EuropeanIssuers

aisbl - ivzw
Rue Belliard 4-6
B-1040 BRUSSELS

Tel : +32 (0)2 289 25 70
Fax : +32 (0)2 502 15 60

info@europeanissuers.eu
www.europeanissuers.eu

EUROPEANISSUERS' POSITION CONCERNING SHAREHOLDERS VOTE ON EXECUTIVE REMUNERATION 'SAY ON PAY'

23 May 2013

Summary

As announced in the European Company Law and Corporate Governance Action Plan, the Commission intends to propose in 2013 an initiative aimed at enhancing transparency of remuneration policies and individual remuneration of directors, as well as granting shareholders the right to vote on remuneration policy and/or the remuneration report.

EuropeanIssuers may support the introduction of a shareholders' vote on executive remunerations, provided the proposed regime remains flexible to accommodate the diversity of national regimes and corporate law principles. Some Member States have already adopted diverging systems: binding vote, consultative vote, or a combination of a binding and a consultative vote, either annual or on a less frequent basis (every two or three years), either on a remuneration report describing detailed remuneration or on the basis of a remuneration policy report.

To this end, our members emphasize that **the vote should be "ex ante", non-binding (advisory) and limited to remuneration policy.** Moreover, **it should only take place in case of a change in the remuneration policy**.

Remuneration Policy versus Remuneration Report

EuropeanIssuers is convinced it is crucial to remain the well-established principle of separation of powers within companies unaffected. **The Board of Directors and the Supervisory Board respectively, should remain responsible for determining the remuneration of executive directors**, based on proposals made by the remuneration committee. The reasons for that are:

- Remuneration is one of the aspects of the negotiations carried out with the executive director.
- The Board has a much broader overview of all the challenges and is in a better position to ensure a balance between the interests of all of the company's stakeholders when it is called on to decide on remuneration matters
- Issues relating to executive remuneration involve particularly technical aspects (some of which cannot be easily understood by the shareholders e.g. the calculation formulae for variable executive remuneration) that cannot be dealt with by the AGM.

Therefore, a vote should only be on the remuneration policy.

EuropeanIssuers
aisbl - ivzw
Rue Belliard 4-6
B-1040 BRUSSELS
Tel : +32 (0)2 289 25 70
Fax : +32 (0)2 502 15 60
info@europeanissuers.eu
www.europeanissuers.eu

Advisory versus binding vote

There are various arguments behind EuropeanIssuers' decision to support the advisory (non-binding) vote:

- The main purpose of 'say on pay' is not its binding nature but the message it delivers to the Board of Directors or the Supervisory Board on a proposed continuation or change of remuneration policy. One of the best examples of the impact of an advisory (non-binding) vote concerns German companies in the DAX 30 index. According to our knowledge between 2010 and 2012 there was only one negative vote on remuneration policy[1]. Even though the vote was non-binding the following year the company's remuneration policy received 96.04 % support and got recognition by shareholders for its remuneration report[2].
- Investors' preferences: according to a survey conducted amongst 35 institutional investors representing USD$ 12,86 trillions of assets under management (equity / bonds) in 2012, 65,7% of respondents preferred "Advisory vote" than "Binding vote"[3]
- Problems would arise in the different legal systems with their special checks and balances if the vote were binding: e.g. the effects on contractual agreements with executive directors in case of a negative vote and problems that arise if the vote of the AGM is void, etc.
- Introduction of a 'say on pay' system will give more influence to proxy advisers as institutional shareholders rely frequently on proxy advisers' recommendations that may follow a "one size fits all" approach, rather than adjusting to the specificities of companies and their sectors.

Therefore, EuropeanIssuers would only support an advisory (non-binding vote).

Ex-ante versus ex-post vote

This issue is interrelated with the debate around the vote on remuneration policy versus remuneration report, as the remuneration policy relates to the future while the remuneration report according to EU recommendations is retrospective. Nevertheless, we would like to draw attention to the timeline and the potential unintended consequences resulting from the dangerous introduction of the vote on both future remuneration policy and the retrospective remuneration report.

- It is important to note that companies' shareholders change in time. Changing majorities and other potential influences can easily lead to a situation where there is a negative vote on the past remuneration report even though the vote on the policy has been positive and the policy

[1] Heidelberg Cement
[2] Euroshareholders friendly award 2012
[3] survey conducted by Sodali published in September 2012

EuropeanIssuers

aisbl - ivzw
Rue Belliard 4-6
B-1040 BRUSSELS

Tel : +32 (0)2 289 25 70
Fax : +32 (0)2 502 15 60

info@europeanissuers.eu
www.europeanissuers.eu

has been correctly applied. This situation could have a serious effect on company stability and subsequently performance, and confuse the board and shareholders as well as the public.

- The ex-post vote can be very problematic in case of a negative vote. It is difficult to claim back the compensation already awarded. It could also harm the reputation of a company and discourage potential good candidates for executive positions.

Therefore, EuropeanIssuers believes that a vote on remuneration should only be ex ante.

Possible unintended consequences

- EuropeanIssuers' would like to draw the attention of regulators that there is no evidence that a 'say on pay' system would contribute to re-balancing the remuneration of the executives. On the contrary, international investment funds, which own a large proportion of large European companies and which may adopt 'short-term' investment policies, may encourage executives to maximise short-term profits to the detriment of the company's sustainability.
- Votes on remuneration may already dominate the governance debate to the detriment of other equally important areas[4].

In conclusion

To summarise, EuropeanIssuers does not want to refer to a specific system already in place, but would favour a remuneration process like the following.

Before the AGM, the Board of Directors should publish a detailed presentation of the remuneration policy for executive directors. This presentation should describe the rules set by the Board governing the various components of the remuneration and taking into account national Corporate Governance Codes or the Commission Recommendation for the remuneration of directors of listed companies; in particular, the rules governing:

- the proportion of the fixed versus variable part (pay-mix);
- the performance criteria for variable pay awards;
- the criteria used for vesting share-based remuneration;
- information concerning supplementary pension schemes;
- information concerning golden hellos and termination payments.

[4] Survey conducted by Sodali amongst 35 institutional investors representing USD$ 12,86 trillions of assets under management (equity / bonds) and published in September 2012

Shareholders may cast, in a single resolution, an advisory vote on the proposed remuneration policy. Such a vote should be required only in case of a change in the remuneration policy.

***EuropeanIssuers** was set up to represent the interests of quoted companies across Europe. Our members include both national associations and companies from all sectors in 14 European countries.*

We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

More information can be found at www.europeanissuers.eu.