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Targeted consultation on the draft guidelines on the standardised presentation of the remuneration report under Directive 2007/36/EC as amended by Directive(EU) 2017/828 ('Shareholders' Rights Directive')

Fields marked with * are mandatory.

Introduction

Disclaimer

Nothing in this document commits the European Commission or prejudices any decision by the Commission regarding the preparation of the non-binding guidelines on the standardised presentation of the remuneration report.

Directive 2007/36/EC of the European Parliament and of the Council of 11 of July 2007 on the exercise of certain rights of shareholders in listed companies, as amended by Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 as regards the encouragement of long-term shareholder engagement requires in its Article 9b that 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) draw up a clear and understandable remuneration report, providing a comprehensive overview of the remuneration of their directors. According to the Directive, the report shall include 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 company's remuneration policy.

Article 9b(6) of the Directive gives a mandate to the Commission to adopt guidelines to specify the standardised presentation of the Report with a view to ensuring harmonisation in this regard.

When preparing these guidelines, the Commission has consulted stakeholders both through the Commission Expert Group on Technical Aspects of Corporate Governance Processes and thereafter convening the Member States in a meeting of the Company Law Expert Group, in compliance with Recital 49 of the Directive (EU) 2017/828.

The Commission has taken into account the comments of the Expert Groups and is now consulting on the draft guidelines before their planned adoption in June 2019. Member States and stakeholders are invited to provide written comments by 21 March.

The consultation document has been drafted by the services of the European Commission to facilitate a targeted consultation on the possible content of the guidelines. Comments on this document should be submitted by the end of Thursday 21 March 2019, through this online facility created for this purpose. Comments submitted after that date, and comments not submitted through the online facility, will not necessarily be taken into consideration.

Nothing in this document commits the European Commission or prejudices any decision by the Commission regarding the preparation of the guidelines on the remuneration report.

Consultation document: draft guidelines on the remuneration report

RRG_draft_21012019.pdf

Privacy statement on the protection of personal data regime for this consultation

Privacy_Statement_for_Guidelines_Targeted_Consultation.pdf

Information about you

*Are you replying as:

- ○ a private individual
- ● an organisation or a company
- ○ a public authority or an international organisation

*First name and last name:

Edoardo Carlucci

*Name of your organisation:

BETTER FINANCE- The European Federation of Investors and Financial Services Users

*Contact email address:

(The information you provide here is for administrative purposes only and will not be published)

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*Is your organisation included in the Transparency Register ?

(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)

- ● Yes
- ○ No

*If so, please indicate your Register ID number:

24633926420-79

*Type of organisation:

- Academic institution
- Company, SME, micro-enterprise, sole trader
- Consultancy, law firm
- Consumer organisation
- Industry association
- Media
- (selected) Non-governmental organisation
- Think tank
- Trade union
- Other

* Where are you based and/or where do you carry out your activity? Please specify your country.

Belgium

* **Important notice on the publication of responses**

Received contributions, together with the identity of the contributor, may be made publicly available, unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. Do you agree to your contribution being published? (see specific privacy statement: cfr. supra)

- (selected) Yes, I agree to my response being published under the name I indicate (name of your organisation /company/public authority or your name if your reply as an individual)
- No, I do not want my response to be published.

Your opinion

1. Do you have any comments on Chapter 1 “Introduction” and Chapter 2 “Purpose” of the draft guidelines?

3000 character(s) maximum

BETTER FINANCE welcomes the initiative in providing guidelines on the standardised presentation of the remuneration report. We stress the importance of these guidelines to provide a clear and understandable remuneration report for shareholders. The main issue concerning the renumeration report is the understandability of the report. From the point of view of shareholders, it is not the length of the report which matters but the structure and the level of technicality.

As other jurisdictions, like the US show, it is possible to present directors remuneration of different kinds of companies (different size, different business area...) in a streamlined way. In our opinion, the increasingly complex nature of compensation systems across Europe should not drive EU legislators to adopt guidelines that allow for a large amount of flexibility as this would mean reducing the comparability and also the understandability for stakeholders. Rather, the EU legislators should provide for a stable and harmonised framework for remuneration disclosure within which companies should adapt their individual disclosure. Experience shows that even very complex compensation systems can be explained in a very simple and readable way.

We therefore are very supportive of accompanying tables and graphs that help readers easily catching sight of the most important information while we consider that narrative explanations (even more in footnotes) should be used only very restrictively as they often are overlooked, not understood and in any case lack comparability.

However, we consider that the guidelines provide too many tables which will not help stakeholders to easily figure out what directors of a certain company have earned in the reported year and how their remuneration followed the performance of the company.

2. Do you have any comments on Chapter 3 “Scope” of the draft guidelines?
3000 character(s) maximum

3. Do you think it is appropriate to have a clarification of the notion of “awarded or due” benefits in the guidelines and if this is so, do you consider that the explanation included in the footnote to chapter 3 “Scope” is clear enough?
3000 character(s) maximum

BETTER FINANCE believes that it is very important to have a clear definition of the notion “awarded or due”. There should be a clearer distinction between all the benefits already awarded to directors in a certain year and the benefits due in a certain year for which the payment or the allocation has not materialized yet. Shareholders need to differentiate how benefits to directors are allocated.

4. Do you have any comments on Chapter 4 “Key principles” of the draft guidelines?
3000 character(s) maximum

Key Principle no. 3: BETTER FINANCE considers that companies should not only report on changes to the methodology but also on changes to benchmarks and performance criteria used to measure directors' compensation. As an example, we point to EBITDA being often used as a criterion for variable pay. EBITDA however is not based on a harmonised definition. So even in case a company continues to use EBITDA to measure for example the short-term performance of its directors, the earnings development can be measured completely different year over year without this being obvious to stakeholders. BETTER FINANCE is of the opinion that also such changes should be disclosed by companies. In addition, we are questioning the very soft wording in the Key Principle no. 3 and recommend to change "Where the methodology has been changed compared with a previous report, a note would be helpful to explain the change and the effect of this change" to "Where the methodology, performance criteria or a benchmark have been changed compared with a previous report, companies should explain the change and the impact of this change on directors' remuneration."

Key Principle no. 4: BETTER FINANCE would like to point out the fact that the hyperlink option does not work in case of reports distributed in paper format. Such paper format reports however are still requested and read by many shareholders. In addition, these shareholders should be provided with the opportunity to have easy and free of charge access to the linked documents that are listed in this paragraph. BETTER FINANCE asks to highlight that cross-references to other sections in the report should only be used where no individual compensation figures need to be explained. As an example, we refer to the pension arrangements that may differ significantly among different directors as well as compared to employees. A (cross-referenced) pension or share scheme information in the notes to the financial statements relates to the pension arrangements or the long-term incentive of a specific director would not contribute to an easily understandable remuneration report.

Key Principle no. 5: For clarification, BETTER FINANCE recommends to include the phrasing: "and in absolute figures".

5. Chapter 5: Do you have any comments on Section 1 “Introduction” and Section 2 “Total remuneration of directors” of the draft guidelines?

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BETTER FINANCE supports the overall structure of the guidelines but has several remarks regarding clarity and content.
Section 1: We recommend combining the "highlights summary" and the subsequent "more comprehensive overview". We would find it preferable if indeed only the key elements regarding directors' compensation would be described in this section to not distract the reader through lengthy other descriptions. These key elements should be ordered by importance and should include also the following information:
-Changes to methodology/performance factors/benchmarks used
-Last voting outcome relating to directors' remuneration
-Increase in fees due to contractual or other agreements that have not been approved by shareholders
Section 2: BETTER FINANCE is very concerned that the guidelines seem to mix up two different approaches in presenting directors' compensation. Table 1 is named "Remuneration of Directors FOR the reported financial year". We understand this as any information awarded or GRANTED to directors FOR a specific financial year, regardless whether the director has received this compensation or not during that specific year.
However, this section seems to allow companies to use table 1 (also?) to present compensation directors that is due for a specific year. We consider that publishing both data sets ("paid for" and "granted for") is very valuable for stakeholders: Remuneration GRANTED FOR a certain financial year allows stakeholders to understand how much the company had to spent on each director (cost for the company). Remuneration RECEIVED FOR a certain year allows stakeholders to understand how much money a director had earned in the reporting year (gain for the director).
Combining both granted and received remuneration in one table, does not enable shareholders to get a clear picture of directors' compensation, on the contrary this would be very misleading as certain compensation elements would be counted twice. We therefore urge the Commission to clearly distinguish in the tables as well as in the guidelines between remuneration "received for" a specific year and remuneration "granted for" a specific year. In addition, we see no added value in presenting compensation from undertakings of the same group in a separate Table 1 BIS. We would have preferred that companies present the overall compensation of their directors, regardless of whether it comes from group companies or the parent company, in one single Table 1. Last but not least, we recommend to include the service period of directors (full year or start/end date) in Table 1 instead of adding a respective note to the table.
Explanatory notes : The guidelines seem to leave a lot of flexibility in explaining deviations from or explanations to Table 1 in notes. BETTER FINANCE is concerned that companies may make extensively use of this opportunity to the detriment of comparability and harmonisation of remuneration reports. Furthermore, we point out that footnotes are often overread or not understood by readers and should therefore be avoided as far as possible.
Please see answer 14 for additional comments.

6. Chapter 5: Do you have any comments on Section 3 "Share-based remuneration" of the draft guidelines?
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BETTER FINANCE underlines the necessity to include any share-based remuneration component in this section of the guidelines which include cash payout or payout in shares or virtual shares and welcomes that the Commission has taken this approach.

Share-based compensation components is the most complex compensation part and as such it is of utmost importance that stakeholders understand:

-How the programme is designed (part of the notes)
-How much remuneration under this programme may cost the company (part of a to be added table Remuneration granted)
-How much a director may at max earn under the programme (part of a to be added table Remuneration paid) over which period of time and what the downsize of the plan is.

In our view the information on how many shares have been exercised during the reporting year and year -1 is missing. A respective column on this should be included. Last but not least, BETTER FINANCE questions where share matching plans will be disclosed in this section and recommends that the guidelines clarify how these plans are being disclosed.

7. Chapter 5: Do you have any comments, in particular, on the valuation of share based remuneration (market value and additional value according to IFRS methodology) included in Section 3 “Share-based remuneration” of Chapter 5 of the draft guidelines?
3000 character(s) maximum

BETTER FINANCE recommends the use of a common valuation method as this is the only way to ensure comparability across companies and Member States. We prefer for the determination of the value of share-based awards at grant date the use of the fair value methodology.

8. Chapter 5: Do you have any comments on Section 4 “Any use of the right to reclaim” of the draft guidelines?
3000 character(s) maximum

9. Chapter 5: Do you have any comments on Section 5 “Information on how the remuneration complies with the remuneration policy and how performance criteria were applied” of the draft guidelines?
3000 character(s) maximum

We question whether separating the performance information from the overall remuneration information contributes to the understandability of the remuneration report. As stated above, we consider that it enhances understandability to have all necessary and meaningful information combined in two tables: one for the compensation granted and one for the compensation paid.

In addition, a separate table for share-based remuneration may be warranted to further explain this complex pay component. Instead of separating the information under section 5.5 in a separate table, BETTER FINANCE suggests to add the minimum/target/maximum pay for each component, not only for the variable component, to Table 1 in both granted and paid version. In the note section below, companies should then inform the stakeholders about the performance targets and the (ex post) target achievements – either by narrative description or in a small table.

As regards the maximum award achievement, BETTER FINANCE would – if the Commission decides to leave Table 4 as it is – recommend to:

- Separate minimum/target/maximum award achievement in three separate columns, not two;
- To clarify in the explanatory notes to which point in time the award achievements relate either to the time of grant or to the time of exercise of the share-based award. For both points in time, the information on maximum awards is important for stakeholders to understand the current performance of a director and the potential cost under a certain programme for the company.

10. Chapter 5: Do you have any comments on Section 6 “Derogations and deviations from the remuneration policy and from the procedure of its implementation” of the draft guidelines?3000 character (s) maximum

11. Chapter 5: Do you have any comments on Section 7 “Comparative information on the change of remuneration and company performance” of the draft guidelines?
3000 character(s) maximum

BETTER FINANCE asks for clarification whether the information to be added in table relates to remuneration granted for or paid in the reported financial year and in the preceding four years. According to our understanding, that figure should be encouraged to be used that provides for the highest comparability to employees' compensation. We consider this would be the remuneration paid in the reported year as this reflects in our view the remuneration model of the majority of employees aside of directors.

We are not favourable of annualising a director's remuneration where he or she does not hold its mandate throughout the full financial year as this does not reflect the full cost for this specific director and may lead to distortion in comparing the board's compensation to that of the employees. Also, in a situation where a director changes position within the board (ordinary executive board member becomes CEO) during the financial year only the actual cost paid to him or her should be used for comparison in this table. The notes should however explain these specificities.

Company performance: Here, the guidelines should state clearly whether the information relates to the net profit/loss for the company or for the entire group. As for the disclosure of employees' remuneration, BETTER FINANCE would prefer that the guidelines recommend the disclosure related to the whole group.

Average remuneration of directors vs. employees: We note that in the Shareholder Rights Directive the Commission has restricted the information on employees to the employees of the company itself. While we would have preferred the disclosure of average employee figures from the whole group. Therefore, we welcome the initiative of the Commission to extend this information (in the guidelines) to all employees of the entire group where companies find it more meaningful or informative. We point out that in the notes to this table the guidelines should recommend to add numeric information on the number of FTEs considered for this table (e.g. all FTE at the end of the reporting year or all FTE averaged during the reporting year of the company/the entire group) to allow for a minimum of comparison of the disclosed figures.

12. Chapter 5: Do you have any comments on Section 8 “Information on shareholder vote” of the draft guidelines?
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Shareholder voting plays an essential role in the corporate governance of European listed companies. At the same time, cross-border share ownership has increased significantly over the recent years. These circumstances underline the need for a system that facilitates cross-border voting. Any barriers to cross-border voting can be considered as having a negative impact on the voting turnout at general meetings.
The disclosure on how the advisory vote on the previous renumeration report has been taken into consideration is an essential information for shareholders.

Although say-on-pay votes are non-binding, companies should also address how the companies considered the results of their most recent say-on-pay vote, and how that consideration affected their executive compensation decisions and policies.
In addition to that, companies should be required to provide additional disclosure (in “extraordinary item” Section 2) regarding compensation arrangements with named executive officers in connection with mergers, acquisitions, and other specified transactions including going-private transactions and third-party tender offers. All agreements of such “golden parachute” arrangements with named executive officers need to be disclosed for both the acquiring and target companies, and the disclosure needs to be made in the form of both narratives and tables.

13. Do you have any comments on Chapter 6 “Transitional regime (first reporting years)” of the draft guidelines?
3000 character(s) maximum

BETTER FINANCE considers that the transitional regime is not necessary and that companies should not be enabled to not publish the full set of information as soon as the Shareholder Rights Directive II gets into force.

14. Do you have any additional comments on the draft guidelines as a whole?
3000 character(s) maximum

Total remuneration of directors:
General: This section should also include changes to performance criteria or benchmarks, if any, see comment above.
Name of director, position: We recommend to add the term of office of the directors to Table 1 instead of adding a footnote. This enhances understandability and comparability.
Fringe benefits: We recommend that the nature of fringe benefits/perquisites should only be explained in a note where they exceed a certain threshold.
Variable remuneration: BETTER FINANCE regrets that the disclosure regarding variable remuneration (both over one year and over several years) is recommended in a limited way. Companies should disclose all compensation elements granted for and all compensation elements received in the reporting year and the previous year in two separate tables. Furthermore, in order to facilitate the assessment of the performance of an individual director, companies should disclose the potential maximum and minimum amount of each compensation component plus the target figures. With this information, stakeholders can compare the performance of directors of the same company and find out whether directors have reached their performance goals or not.
Extraordinary items: The guidelines should recommend that an explanation is provided whenever non-recurring remuneration has been awarded or paid in the reported financial year.
Pension expenses: BETTER FINANCE sees no added value in naming the pension arrangement (defined benefit). We would be recommending an explanation of the pension arrangement(s) including if pensions have a variable part or not. In addition, we urge the Commission to further recommend requiring companies to disclose the service cost recognized in accordance with IFRS in the reported fiscal year and year -1. Next to the pension obligations for the company (cost for the company) it is – inversely to other remuneration components – a valuable information for stakeholders on how much directors will receive (gain for directors) upon retirement.
Furthermore, BETTER FINANCE considers relevant to get information on the duration of pension commitments and whether arrangements for descendants exist. We recommend to add this information to the notes.
Proportion of fixed and variable remuneration: Again, BETTER FINANCE wants to reiterate that the guidelines need to clearly state the relation of fixed to variable pay both for remuneration granted and for remuneration paid.

Last but not least, BETTER FINANCE suggests to clearly separate tables for executive and non-executive (or management and supervisory) board members. Their compensation components follow completely separate rules and are currently not published together in any Member State, as to our knowledge. The guidelines should therefore suggest two different tables for these different kind of board members.

In addition, BETTER FINANCE acknowledges the existence of disproportionate remuneration of some directors in some of the big listed EU companies. For this reason, we consider that the establishment of renumeration caps for directors is necessary. The maximum remuneration should be adopted for base salaries and as well for variable remunerations.

Contact

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