

# 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

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### 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

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\* Are you replying as:

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

\* First name and last name:

Henry Daubeney

\* Name of your organisation:

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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:

60402754518-05

\* Type of organisation:

- Academic institution
- Company, SME, micro-enterprise, sole trader
- Consultancy, law firm
- Consumer organisation
- Industry association
- Media
- 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.

Global

### **\*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)

- 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**

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

3000 character(s) maximum

We agree with the guidance given in chapters 1 and 2 of the draft guidelines on the standardised presentation of the remuneration report (“guidelines”).

2. Do you have any comments on Chapter 3 “Scope” of the draft guidelines?

3000 character(s) maximum

We agree with the guidance given in chapter 3 of the draft guidelines. Concerning the footnote to chapter 3 see our remarks on question 3.

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

We strongly support the idea to clarify the notion of “awarded or due” benefits in the guidelines, especially the notion of “awarded”.

In our opinion, however, the explanation given so far is not sufficient and clear enough, especially compared to the definitions and explanations in the Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No. 575/2013 by European Banking Authority (“EBA Remuneration Guidelines”). At least the following should be clarified:

1. The relationship between “awarded” and service conditions, i.e. a clarification whether benefits are “awarded” if they are not yet legally owned, because they are still subject to service conditions (e.g. a retention bonus based on providing future service for a predetermined period);
2. The relationship between “awarded” and performance conditions, especially ex post risk adjustments (deferral, malus and clawback arrangements), i.e. a clarification whether benefits are “awarded” when still subject to ex post risk adjustments, e.g. the future development of performance indicators during a deferral period;
3. The determination of “awarded” for companies (other than credit institutions and investment firms) where no distinction is made between “accrual period” within the meaning of the EBA Remuneration Guidelines, page 22 (“the period of time for which the performance is assessed and measured for the purposes of determining an award of variable remuneration”) and “deferral period” within the meaning of the EBA Remuneration Guidelines, page 22 (“the period of time between the award and the vesting of variable remuneration during which staff is not the legal owner of the remuneration awarded”).
4. The relationship between “awarded” and “granted” as used in point (d), paragraph 1 of Article 9b of the Directive 2007/36/EC, as amended by Directive (EU) 2017/828 (“Directive”) and in point (d), paragraph 1 of Article 17 of the Directive 2013/34/EU, i.e. a clarification whether the terms are used synonymously or not. According to the EBA Remuneration Guidelines, “award” is defined as “the granting of variable remuneration for a specific accrual period [...]” suggesting a synonymous use.
5. The meaning of “awarded” for share-based remunerations, especially the relationship between “awarded” on the one hand and “grant date” and “vesting date” according to IFRS 2 on the other hand. This is of specific importance, since all companies that have to draw up a remuneration report in accordance with paragraph 1 of Article 9b of the Directive must prepare their consolidated financial statements in accordance with IFRS. This clarification could also be provided in section 3 of chapter 5.

4. Do you have any comments on Chapter 4 “Key principles” of the draft guidelines?  
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We support the idea of defining key presentation principles, but we suggest a few clarifications and additions.

Despite the guidelines, some requirements of the Directive may leave room for interpretation, e.g. the award date of remuneration or whether a remuneration component is fixed or variable. We therefore recommend to supplement key principles no. 3 (Contents) or no. 6 (Narrative information) by encouraging narratives giving further explanations on how such requirements have been interpreted.

According to key principle no. 7 (Executive/Non-executive directors), information should be provided in a manner which allows to distinguish between different directors with different functions. We propose to extend the examples to include former directors as their total remuneration (possibly only pension expenses; but see our remarks on question 5) differs from that of active directors. Moreover, for two-tier-systems we suggest a recommendation to split the tables into one for the executive directors (executive board) and one for the non-executive directors (supervisory board).

Moreover, the key principles should be supplemented by a determination of the reporting entity of the remuneration report, i.e. whether the remuneration report has to include only the remuneration (either from the reporting company or from other companies belonging to the same group) in exchange for the directors' services to the reporting company (a single entity remuneration report) or also the remuneration in exchange for the directors' services to other companies belonging to the same group (i.e. a group remuneration report).

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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According to point 3 of section 2, tables 1 and 1 BIS should include information of benefits granted or awarded or due during the reported financial year. As the Directive only requires information on benefits “awarded or due”, it should either be clarified that “granted” is used synonymously with “awarded”, or “granted” should be deleted (see also our remarks on question 3).

According to point 4 of section 2, tables 1 and 1 BIS should also provide information regarding former directors to the extent remuneration was awarded or due during the reported financial year. As the remuneration should include pension expense it should be clarified whether the disclosure of pension expense also applies to former directors. Depending on the number of former directors this could lead to a substantive extension of the remuneration report.

According to point 5 of section 2, the variable remuneration should be split in one-year variable and multi-year variable on the basis of the time span of the relevant performance criteria. We propose further guidance on how to determine the time span, e.g. whether or not a deferral period (i.e. a period where the remuneration is subject to ex post risk adjustment) should be included or how to determine it in case of multi-year variable remuneration based on past as well as future performance conditions.

According to point 5 of section 2, the amount of share-based remuneration reported in the column “Multi-year variable” should be equal to the sum of the amount reported in table 2 (share options) column and table 3 (share awards) column. This applies only to share-based remunerations with a vesting period of more than one year. Furthermore it should be clarified which of the values to be reported in table 2 and table 3 (if any; see our remark on question 6) should be included in the total remuneration, the value at award date or the value at vesting date.

Concerning extraordinary items, we propose to extend the examples to include compensation or buyout from previous employment contracts.

We support the disclosure of pension expense as a component of total remuneration. However, the guidelines imply that only contributions to finance a fund for future pension pay-out are subject to this disclosure. We suggest that the disclosure should apply to any pension obligation and any similar obligation (e.g. early retirement schemes; see paragraph 6 of Article 9a of the Directive). Moreover, it would be helpful if the document provided further guidance on how to determine the pension expense to be reported (e.g. service cost as recognised in the company’s statement of profit or loss ).

To calculate the proportion of fixed and variable remuneration, we suggest further guidance, in particular indicators, on how to allocate remuneration components to either fixed or variable remuneration (e.g. guaranteed variable remuneration like a minimum bonus or a severance payment compensating both future fixed and variable remuneration components).

6. Chapter 5: Do you have any comments on Section 3 “Share-based remuneration” of the draft guidelines?

3000 character(s) maximum

According to point (d), paragraph 1 of Article 9b of the Directive, the remuneration report shall contain the numbers of shares and share options granted or offered. In accordance with the clarification of the notion of "awarded or due" in the footnote to chapter 3 we strongly recommend a clarification of the notion of "granted or offered". This should contain, in particular, the difference between "granted" and "offered", the relationship between "granted or offered" and "awarded or due" and the relationship between "granted" and "grant date" according to IFRS 2 (see our remarks on question 3).

According to point 3 of section 3, share-related instruments other than shares or share options such as phantom stock, stock appreciation rights and warrants should also be disclosed in the tables 2 and 3. In our opinion this exceeds the requirements of the Directive, which only requires information on shares and share options and not on other share-related instruments (see in contrast the wording in of point (I) (i), paragraph 1 of Article 93 of the Directive 2013/36/EU: "shares or equivalent ownership interests [...] or share-linked instruments or equivalent non-cash instruments").

According to point 4 of section 3, information on the market value at the award date and the market value at the vesting date should be included in the tables 2 and 3. In our opinion this exceeds the requirements of the Directive, which only requires information on numbers of shares and share options.

In tables 2 and 3, for each director there are three data fields provided for specific information per plan without giving an indication as to how these data fields are to be filled differently. Presumably, these data fields are meant to be used if, for example, a plan contains a number of tranches. We recommend to clarify the way in which these data fields are supposed to be used.

Concerning the award date, see our remarks on question 3.

According to point (d), paragraph 1 of Article 9b of the Directive, the remuneration report shall contain the main conditions for the exercise of shares and share options granted or offered including the exercise price and date and any change thereof. The explanatory notes regarding tables 2 and 3 should be extended on how to report such changes.

Concerning tables 2 and 3, the relationship between the opening balance and the closing balance within two consecutive financial years is not clear. According to tables 2 and 3 the opening balance should present the number of share options or shares awarded whereas the closing balance should include the number of share options or shares the award of which is still subject to a performance condition, i.e. in our opinion, the number of share options or shares not yet awarded. This would mean that the closing balance of financial year x1 does not match the opening balance of financial year x2. We therefore recommend to include the number of share options or shares not yet awarded in the opening balance.

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

We support the idea to clarify the valuation of share-based remuneration, not for tables 2 and 3 (see our remarks on question 6), but for tables 1 and 1 BIS, as the share-based remuneration is a component of the total remuneration.

According to point 4 of section 3 it is recommended to use a common method to determine the value of such type of remuneration such as the market value of shares or the market value of the underlying shares in the case of share options. We disagree that such a market value determines the value of such type of remuneration, in particular as it disregards the exercise price of the share options or the price the counterparty will be required to pay for the shares, and, in the case of share options, their time value. Instead share-based remunerations should be included in the total remuneration at their fair value. Since all companies that have to draw up a remuneration report in accordance with paragraph 1 of Article 9b of the Directive must prepare their consolidated financial statements in accordance with IFRS, we suggest that the fair value should be measured according to IFRS methodology. Concerning the measurement date see the next bullet point.

Point 4 of section 3 mentions two dates, the award date and the vesting date. In accordance with paragraph 1 of Article 9b of the Directive which requires to include all benefits, awarded or due, into the total remuneration, measurement date should be (only) the award date. Concerning "award date" see our remarks on questions 3 and 6.

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

We agree with the guidance given in section 4 of the draft guidelines, in particular that information on reclaims is only required if variable remuneration was awarded or due (and was therefore included in the total remuneration according to point (a), paragraph 1 of Article 9b of the Directive) and if variable remuneration has actually been reclaimed in the reported financial year.

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

According to point (a), paragraph 1 of Article 9b of the Directive the remuneration report shall contain an explanation how the total remuneration complies with the adopted remuneration policy including information on how the performance criteria were applied. In our understanding, these informations are only required for actual outcomes and not for targets. Instead the information on performance targets should be described in the remuneration policy (see Recital 29 of the Directive: "The remuneration policy should describe the different components of the directors' pay and the range of their relative proportions."). Therefore we propose to remove the columns "3. Information on Performance Targets" from Table 4 and instead suggest a cross-reference to the remuneration policy.

Usually there are different performance criteria depending on the type of remuneration (one-year, multi-year, share-based, non share-based). Therefore we suggest that the information for each director on performance criteria and its application according to table 4 should not be presented for the remuneration as a whole, but for each remuneration component.

According to point 3 of section 5 companies should present for each director the performance achieved over the reported financial year. For multi-year variable remuneration components it should be clarified that this information should not be reported annually but only in the year in which this remuneration component is awarded or due and that this information should be determined for the whole performance period.

If a performance criterion does not have a maximum, the explanatory notes regarding table 4 suggest that a note should be inserted to describe how the award is determined. In our opinion such a description should form part of the remuneration policy and not of the remuneration report, so that, if at all, a cross-reference to the remuneration policy should be sufficient.

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

We agree with the guidance given in section 6 of the draft guidelines concerning information on any derogations applied in accordance with paragraph 4 of Article 9b of the Directive.

Concerning deviations from the procedure for the implementation of the remuneration policy, point 3 of section 6 suggests that the information required by point (f), paragraph 1 of Article 9b of the Directive should, in particular, include an explanation for the reasons and the circumstances for this deviation, and the procedure followed instead of the prescribed one to achieve the targets included in the remuneration policy. In our opinion this exceeds the requirements of the Directive, since such detailed explanations are required by the Directive only for derogations, not for deviations.

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

In general we agree with the guidance given in section 7 of the draft guidelines.

According to the explanatory notes regarding table 5, for calculating the annual change of remuneration for a director whose mandate began or ended during the financial year, the respective remuneration should be annualised to allow a meaningful comparison. In this context it should be clarified how to deal with extraordinary items relating to the commencement or termination of the service, such as sign-on fees, compensations for previous employment contracts or severance payments.

According to the explanatory notes regarding table 5, the information on the annual change of the company's performance should relate to the net profit or loss for the financial year, and could in addition also relate to other performance. As the net profit or loss of the company may not be the most relevant performance indicator we suggest that the information should instead relate to the financial and/or non-financial key performance indicators in accordance with paragraph 1 of Article 19 of Directive 2013/34/EU.

According to the explanatory notes regarding table 5, the company should provide numeric information on average remuneration including all the employees of the company. By contrast the wording of point (b), paragraph 1 of Article 9b of the Directive does not require all the employees of the company to be included in the calculation of the employees' average remuneration ("average remuneration on a full-time equivalent basis of employees of the company [...]"). Therefore, in our opinion the company has flexibility in the definition of this peer group, limited only to the extent that it must include employees of the company. Moreover we support the idea to provide numeric information including employees of the entire group of companies, on a consolidated basis. However, in the event that the key performance indicators are determined at group level, we consider it sufficient for the average remuneration to be reported at group level only. In any case a note should be included to explain the methodology of calculating the average remuneration of employees.

12. Chapter 5: Do you have any comments on Section 8 "Information on shareholder vote" of the draft guidelines?

3000 character(s) maximum

In general we agree with the guidance given in section 8 of the draft guidelines. Nevertheless we suggest that the possibility of estimating or omitting the information for previous financial years where the reporting obligation did not yet apply should be irrespective of whether this information is readily available or not.

13. Do you have any comments on Chapter 6 "Transitional regime (first reporting years)" of the draft guidelines?

3000 character(s) maximum

We agree with the guidance given in chapter 6 of the draft guidelines.

14. Do you have any additional comments on the draft guidelines as a whole?

3000 character(s) maximum

We support guidance to specify the standardised presentation of the remuneration report according to paragraph 6 of Article 9b of the Directive and further guidance for the interpretation of the Directive's requirements for the remuneration report. However, the non-binding guidelines should not exceed the requirements of the Directive.

We suggest to provide further guidance on how to present the informations required by the Directive in case of changes in the remuneration policy during the reporting year.

We suggest that all tables including figures for the previous financial year (e.g. table 1) be extended by a column next to "Name of Director, position" indicating which row summarizes the remuneration of the reported financial year and which row summarizes the remuneration of the previous financial year.

## Contact

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