

## **Request for more clarification and practicability**

Position of Deutsches Aktieninstitut on the EU Commission's draft Guidelines on the standardised presentation of the remuneration report under Directive 2007/36/EC, as amended by Directive (EU) 2017/828, as regards the encouragement of long-term shareholder engagement

## Introduction

Deutsches Aktieninstitut appreciates the possibility to comment on the draft Remuneration Guidelines presented by the EU-Commission. Although there has been a lot of improvement compared to 2019, there are still unclarities and practical issues we want to address.

The aim should be clear and informative remuneration reports. Preparers should not be driven to add deliberately additional tables to meet investor demands (e.g. pay for performance) or include long explanations if a table does not correspond to remuneration systems you can find in the market (multiplicative performance measures).

## Recommendations

**Deutsches Aktieninstitut suggests to clarify the following points:**

### **1. Definition of “awarded” and reporting year of the variable compensation components**

Definition: the definition of “awarded” is still unclear. Does the variable compensation element and its corresponding payout have to be disclosed for the financial year in which the performance period of the variable compensation element ends, irrespective of the exact payout date (see Footnote 15) or only for the financial year in which the payout occurs?

Example: The one-year variable compensation for financial year 2022 which performance period ends at the end of financial year 2022 but which payout occurs at the beginning of financial year 2023 must be disclosed in the compensation report 2022.

Or:

The one-year variable compensation for financial year 2022 which performance period ends at the end of financial year 2022 but which payout occurs at the beginning of financial year 2023 must be disclosed in the compensation report 2023.

If the variable compensation is disclosed according to the second alternative, so usually more than one year after the end of the performance period, there is a discrepancy between the disclosed amount and the performance of the company within the respective reporting year.

Therefore, it would not possible for shareholders to make an appropriate and meaningful assessment of the pay for performance link.

But can Footnote 15 been understood in a way that the payout or even actual decision on the award doesn't have to be taken in the respective financial year, but in the (beginning) of the following financial year if the performance period has ended in the financial year? The background to this question is the hint on the EBA guidelines in Footnote 15 which seems to be the understanding of the Commission: According to number 125 of the EBA Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013 an amount should be considered as awarded already after the performance conditions have been met and even if, it seems, the according decision has been taken in the (beginning) of the following financial year under certain conditions.

Does this hint mean that regularly variable remuneration cannot be disclosed for the financial year, so that regularly there will be the described discrepancy (only under certain circumstances as described by EBA this would be otherwise)?

Or is there a general approach by the EU Commission in that respect that could be clarified?

## 2. Former Directors

As we understand even former directors (from the management board) who receive only pensions have to be included in table 1. Does it really make sense to list them in the same table as current directors? The pay for former directors are not equivalently relevant as current directors for investors and markets and could also be confusing.

We suggest to give companies the option to include a table exclusively for former directors like they can for supervisory board members/non-executive directors.

The question is also where to disclose the actual pension payments. The tables are designed for current directors and their pension benefits for future payouts.

### 3. Share-based remuneration (tables 2 and 3)

- Could you please specify as to where the exercised options shall be reported (number and value)?
- Could you please specify how “market value” is defined and calculated? Is it calculated as final number of shares multiplied by the share price at relevant date? In addition, which date is relevant?
- “This column should present in the respective Table the number of share options and value of the underlying shares...”: Do you think that the value of an option can be expressed as that of the underlying share? This would imply that e.g. 1,000 options are valued the same as 1,000 shares.
- We highly recommend disclosing the fair value of share-based awards by default, in line with the requirements of the IFRS 2. This approach is globally known and applied across Europe. Further, the fair value is also used in the standardized SEC compensation reporting tables applied in the United States.
- When reporting share-based compensation awards at time of vesting the market value (final number of shares multiplied by share price at date of vesting) may be applied.

### 4. Information on how the remuneration complies with the remuneration policy and how performance criteria were applied (table 4)

- We would like to point out that table 4 can only be filled out for target-based compensation systems, in which the performance criteria are linked additively. A multiplicative combination of targets as well as profit sharing systems cannot not be depicted within this table. They should be adapted to market practice.
- The information can be complex. For the sake of brevity and conciseness, we strongly recommend the following: If the same information of columns 1 to 4 applies to multiple directors, we recommend that each director does not have to be listed individually in a separate row. Rather, the names of those directors could be summarized in the column “name of director, position”.
- We recommend splitting column 1 of Table 4 into two columns. The first column may specify the plan type, the second column would solely disclose the performance criterion.

- Could you please specify how share-based vehicles shall be reported under column 3b) “corresponding remuneration”? The value of share-based awards depends, in addition to the predefined performance criteria, on the share price development. Is it desired that only the corresponding award derived from the target amount without any share price development is to be reported under “corresponding remuneration”? Hence, the share price development is disregarded, even though the total payout of the award may not be capped and/or potentially higher?

## 5. Table 5

- Inclusion of former directors in table 5

For table 5, former directors are not explicitly mentioned. We appreciate this because they are not employees of the company and are their monitoring function provided by law cannot be compared with employees.

- Only percent values should have to be included in table 5, not additional and confusing absolute values.
- The draft also recommends referring to the average compensation of employees at group level. In practice, recording these figures can be very time-consuming, and there is also the question of the extent to which this figure is meaningful in view of various local peculiarities.

## Contact

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