welcomes this Article and the provisions it entails. In the EU, the share of intra-EU cross-border equity ownership averages 43% and ranges from 20% to 90% across countries (before the re-classification of Luxembourg and Irish funds mentioned above). It is superior to one third in 25 countries out of 27 (below 30% in UK and Latvia)<sup>3</sup>.

Ensuring a smooth operating framework for the (cross-border) exercise of voting rights is therefore for Eurosif an absolute requirement to achieve the objectives of the Proposal. They are the two faces of the same coin and this is even more important in a world where shareholdings are highly intermediated.

Yet, despite several reports and recommendations made years ago, operational impediments regarding cross-border voting still exist to a large extent according to several Eurosif Member Affiliates. Eurosif already pointed at some of these issues in a joint letter sent to DG Markt in 2010<sup>4</sup>. Examples of EU initiatives that could address these include:

- Making the use of electronic voting a right for shareholders as in some markets, paper is still predominant (e.g. France);
- Ensuring single technical standards for the transmission of information;
- Requiring custodians to support account structures that enable look-through (as opposed to omnibus or nominee account) at reasonable and affordable costs;
- Ensuring that already existing EU rules are properly implemented, such as removing the arbitrary blocking of shares by some custodian banks, which has been mentioned by some Member Affiliates of Eurosif;
- Removing requirements for Power of Attorneys in certain markets (e.g. Austria);
- Implementing non-discrimination measures in terms of costs of services related to voting domestic vs. intra-EU cross-border shares.

We also insist on the need to increase the accountability of intermediaries and suggest:

- In paragraph 1, “the intermediary facilitates...” should be replaced by “each intermediary facilitates...”;
- It should also be mentioned that each intermediary retains full responsibility for the implementation of the requirements pertaining to the transmission of information stipulated in this Article, even if the intermediary sub-contracts some services;

---

<sup>3</sup> OEE, INSEAD, Who owns the European economy?, August 2013

<sup>4</sup> <http://www.eurosif.org/semantics/uploads/2014/06/888.-sld-investors-position-2010-def.pdf>



Eurosif also welcomes that the Proposal mandates the issuer and/or the intermediaries to confirm to shareholders that the vote has indeed been cast and that this should happen “without undue delay” within 15 days after the AGM of the company (Article 14, paragraph 2 of the Directive). The lack of such confirmation has been reported by several Eurosif Member Affiliates as an ongoing issue.

### ***Article 3d – Transparency on costs***

Eurosif welcomes the transparency requirements on fees charged by intermediaries regarding services related to the exercise of voting rights.

It is important to ensure that such fees/charges remain within a reasonable level while incentivizing adequately intermediaries to deliver high quality services and seek continuous technological and process improvements. Too high fees would have adverse effects and might even contribute to creating an uneven playing field between different types of asset owners or investors (concentrated portfolios vs. broadly diversified ones, different sizes in terms of assets, etc.).

In addition, Member States shall ensure that any charges that may be levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportional. Any differences in the charges levied between domestic and cross-border exercise of rights shall be duly justified.

Finally, Eurosif believes that the allocation of voting costs and its alignment with the objectives of the Proposal could go a long way in supporting more active ownership. Although we realize that this could have significant operational implications, we suggest to explore a model whereby the voting costs are borne by all shareholders and not only those who are active (in terms of engagement and exercise of voting rights). In this model, costs would be distributed among shareholders in, proportion to their share ownership (and therefore in proportion to the benefit they receive). This would also help address the “free-rider” issue associated with those ultimate account holders who choose not to exercise their “stewardship” responsibilities but who benefit from the activities of others who spend time and money in being responsible shareholders. This could be done for instance by making the offering of voting services by custodians a non-optional basic service to include in any custody contract and charge an incremental fee as a percentage of the overall custody fee. Another option could be to impose compulsory voting on all pooled investment funds (e.g. UCITS).

### ***Article 3f – Engagement policy***

Eurosif has been a longstanding supporter of long-term oriented shareholder engagement (as opposed to short-term activism). We fully welcome the proposal to mandate the development of engagement policies by institutional investors and asset managers and their subsequent disclosure on a comply-or-explain basis. One of the best ways to incentivize “stewardship” is through transparency and the Proposal clearly fosters greater disclosure.



We also welcome the fact that the Proposal makes reference in the first paragraph of this Article to non-financial performance. We believe that in order to encourage all participants in the European capital markets to focus greater attention towards long-term performance, non-financial issues, such as Environmental, Social and Governance (“ESG”), issues have an important role to play. ESG issues can affect the performance of companies and have material impacts on stock values and investment portfolio performance. There is a growing consensus in the financial community that taking ESG issues into consideration is consistent with the fiduciary duty of investors when it impacts profitability<sup>5</sup>.

We would like to make however the following observations:

Paragraph 1 (b):

- Eurosif would like to see a more precise definition of non-financial performance and what this precisely covers. This could be done by making reference to the Non-financial & Diversity Disclosure Directive.

Paragraph 2:

- Eurosif fully welcomes the disclosure of conflict of interest policies within the Engagement policy document. We believe however that the current language is too prescriptive and should be made more generic. It could be nevertheless appropriate to include some examples of situations towards which these policies could be developed in accompanying guidance to the legislation.

Paragraph 3:

- Institutional investors (asset owners) sit at the top of the investment chain and, as mentioned previously, they own large pools and capital and have the power to initiate change. Eurosif believes that this power implies specific responsibilities. We would therefore like to see more emphasis placed on this responsibility in the Proposal. This means for example highlighting explicitly that institutional investors cannot be exempted from their responsibilities, even if they outsource portfolio management to external third parties.
- It is unclear how asset managers/owners are required to “manage” the diversity of engagement and voting policies they may be confronted with. Various investment vehicles (e.g. pooled funds/collective undertakings) may have different engagement and voting policies and these policies may be different from the general policy developed by the asset manager/owner. Eurosif believes that the disclosure requirement should apply to the general policy as variations of the general policy may not be material and unnecessarily add to the reporting burden.
- By the same token, when an asset manager manages a separate account (mandate) on behalf of an institutional investor and has to contractually apply the engagement and voting policy of that institutional investor, Eurosif believes that it should be exempted

---

<sup>5</sup> UNEP FI, Freshfields, Bruckhaus, Deringer: a legal framework for the integration of environmental, social and governance issues into institutional investment, October 2005.



from that disclosure requirement for this mandate. The disclosure should be made by the institutional investor based on information provided by its service providers (incl. asset managers). The institutional investor will in this way be able to disclose the information in a consistent fashion, across its investments even if outsourced to different asset managers.

- Eurosif is not opposed to the disclosure of how the engagement policy has been implemented, however, we question whether the actual results of engagement should be disclosed on an annual basis. As illustrated in a recent Eurosif Study<sup>6</sup>, Engagement is a long-term process that can take more than a year to deliver results. In addition, Engagement results are best achieved when the process is not public. It can be counterproductive to disclose information too early. We would therefore prefer if the disclosure of engagement results were made optional (for instance “if appropriate”).
- Eurosif welcomes the disclosure of actual vote results, however, it would be wise if the text of the Proposal indicated some time lag for reporting, for instance, two weeks after the AGM or “on an annual basis” (it is unclear if this specific disclosure falls under the yearly engagement policy disclosure requirement). It is also unclear if the asset manager/owner has to report on a fund by fund basis or in aggregate. Our suggestion is a disclosure of voting decisions “in aggregate” to ease the administrative process and provide better readability. In addition, and more importantly, Eurosif believes that the current requirement to report on the rationale behind the vote is unpractical. As mentioned above, asset managers/owners are often invested in hundreds of shares. Reporting on the result of the vote casted can be automated, however, reporting the narrative behind the voting decision cannot result in a burdensome process. We understand the spirit of the text but do not think that the actual language is practical.
- Our suggestion would be to remove this language or make it subject to specific criteria / threshold to limit the administrative burden. For instance, institutional investors and asset managers should be required to disclose the rationale in instances when they vote against the company board, or instances why they voted with the company board on contentious matters (for example during so-called “shareholder rebellions”). At a minimum, asset managers/owners should make the reasons available upon request of their clients/beneficiaries. We would like to point out to policy-makers that ensuring that the reporting burden is as easy as possible is important in order not to create market a market distortion between smaller players and larger ones and more importantly not to encourage systematic use of outsourced “autopilot” voting practices which would be counter to the goals of this Proposal.

### ***Article 3g – Investment strategy of institutional investors and arrangements with asset managers***

In general terms, Eurosif welcomes the idea of encouraging long-term investment and acknowledges that disclosure can be a powerful tool to encourage changes in behaviors. Eurosif therefore welcomes the spirit of this article. The word “incentivize” in paragraph 2 appears quite appropriate from this perspective.

---

<sup>6</sup> Eurosif, Shareholder Stewardship: European ESG Engagement Practices, 2013.



By way of background, Eurosif has been advocating since 2009 the introduction of a European-wide mandatory and public “Statement of Investment Principles (SIP)” for all pension funds, as suggested in the European Parliament resolution of March 13 2007 on Corporate Social Responsibility (2006/2133(INI)). In these SIPs, pension funds (trustees where appropriate) would state –amongst other things - how their investment strategy is aligned with their liability profile, in particular on the long-term. They would also state the extent (if at all) to which non-financial considerations (“ESG”) are taken into account in the selection, retention and realisation of investments as ESG factors can prove material for the long-term financial performance of a portfolio. Implementing an EU-wide SIP (for instance in the IORP Directive) would be aligned with the objectives of the current Proposal.

Eurosif also recognizes, as mentioned above and in its response to the Green Paper on Corporate Governance in Listed Companies from July 2011, the critical role that asset owners (institutional investors) can play in encouraging behavioral changes with their asset managers. That said, we also acknowledge that any specific relationship between an asset owner and its asset manager is largely governed by private contract law (subject to general investment framework governed by prudential law). Eurosif therefore wonders whether all parts of this Article are appropriate.

We would therefore like to make the following observations about this Article as written in the Proposal:

- The focus on equities in paragraph 1 is unclear to Eurosif. Equity is an asset class that has the potential to deliver long-term performance and as such equities do form an important part of institutional portfolios, however it is difficult to isolate this “bucket” from other asset classes when a pension plan designs its overall investment policy. What ultimately matters is the financial performance of the investor’s overall portfolio (all asset classes) and therefore the overall approach to generating financial returns able to meet liabilities over the short-, medium- and long-term. Eurosif believes that the disclosure requirement should therefore apply in a more general manner. Institutional investors should disclose their overall investment policy, how it is designed to meet liabilities including long-term liabilities and the extent to which (if at all) they take non-financial factors into consideration, a requirement which is missing from the Proposal (which is however mentioned in Art3(g)2(b) as a requirement for asset managers).
- Collective investment undertakings should be removed from this paragraph. The disclosure requirement should only apply to separate accounts. Disclosure for collective investment undertakings (pooled funds, eg. UCITS) is governed by other EU legislation (eg. PRIPs). These vehicles are by definition not designed for any single investor and therefore some of the disclosure requirements are unpractical (eg. 2(a)).
- Eurosif wonders about the reasons to make all the elements of the disclosure public. Most of this information is technical by nature and we wonder about the relevance of making this public: the trend seems to be rather about the simplification of investment-related information (see PRIPs Directive with the Key Information Document). Further, some of this information can be commercially sensitive for asset managers, especially around separate accounts (mandates). We would therefore recommend to think carefully



about which elements should be publicly disclosed (eg. general investment policy or “SIP”), those who may be restricted to – for instance – relevant Authorities or beneficiaries and those who do not need to be made public at all.

- We would like to add language requesting institutional investors to disclose how their investment consultant selection process focusses on “long-term” and Sustainable and Responsible Investment expertise (“ESG”). Investment consultants are extremely influential actors when it comes to designing investment policies of pension funds, large or small. Yet, Eurosif believes that these players could play a much more prominent role in promoting long-term responsible investment behaviors.
- We also note that the Proposal does not offer any specific definition of long-term. Is this 3 years, 5 years or more? Investment mandates typically run for 3 to 5 years which on the scale of pension liabilities may appear as relatively short term. However, given current practices, it seems reasonable to assume that 3-5 years is already long-term in the context of this disclosure. This highlights a clear mismatch between the disclosure frequency requirement in the Proposal (annually), the duration of mandates in practice (3-5 years) and the nature of long-term pension liabilities (often over 10 years). Measuring long-term performance in these conditions is challenging.
- We note that if the requirement to disclose the method and time horizon of the evaluation of the asset manager’s performance emphasizes absolute performance rather than benchmark-based performance. We believe that it is not appropriate to discount financial performance measurement against a benchmark. Benchmarks have to be carefully used but offer useful references. In the event of this paragraph being maintained, we would advocate for a removal of “and how this evaluation takes long-term absolute performance into account as opposed to...”. The institutional investor should decide upon the most appropriate way to measure the long-term success of its asset managers. One way to do this is to focus on measuring long-term financial returns and characteristics of the portfolio but also on assessing the investment process. This requires the asset manager to disclose the extent to which (if at all) it takes non-financial factors into account when making investment decisions (see Article 3h(2a)).
- Paragraph 2(c), 2(d) and 2(e) do not appear necessary to Eurosif. These are information that can be requested by an asset owner from its asset manager via the contract (Separate Account Agreement, “SMA”). Whether this information is useful to the asset owner or not is its own decision. We suggest to therefore limit the disclosure requirement to (a) and (b).
- We also strongly feel that 2(e) should be removed. Turnover can provide useful information however, being a long-term investor does not necessarily and automatically means having a low turnover. As stated above, this is information that an asset owner can require by contract from its asset manager if it feels that this is useful information.

### ***Article 3h – Transparency of asset managers***

Eurosif welcomes in general transparency requirements. It has for instance been maintaining since 2004 a European SRI Transparency Code (now in its third version) encouraging SRI



asset managers to be more transparent about the extent to which and how their SRI funds incorporate non-financial factors and actively engage with investee companies.

We note that transparency requirements for asset managers and their funds are also governed by EU legislation (MIFID, UCITS and AIMD). Therefore, while not being opposed to this Article, Eurosif questions whether this Article is needed. In any case, consistency with other EU legislation need to be preserved and the added-value of this Article in the context of the Shareholder Rights Directive has to be clearly defined. Several of our remarks would be similar to comments made for 3g.

We also believe that regulators (ESMA) should produce specific guidelines and templates to asset managers so that this disclosure could be automated when possible. Also, when an asset manager or institutional investor uses a widely recognized reporting framework, these tools should be acknowledged and recognized as “compliant”<sup>7</sup>.

Our observations are:

- We do not think that a half-yearly disclosure of the information aligns well with the long-term orientation of the Proposal. An annual disclosure requirement appears sufficient and aligns with 3g.
- It should be made clear that the reporting requirements of this Article apply to separate accounts (mandates) only. As mentioned previously, pooled funds capture investments from various investors. They are not designed for a specific investment strategy but may fit into several of them.
- Eurosif welcomes disclosure around securities lending practices, which is somewhat required in its European SRI Transparency Code, however we believe that “and its implementation thereof” should be removed (2e) as it does not bring added value.
  - Other portfolio and performance-related disclosure requirements should be defined by the contract between the institutional investor and the asset manager.

### ***Article 3i – Transparency of proxy advisors***

Eurosif fully agrees that the proxy advisory industry provides essential research and services that can help investors to be more active and better shareholders by providing them with timely, factual and relevant information on a broad scale, which otherwise might be challenging to achieve due to the scale and diversity of their investments.

We therefore support a healthy and competitive European Proxy Advisory market as this is in the interest of all market participants (issuers and investors).

We would like however to point out that it is very important that the legislation places a clear responsibility and accountability on shareowners in the context of exercising their ownership

---

<sup>7</sup> Examples of this would include the European SRI Transparency Code, the Principles for Responsible Investment Reporting framework or the ICGN model template for mandates.



rights (through engagement and/or voting) and on issuers for making sure that a constructive shareholder-company dialogue can take place. Proxy Advisors should be seen as “enablers” and their role confined to this (see our comments below on paragraph 2).

While acknowledging the need for transparency and continuous improvement of quality standards of the industry, we are concerned by some provisions laid out in the current Proposal. We believe that such provisions are unrealistic and may have counterproductive effects.

Paragraph 1:

- Proxy advisors should not be required to “guarantee” that their voting recommendations are accurate and reliable. Practices can and should be improved but Eurosif wonders whether placing such unique requirements on the proxy advisory industry is realistic (it is unique because no other industry player is required to produce such a guarantee). Instead, we would strongly recommend co-legislators to mention the recently created Code of Conduct of the industry, listing best practices, and seek its continuous improvement. Eurosif recently welcomed the initiative of the proxy advisory industry to develop these Best Practice Principles in response to the recommendation made by the European Securities and Markets Authority (ESMA) that the industry should develop a Code of Conduct. At the same time, we highlighted the need to improve the Code<sup>8</sup>. The Code could be complemented by quality standards or a certification similar to the ones developed by non-financial rating firms (Arista).
- It should be made clear however on a general basis that proxy advisors should act in the best interest of their clients, a provision which is missing from the Proposal.

Paragraph 2:

- Paragraph 2(e) requires proxy advisors to state “whether they have dialogues with companies which are the object of their voting recommendations”. Eurosif contends that proxy advisors should focus on analyzing resolutions on the basis of the engagement/voting policies of investors and abstain to engage themselves with companies. Dialogues with companies can of course happen but should be limited to fact-checking and not represent “engagement” per se. This should be made clear in the Proposal and 2(e) should be consequently adapted.
- Eurosif contends that 2(e) and (f) should be removed. This is corporate information that may be requested in the context of an RFP issued by an investor when selecting a proxy advisor but should not be required by legislation.

### ***Article 9a – Right to vote on the remuneration policy***

Considering that one of the aims of remuneration is to incentivise and reward appropriate performance, risk management and behaviour (both short and long term) Eurosif believes that there should be increased transparency of remuneration for directors of all listed

---

<sup>8</sup> See [www.eurosif.org](http://www.eurosif.org) / our work / policy



companies and better control of these by shareholders. We therefore welcome the text of the Proposal.

Eurosif particularly welcomes:

- A submission of the remuneration policy to a vote every three-years and its public disclosure. This timeframe sounds reasonable and in line with current practices in some Member States.
- The fact that the policy should explain how it contributes to the long-term performance of the company, a demand that Eurosif made several years ago<sup>9</sup>.

However:

- Eurosif wishes to highlight the fact that transparency on remuneration policies and “say-on-pay” are not going to be sufficient per se to prevent “paying for poor performance” as evidenced by the UK experience. In October 2013 the UK introduced rules giving shareholders a binding vote to approve the company director’s remuneration policy every 3 years, and an advisory vote on how the policy has been implemented every year. Since this reform, no companies have been challenged or defeated in these votes. There have only been a handful of shareholder ‘rebellions’ on executive remuneration since the reforms were introduced. The most significant was Barclays Bank, whose bonus pool rose by 10% this year despite profits falling by 32%: 34% of shareholders voted against the remuneration package, which was not enough to defeat it.
- For the remuneration aspects of the proposed legislation to be successful, it is essential that institutional investors and asset managers disclose their engagement policy, how it has been implemented and how they cast votes at annual general meetings – as recommended in Article 3f.
- We wish to bring forward the main suggestion that remuneration policies/strategies should be linked to non-financial (“ESG”) performance based on a “comply or explain approach” whereby companies disclose the extent to which non-financial targets are incorporated or explain the lack of such targets integrated in remuneration strategies<sup>10</sup>;
- The policy should emphasize “qualitative” explanations about how the remuneration strategy is connected with the long-term business strategy. The current text puts the emphasis on quantitative and measurable aspects but a strong narrative around the strategic and competitive context of the remuneration policy is essential to investors. The first sentence of paragraph 3 could require this more explicitly;
- In order to better effect change in behaviors and foster long-term practices, the Proposal should also include disclosure around the mechanisms that have the potential to align behaviors with long-term value creation and establish a clear link between paid-out remunerations and actual performance. Eurosif would like to see for instance disclosure around the long-term performance incentive plans including targets for Directors. This should be made a central component of the remuneration policy and remuneration report.

---

<sup>9</sup> Eurosif, Response to Green Paper on Corporate Governance and Financial Institutions and Remuneration Policies, 2010.

<sup>10</sup> Ibid.



- We recommend that the legislation states that all remuneration components should be disclosed including long term incentive plan paid in cash or stock, and differed remuneration i.e. pension schemes and severance payments.

Disclosing the ratio between the average remuneration of directors and the average remuneration of full time employees of the company can be useful to some investors and therefore Eurosif is not opposed to this. However, several Member Affiliates of Eurosif point out to the need to establish a consistent EU methodology to calculate such a ratio and make it comparable across companies in a given sector. In the absence of such a methodology, Eurosif would prefer that the mention to such a ratio is dropped as it may lead to false conclusions. Eurosif also recommends to move the requirement to disclose the ratio to Article 9b, i.e. in the remuneration report, thus making it subject to a non-binding vote.

#### ***Article 9a – Information to be provided in the remuneration report and right to vote on the remuneration report***

Eurosif welcomes a vote on the remuneration report in addition to a vote on remuneration policy. The two votes are essential for effective “say-on-pay”.

We recommend co-legislators to add language placing the emphasis on the need for a strong narrative in the remuneration report explaining why the remuneration makes sense with regards to the performance achieved, the strategic and competitive context, etc. The current Proposal places in our view too much emphasis on quantitative elements.

We also want to highlight that harmonized guidelines across Europe about remuneration reports would meet investor demand for simplicity and comparability. This would also facilitate the reporting by companies themselves.

#### ***Article 9c – Right to vote on the related party transactions***

Eurosif agrees that it is important to strengthen shareholder protection against “unfair” related party transactions as these could cause them prejudice. It is therefore essential that these provisions are not weakened.

We agree that enhanced disclosure on the transaction and its context (who is impacted, by how much, what is the purpose of transaction, what are the benefits for different parties) can be useful from this perspective and that if the amount is over a certain, material threshold, and that where there is a risk of conflict of interest, it should be subject to a shareholder vote.



Eurosif contends that the two thresholds mentioned in the Proposal seem appropriate (1% for disclosure and 5% for a shareholder vote). However, it is not clear to Eurosif how “significant impacts” are defined.

We also wonder if the legislation should not specify what type of the “independent party” (including a definition of what “independent means”) would be allowed to produce the report mentioned in paragraph 1).

A handwritten signature in black ink that reads "François Passant".

François Passant  
Executive Director  
European Sustainable Investment Forum  
+32 (0)2 274 14 36  
[francois@eurosif.org](mailto:francois@eurosif.org)

### **About Eurosif**

Eurosif, the European Sustainable Investment Forum, is the leading pan-European sustainable and responsible investment (SRI) membership organisation whose mission is to promote sustainability through European financial markets. Members of Eurosif are European-based national Sustainable Investment Forums (SIFs) covering 10 European markets. These SIFs represent a network of over 500 Europe-based organisations drawn from the European sustainable and responsible investment industry value chain and its stakeholders, of which over 60 are directly affiliated to Eurosif. Eurosif Member Affiliates include institutional investors, asset managers, financial services, index providers and ESG research and analysis firms together representing assets totalling over €1 trillion. The main activities of Eurosif are public policy, research and creating platforms for nurturing sustainable investing best practices. **For the full list of Eurosif Members and Member Affiliates, please see [www.eurosif.org](http://www.eurosif.org)**