

COMMISSION CONSULTATION ON 'FOSTERING AN APPROPRIATE REGIME FOR THE REMUNERATION OF DIRECTORS'

UNICE RESPONSE

1. AMOUNT, COMPOSITION AND DETERMINATION OF THE REMUNERATION

Do interested parties agree that the recommendation should not deal with the issues of the amount and structure of the directors' remuneration?

YES, UNICE agrees with the Commission's orientation according to which the amount and structure of directors' remuneration is a matter that must be left to the decision of each individual company.

2. RECOMMENDATION TO THE MEMBER STATES

Do interested parties agree with the Commission that the recommendation should invite Member States to take the necessary regulatory measures to ensure that listed companies comply with all the provisions to foster an appropriate regime for directors' remuneration?

NO, It is our considered opinion that regulatory measures are not appropriate in the area of directors' remuneration. Such an approach would not have the necessary flexibility to take into account evolutions in this area that may arise. A self-regulatory approach is to be preferred such as corporate governance codes.

3. SCOPE – LISTED COMPANIES

Do interested parties share the view that the scope of the recommendation should cover EU listed companies as defined above or should it cover all EU companies?

YES, it is UNICE's view that the Recommendation should cover only listed companies open to the public as investors. There is no public policy reason for imposing such standards on companies which are not open to the public as investors.

4. SCOPE – DEFINITION OF DIRECTORS

Do interested parties share the view that this recommendation should deal with the remuneration of the members of the administrative, managerial and supervisory bodies by reason of their responsibilities?

UNICE agrees with the Recommendation dealing with the remuneration of Board members. It is our understanding that this terminology is coherent with the 4th and 7th company law Directives and shall take full account of the differences between existing board systems (one-tier and two tier).

5. DISCLOSURE OF REMUNERATION POLICY

Do interested parties agree that the disclosure of remuneration policy should be forward looking (i.e. next financial year) and should contain at least the elements mentioned above?

Do they agree that such information should be a separate item on the AGM agenda?

And should there be a requirement for at least an advisory vote on the remuneration policy at the Annual General Meeting?

The question whether a listed company should provide an *ex ante* disclosure about the remuneration policy is linked to the existence of a remuneration policy. Among listed companies there are not only large firms but also medium size or small firms which do not have any remuneration policy: in those cases, the general meeting is called only to approve the global amount should be paid to the board of directors for the whole duration of their mandate.

Forward looking disclosure should be limited to only general objectives. In this context, the list of elements proposed by the Commission is too detailed. For example, it is proposed that the remuneration policy should include a description of the performance criteria on which any right to options, shares or other variable components of remuneration is based and of the main parameters for any annual bonus scheme.

It is our strong opinion that the criteria or parameters for variable or performance related elements of especially the executive directors' remuneration should not be disclosed outside the company's board if they constitute business secrets.

A Commission recommendation should be coordinated with adjacent rules, inter alia international accounting standards.

UNICE is of the strong opinion that there is no need for remuneration policy to be a separate item on the AGM agenda. It goes without saying that shareholders are free to raise the question of directors' remuneration at the AGM if they see fit.

In this context, UNICE does not believe that the Recommendation should provide for advisory votes on the remuneration policy at the AGM. This should be left to national corporate governance codes to determine.

6. REMUNERATION OF INDIVIDUAL DIRECTORS

Do interested parties consider that the disclosure of the remuneration of individual directors should include all financial and non-financial benefits as described above?

Do they consider that other information related to individual directors' remuneration should also be disclosed?

UNICE believes that the disclosure of the remuneration of individual directors should primarily be established by corporate governance codes.

In any case UNICE considers the amount of information foreseen by the Commission to be too detailed, especially regarding share-options.

7. ROLE OF SHAREHOLDERS' MEETING

Do interested parties agree that grants of share-based schemes to directors should be subject to the prior approval of the general meeting of shareholders and that relevant information on such schemes should be communicated to shareholders prior to the meeting?

UNICE takes this opportunity to point out that the role of the AGM should be limited to authorising the attribution of stock-options, fixing the maximum number of options to be attributed and the general modalities for such attribution.

UNICE does not agree that, in the case of share and share-option schemes, the AGM should approve actual performance criteria. The relevant information may be price sensitive or may be regarded as an opinion of the company about the price of its own shares. Disclosure thereof could harm the interests of the company, for instance when the information is relevant to determine the competitive position of the company. The precise performance criteria may well be part of the actual remuneration of individual directors, which is not a responsibility of the AGM. It should be sufficient that the remuneration report contains a general description of the performance criteria.

Accordingly, UNICE feels that companies should not be obliged to provide shareholders with detailed information on the performance criteria forming part of the remuneration of the board or individual directors.

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