



Newsflash – European Commission publishes draft standardised guidance on presentation of the annual remuneration report under the Shareholder Rights Directive

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Background and purpose

- The European Commission has published draft guidance intended to help companies disclose **clear, understandable, comprehensive and comparable** information on directors' remuneration which meets the requirements of the Shareholder Rights Directive (Directive 2007/36/EC, as amended by Directive (EU) 2017/828) ('SRDII')
- It does not aim at a 'one-size-fits-all' approach but seeks to address different practices of companies in member states.
- The guidance is **non-binding**. Companies using it are also **subject to the legal requirements of the applicable national laws transposing the Directive** and relevant local corporate governance frameworks where applicable.
- SRDII is due to be transposed into local member state law by 10th June 2019.
- The document does not include further guidance on the establishment of a remuneration policy as outlined in the Directive as amended by Directive (EU) 2017/828.

Structure of remuneration report

- The guidance sets out a **framework for annual reporting** on how the remuneration policy has been implemented during the most recent financial year under review. The proposed framework is summarised below (explanatory notes in the guidance specify the relevant information to be provided):
 1. **Introduction** – Opening with a brief '*highlights summary*' including key remuneration elements for the financial year, key events in the company's business environment, key changes in directors, changes in the remuneration policy or its application. The introduction may also include comment on how a shareholder vote or views have been taken into account.
 2. **Total remuneration of directors** – each **individual** directors' remuneration **received** during the year **by pay component, in a specified table format**, including relative proportions of fixed to variable remuneration. Where applicable, this should include any remuneration from an undertaking belonging to the same group, which should be expanded in a separate table. Total remuneration also to include information for previous year for comparison, as well as information for remuneration awarded or due to former directors in the financial year.
 3. **Share-based remuneration** - information in respect of the grant and vesting of share awards or share options during the financial year, in a **specified table format**. This includes details of performance and holding periods. Valuation of awards is based on the market value of shares (or underlying value of shares under option) at the award date or vesting date. (*The guidance states that companies may also want to include the IFRS value, either in narrative or additional column*). Where phantom awards are used, the table format should be applied where possible.
 4. **Right to reclaim ('malus and clawback')** – provide information on the use of any reclaim of variable remuneration during the financial year in the form of 'malus' or 'clawback'. Disclosures to include the amount reclaimed for a specifically named director.
 5. **Information on how the remuneration complies with the remuneration policy and how performance criteria were applied** – information on how directors' remuneration complies with the policy, and how it contributes to the long-term performance of the company, including how performance criteria were applied.

A **specified table format** is provided in respect of variable remuneration paid during the year, and includes a description of financial and non-financial metrics, the relevant weighting of each metric, minimum and maximum target performance required and corresponding award under each criteria **and actual award outcomes**. An explanation of any discretion used (upward or downward) should also be provided.
 6. **Derogations and deviations from remuneration policy** – to provide information on any deviations from the procedure for the implementation of the remuneration policy, and/or any derogations from the remuneration policy, including an explanation of the nature of the exceptional circumstances.
 7. **Comparative information on the change of remuneration and company performance** – to be provided **in a specified table format**, over a five year period. This includes change in remuneration for each individual director, company performance (based on net profit or loss, but could also relate to other metrics), compared to average employee remuneration on a full-time equivalent basis.
 8. **Information on shareholder vote** - to explain how the advisory vote on the previous remuneration report has been taken into account.

Other key principles

Other **key principles** set out in the guidance include:

- If nothing to report for a specific section, such elements can be omitted. However, companies are encouraged to explicitly state that they have nothing to report where applicable.
- Where companies have flexibility regarding the methodology used, they should be transparent on the methodology applied and maintain consistency over the reported financial years. Where the methodology has been changed, explain the change and the effect of this change.
- The report should be self-standing and contain all the necessary information in one place.
- All monetary amounts should be presented as gross.
- Disclosures should be provided in a manner which allows a distinction between roles (e.g. executive and non-executive).
- Companies should aim at providing sufficient insight to enable an understanding of the link between the remuneration awarded or due and performance achieved, but not where the disclosure of information would be 'seriously prejudicial to their business position.'

Implications for Danish companies

- Companies with shares listed on the Nasdaq Copenhagen will be required to comply with Shareholder Rights Directive (Directive 2007/36/EC, as amended by Directive (EU) 2017/828) ('SRDII').
- The requirement to publish a remuneration policy and report will replace the current requirement to prepare guidelines for incentive-based remuneration for management (which will be deleted from the Companies Act and replaced with revised wording).
- Companies will be required to comply as of the first annual general meeting (AGM) in the financial year starting 10 June 2019. Accordingly, the requirement for a new remuneration policy will be effective as of the 2020 AGM and the first remuneration report under the new rules will be required to be presented at the 2021 AGM (in respect of the prior financial year).
- The remuneration policy must be put before shareholders at least every four years, or in case of any significant amendments. This vote is binding while the annual vote on the remuneration report is advisory (but must be a separate item on the AGM agenda).
- The existing Recommendations for Corporate Governance remain in place. These Recommendations provide best practice guidance on producing a remuneration policy and report which companies can follow on a voluntary basis. The new requirements however are a statutory requirement.
- While the guidelines on standardised presentation of the remuneration report are non-binding, we anticipate most Danish listed companies will broadly comply, building on the existing trend for more detailed disclosure including ex post performance outcomes under short and long-term incentive plans.
- Even so, the new rules will be a significant change for most companies in terms of the level of detail in specific disclosures. In particular, several disclosures will require careful consideration. These include: the suggested approach of reporting the market value of long-term incentives both when awarded and when vested (rather than an IFRS value as per common practice), deviations from the policy and the reporting on company performance relative to the annual change in remuneration for each disclosed director and the average remuneration for full-time equivalent employees.
- Boards should not underestimate the considerable work required to comply with the policy and in following the standardised report guidelines. Companies will benefit from planning their anticipated remuneration report early to both comply with the Directive as well as ensure the remuneration report contains a meaningful narrative around pay – performance outcomes.

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