EP tones down proposed amendments to shareholder rights and accounting directives

In July 2015, the European Parliament adopted a number of amendments that tone down certain elements of a 2014 European Commission proposal to amend the Shareholder Rights Directive and the Accounting Directive. The proposal aimed to promote long-term shareholder engagement and greater transparency at listed companies. We reported on this previously.

The EP’s amendments are to some extent in line with the text the European Council agreed on in March 2015. The following elements of the Commission’s proposal are toned down in particular:

- “say on pay” - member states may determine that the shareholders’ vote will only be advisory, not binding
- related party transactions - member states may determine that approval by the supervisory body of the company is sufficient, without shareholder approval being needed; the possibilities to exempt certain transactions from approval requirements are also extended
- “loyalty rights” - the proposal to include rules on enhanced voting rights and dividend rights for long-term shareholders has been rejected.

The Parliament has decided to postpone the vote on the proposal itself, and to enter into informal consultation with the Commission and the Council in order to come to a final text, which could then be adopted at first reading. Agreement on this is not expected before the end of 2015. It remains to be seen what the final wording of the directive will be, and how it will be implemented by the member states. We will keep you informed of further developments.

Update on the European Commission’s proposal to strengthen shareholders engagement and shareholders rights

In April 2014 the European Commission published a proposal to amend the Shareholder Rights Directive (2007/36/EC) and the Accounting Directive (2013/34/EU) with the aim of promoting long-term shareholder engagement and greater transparency at listed companies. In March 2015 the European Council agreed on an amended text of the proposal which in effect diluted the Commission’s proposal. In July 2015 the European Parliament adopted a number of amendments to the Commission’s proposal, which to some extent are in line with the position of the Council. The amendments also clarified certain elements of the Commission’s proposal. Most notably, the Parliament’s amendments
include the following:

**Shareholders “say on pay”**

*Remuneration policy*

- Member states may provide that the shareholders’ vote on the remuneration policy is merely advisory instead of being binding.
- The remuneration policy must be put to vote (either binding or advisory, at the discretion of the member states) at least every three years. In addition, according to current Dutch law, the remuneration policy must be put to vote at the General Meeting in case of material alterations.
- If the shareholders’ vote is binding and shareholders reject the draft remuneration policy submitted to them, the company may, while reworking the draft and for a period of no longer than one year, pay remuneration to its directors in accordance with existing practices (where there was no previous remuneration policy) or with its existing policy (where there was one).
- The definition of ‘directors’ is broadened to include CEOs and deputy CEOs who are not also members of administrative, management or supervisory bodies of the company. Also, member states may include other persons who hold similar positions.
- Member states must ensure that the value of shares does not play a dominant role in the financial performance criteria linked to directors’ remuneration.
- Member states must ensure that share based remuneration does not represent the most significant part of directors’ variable remuneration, unless the remuneration policy includes a clear and reasoned explanation as to how that remuneration contributes to the long term interests and sustainability of the company.

**Remuneration report**

- It is clarified that the shareholders’ vote on the remuneration report is advisory, but if shareholders vote against the report the company must enter into dialogue with the shareholders to identify reasons for the rejection. As of 1 January 2014, Dutch listed companies are already obliged to put the implementation of the resolution on remuneration on the agenda of the Annual General Meeting for discussion purposes.

**Shareholders right to vote on related party transactions**

- Member states may provide that shareholder approval of related party transactions is no longer necessary and that approval by the administrative or supervisory body of the company is sufficient.
- The proposal is amended to relate to *material* transactions with related parties, instead of all transactions that represent a certain value.
- Member states must determine what constitutes a material transaction and they still may set one or more quantitative criteria based on the impact of the transaction on the revenues, assets, capitalization or turnover of the company. Member states may also take into account the nature of the transaction and the position of the related party.
- When defining material transactions, member states must at least take into account:
  - the influence that the information about the transaction may have on the decisions of the subjects involved in the approval process;
  - the impact of the transaction on the company’s results, assets, capitalisation or turnover and the position of the related party; and
  - the risks that the transaction creates for the company and its minority shareholders.
- The possibilities for member states to exempt certain transactions from approval are
expanded. In addition to intra-group transactions, they may exempt:
- transactions entered into between the company and one or more members of its joint ventures; and
- transactions entered into in the ordinary course of business and concluded on normal market terms.

‘Country-by-Country reporting’
In the Shareholders Rights Directive requirements are to be included to publicly disclose on a country by country basis the following information on a consolidated basis for the financial year:

- names, nature of activities and geographical location;
- turnover;
- number of employees on a full time equivalent basis;
- profit or loss before tax;
- tax on profit or loss; and
- public subsidies received.

At the moment it is unsure whether these disclosure requirements will be made part of the legislative process regarding the Shareholders Rights Directive or that they will be dealt with in a separate proposal.

No loyalty rights
The proposal to provide for rules on so-called ‘loyalty rights’ (enhanced voting rights or dividend rights) to shareholders who hold on to their shares for a certain period of time, has been rejected by Parliament.

Next steps
The Parliament has decided to postpone the vote on the proposal itself, and to enter into informal consultation with the Commission and the Council in order to reach an agreement on the final text of the proposal, which could then be adopted at first reading. It is expected that such agreement will not be reached before the end of 2015. It remains to be seen what the final wording of the directive will be, and how it will be implemented by the member states.