



European Union Shareholder Rights Directive approved

15 March 2017

The European Parliament has adopted the Shareholder Rights Directive, which has been agreed with the European Commission and European Council. The text is still being processed for publication in various European languages and is expected to be published in the Official Journal of the European Union in the coming weeks.

Timing

The Directive will come into force 20 days after the publication in the Official Journal. After that date:

- The European Commission has 15 months to issue standardised guidance for the implementation of the Directive.
- Member states have 24 months to bring national laws/regulations into force.

Scope

- Companies with registered office in a member state and listed on a regulated market situated or operating within a member state.
- Directors (executives as well as non-executives): any member of the administrative, management or supervisory bodies of a company. Member states can also opt to include individuals who perform similar functions. The chief executive and deputy chief executive (if applicable) are both considered directors, irrespective of their membership of the board.

Remuneration policy

- Companies will be required to establish a remuneration policy for directors, which shareholders will have the right to vote on at the general meeting. Member states will decide whether this vote should be binding or advisory.

- Irrespective of whether the vote is binding or advisory, companies can only pay remuneration to directors in accordance with the remuneration policy submitted to a general meeting.
- Where the vote is binding and a new policy fails to gain approval, the company must continue to pay in accordance with the previously approved policy and submit a revised policy for approval at the next meeting.
- Where the vote is advisory and a new policy is not approved by shareholders, the company must submit a revised policy to a vote at the next general meeting.
- Member states might allow companies to derogate from specific elements of the remuneration policy in exceptional circumstances. The policy must specify the elements of the policy which may be derogated from. Exceptional circumstances must be considered to be necessary to serve the long-term interests and sustainability of the company as a whole or to assure its viability.
- The policy must be put to a vote at every material change and at least every four years.
- The policy must be clear, understandable and set out:
 - o How the policy, and also specifically each component of variable remuneration, contributes to business strategy, the long-term interests and sustainability of the company.
 - o The different components of fixed (including benefits in whatever form) and variable remuneration which can be awarded to directors and indicate their relative proportion.
 - o How the pay and conditions for employees of the company were taken into account when setting the remuneration policy.
 - o For awards of variable remuneration, set clear, comprehensive and varied criteria for the award of variable remuneration (including an indication of financial and non-financial criteria including, where appropriate, criteria related to corporate social responsibility) and the methods to be applied to determine the extent that performance conditions have been achieved.
 - o The possibility for the company to reclaim variable remuneration, as well as any deferral periods applicable to variable remuneration.
 - o Where share-based remuneration is awarded, specify vesting periods and, where applicable, retention of shares after vesting.
 - o The duration of directors' contracts and their notice periods, the main characteristics of supplementary pension or early retirement schemes, the terms applicable in instances of termination, including any payment linked to termination.
 - o The decision-making process followed for the determination, review and implementation of the policy, including measures to avoid or manage conflicts of interest and where applicable the role of the remuneration committee or other committees concerned.
- Where the policy is revised, describe and explain all significant changes, as well as how it takes into account the votes and views of shareholders on the policy and reports since the last vote.
- The policy, together with the date and the results of the vote, must be publicly disclosed online for as long as it is applicable.

Remuneration report

- Companies will be required to draw up a clear and understandable report on remuneration awarded or due over the last financial year to individual directors, which will be subject to an advisory vote at the annual general meeting.
- Member states may allow small and medium-sized companies to submit the report for a discussion at the annual general meeting, rather than an advisory vote.
- The report should contain the following information regarding each individual director's remuneration:
 - o Total remuneration split out by component
 - o The relative proportion of fixed and variable remuneration
 - o An explanation of how total remuneration complies with the adopted policy, including how it contributes to the long-term performance of the company
 - o Information on how the performance criteria were applied
 - o A comparison of the annual change in remuneration over the last five years against the evolution of company performance and the average remuneration of employees other than directors (which is to be calculated on a full-time equivalent basis)
 - o The number of shares/options granted, and any applicable performance conditions
 - o The use of the possibility to reclaim variable remuneration
 - o Any deviation from the policy, including an explanation of the exceptional circumstances and the indication of the specific elements of remuneration concerned
- The European Commission will adopt guidelines to specify a standardised presentation of this information.
- The report must be publicly available online for ten years after publication.
- Companies must explain in the next remuneration report how the vote (or, where applicable, discussion) at last year's meeting has been taken into account.

Proxy advisors

- Proxy advisors will be required to publicly disclose a code of conduct, or provide a clear and reasoned explanation for why they do not.
- Proxy advisors must also make annual public disclosures (to remain publicly available for at least three years) in relation to the preparation of their research, advice and voting recommendations including:
 - o the essential features of the methodologies and models they apply
 - o the main information sources they use
 - o the procedures put in place to ensure quality of the research, advice and voting recommendations and qualifications of the staff involved
 - o whether and, if so, how they take national market, legal, regulatory and company-specific conditions into account

- the essential features of the voting policies they apply for each market
- whether they have dialogues with the companies which are the object of their research, advice or voting recommendations and with the stakeholders of the company, and, if so, the extent and nature thereof
- their policy regarding the prevention and management of potential conflicts of interests

Disclosure requirements for institutional investors and asset managers

- Institutional investors and asset managers will be required to publicly disclose online (or explain why they have chosen not to do so) a policy on shareholder engagement and how it has been implemented, including a general description of voting behaviour and an explanation of the most significant votes and the use of proxy advisors as well as how they have cast votes at the general meetings of companies in which they hold significant shares.

Rights for shareholders

- Financial intermediaries will be required to facilitate the exercise of voting rights by shareholders, by making necessary arrangements for the shareholder to be able to exercise the rights themselves and/or the intermediary exercising the rights upon explicit authorisation of the shareholder.

Shareholder identification

- In order to facilitate shareholder engagement, intermediaries will be required, upon request of the company, to provide information regarding shareholder identity (including at least name and contact details and number of shares held). Member states can allow exclusion from identification shareholders holding a small number of shares.

Deloitte view

The remuneration provisions are broadly consistent with the UK regulations but will bring significant changes in most European countries and should enable easier cross country comparisons.

The Commission consultation on guidelines for standardised presentation of the remuneration report will be of particular interest, notably in relation to the presentation of pay for the year. The UK remuneration report is unique in providing “a single figure” including variable pay outcome rather than equity granted and it is yet to be seen whether other countries will want to follow this practice.

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