



Maija Laurila,  
DG Justice's Head of Company Law Unit  
*Copy to: Zsofia Kerecsen and Markus Tervonen*

The 14<sup>th</sup> of February 2019,

*Subject: ecoDa's Comments to the EC Guidelines related to the presentation of the remuneration reports.*

Dear Mrs Laurila,

Following its participation to the EC Company Law Expert Group meeting of 29 January 2019, ecoDa is pleased to be able to submit its written comments on the EC Guidelines related to the presentation of the remuneration reports.

ecoDa welcomes the draft Guidelines in the sense that they will provide shareholders with clear, comprehensive and comparable information on remuneration policies and individual remuneration of directors. In addition, reports in line with the Guidelines will constitute a clear documentation of the relationship between the evolution in executive pay and the evolution in performance.

However, we would like to highlight the main following points:

- It is important that the guidelines remain non-binding and that these guidelines are not subject to the 'comply or explain' principle as this concept may give the impression that the guidelines are in practice mandatory and that non-compliance with their recommendations is to be disclosed and explained, which would be inconsistent with their nature as non-binding recommendations. Trying to get complete harmonization in terms of best practices might be too far-reaching. The guidance should not be rules based and should leave enough flexibility to companies for implementation furthermore that listed companies are already overloaded by the amount of existing regulations.
- While developing its own Guidelines, the Commission should sufficiently take into consideration the existing self-regulations developed at national levels. Therefore, ecoDa would recommend that the European Commission explicitly refers to the national Corporate Governance Codes.
- The Guidelines should not overlook that sensitive strategic information should remain confidential (given the more prominent link between remuneration design and strategy).
- 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's 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 executives' remuneration unless performance criteria-related remuneration and remuneration in securities are allowed for NEDs, as it happens in some jurisdictions and in some innovative companies (start-ups) with with share schemes for all Directors.
- The European Commission should question to what extent individual disclosure is useful. We have seen side-effects in certain countries where companies limit the size of their management committee to avoid too many individual disclosures. In countries where director pay is decided directly by the AGM as an annual pay 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.
- While requesting information of 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 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 the directors' remuneration to that of workforces varying hugely between industry sectors, geographical distribution etc. will lead to meaningless comparisons. What is important is to compare respective evolutions in time. Again flexibility is required there.

We thank you for your attention and remain at your disposal for further discussion on this topic if needed.

Yours sincerely,

p.p. Béatrice Richez-Baum



Michel de Fabiani  
Chair of ecoDa's Policy Committee



Irena Prijovic  
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