

PROPOSAL ON EC GUIDELINES ON DIRECTORS' REMUNERATIONS FINAL DRAFT

7 June 2018

According to Article 9b of the Directive (EU)2017/828 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (so called Shareholder Rights Directive II or SRD II), *“the Commission shall, with a view to ensuring harmonisation in relation to this Article, adopt guidelines to specify the standardised presentation to the information laid down in §1”*.

We believe that the guidelines on remuneration report disclosure are a great opportunity to compare practices among the Member States, discuss what works best and try to find a common denominator that can work in all markets. Meanwhile, it is important to avoid one-size fits all solutions. We believe that the guidelines can be helpful for companies applying the new rules and will result in more comparable disclosure that will benefit investors also.

To help the Commission in its preparatory work on the guidelines, EuropeanIssuers' Working Group exchanged information on the market practices and local rules regarding remuneration reporting. Following extensive debates, the Working Group has developed a set of flexible templates providing guidance for remuneration reporting in line with the requirements of SRD II while taking into consideration national existing frameworks. Based on the discussions with our members, we believe the templates we propose strike the balance between the need for harmonisation and the flexibility to accommodate local specificities.

Our proposals below set out a non-exhaustive indicative list of templates, which are reasonably expected to be followed while disclosing information in the remuneration report. Nevertheless, more information can be provided depending on national frameworks and specific circumstances. Also, it should be noted that remuneration practices undergo constant changes due to evolving market expectations. Therefore, we propose templates that are high level and adaptable so that companies can use them flexibly, also by inserting footnotes and / or additional columns (e.g. if they chose to differentiate between mid-term and long-term remuneration).

Companies are already subject to various EU and local rules already requiring reporting on remuneration components, in some cases on individual basis, with different reporting standards. Therefore, we believe that any guidance on the remuneration report shall offer flexibility needed to be compliant with various obligations and serve different purposes. This would help avoid duplication of information in different tables or reports which could lead to inconsistencies in disclosure. Overall, we believe it important to avoid duplication and consider confidentiality of certain information while designing the guidelines on remuneration. For instance, when it comes to deferred remuneration components, if the information had been already disclosed and explained in the previous remuneration report, there should be no obligation to disclose the deferred bonuses in the subsequent reporting years. These deferred remuneration components had been already disclosed and approved by shareholders.

Regarding confidentiality, for instance targets and their respective achievements could be considered as sensitive information. We would appreciate if the EU Commission clarified that the principle¹ allowing omitting disclosure of information that could be seriously prejudicial to the commercial position of the undertaking in Art. 19a(1)(4) of Directive 2014/95/EU on Non-Financial information also applies in case of remuneration reports.

Below we provide our detailed proposals which we hope will be helpful for the European Commission while drafting the Non-Binding Guidelines on Remuneration in line with the requirements in SRD II², as well as for the companies preparing to be compliant with the new requirements. We would be happy to discuss further and answer any question during a meeting in person.

¹ *“Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.”*

² Article 9b(6) of SRD II.

I - Definitions

- **'Director'³** means:
 - (i) any member of the administrative, management or supervisory body of a company;
 - (ii) where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officer;
 - (iii) where so determined by a Member State, other persons who perform functions similar to those performed under point (i) or (ii).
- **'Executive director'⁴** means any member of the administrative body (unitary board) who is engaged in the daily management of the company. This includes 'managing director' meaning any member of the managerial body (dual board) of a company.
- **'Non-executive director'⁵** means any member of the administrative body (unitary board) of a company other than an executive director. This includes 'supervisory director' meaning any member of the supervisory body (dual board) of a company.
- **'Former director'⁶** means a director who has left the company during the last financial year ("relevant financial year") regardless of the form of his departure (resignation, dismissal...).
- **'Remuneration'⁷** refers to salary, fees, other financial benefits (such as shares or other equity-based financial instruments) as well as non-monetary benefits in whatever form awarded or due to each person who served as Directors at any time during the relevant financial year, by the company or by any undertaking belonging to the same group of the company.

II - Tables

Table 1 and Table 2 provide an overview of the total remuneration respectively of Executive and non-Executive Directors disclosing different components awarded or due by the company and, according to Art. 9b (1)(c) of SRD II by any undertaking belonging to the same group.

As Executive Directors (Table 1) and Non-Executive Directors (Table 2) are not remunerated in the same manner, it might be useful to present two different tables. Nevertheless, Table 1 may be used for both Executive and non-Executive Directors.

These tables may also show the evolution of remuneration by disclosing information from the reporting financial year (N) as well as the previous financial year (N-1).

³ Definition provided by the SHRD II (Article 2).

⁴ Definition from 2.3 of Commission Recommendation of 15 February 2005 (2005/162/EC), combined with the definition of 2.5 "managing director".

⁵ Definition taken from 2.4 of Commission Recommendation of 15 February 2005 (2005/162/EC), combined with the definition of 2.6 of "supervisory director".

⁶ Given the absence of a definition in the EU law, we propose a definition to ensure more clarity and comparability.

⁷ Idem.

Table 1

Total remuneration awarded or due to Executive Directors				
	Director's name and position		Director's name and position	
	Financial year N-1	Financial year N	Financial year N-1	Financial year N
	Remuneration awarded or due	Remuneration awarded or due	Remuneration awarded or due	Remuneration awarded or due
Fixed remuneration				
Annual variable remuneration ⁸				
Long-term remuneration ⁹ : <ul style="list-style-type: none"> - cash-based remuneration - equity-based remuneration (stock options, bonus shares...) - any other remuneration based on a multiple year approach: <ul style="list-style-type: none"> • plan ID (plan term) • plan ID (plan term) 				
Directors' fees ¹⁰				
Fringe benefits ¹¹				
Remuneration awarded or due by any				

⁸ **Annual variable remuneration** refers to the annual bonus, usually in cash, paid to the Executive Director when performance conditions are met. Usually it relates to a period ending in the relevant financial year. The remuneration 'due' during the most recent financial year may include **deferred bonuses**. For instance, 50 % of the annual bonus of the year N is paid the following year and 50 % is deferred over the four following years and subject to additional performance conditions. If this information had been fully disclosed and explained in the remuneration report of the year N, it should not be required to disclose it again in the remuneration report in the years N+1, N+2, N+3 and N+4 as it would be duplicative and possibly even confusing. Moreover, shareholders had already approved such deferred bonus in the year N.

⁹ **Long-term remuneration** refers to the remuneration components such as stock options or shares or to the plans settled either in shares or cash to encourage directors to adopt a long-term approach. Those remuneration components are usually conditional on fulfilment of performance criteria over a period of several years. Valuation of the equity-based plans may be done based on the method used for consolidated financial statements or any other method customary in the market where the company is incorporated.

¹⁰ **Director fees** include compensation for the participation in the Board or committees of the Board.

¹¹ **Fringe benefits** include all taxable non-monetary financial benefits (e.g. car, accommodation, allowances, ...)

undertaking belonging to the same group ¹²				
SUBTOTAL				
Non-recurrent items ¹³ :				
- Severance indemnity for the end of office or termination of employment				
- Other exceptional compensation				
SUBTOTAL				
Pension schemes ¹⁴				
SUBTOTAL				
TOTAL				

¹² **Remuneration awarded or due by any undertaking:** If emoluments e.g. for the board functions in subsidiaries are deducted from or offset by other remuneration indicated in this table, the numbers do not have to be indicated here but described in the remuneration report.

¹³ **Non-recurrent items** refer to:

- **Severance indemnity** paid in relation to the termination or early termination of the office and/or of the employment relationship of the Executive Director in whatever form;
- **Indemnity related to a non-competition agreement** which refers to any compensation received or receivable according to any agreement that restricts the Executive Director from working in a similar business for a certain period;
- **Other compensation** such as golden hellos which might be granted to compensate the Executive Director for the loss of the entitlements from which he or she previously benefited or extraordinary remuneration which might be granted due to specific circumstances.

¹⁴ **Pension schemes:** Market practises differ among Members States and the information required by national law differs also according to the configuration of the scheme (e.g. defined-benefit or defined-contribution schemes). Therefore, each company must comply with the level of information required by its national law. For instance, in some jurisdictions company expenses for defined contributions or defined benefit plans, are valued according to the method used for consolidated financial statements or any other method customary in the market where the company is incorporated. In other jurisdictions, only the provisions of the pension schemes and the life benefits are described. The Directive 2014/50/EU of 16 April 2014 “on minimum requirements for enhancing worker mobility between MS by improving the acquisition and preservation of supplementary pension rights” is being implemented by MS and is expected to improve the level playing field regarding pension schemes.

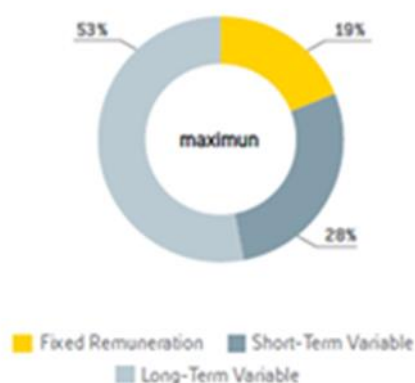
Additional information to be included in the remuneration report

The remuneration report should contain additional information regarding:

- the relative proportion of fixed and variable remuneration that could be presented either in narrative or in graph form.¹⁵

Example 1: the annual variable remuneration of executive director Mr/Ms X represents 150 % of his/her fixed remuneration referring to the remuneration policy.

Example 2:



- how the total remuneration complies with the adopted remuneration policy¹⁶, including how it contributes to the long-term performance of the company. As the remuneration policy shall explain how it contributes to the company’s business strategy and long-term interests and sustainability, the remuneration report could make a reference to the remuneration policy in that respect.
- how the performance criteria were applied. However, the company may consider that disclosing certain performance criteria may jeopardise the confidentiality that might be justified for certain elements (for instance the qualitative criteria).
- the use of the possibility to reclaim variable remuneration. This concept solely refers to the information to be dispensed whenever a claw-back clause is being used, not to the requirement to use such a clause.
- deferred bonus (see footnote 8).
- pension schemes (see footnote 14).
- any deviations from the procedure for the implementation of the remuneration policy referred to in Article 9 a para 6 of SRD II.
- any derogations applied in accordance with Article 9 a para 4 of SRD II, including the explanation of the nature of the exceptional circumstances and the indication of the specific elements derogated from.

¹⁵ Article 9b(1)(a) of SRD II requires disclosure of the “the total remuneration split out by component” and the relative proportion of “fixed and variable remuneration”. Therefore, it excludes from the calculation other elements like fringe benefits, pension expense/service cost and severance indemnity for end of office or termination of employment.

¹⁶ In line with Article 9a(6) of SRD II

Table 2

As there are different ways to compensate Non-Executives Directors across Member States, this table may be used as an alternative to the Table 1. It could be adapted according to national specificities and if necessary supplemented regarding the amount awarded or due for the participation in the Board committees.

Non-Executive Director's name	Directors' fees or any other benefits awarded or due	
	Amount awarded or due in N-1	Amount awarded or due in N

Tables 3 and 4 provide an analytical presentation of the number of share options and shares granted or offered during the financial year by the company or any undertaking belonging to the same group. This information should be provided in two different tables and shall not be aggregated.

Table 3

Share Options granted or offered during the financial year to each Executive Director by the company								
	Share Options granted during the financial year					Share Options exercised during the financial year		
Named list	Number of share options granted and date of the plan	Exercise price	Exercise period	Valuation of share options ¹⁷	Performance conditions	Date of the plan	Number of share options exercised during the financial year	Exercise price

Table 4

Shares granted or offered during the financial year to the Executive Director by the company							
	Shares granted or offered during the financial year					Shares that have become available during the financial year	
Name list	Number of shares granted and date of the plan	Acquisition date	Availability date	Valuation of shares ¹⁸	Performance conditions	Date of the plan	Number of shares that have become available during the financial year

¹⁷ Valuation according to the method used for consolidated financial statements or any other method required in the market where the company is incorporated.

¹⁸ Idem.

Table 5

The following table illustrates “the annual change of remuneration, of the performance of the company, and of average remuneration on a full-time equivalent basis of employees of the company other than directors over at least the five most recent financial years”¹⁹.

Comparative table						
Annual change	N-5	N-4	N-3	N-2	N-1	N
Performance of the company						
Remuneration of Executive directors						
Average remuneration of employees of the company (on an FTE basis)						

- **Performance of the company:** As companies publish consolidated accounts, “the performance of the company” refers to the performance of the group. For measuring performance, companies should be free to use other financial metric they deem appropriate (such as TSR, EBIT, EBITDA ROE, ROA etc...), according to their business model and/or their strategy. However, and in order to preserve comparability over the five-year period, the method chosen should ideally remain the same even if some adjustments could be done due to specific circumstances which have to be explained.
- **Remuneration of Executive Directors:** The remuneration included in Table 1 should be disclosed here with the exception of **non-recurrent items** displayed in Table 1: (e.g. severance indemnity, non-competition agreement, extraordinary bonuses, golden-hellos) and/or of any other item that could **not be comparable** with employees’ remuneration due to specific circumstances which have to be explained.
- **Average remuneration of employees of the company:** This provision refers solely to the national full-time equivalent employees of the company which is elaborating the remuneration report. In case where the company has no employees (holding), it shall disclose only the annual change of remuneration of Executive Directors and the performance of the company over the five most recent financial years.

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¹⁹ Article 9b(1)(b) of SRD II
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Article 9b

Information to be provided in and right to vote on the remuneration report

“1. 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 referred to in Article 9a.

Where applicable, the remuneration report shall contain the following information regarding each individual director’s remuneration:

(a) the total remuneration split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration complies with the adopted remuneration policy, including how it contributes to the long-term performance of the company, and information on how the performance criteria were applied;

(b) the annual change of remuneration, of the performance of the company, and of average remuneration on a full-time equivalent basis of employees of the company other than directors over at least the five most recent financial years, presented together in a manner which permits comparison;

(c) any remuneration from any undertaking belonging to the same group as defined in point (11) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council;

(d) the number of shares and share options granted or offered, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof;

(e) information on the use of the possibility to reclaim variable remuneration;

(f) information on any deviations from the procedure for the implementation of the remuneration policy referred to in Article 9a (6) and on any derogations applied in accordance with Article 9a(4), including the explanation of the nature of the exceptional circumstances and the indication of the specific elements derogated from.”

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