18 March 2019

ecoDa's RESPONSE

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')

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

Although EC guidelines are formally to be non-binding they often tend to be designed and formulated in a way that in practice make then more or less mandatory for companies to comply with. An example of this is the distinction between two categories of disclosure to be considered, which – although being an improvement from the TEG report's three categories – may give the impression that the degree of voluntariness is in fact graded. It is hard to conceive of major listed companies, anxious about their reputation in broad circles in the society, daring to disregard these guidelines even if they think other ways of reporting would more useful for investors and other relevant stakeholders.

Overall ecoDa thinks that the Commission has an exaggerated ambition to obtain comparability across companies, industries and perhaps even countries. We believe it is in general of greater value for the relevant target groups to receive highly pertinent information about individual companies of their particular interest than to be able to compare - unavoidably more superficial - information across companies and industries.

In addition, ecoDa is questioning to what extent the information provided will actually serve investors' interests. Investors are generally inclined to look for more concise and clear information. ecoDa has even more doubts that the public audience, including employees, will be in a position to digest all detailed information to be provided in the standardized reports. Quite on the contrary we see obvious risks of misinterpretation, not least by the media. In fact the only target group demanding such detailed information seems to be proxy advisors, because it would help them develop their recommendations.

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

In most EU Members states, remuneration data for the group of senior managers, directly subordinate to the CEO (and the deputy CEO where relevant), is reported as a lump sum. Disclosing such information at an individual level will most likely lead to an upward trend of remuneration at this management level. In addition, we have seen side-effects in certain countries where companies limit

the size of their senior management team to avoid too many individual disclosures. In countries where director pay is decided directly by the AGM as an annual and equal fee with no other components, the proposed reporting format with separate excel sheets for each director and columns for different types of remuneration could easily become unclear for the investors.

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**

4. **Do you have any comments on Chapter 4 "Key principles" of the draft guidelines?**

The Guidelines should better distinguish between non-executive directors and executive directors. The 'supervisory function' is too often seen as the responsibility of the non-executive directors, whereas the management function is defined as the responsibility of executive members. This is a simplification of European governance practices that might be acceptable in some 2-tier models (even if board committees have more roles than supervisory functions), but it is certainly not correct for 1-tier models.

Remuneration of non-executives directors should be treated differently from that of executive directors unless performance-criteria related remuneration and remuneration in shares are allowed for NEDs, as occurs in some jurisdictions and in some entrepreneurial companies (start-ups) with share schemes for all directors.

5. **Chapter 5: Do you have any comments on Section 1 "Introduction" and Section 2 "Total remuneration of directors" of the draft guidelines?**
6. **Chapter 5: Do you have any comments on Section 3 "Share-based remuneration" of the draft guidelines?**
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?**
8. **Chapter 5: Do you have any comments on Section 4 "Any use of the right to reclaim" of the draft guidelines?**

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?**

The Guidelines should not overlook that companies must be allowed to keep sensitive strategic information confidential (given the more prominent link between remuneration design and strategy). Much of the information to be disclosed in Table 4 goes way too far in terms of strategic sensitiveness, thus risking to hurt vital commercial interests of the company.

It is infeasible for companies to give full disclosure internally, let alone externally, on the individual performance of different executive directors as well as their individual minimum and maximum targets per type of performance criterion, etc.

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?**

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?**

We think 5-year overviews as specified in Table 5 should not be required from the outset but only to be built up successively over the first five years of application of the guidelines. It would be unreasonable to expect companies to determine exactly the same information, defined in the same way, four years back in the first year of reporting according to this format.

While requesting information on the average remuneration on a full-time equivalent basis of employees of the company other than directors, the Guidelines could invite the company to disclose whether there are long-term plans for employees’ variable remuneration.

Including the entire group's employees in the information supporting the calculation of an "equity ratio" should not be mandatory. Indeed, also limiting the information to "the company (i.e. the reporting entity)" may be misleading as in many cases the reporting entity is a holding company with very few employees; on the other hand comparing directors' remuneration to that of workforces varying hugely between industry sectors, geographical distribution etc. will also lead to meaningless information. What is really relevant is rather to compare the respective evolutions over time. Again flexibility is required.

12. **Chapter 5: Do you have any comments on Section 8 “Information on shareholder vote” of the draft guidelines?**
13. **Do you have any comments on Chapter 6 “Transitional regime (first reporting years)” of the draft guidelines?**

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

The Guidelines are overall far too extensive and detailed. In their current form they will invoke administrative work, and/or costs (depending on how companies choose to produce the required information), which will be quite burdensome for all companies concerned but in particular for small and middle-size listed companies. In our opinion, guidelines of this kind should be more principle-based, leaving reasonable freedom to companies to design their information in ways they consider most suitable to their specific circumstances. Maintaining flexibility is even more important in countries in the developing phase of their financial market. The more strict and burdensome rules for public companies are, the less attractive the public market is for companies.

While developing its own Guidelines, the Commission should sufficiently take into consideration the existing self-regulation regimes available at national levels. Therefore, ecoDa would recommend the Commission to explicitly refer to the national Corporate Governance Codes.

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