**European Commission takes hard line on executive remuneration**

The European Commission recently made recommendations for the future of executive remuneration for the directors of listed companies in the wake of the global financial crisis. In particular, remuneration must be linked to performance and must not reward poor performance.

With regard to the structure of directors' remuneration, the EC's recommendation is not binding on its member states but it invites them to:

- impose a limit of two years' maximum of fixed component of directors' pay on termination payouts (also known as golden parachutes) and to ban severance pay in case of failure
- demand a balance between fixed and variable pay components and link variable pay to predetermined and measurable performance criteria to augment the link between performance and pay
- promote companies' sustainability in the long term through a balancing between long- and short-term performance criteria of directors' remuneration, deferring variable components of pay, requiring a minimum vesting period for stock options and shares at least three years and partial retention of shares until the end of the director's employment
- allow companies to reclaim variable remuneration paid to directors on the basis of data which proved to be manifestly misstated ('clawback').

On the process of determining directors' remuneration, again it is suggested that member states:

- extend the existing disclosure requirements in order to improve shareholder oversight of remuneration policies
- ensure that shareholders, especially institutional investors, attend companies' general meetings and make considered use of their votes regarding directors´ remuneration
- require that non-executive directors should not receive share options as part of their remuneration packages, so as to avoid conflicts of interest
- strengthen companies' remuneration committees through changing their composition, members of the remuneration committee to be present and participate at general meetings and avoiding conflicts of remuneration consultants.

EU member states have until 31 December 2009 to indicate whether they intend to act on these suggestions.

Meanwhile, in the US, the passage of the government's economic stimulus legislation means that companies receiving assistance from the US Government must now allow a non-binding shareholder vote on executive remuneration practices for the first time this year. Further, the government has capped executive compensation at US$500,000 for companies receiving assistance. Many are having to revise proxy forms that were being prepared when the package was enacted. Some other firms have decided to adopt a remuneration vote (or 'say on pay' as it is known in the US) voluntarily.

However, many US companies are concerned about what a high negative vote might mean. It is only now that boards and secretaries are beginning to understand that decisions taken now and this year's remuneration practices will be examined in next year's proxy votes.