

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,

Draft

**COMMISSION RECOMMENDATION**

**of [...]**

**on fostering an appropriate regime  
for the remuneration of directors**

Draft

## COMMISSION RECOMMENDATION

of [...]

### **on fostering an appropriate regime for the remuneration of directors**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 second indent thereof,

Having regard to the Directive of the European Parliament and of the Council on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

Whereas

- (1) In May 2003, the Commission adopted a Communication on “Modernising Company Law and enhancing Corporate Governance in the European Union – A Plan to Move Forward” (COM(2003) 284 final). Among a range of proposals to strengthen shareholders’ rights and modernise the board of directors, it provides for an initiative aimed at encouraging the implementation of an appropriate regulatory regime on directors’ remuneration in the Member States.
- (2) The need to provide shareholders with accurate information and the appropriate mechanisms to express their views was recognised by the European Parliament<sup>1</sup>.
- (3) The Commission organised a public consultation on the subject of directors’ remuneration. The analysis of the responses received, as published in a DG MARKET working document, indicates support for the approach proposed by the Commission.
- (4) The form and level of directors’ remuneration is a matter for the companies and their shareholders. The level and structure of the remuneration should be such that directors of the quality required to run the company can be recruited and retained. The choice of specific remuneration instruments should be made within each company.

---

<sup>1</sup> European Parliament resolution P5\_TA(2004)0346 of 21 April 2004 on the communication from the Commission to the Council and the European Parliament : Modernising company law and enhancing corporate governance in the European Union – a plan to move forward (not yet published in the official journal).

- (5) Directors' remuneration nevertheless is one of the key areas where executive directors have a conflict of interest and where due account must be taken of the interests of shareholders. Remuneration systems should therefore be subjected to appropriate governance controls, based on adequate information rights.
- (6) It is nevertheless important to respect fully the diversity of corporate governance systems within the European Union which reflect Member States' different cultures and views about the roles of corporations and of the various bodies responsible for the determination of directors' remuneration policy and individual directors' remunerations.
- (7) The disclosure of accurate and timely information by security issuers builds sustained investor confidence and constitutes an important tool for promoting sound corporate governance throughout the European Union. To that end, it is important that listed companies ensure appropriate transparency towards investors to enable them to express their views. This would not prevent Member States to apply the provisions of this recommendation also to non-listed companies, including public interest companies.
- (8) Shareholders should be provided with a clear and comprehensive overview of the company's remuneration policy.. Such disclosure would enable shareholders to assess a company's approach to remuneration and strengthen company's accountability to shareholders. Such disclosure should include element related to compensation. This should however not lead the company to disclose commercially-sensitive information.
- (9) Adequate transparency should also be ensured in the area of directors' contracts policy. This should include the disclosure of information on issues like notice periods and termination payments under such contracts which are directly linked to directors' remuneration.
- (10) In order to give shareholders the effective means to express their views and the opportunity to debate the remuneration policy on the basis of a comprehensive disclosure, without having to go through the process of tabling shareholders' resolution, the remuneration policy should be an explicit item on the agenda of the annual general meeting.
- (11) In order to increase accountability, the remuneration policy should be submitted to the general meeting for a vote. The vote of the annual general meeting of shareholders could be advisory, so that the prevailing rights of the relevant bodies assuming responsibilities for remuneration matters would not be altered. An advisory vote would not require directors to amend contractual entitlements nor to amend their remuneration policy.
- (12) Shareholders should also be provided with the information on the basis of which they can hold individual directors accountable for the remuneration they extract or have extracted from the company. Disclosure of the remuneration of individual directors of the company, both executive and non-executive or supervisory directors, in the preceding financial year is therefore important to help them appreciate the remuneration in the light of the overall performance of the company.

- (13) Variable remuneration schemes under which directors are remunerated in shares, share options or any other right to acquire shares or to be remunerated on the basis of share price movements, and any substantial change in such schemes, should be subject to the prior approval of the Annual General Meeting of Shareholders. The approval should relate to the scheme in itself- the system of remuneration and the rules applied to establish the individual remuneration under the scheme. It should not relate to the individual remuneration of directors under the scheme.
- (14) The Commission intends to monitor compliance by -and within- Member States and would consider further measures if compliance is insufficient.

HEREBY RECOMMENDS:

#### SECTION I: SCOPE AND DEFINITIONS

##### *Article 1: Scope*

Each Member State should take the appropriate measures to ensure that listed companies having their registered office in its territory comply with the provisions of this recommendation.

Each Member State should also take the appropriate measures to ensure that listed companies which are not incorporated in one of the EU Member States but have their primary listing on a regulated market established in its territory comply with the provisions of this recommendation.

##### *Article 2: Definitions*

For the purpose of this recommendation, the following definitions apply

- a) “Director” means any member of the administrative, managerial and supervisory bodies of a listed company.
- b) “Listed company” means a company whose securities are admitted to trading on a regulated market within the meaning of Directive 2004/39/EEC.

##### *Article 3: Chief Executive officer*

Member States will also ensure that the provisions of this recommendation apply to the remuneration of the chief executive officer when he/she is not a member of the administrative, managerial and supervisory bodies of a listed company.

#### SECTION II: REMUNERATION POLICY

##### *Article 4: Disclosure of the directors’ remuneration policy*

1. Each listed company should disclose a statement of the remuneration policy of the company in order to ensure accountability to shareholders (“the remuneration

statement”). It should be part of a self-standing remuneration report and/or be included in the annual accounts and annual report or in the notes to the annual accounts of the company. The remuneration statement should also be posted on the listed company’s website.

2. The remuneration statement should contain an overview of the manner in which the remuneration policy has been implemented in the previous financial year. However, this statement should mainly focus on the company’s policy on directors’ remuneration for the following financial year and, if appropriate, the years subsequent to that. Particular emphasis should be put on any significant changes in the listed company’s remuneration policy compared to the previous financial year. The remuneration statement should include at least the following information :
  - Explanation of the relative importance of the variable and non-variable components of directors’ remuneration;
  - Sufficient information on the performance criteria on which any entitlement to share options, shares or variable components of remuneration is based;
  - Sufficient information on the linkage between remuneration and performance. ;
  - The main parameters and rationale for any annual bonus scheme and any other non-cash benefits;
  - A description of the main characteristics of supplementary pension or early retirement schemes for directors.

The disclosure of this information in the remuneration statement should nevertheless not entail the disclosure of information of a commercially-sensitive nature.

3. The remuneration statement should also summarise and explain the listed company's policy with regard to the terms of the contracts of executive directors. This should include, inter alia, information on the duration of contracts with executive directors, the applicable notice periods and details of provisions for termination payments (and other payments linked to early termination) under such contracts for executive directors.
4. In accordance with the Commission recommendation on strengthening the role of non-executive or supervisory directors, the information concerning the preparatory and decision-making process used for determining the listed company's remuneration policy for directors should also be disclosed. This should include information about, if applicable, the mandate and composition of a remuneration committee, the names of external consultants whose services have been used in determination of the remuneration policy and the role of the shareholders’ annual general meeting.

#### *Article 5: Shareholders’ vote*

1. Without prejudice to the role and organisation of the relevant bodies responsible for setting directors’ remunerations, the remuneration policy or, alternatively every significant change to the remuneration policy should be an explicit item on the agenda of the annual general meeting. The remuneration statement should be submitted to the general meeting of shareholders for a vote.

2. To this effect, the listed company should inform shareholders entitled to be sent notice of the meeting about the intention to file a resolution approving the remuneration statement at the annual general meeting.
3. The vote of a General meeting could be advisory.

### SECTION III - REMUNERATION OF INDIVIDUAL DIRECTORS

#### *Article 6: Disclosure of the remuneration of individual directors*

1. The total remuneration and other benefits granted to individual directors over the relevant financial year should be disclosed in detail in the annual accounts or in the notes to the annual accounts or, where applicable, in the remuneration report.
2. The annual accounts or, where applicable, the remuneration report should for the relevant financial year show for each person who has served as a director of the listed company at any time during that year at least the following information:

#### A. Remuneration - emoluments

- i. The total amount of salary paid or due to the director for the services performed under the relevant financial year, including where appropriate the attendance fees fixed by the general shareholders meeting
- ii. The remuneration and advantages received from any undertaking belonging to the same group;
- iii. Remuneration paid in the form of profit sharing and/or bonus payments and the reasons why such bonus payments and/or profit sharing were granted;
- iv. Where legally allowed, the additional remuneration paid to directors for special services outside the scope of the usual functions of a director.
- v. The compensation paid to or receivable by each former executive director in connection with the termination of his activities during that financial year;
- vi. Total estimated value of non-cash benefits considered as remuneration other than those covered in paragraphs i) to (v).

#### B. Shares – rights to acquire shares option and all other share-incentive schemes

- i. The number of share options granted by the company during the relevant financial year and their conditions of application;
- ii. The number of share options exercised during the relevant financial year and for each of them the number of shares involved and the exercise price.

- iii. The number of share options unexercised at the end of the financial year; their exercise price, the exercise date and the main conditions for the exercise of the rights;
- iv. Any change in the terms and conditions of existing share options during the financial year;

C. Supplementary pension schemes

- i. When the pension scheme is a defined-benefit scheme, changes in the director's accrued benefits under that scheme during the relevant financial year;
- ii. When the scheme is a defined-contribution scheme, details of the contributions paid or payable by the listed company in respect of that director during the relevant financial year.

D. Loans, guarantees and advance payments to each person who has served as a director at any time during the relevant financial year

- i. Where allowed by national law or allowed according to the company's Articles of Association, the amounts the company or any subsidiary or company included in the company's consolidated annual accounts, has paid for loans, advance payments and guarantees, including the amount outstanding and the interest rate.

#### SECTION IV: SHARE-BASED REMUNERATION

##### *Article 7: Shareholders' approval*

1. Schemes under which directors are remunerated in shares, share options or any other right to acquire shares or to be remunerated on the basis of share price movements, should be subject to the prior approval of shareholders by way of a resolution at the general meeting prior to their adoption. The approval relates to the scheme in itself and not to the grant of such share-based benefits under that scheme to individual directors.
2. Approval of the General Meeting of Shareholders should be obtained for the following:
  - grant of share-based schemes, including share options, to directors;
  - the determination of their maximum number and the main conditions of the granting process;
  - the term within which options can be exercised;
  - the conditions for any subsequent change in the exercise price of the options, if appropriate and legally allowed;

- any other long term incentive schemes for which directors are eligible and which is not offered under similar terms to all other employees
3. The shareholders' general meeting should also fix the deadline within which the Board of directors or the Supervisory Board can award these types of compensation to individual directors.
  4. Any substantial change in the terms and conditions of the schemes should also be subject to the prior approval of shareholders by way of a resolution at the general meeting prior to their adoption. In such cases, shareholders should be informed about the full terms of the proposed changes and an explanation of the effect of the proposed changes.
  5. If legally allowed, any discounted option arrangement under which any rights are granted to subscribe to shares at a price lower than the market value of the share on the date when the exercise price is determined, or the average of the market values over a number of days preceding the date when the exercise price is determined, should also receive the approval of shareholders.
  6. Paragraphs 1, 2, 3 and 4 should not apply to schemes in which participation is offered on similar terms to employees of the listed company or any of its subsidiary undertaking whose employees are eligible to participate in the scheme and which has been approved by the shareholders' annual general meeting.

#### *Article 8: Information*

1. Prior to the general meeting where a resolution is tabled in accordance with article 6 paragraph 1 and in accordance with national legislation and/or the Articles of Association of the listed company, an information notice in connection with the resolution should be made available to shareholders. It should at least contain the full text of the schemes or a description of its principal terms, and the names of the participants in the schemes. The notice should also set out the relationship of the scheme with the overall policy with regard to directors' remuneration. The resolution contained in the notice of the meeting accompanying the circular should clearly refer either to the scheme itself or to the summary of its principal terms included in the circular.
2. Information should also be made available to shareholders about the policy on the exercise of option rights. In particular, shareholders should be informed about the number of shares the company holds as at the balance sheet date or will buy thereafter and about the number of new shares the company has issued as at the balance sheet date or will issue thereafter in order to cover the exercise of the option rights granted.
3. This information should also provide an overview of the costs of the scheme to the company in view of the intended application.
4. Such information could be posted on the listed company's website.

## SECTION V: FINAL PROVISIONS

### *Article 9: Final Provisions*

1. The Member States are invited to take the necessary measures to promote the application of this recommendation by 31 December 2005.
2. The Member States should notify the Commission of measures taken in compliance with this recommendation. The Commission will closely monitor the situation and on this basis, assess the need for further additional measures.

Done at Brussels, [...]

*For the Commission*

[...]

*Member of the Commission*