



APCIMS-EASD CORPORATE GOVERNANCE COMMITTEE

SHAREHOLDERS RIGHTS

A LEGAL COMPARISON

COMPILED BY TELFA

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SEE SEPARATE APPENDIX FOR THE MATRIX OF THE DETAILED RESPONSES FROM THE CONTRIBUTORS IN MATRIX FORM

- United Kingdom, Ireland, Greece
- France, Belgium, Luxembourg
- Italy, Spain, Portugal
- Germany, Austria, the Netherlands
- Denmark, Sweden, Finland
- Norway, Switzerland

ACKNOWLEDGEMENTS

APCIMS-EASD Corporate Governance Committee issued a first general pan European corporate governance code in May 2000. It then turned its attention to specific topics within that overall framework. Shareholder rights is a much debated matter that confronts companies, investors, and securities practitioners and the variety of differences between different countries results in uncertainty, confusion and irritation. This is one of the areas where the net consequence is a higher cost of capital to the European companies.¹

The different laws and rules as well as the concepts and culture from which they are derived are deeply rooted in each country and are all perfectly reputable. However it is equally true that investors living in one country may well not be aware of the differences in responsibility and practices of a company quartered in another country and in which they wish to invest.

This APCIMS-EASD Corporate Governance Committee report into shareholders rights has set out to assess the facts and differences as at 1 May 2002 in the current 15 member states of the European Union plus Norway and Switzerland.

The study has been put together under the leadership of Andrew Baker, a Partner of Wedlake Bell in the UK. This well known law firm is in turn a major element of TELFA, the Trans European Law Firms Alliance whose resources were marshalled to help produce this document. Particular thanks are due to Giancarlo Agace, Secretary General of TELFA who co-ordinated the editing of the various country contributions. The Committee is also grateful for the input of Borenus & Kemppinen for the information relating to Finland. While every attempt has been made to ensure the accuracy of this document the Committee would welcome any comments and corrections and will include these in later editions.

Leo Goldschmidt
Chairman, APCIMS-EASD Corporate Governance Committee

¹ See the Comparative Study on Corporate Governance Codes (January 2002) undertaken for the European Commission, in which the EASD Corporate Governance Committee participated.

Report

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INTRODUCTION

Increasing globalisation of markets has had a dramatic effect on investment decisions. Many companies are now viewed on a sectoral rather than on a national market basis. The rights of shareholders, however, depend largely on the jurisdiction of incorporation of the company in which they have invested. This study has therefore been undertaken in order to assist fund managers and investors generally to understand and be able to compare the information made available to them and the relevant company voting procedures of corporates which are in the same sector but incorporated in different countries.

Different matters are important to different investors. Nevertheless, there are matters which will be important to all investors and it is in these areas where the study pays most attention. These are:-

- The decisions that must be taken by shareholders at annual general meetings or extraordinary general meetings;
- The ability of shareholders to vote;
- The different types of anti take-over devices;
- The rights of shareholders to add proposals (resolutions) to a meeting;
- The rights of shareholders to ask questions;
- Voting procedures and voting powers;
- Availability of information about the company;
- Shareholders rights to challenge decisions in court;
- Obligations on the companies to announce relevant information.

Board structures and terminology are different across the EU. In some countries, notably Austria, Germany and the Netherlands, the Board has a two-tier structure separating supervisory and executive (management) functions. Elsewhere the unitary board, covering both functions, is predominant. For the purpose of this study, where there is a unitary board its members are referred to as directors; where there is a two-tier structure, only members of the supervisory board are referred to as directors.

While this survey is intended to be purely factual, within the APCIMS-EASD Corporate Governance Committee, there exists a general consensus on the minimum rights that shareholders in major corporates should enjoy. These minimum rights should include:-

- The annual report and accounts should contain full disclosure of the true financial position of the company and in addition, if it is part of a group, that of all the other companies in the group.
- The company should promptly disclose any information that may affect its share price (market sensitive information).
- Investors should be able to attend general meetings of the company and question the executive team without having to give prior notice.

- Independent non-executive directors should be present on the Board.
- Shareholders should be consulted on takeover bids and such bids should not be blocked by the Board without reference to the shareholders.
- The percentage of shareholders needed to require that the Board convenes general meetings should be set at a reasonable level.
- Voting rights in each class of share should be proportionate to the financial stake owned in the company.
- All shareholders should be considered as equal, regardless of the form in which they hold their shares.
- Shareholders should be entitled to vote at least:
 - on the appointment of individual directors
 - on the adoption (or otherwise) of annual reports and accounts
 - on the appointment of the auditors
 - on changes to constitutional documents (i.e. the articles of association of the company)
 - on major changes in the activities of the company

The information in the tables demonstrates the extent to which each of the 17 countries comply with these principles. In this post Enron time, corporate governance is being considered a high priority by all countries, governments and European institutions. The aim of this overview of the situation of shareholders rights in 17 European countries is to be of practical use to the financial community of Europe and beyond.

I. LEGAL BASIS FOR SHAREHOLDERS RIGHTS

The general principles of shareholder rights are enshrined in the company law of each of the seventeen jurisdictions. While the law lays down minimum requirements, in many jurisdictions these rights can be strengthened by the articles of association of the company.

Securities regulations are also important as they add to shareholder rights by specifying transparency and information requirements such as announcement of price-sensitive information and the setting of corporate governance codes. These vary in the different countries.

Finally, shareholder activism is also developing and particularly where the institutional investors are involved, is increasing communication of companies with its shareholders, the governance of companies and general standards of openness and behaviour by the boards.

These issues are amplified later in this report.

II. SHAREHOLDING, VOTING POWER AND ANTI-TAKEOVER MEASURES

The following tables indicate the different types of shares in existence in the various jurisdictions (Table 1), the existence of the various classes of shares with particular rights (Table 2), restrictions or limitations on voting powers (Table 3), restrictions on cross shareholding and the position of Treasury shares (Table 4), and the major anti takeover devices or restrictions on transferability of ownership arrangements (Table 5).

MAJOR SHARE TYPES AND FORMS :

Table 1

Most common forms of shares (X: common; O: less common)

	BEARER	REGISTERED
Austria	X	O
Belgium	X	O
Denmark	X	X
Finland	O	X
France	X	X
Germany	X	X
Greece	X	X
Ireland		X
Italy	O	X
Luxembourg	X	X
Netherlands	X	X
Norway		X
Portugal	X	X
Spain	X	X
Sweden		X
Switzerland	X	X
UK		X

With the exception of Ireland, Norway, Sweden and the UK, bearer shares are common in these European jurisdictions. In Finland they are used occasionally and in Italy bearer shares are available in only two instances. The first are saving shares in public companies and are non-voting shares and the second instance is where shares are issued by a “SICAV” company (an investment company with variable capital/ Italian open ended investment company).

With the move to electronic trading in shares, many jurisdictions now require the holding of investments to be in a “de-materialised” form (certificates replaced by a registration in an account; this registration can be of bearer or registered shares). While such change has taken place in order to reduce settlement times and so risk, in France the predominant reason for dematerialising was fiscal as it allows the holders of the shares to be identified.

TYPES OF SHARES

Table 2

	Ordinary	Preference	Cumulative	Redeemable	Convertible	Non-voting	Transfer restrictions	Founder shares	With more than one vote	Deferred	Others
Austria	X	X			X	X	X				
Belgium	X	X	X	X		X	X	X			
Denmark	X	X					X		X		
Finland	X	X	X	X	X	X	X		X	X	
France	X	X	X			X	X ²		X		
Germany	X	X				X	X				
Greece	X	X	X			X	X				
Ireland	X	X	X	X	X		X			X	
Italy	X	X		X		X	X				X
Luxemb.	X	X		X		X	X	X			
NL	X	X			X	X	X		X		
Norway	X	X			X	X	X				
Portugal	X	X		X	X	X	X		X		
Spain	X	X		X		X	X				
Sweden	X	X			X		X		X		
CH	X	X			X	X	X		X		
UK	X	X	X	X	X	X	X			X	

There are a wide variety of types of shares in existence, with ordinary and preference shares used in all of the countries and non-voting shares and those with restrictions are also widely used.

The principle of one share one vote is applicable everywhere in theory, though in a number of countries the articles of association of a company may allow departures from this principle as they allow for voting caps, multiple voting rights, or a requirement to hold a minimum number of shares in order to exercise the voting rights. In addition the number of jurisdictions where non-voting shares can be issued indicates that controlling shareholders widely use this instrument as a technique for raising funds without diluting or losing their control in the company. In Italy, non-voting preference shares which confer voting rights only at extraordinary general meetings can also be issued, though they cannot comprise more than one-half of the share capital.

It is also worth noting that in some jurisdictions, it is only the person who is registered as the shareholder, rather than the underlying owner or beneficiary, who is entitled to attend and vote at meetings.

² If not listed

NON-VOTING STOCK CONVERSIONS AND VOTING CAPS

Table 3

	Non-voting stock converted into voting if dividend not paid	Voting caps
Austria	Yes	Yes
Belgium	Yes	Yes
Denmark		Yes
Finland	Yes	Yes
France	Yes	Yes
Germany	Yes	Yes ³
Greece		
Ireland		Yes
Italy		Yes
Luxembourg	Yes	
Netherlands		Yes
Norway	Yes	Yes
Portugal	Yes	Yes
Spain	Yes	
Sweden		Yes
Switzerland		Yes
UK		Yes

Many of the special shares, as set out in Table 2, have particular rights. These rights though are neither the same in all countries, nor are they necessarily conferred automatically. The rights of these special shares depend upon the particular terms specified either in the articles of association of the company or at the time of issue.

In some countries, the rights stem directly from company law, such as when non-voting stock automatically convert into voting shares if dividends are not paid in the specified periods.

A voting cap is defined as being a limit on the number of votes which can be cast by a shareholder even if that shareholder holds a greater number of shares. Voting caps are allowed in 14 of the 17 countries in this survey. In some countries such as Belgium and France voting caps are allowed, but the law imposes restrictions to ensure that such a cap applies equally to all classes of shares and there can be no distinction made between the different classes. In Ireland and the UK, class approval must be obtained before a voting cap can be implemented.

Special classes of shares may contain double (or in the case of Sweden, Denmark and Finland multiple) voting as a special right in some countries. Where this is the case, it is possible to have a situation arise where both multiple voting shares and the limitation of voting powers exist.

In the Netherlands, the economic benefits of the shares can be separated from the voting rights. A Netherlands company does this by issuing ordinary shares and then separating the economic benefit from the voting power by remitting the shares to a trust office which in turn issues depository receipts entitling holders to the dividend but not the voting rights.

³ No for quoted companies.

RESTRICTION ON CROSS-SHAREHOLDINGS AND TREASURY SHARES

Table 4

	Cross-shareholding		Treasury shares
	Between a subsidiary and its parent company	Between two different companies	
Austria	Limited to 10% and voting rights may not be exercised		Limited to 10 % and voting rights may not be exercised
Belgium	Limited to 10 % and voting rights cannot be exercised	No restrictions up to 10%. Holdings in excess of 10% are not eligible to vote and the situation must be regularised within a year.	Limited to 10 % and voting rights may not be exercised
Denmark	Limited to 10 % and voting rights may not be exercised (for public limited companies)		Limited to 10 % and voting rights may not be exercised (for public limited companies)
Finland	Allowed only under certain circumstances within a limit of 5 %		Within a limit of 5 % and only if matched by surplus accounts available for distribution of profits
France	Not allowed	A company (SA) may not hold shares of another company if the latter holds more than 10% of its capital	Limited to 10 % and voting rights may not be exercised
Germany	Limited to 10 % and voting rights may not be exercised		Limited to 10 % and voting rights may not be exercised
Greece	Not allowed		Allowed to a limited extent only, the company must relinquish the acquired shares within one year from the date of the acquisition
Ireland	Permitted but only if treated in the same way as treasury shares		A company may only buy its own shares if this is specifically permitted in its articles of association and by special resolution of its shareholders. Voting rights may not be exercised
Italy	Limited to 2-5 % in addition to further restrictions, including voting rights which cannot be exercised	Allowed insofar as it relates to issued shares	Limited to 10 % and voting rights may not be exercised
Luxembourg	Allowed but in some cases the voting rights can be suspended		Limited to 10 % and voting rights may not be exercised
Netherlands	Limited to 10 %		Limited to 10 %
Norway	Limited to 10 %		Limited to 10 % and voting rights may not be exercised
Portugal	A company controlled by another company may only buy shares in the parent company: (i) if the acquisition is gratuitous; (ii) if it is in execution of payment of debt; (iii) as a result of the dissolution of another company in which the acquirer is a shareholder.	No restrictions up to 10%. Over this figure, the acquiring company must notify the other. Thereafter it is not entitled to buy any more shares and if it does so, those additional shares have no voting rights.	Limited to 10 % and voting rights may not be exercised except in specific circumstances.
Spain	Limited to 10 % and voting rights may not be exercised		Limited to 10 % and voting rights may not be exercised
Sweden	Not allowed		Limited to 10 % and voting rights may not be exercised
Switzerland	Limited to 10 % and voting rights may not be exercised		Limited to 10 % and voting rights may not be exercised
UK	Generally not allowed		Not currently allowed (but likely to become allowed soon)

With the exception of Belgium, France and Portugal, plus a specific variation in Italy, there are few limitations on cross-shareholdings of shares where one company is not treated as a subsidiary of the other.

Cross-shareholding by a subsidiary in its parent company is allowed in all countries with the exception of Greece (except in a few circumstances), Sweden and the UK (except in a few circumstances). Where cross-holding is allowed, the number of shares involved is often limited to a 10% holding by the subsidiary of the parent's shares, meanwhile in Finland and Italy this limit is set at 5%.

Treasury shares are also permitted but, as for cross-shareholding between subsidiaries and parent companies, there are limitations. The only jurisdiction where this is currently not allowed is the UK.

- (i) Cross-shareholdings refer to the circumstance where companies of the same or different groups hold each other's shares.
- (ii) Treasury shares refer to a company's own shares which it has bought back and not cancelled.
- (iii) A company is considered a subsidiary of another company if one or more other companies control more than 50% of the votes that can be cast at a general meeting, or have the power to appoint or remove the majority of the board of directors of that company.

ANTI-TAKEOVER DEVICES

Table 5

	A	B	DK	FIN	F	FRG	GR	IRL	I	L	NL	N	P	E	S	CH	UK
Ownership caps			X		X												X
Golden shares			X						X		X		X				X
Restriction to the transferability of shares	X	X	X	X	X ⁴	X	X	X		X	X	X	X	X	X	X	X
Poison pills	X	X	X	X	X	X		X		X	X	X			X	X	X
Interlocking shareholdings Pyramiding	X				X			X									X
Voting caps	X	X	X	X	X			X	X		X	X	X			X	X
Shares with multiple voting rights			X	X	X						X		X				
Shares with no voting rights		X		X	X			X	X			X	X		X	X	
Voting trusts	X	X	X		X			X			X						X
Supermajorities		X		X					X					X	X	X	
Shares with special rights to appoint the directors	X	X	X	X	X	X					X		X				
Golden parachutes			X	X							X			X	X		
Sales of assets (scorched earth)															X		
Spin-offs								X									
Lock-ups of corporate assets (crown jewels)	X	X		X							X						
Poison debt				X							X						
Share buyback, self bid, delisting bid	X	X	X		X	X			X	X		X					X
Issue of capital to a friendly party (white squire)		X	X	X	X			X	X		X				X		X
Issue of capital with pre-emption rights	X	X	X	X	X		X		X	X	X		X		X		
Creation of regulatory problems				X		X			X								X
White knights	X	X	X			X		X	X		X				X		X
Shark repellents	X	X	X	X													
Obligation to extend the bid for the remaining shares	X	X	X	X			X		X				X		X		X
Bid for the bidder (pacman defence)	X	X						X	X		X						X

There are many forms of anti-takeover devices stemming from company law, from takeover rules and from contracts entered into between relevant parties. It is an area that is subject to rapid and frequent development and consequently table 5 may not be wholly complete. This table, however, attempts to give a broad picture of those anti-takeover devices which are technically possible in the various jurisdictions, although some may not be available in practice. In some jurisdictions company law provisions and related rules are designed to protect existing shareholders. Examples of these are protected subscription rights, voting caps and obligation to extend the bid for the remaining shares. Others such as poison-pills, or the emergence of white knights, for example, derive from the principle of contractual freedom. Anti-takeover devices warrant a separate study in their own right.

⁴ If not listed

III. SHAREHOLDERS MEETINGS AND RIGHTS

This section compares :

- the decisions that must be taken by shareholders' meeting, whether ordinary or extraordinary, before they can be put into effect;
- who can convene a meeting and how;
- what information is provided to shareholders and what they have to do in order to attend meetings;
- what shareholders have to do in order to vote;
- whether shareholders can add proposals to the agenda of general meetings;
- whether voting recommendations can be made and who can make them;
- whether shareholders are allowed to ask questions;
- whether attendance lists and minutes of shareholders' meetings are disclosed publicly;
- voting procedures and voting powers;
- who appoints the directors, managers, auditors; and
- who approves the payment of dividends.

DECISIONS THAT HAVE TO BE TAKEN OR RATIFIED BY A SHAREHOLDERS MEETING

Table 6

Austria	<ul style="list-style-type: none"> Appointment of auditors Election and removal of members of the supervisory board Distribution of profits Capital measures (increases or decreases) Amendments to the articles of association Discharge of liability of the management and of the supervisory board Approval of “restructuring” measures Appointment of special auditors Vote of no confidence against individual managers or against the board as a whole Vote to raise claims against members of the management and the supervisory board Vote of approval on any business decision presented to the shareholders’ meeting by the supervisory board Liquidation of the company
Belgium	<ul style="list-style-type: none"> Appointment of auditors and approval of report of the auditors Approval of the annual report Appointment and replacement of the board of directors Amendments to the articles of association, including the objects of the company Resolution to merge or transform the company Distribution of profits Approval of the annual accounts Discharge of liability of board members Granting third parties rights arising from a change of control or a takeover. Other business which the articles of association may specify in addition Liquidation of the company
Denmark	<ul style="list-style-type: none"> Appointment of auditors Adoption of annual accounts Amendments to the articles of association Election of members of the board of directors Distribution of profits Liquidation of the company Resolution to merge Other business which the articles of association may specify in addition
Finland	<ul style="list-style-type: none"> Appointment of Auditors Election of Directors Amendments to the articles of association Distribution of profits Adoption of accounts and balance sheet Liquidation of the company Discharge from liability for the members of the board and the managing director Matters that fall under the authority of the general meeting under the articles of association.
France	<ul style="list-style-type: none"> Appointment of auditors Appointment and removal of the board of directors Amendments to the articles of association Distribution of profits Adoption of the annual accounts. Approval of certain agreements between the company and its managers⁵ or the company and other entities having common managers Merger and transformation of the company into another type of company Dissolution of the company

⁵ Managers here are to be understood as any «mandataire social», i.e. members of the board of directors, of the supervisory board, the board of management, general managers and deputy general managers

Germany	<ul style="list-style-type: none"> Appointment of auditors Appointment and removal of members of the supervisory board Amendments to the articles of association Appropriation of any net retained profits Ratification of the acts of management Capital increases or reductions Major structural decisions (e.g. sale of a major branch) Conclusion of control and profit transfer agreements Merger or transformation of the company Dissolution of the company
Greece	<ul style="list-style-type: none"> Appointment of the auditors Appointment of the members of the board Amendments to the articles of association Approval of the financial statement Distribution of profits Issuance of loans by means of debt securities Merger, extension or dissolution of the company Appointment of liquidators
Ireland	<ul style="list-style-type: none"> Re-appoint the retiring auditors and authorise the directors to fix their remuneration Elect directors in place of those retiring Altering the objects clause or the articles of association Approval of the financial statements and the directors' and auditors' reports. Declaration of dividends Transact any other ordinary business of the company Altering provisions in the memorandum unless prohibited by the memorandum itself Disapplying shareholders statutory pre-emption rights Change the name or statutes of the company
Italy	<ul style="list-style-type: none"> Appointment of auditors Adoption of annual accounts Election of directors Amendment to the articles of association, including an increase or decrease in capital Allocation of profits or the covering of losses Merger, demergers, winding-up Appointment of liquidators Issue of corporate bonds Removal of directors Action against directors Purchase of own shares Proposal of composition with creditors in case of compulsory winding-up
Luxembourg	<ul style="list-style-type: none"> Appointment of auditors Approval of annual accounts Election of directors Amendments to the articles of association Distribution of profits Adoption of the annual report of the company's directors Adoption of auditor's report Discharge of the company's representatives (directors and auditors) Change the company nationality Increase shareholders' liabilities Mergers, liquidation or dissolution "quasi-in kind contributions"
Netherlands	<ul style="list-style-type: none"> Appointment of auditors Adoption of annual accounts Amend the articles of association Wind up the company Merger Convert the company into another type of legal structure Appoint, suspend and remove managers and at least 2/3 of the supervisory board members (except in the structure regime) Other issues described in the articles of association

Norway	<ul style="list-style-type: none"> Appointment of auditors Adoption of annual accounts Election of directors Amendments to the articles of association, including increase in capital Mergers, splits, winding-up Distribution of profits
Portugal	<ul style="list-style-type: none"> Appointment of auditors Approval of annual reports and financial statements Election of the members of the board of directors Amendments of the company articles of association Distribution of profits Modification of share capital (increase or reduction) Acquisition of own shares Dissolution of the company Other issues reserved to the general meeting in the articles of association
Spain	<ul style="list-style-type: none"> Appointment of auditors Approval of annual accounts Election of directors Amendments to the articles of association Distribution of profits Approval of the acts undertaken to date by the promoters (at the outset) Approval of the value assigned to any contributions in kind Appointment of the persons who shall execute the notarial deed of incorporation Acquisition of property for consideration within the first two years of incorporation, where the value of such acquisition exceeds 1/10 of the share capital Acquisition of own shares Increase and reduction of capital Suspension of pre-emptive rights Any matter provided for in the articles of association
Sweden	<ul style="list-style-type: none"> Appointment of auditors Adoption of annual accounts Election of directors Amendments to the articles of association Distribution of profits Regarding parent companies, the consolidated accounts and the group's auditors' report Approval of the profit and loss statements Removal of members of the board and managing directors Discharge from liability for the members of the board and the managing director All matters reserved for determination by the shareholders (by law or the articles of association) Liquidation of the company
Switzerland	<ul style="list-style-type: none"> Appointment of auditors Election of directors Amendments to the articles of association Allocation of profit, in particular with regard to dividends and bonus payments to members of the board of directors Remove members of the board of directors All matters reserved for determination by the shareholders (by law or the articles of association) Approve Annual Report and consolidated financial statements

UK	Appointment of auditors Adoption of annual accounts and reports of auditors and directors Declare dividends Annual ⁶ election of directors Amendments to the articles of association Remove a director or an auditor Ratify a director's breach of duty Amend the capital structure (reductions would require a special resolution) Altering the objects clause in the memorandum of association Changing a company's name Authority ⁷ for allotment of shares Disapplying members' statutory pre-emption rights Approving the giving of financial assistance ⁸ / purchase of own shares Voluntary winding-up of a company
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While the intention is for power to be delegated to the shareholders meetings to decide on all important decisions of the company, from table 6 it can be seen that in some jurisdictions the shareholders meeting has the ability to take on many more of the decisions than in other jurisdictions. In some jurisdictions such as Austria, Belgium, Italy, Ireland, Luxembourg and the UK any of these powers that are not given to the general assembly of the company by the articles of association belongs to the board of directors. Elsewhere, the reverse is true and all powers that are not given to the boards of directors (defined as the supervisory body) are within the competence of the shareholders.

⁶ If so required by the articles of association a certain proportion of the directors must retire by rotation and offer themselves for re-election each year. In the case of listed public companies it is normally a requirement that each director should retire by rotation and submit himself for re-election at least every three years.

⁷ Although the power to allot shares resides in the directors, before they can allot shares, the directors have to be given the necessary specific authorities by the shareholders.

⁸ Private companies only.

CALLING A SHAREHOLDERS MEETING

Table 7

	Board of directors/ Supervisory board	Auditors	Shareholders (% of share capital required)	Courts	Public Authorities	Others
Austria	X		5%	X		
Belgium	X	X	20%			X
Denmark	X	X	10%		X	
Finland	X	X	10%			
France	X	X	50% (in case of takeover)	X		X (liquidators)
Germany	X		5%		X	X
Greece	X	X	5% (only EGM)	X		
Ireland	X		10%	X	X	
Italy	X	X	20%	X		
Luxembourg	X	X	20%	X		
Netherlands	X		10%			X
Norway	X		10 %	X		
Portugal	X	X	5%	X		
Spain	X		5%	X		X
Sweden	X	X	10%	X		
Switzerland	X	X	10%	X		X (liquidators)
UK	X		10%	X		

SUPERVISORY BODY

The board of directors, or in the two-tier system the supervisory board, can call a shareholders meeting in all the countries considered by this study.

AUDITORS

Auditors are permitted to call a meeting in Belgium, Denmark, Finland, Greece, Portugal, Luxembourg, Switzerland. When the board fails to convene a meeting, the auditors in Italy, France and Sweden are empowered to convene one. In Norway, for the same reason, the auditor can require the Bankruptcy Court to convene a meeting without delay.

SHAREHOLDERS

In general shareholders cannot individually request a board to convene a meeting, but they can do when certain conditions are met. These conditions are that they must represent :

- at least 20% of the capital, for companies in Belgium, Italy and Luxembourg;
- at least 10 % of the capital for companies in Ireland, Norway, Sweden and Switzerland.
- 10% or less if stipulated in the articles of association of companies in Denmark, Finland, the Netherlands and the UK.
- at least 5 % of the capital for companies in Austria, Germany, Portugal and Spain. In Greece, the same percentage applies but only for extraordinary general meetings.

If the board does not comply with the request of the shareholders then:

- The shareholders can convene a meeting themselves (Ireland and UK) provided they meet the 10% conditions;
- The majority of shareholders can call a meeting only after a takeover has been initiated (France);
- The courts can empower the shareholders to convene a meeting themselves (Austria, Germany, the Netherlands) or order that a meeting be called (Belgium, Italy, Ireland, Luxembourg, Greece, Sweden, Switzerland).

In Germany the articles of association can empower individual shareholders to call a meeting.

COURTS

The right of courts to convene a meeting is limited with the exception of specific situations in the countries listed below:

- The Norwegian Bankruptcy Court must convene a meeting if the board or the chairman of the corporate assembly⁹ fails to convene a statutory meeting when demanded by a member of the board, a member of the corporate assembly, a general manager, an auditor or a shareholder.
- In Belgium and France, if a group of shareholders representing 20% of the capital has requested the board to convene a meeting but it has failed to do so, an attorney (“mandataire ad hoc”) appointed by judicial decision can call a meeting.
- In Italy and the UK, courts can be used to call meetings if it is impracticable for such a meeting to be convened in the usual way. In addition, court sanctioned meetings may be required for certain major re-structurings in the UK.
- In Spain, if the board fails to convene a general meeting within the timeframe established by the law, the shareholders can request the court to call for a general meeting irrespective of the number of shareholders or the share capital that they

⁹ For companies with more than 200 employees the two tier structure is compulsory and the supervisory body is called the Corporate Assembly.

represent. Furthermore the court will convene a meeting whenever requested by shareholders representing 5% of the shares.

- In Portugal when the chairman of the general meeting supervisory committee¹⁰ fails to convene a meeting that has been requested by shareholders representing 5% or more of a company's share capital, then they may file a petition with the court and the court may convene a meeting.

OTHERS

In Germany the articles of association can empower third parties such as public authorities to call a meeting. In Ireland, if the board refuses or is unable to convene a meeting, any member may apply to the Minister for Enterprise, Trade and Employment, who may direct that a meeting be held.

¹⁰ In Portuguese company law a general meeting of shareholders shall be presided over by a chairman, whose functions are to convene, conduct and preserve the discipline of the meeting. The chairman is statutorily assisted by a secretary, that will be the corporate secretary or any person elected for that role. The chairman and his assistant are a statutory designated body, elected by shareholders in general meetings. This corporate body is called "mesa da assembleia geral" (general meeting supervisory committee).

HOW A MEETING IS CALLED

Table 8

	If shareholders are unknown	If shareholders are known	Minimum (and maximum) time limits
Austria	Publication in the Federal Gazette	If stipulated in the articles of association ; any other way	14 days
Belgium	Publication in the official journal and two national newspapers (at 8 days interval)	Registered mail	8 days second publication; 16 days first publication
Denmark	Publication in a national newspaper	Written notice	Between 8 days and 4 weeks
Finland	As stated in the articles of association ¹¹	Written notice	Between 1 week and 2 months
France	Publication of a preliminary notice and thereafter the notice in the "BALO"	Written notice	30 days for the preliminary notice and between 15 to 6 days for the notice itself (listed companies)
Germany	Publication in the Federal Gazette ¹²	Registered mail	1 month
Greece	Publication in the bulletin of companies limited by shares and limited companies of the Government Gazette. In one of the daily newspaper published in Athens and in one financial newspaper	Written notice	20 days
Ireland		Written notice	21 days for ordinary meetings and 7 days for extraordinary meetings
Italy	Publication in the Official Gazette and in a national newspaper		15 days (30 days for public companies)
Luxembourg	Publication in the official journal and two national newspapers (at 8 days interval) ¹³	Registered mail ¹⁴	8 days second publication 16 days first publication
Netherlands	Publication in a daily newspaper	Written notice	15 days
Norway		Written notice	2 weeks
Portugal	Publication in the official gazette and in a daily newspaper	Written notice, if stated in the articles of association	30 days in case of publication, 21 days in case of written notice
Spain	Publication in the Mercantile Gazette and in a national newspaper	Written notice	15 days
Sweden	Publication in the Swedish Official Gazette as well as in a national newspaper	Written Notice	Between and 6 weeks for ordinary meetings, 2 and 6 for extraordinary meetings
Switzerland	Publication in the Official Gazette and, if stated in the articles, in newspapers	Written notice, if stated in the articles of association	20 days
UK		Written notice (including electronic communications)	21 days (AGM or special resolution) otherwise 14 days

The method for calling a meeting invariably depends on whether the shareholders are registered and therefore known, or whether bearer shares have been issued and so the shareholders are not known.

Where shareholders are registered, the notice is usually sent by mail, while in countries where bearer shares are the norm the notice is published in the Official Gazette and/or in one or more newspapers. In Italy, although registered shares are more common than bearer shares, interestingly shareholders do not receive written notices.

Significant differences can be observed in both the minimum (and maximum) time limits for the issuing of the formal notification for calling the meeting.

¹¹ Bearer shares are rarely found in Finnish companies. However, if there are certain provisions regarding how the meeting is called in a situation where a shareholder is unknown the requirements are stipulated in the articles.

¹² The new German Law on Transparency and Publicity (TransPuG) which modifies the German Stock Corporation Act (AktG), effective as of September 2002, provides for publication in electronic form.

¹³ If the intention is to amend the company's articles of association, the notice convening the meeting must be published by way of two announcements at 15 day intervals, the last notice appearing 15 days before the meeting

¹⁴ When a company has issued both registered and bearer shares, it is not compulsory to send registered letters to convene the shareholders holding registered shares.

THE INFORMATION THAT IS PROVIDED TO SHAREHOLDERS

Table 9

	Agenda	Proposed resolutions	Annual accounts	Annual Report	Auditor's report	Articles of Association	Register of Shareholders	Minutes of shareholders meetings	Other
Austria	X	X	Available for inspection	Available for inspection		Available for inspection		Available for inspection	
Belgium	X	X ¹⁵	X ¹⁶	X ¹⁷	X ¹⁸	Can be examined on request	Can be examined on request	Can be examined on request	
Denmark	X	X	X	Can be examined or sent on request	Can be examined or sent on request	Can be examined on request	Can be examined on request	Can be examined on request	
Finland	X	X	Can be examined or sent on request	Can be examined or sent on request	Can be examined or sent on request	Available from commercial registry	Available for inspection	Available for inspection	
France¹⁹	X	Can get copies on request	Can be examined or sent on request	Can get copies on request	Can get copies on request	Available from the commercial registry	Available for inspection 15 days prior to the meeting	Available for inspection for the last 3 fiscal years	
Germany	X	X	Can be examined or sent on request	Can be examined or sent on request	Available for inspection	Available for inspection	Only personal data concerning the shareholder submitting request can be examined	Available for inspection	
Greece	X	X	Can be examined on request	Can be examined on request	Can be examined on request			Can be examined on request	
Ireland	X	X	X	X	X	X	Available for inspection	Available for inspection	
Italy	X	Available for inspection	Available for inspection	Available for inspection	Available for inspection		Available for inspection	Available for inspection	
Luxembourg	X		X	X ²⁰	X ²¹		Available for inspection		
Netherlands	X	Available for inspection or sent on request	Available for inspection	Available for inspection	Auditor's statement is available for inspection ²²	Available for inspection or sent on request	Available for inspection or sent on request	Available for inspection or sent on request	
Norway	X	Can get copies on request	X	X	X	Available from registry	Available for inspection	Can get copies on request	
Portugal	X	Regarding changes to the articles, the rest On request	Available for inspection	Available for inspection	Available for inspection		On request	On request	
Spain	X	Can get copies on request	Can get copies on	Can get copies on	Can get copies on	Available for inspection	Available for inspection	Available for inspection	

¹⁵ This is true for « public companies », i.e. companies with public offerings

¹⁶ To the holders of registered shares only, otherwise copies can be examined or sent on request

¹⁷ Cfr. footnote 15

¹⁸ Cfr. footnote 15

¹⁹ Any proxy form sent to a shareholder should be accompanied by several pieces of information (agenda, draft resolutions, summary of the situation of the company during the past fiscal year, table of results for the past five years and a form of request for documents). This means that when the notice calling the meeting includes a proxy form, all the above-mentioned document should be enclosed with the notice and are therefore “spontaneously” provided to the shareholder. Moreover a shareholder may request that the notice calling the meeting systematically contains a certain number of documents.

²⁰ To the holders of registered shares only, otherwise available for inspection

²¹ Cfr. footnote 20

²² When the auditor's statement is part of the annual report, it is thereby available for inspection. When there is a full and separate auditors report, shareholders have no right to receive or inspect such report. This is only for the supervisory board.

			request	request	request				
Sweden	X	X	X	X	Available for inspection	Available for inspection	Available for inspection	Available for inspection	
	Agenda	Proposed resolutions	Annual accounts	Annual Report	Auditor's report	Articles of Association	Register of Shareholders	Minutes of shareholders meetings	Other
Switzerland	X	X	Available for inspection	Available for inspection	Available for inspection			Available for inspection	Accounting books and correspondence ²³
UK	X	X	X	X	X	Can get copies on request	Available for inspection	Available for inspection (general meeting minutes only)	

Information is not always issued automatically to investors. This is understandable for countries where bearer shares are common, but in some other countries many documents are only available for inspection by registered shareholders at the registered office of the company or the Commercial Register. For example, in Austria minutes of shareholder meetings, and the annual report and accounts are only available for inspection and in the Netherlands information such as annual accounts and the articles of association can be requested at the Chamber of Commerce, but are not required to be provided direct to shareholders. In addition, in some jurisdictions such as the UK, the information is provided only to names on the shareholders register and not automatically to the beneficial owner.

²³ Company books and correspondence may only be inspected with the express authorisation of the shareholders meeting or by resolution of the board of directors and subject to the safeguarding of commercially sensitive information.

MEETING ATTENDANCE AND MEANS OF VOTING

Table 10

	Meeting attendance requirements				Voting possibilities			
	Give formal notice of attendance	Certificate of account holder (Dematerialised shares)	Certificate of blocking of shares (with notary, financial institution, the company itself)	Certificate of registration or entry in the shareholder's register	In person	By proxy	By mail	By electronic means
Austria			X	X If stipulated in the articles of association	X	X		
Belgium	X If stipulated in the articles of association	X	X	X	X	X	X	
Denmark	X			X	X	X		
Finland	X			X	X	X	X	X
France		X	X	X	X	X	X	X
Germany	X If stipulated in the articles of association		X	X If stipulated in the articles of association	X	X		
Greece		X	X		X	X		
Ireland				X	X	X	X	
Italy			X	X	X	X	X	
Luxembourg	X If stipulated in the articles of association		X	X	X	X		
Netherlands	X If stipulated in the articles of association		X		X	X		X
Norway				X	X	X		
Portugal	X If stipulated in the articles of association				X	X	X	
Spain	X If stipulated in the articles of association	X If stipulated in the articles of association	X If stipulated in the articles of association		X	X		
Sweden	X If stipulated in the articles of association			X	X	X		
Switzerland			X	X	X	X		
UK				X	X	X		

Shareholders generally need to prove ownership of shares to give them the right to attend the meeting.

In addition, in some countries the shareholder must give formal notice that they are going to attend. In general this notice needs to be given 5 days in advance unless stated differently in the articles of association of the company. However, it is usually 7 days notice that is required in Germany and in Portugal, shareholders must register with the general meeting supervisory committee according to the procedure set out in the notice calling the meeting. A request to deposit shares or a certificate of deposit in advance of the meeting may be regarded as equivalent to a formal attendance notice.

Shareholders should be present or appoint a proxy if they wish to exercise their rights to vote. In Germany the stock exchange listed companies may offer a proxy for all shareholders. Voting by mail is allowed in France and Ireland, meanwhile if it is provided for in the articles of association, it is also allowed in Belgium, Finland, Italy, Luxembourg and Portugal. The first countries to allow electronic voting are Finland, France and the Netherlands. However, others such as Italy are actively taking steps to allow this in future.

There are a number of restrictions on who can be appointed as a proxy. In some countries this power must be given to certain entities and in others, regardless of what is said within the articles of association of a company if the proxy has been given to certain entities then they must be allowed to exercise it. These are as follows:-

- members of the family (Portugal, France provided it is the spouse);
- another shareholder (France and Portugal, and Switzerland for holders of registered shares only); or
- the directors (Portugal and Finland for certain matters and as stated in the articles of association).

In Italy this power cannot be given to directors, auditors, employees or subsidiary companies.

There are further differences between countries in the way that proxies are appointed. These are:-

- Shareholders are required to inform the company of their intention to appoint a proxy in Belgium, Denmark, Finland and Greece (where proxies must deposit their proxy documents with a bank or the company 5 days before the meeting).
- The validity of a proxy varies. For example, it is valid for up to 15 months in Austria; 12 months in Denmark and Sweden; for the period of the meeting in France, Italy, Spain and Portugal provided the proxy represent more than 5 shareholders. In Germany regulations restricting the validity of proxies up to 15 months have recently been repealed.

Other interesting features are that in the UK proxies are not entitled to vote on a show of hands but are entitled to vote on a poll. In France the law allows shareholders not to nominate a proxy by name in which case that shareholder's vote will be in favour of those resolutions proposed or accepted by the board, and against all others.

It is also worth noting that in some jurisdictions, it is only the person who is registered as the shareholder and not the beneficial owner who is entitled to attend and vote at meetings.

SHAREHOLDERS RIGHTS TO ADD PROPOSALS (RESOLUTIONS) TO THE AGENDA/RECOMMENDATIONS FROM DIRECTORS, MANAGERS OR SHAREHOLDERS ON HOW TO VOTE/SHAREHOLDERS QUESTIONS/DISCLOSURE OF DOCUMENTS.

Table 11

	Can shareholders add proposals to the agenda ?	Can the following recommend how to vote ?			Can shareholders ask questions ?	Are the following documents disclosed publicly ?	
		Board of directors/ Supervisory body	Managers	Share holders		Attendance lists	Minutes
Austria	If they represent at least 5% of the capital	Must recommend an auditor ²⁴	Yes	Yes	Yes	Yes	Yes
Belgium	If they represent at least 20% of the capital	Yes			Yes	No	No
Denmark	Yes if requisitioned in writing sufficiently well in advance	Yes			Yes	No	No
Finland	Yes if requisitioned in writing sufficiently well in advance	Yes	Yes	Yes	Yes	No	No
France	Yes if the shareholders hold a certain percentage of the capital depending on the actual level of capital (minimum 5% - decreasing with the level of the capital)	Yes		If they have filed draft resolutions they can submit a motivation paper	Yes but in writing before the meeting and the directors will respond at the meeting	No	No
Germany	Yes if they represent 5% of the share capital or a nominal amount of Euro 500.000 provided the proposals are sent no later than one week after the publication of the notice ²⁵	Yes, must recommend an auditor and the members of the supervisory board to be elected	Yes	Yes, concerning auditors and the members of the supervisory board to be elected	Yes, and the management must respond to them as incomplete answers may lead to the invalidation of the resolution	No, only to shareholders	Yes
Greece	By unanimous consent	Yes			Yes	Yes	No
Ireland	Yes, but only when the shareholders have requisitioned the meeting	Yes (for the chairman)			Yes	No	No
Netherlands	Yes, but only when the shareholders have requisitioned the meeting or by unanimous consent	Yes	Yes	Yes	Yes	No	No
Norway	Yes if requisitioned in writing . If the notice calling the meeting has already been sent, a revised notice must be sent at least 1 week before the meeting	Yes			Yes	No	No
Portugal	Yes if they represent at least 5% of the capital and submitted in writing no later than 5 days after the publication of the notice	Yes		Yes	Yes	No	No

²⁴ This recommendation is however not binding.

²⁵ According to TransPuG: one week prior to the shareholders' meeting.

	Can Shareholders add proposals to the Agenda ?	Can the following recommend how to vote ?	Can shareholders ask questions ?	Are the following documents disclosed publicly ?	Yes	No	No
		Directors	Managers	Shareholders		Attendance lists	Minutes
Spain	Yes if approved by the shareholders meeting	Yes	Yes	No	Yes	No	Yes
Sweden	Yes if requisitioned sufficiently well in advance	Yes			Yes but those to whom the questions are addressed are not bound to reply	No	No
Switzerland	Yes if their combined holding represent a minimum of 1 million Swiss francs	Yes		Yes	Yes, but those to whom the questions are addressed are not bound to reply	No	No, except in some circumstances
UK	Yes, they have requisitioned the meeting, otherwise only if they represent at least 5% of total voting rights or are not less than 100 members holding shares on which an average sum of £ 100 has been paid up.	Yes			Yes	No	No (but certain resolutions have to be filed publicly at Companies Registry)

The right of shareholders to add proposals to the agenda of the general meeting varies significantly in the 17 countries. Those with the least restrictions are the Nordic countries (Norway, Sweden and Finland) and those imposing the most stringent requirements are Greece and the Netherlands where adding proposals requires a unanimous consent of all shareholders. All other countries allow shareholders to add proposals provided they represent a proportion of the capital varying from 5% to 20% plus often some additional conditions.

In most countries recommendations of how to vote can be made to the meeting. However, there are variations. For example in Germany the members of the management board and of the supervisory body are obliged to give recommendations on how to vote. In other countries the board, chairman or management committee may make recommendations and in some instances they have to make such recommendations. Meanwhile in Greece, Luxembourg, Portugal and Spain there are no legal requirements and so recommendations on how to vote may or may not be made to the shareholders.

As shareholders are supposed to be fully informed before votes are taken, it is assumed that they are also allowed to ask questions. However, the board is not necessarily obliged to answer in circumstances such as an answer would, for example, disclose commercially sensitive information which could cause serious damage to the company. In Germany the management board is obliged to respond to any question that is asked and if the questions are not completely answered, then the resolution may be invalidated. In France, shareholders can only ask questions in writing prior to the meeting, although the answers are provided at the meeting itself.

In Europe shareholders generally have the right to see the attendance list for the meeting and the minutes, but these are often not made available to the public. Minutes are kept by the company and are open for inspection by shareholders. In some cases shareholders are entitled to receive a copy by mail. However, the minutes are lodged with the Commercial Register in Germany, in some instances in Switzerland, and in Austria the minutes with the attendance lists. In such circumstances these copies are theoretically available to the public. In Portugal a list of attendance at a general meeting is always kept by the company, and any shareholder may ask for a copy and have access to it. These documents are not available to the public in general.

In some jurisdictions it is necessary to file with the relevant authority decisions taken at extraordinary general meetings, principally where these are amendments to the articles of associations.

VOTING PROCEDURE

Table 12

	Usual voting procedure				
	Item by item	Cumulative voting	Exclusions from voting	Show of hands	Secret ballot/poll
Austria	Decided by the chairman		Shareholders who have a direct interest in the vote	Decided by the chairman	Decided by the chairman
Belgium	X			X	For decisions regarding people; and if decided by the meeting
Denmark	X			Decided by the chairman	Decided by the chairman
Finland	X		In certain circumstances shareholders who have a direct interest in the vote	X	Decided by the chairman
France	X		Shareholders who have a direct interest in the vote, in respect of an agreement with the company, with the exception of the election of the board where they can vote for the election of the board even if they are candidates	Decided by the meeting's officers	Decided by the meeting's officers
Germany	X		A shareholder may not exercise his voting right with respect to a resolution concerning ratification of his acts, discharging him from liability or enforcement of a claim against him by the stock corporation	Decided by the chairman	Decided by the chairman
Greece	X			If mentioned in the articles	If mentioned in the articles
Ireland	X		Shareholders who have a direct interest in the vote	X In this case one member has one vote despite the number of shares he owns	If demanded by at least three members or 10% of the voting shares
Italy	X		Shareholders who have a direct interest in the vote	X	
Luxembourg	X			X	If certain number of shareholders ask for it
Netherlands	X			X	For decisions regarding "people"
Norway				X	If decided by the chairman of the meeting
Portugal	X		Shareholders who have a direct interest in the vote	X	If decided by the meeting
Spain	X		Shareholders who have a direct interest in the vote ²⁶	If mentioned in the articles	If mentioned in the articles
Sweden	X			X	If decided by the meeting
Switzerland	X		In the case of resolutions releasing the board of directors, persons who have, in any way, taken part in the management of the company.	If mentioned in the articles	If mentioned in the articles
UK	X		In certain circumstances shareholders who have a direct interest in the vote	X In this case one member has one vote irrespective of the number of shares he holds	If demanded by at least five members or 10% of the voting shares ²⁷

The most common procedure is to vote resolution by resolution on a show of hands. In Ireland and the UK this restricts the voting power of shareholders present at the meeting to one vote per shareholder, irrespective of how many shares they hold. If a poll is called then the number of shares held by each representative in the meeting is counted as one vote per share. In Spain, any procedure is valid if the articles of association do not contain specific provisions.

²⁶ Although not directly stated in the law, this has been admitted by the General Registries' Commission

²⁷ But the articles frequently allow a lesser number of shareholders or the chairman to do so.

Ballots or polls can be demanded by shareholders although certain criteria may have to be met. In Denmark any such demand cannot be ignored by the chairman. A ballot or poll can be imposed by the chairman of the meeting or may be required in specific circumstances such as the appointment, suspension or removal of directors.

Those shareholders who have a direct interest in the vote including candidates for the board and managers who are also shareholders, are sometimes precluded from voting. In Austria and France shareholders with a direct interest can only vote with respect to election of the Board and in Germany only in cases of ratification of the acts of management and of any discharge from liability or enforcement of a claim against such members. In Italy, Ireland, Portugal, Spain and the UK, shareholders with a direct interest in the vote are precluded from voting on some resolutions.

The system known as cumulative voting by which minority shareholders can concentrate votes with respect to certain issues such as the election of directors, has not been found in these 17 countries.

IMPORTANT VOTING THRESHOLDS

Table 13

	Simple majority	Unanimity	Special / Super majorities	Minorities	Elections	Attendance quorums	Can the articles of association change these
Austria	Ordinary resolutions	If provided by the articles of association	75% of capital represented in case of exclusion of subscription rights in the course of capital increase or in case of liquidation	- 5% of the entire capital requested requisition a meeting and add items on the agenda -33% of the capital can enforce the election of a person to the supervisory board - 10% ²⁸ of the capital can require the company to file action against managers or members of supervisory board	Simple majority	If provided by the articles of association	Yes, the Articles can provide for different majorities except for those listed under “minorities rights”
Belgium	Ordinary resolutions		-80% for the alteration of the object of the company -75% for the alteration of the articles of association	20 % of the capital can requisition a meeting to be convened	Simple majority	50% for the alteration of the articles of association for the first meeting. No quorum thereafter	The articles may provide for stricter voting and quorum requirements
Denmark	All business transacted at a general (both ordinary and extraordinary) meeting	For resolutions increasing the obligation of shareholders	90% of those present for resolutions which limit dividends, transferability of shares and voting rights; 2/3 of those present for the alteration of the articles of association	10% of the entire capital can request a meeting		90% for resolutions which limit dividends, transferability of shares and voting rights; 2/3 of the capital for the alteration of the articles of association	The articles may provide for different majorities and quorums
Finland	All business transacted at a general (both ordinary and extraordinary) meetings	For certain resolutions amending the rights of the existing shareholders	For certain matters Company act requires a “statutory” majority (e.g. 2/3 for decisions regarding alteration of the articles of association and resolution on directed share issue).	10% of all the shares may require a so called “minimum dividend” to be paid 10% of shareholders can requisition a meeting	Highest number of votes		Articles of association may provide for other majorities but can not lower the voting threshold provided for in the Company Act
France	Ordinary resolutions	Alteration of the legal form	2/3 majority required at EGM, mainly the alteration of the articles of association	5% can : -request the courts to appoint a “mandataire ad hoc” to convene a meeting -request a court to appoint an expert to issue a report concerning management operations ²⁹ - ask, in writing, twice a year, questions to the chairman regarding any matter likely to compromise the continuation of the activity.		25% for ordinary meetings 33% for extraordinary meetings (25% on second call)	No

²⁸ Under certain circumstances 5%

²⁹ Where the management has failed to provide answers

	Simple majority	Unanimity	Special / Super Majorities	Minorities/blocking minorities	Elections	Attendance quorums	Can the articles of association change these
Germany	General business transacted at both ordinary and extraordinary meetings	If provided by the articles of association or in case of the integration of a stock corporation into another	75% of the nominal capital in case of the alteration of the articles of association, reduction and increase of capital, major structural decisions, merger or transformation of the company	5% of the capital requested to requisition a meeting and add items on the agenda	Simple majority, if not stipulated otherwise in the articles of association	Only if provided for in the articles of association	Yes, but regarding special majorities in principal the majority of the entire capital generally has to be guaranteed; minority rights may not be restricted
Greece	Ordinary resolutions		2/3 for specific matters	Small minority : 1/20 ³⁰ Large minority : 1/3 5 % of shareholders can requisition a meeting		20% for ordinary meetings, 2/3 for specific matters (50% on second call and 1/3 on third call)	Articles can provide only for higher quorums and majorities
Ireland	Ordinary resolutions	Unanimity is required to hold a shareholders meeting without full notice being given	75% for special resolutions	10% of shareholders can requisition a meeting	Generally simple majority or highest number of votes		Yes for ordinary resolutions
Italy	Ordinary resolutions		The articles of association can provide for special majorities ³¹	20 % of the capital can requisition a meeting to be convened	Generally simple majority	Quorums may change depending on types of resolutions to be passed and type of companies	The articles can increase the thresholds but cannot provide for unanimity
Luxembourg	Ordinary resolutions	Change in the country of incorporation and increasing the duties of shareholders	2/3 in extraordinary meetings	20 % of the capital can requisition a meeting to be convened	Simple majority	50% for extraordinary meetings on first call only	The articles can change these majorities and quorum requirements. They can decrease the blocking minorities percentage
Netherlands	Ordinary resolutions	No decisions require unanimity by law. However, the articles may require unanimity for certain decisions	2/3 for decisions regarding restrictions in pre-emption rights, capital reduction.	10% of the capital to requisition a meeting	Simple majority		Yes, they can provide for qualified majority requirements for ordinary resolutions. The articles of association often provide for further special majorities, e.g. in case of alteration of the articles, suspension and removal of a director.

³⁰ Greek law provides for specific rights of each category of minority shareholders (1/3 or 1/20). There does not seem to be any big difference between the rights exercised either by the large minority or the small minority. The main difference is the 1/3 minority (of a more radical nature) to apply to the competent court for an audit of the company's affairs under art. 40 par. 3 of law 2190/1920.

³¹ There is no standard threshold for special/super majorities. One could find that companies would usually set a threshold of 75%. There may, however, be higher or lower thresholds depending on the company's requirements.

	Simple majority	Unanimity	Special / Super Majorities	Minorities/blocking minorities	Elections	Attendance quorums	Can the articles of association change these
Norway	Ordinary resolutions	For resolutions increasing the obligation of shareholders; compulsory redemption, reduction of right to dividend	2/3 for the alteration of the articles of association 90% of those present for resolutions which limit dividends, transferability of shares and voting rights;	10% of shareholders can requisition a meeting	Simple majority	In some circumstances a quorum of 50% is required	Yes
Portugal	Ordinary resolutions	No decisions require unanimity by law. However, the articles may require unanimity for certain	2/3 of those in attendance for the changes in articles of association, merger or dissolution	5% of shareholders can requisition a meeting	Simple majority	1/3 of total capital in meetings convened at 1 st call for changes in the articles, merger and dissolution	Yes
Spain	Ordinary resolutions		For certain matters as specified in the articles of association or by law, e.g. the issuance of bonds, the alteration of the articles etc ³² .	5% of shareholders can requisition a meeting 5% of share capital may block the decision of waiving of bringing legal action against the directors ³³ . For changes in the articles, whenever it results in altering shareholders rights, shareholders need to agree.	Simple majority	Ordinary meetings 25% of share capital for the first meeting; any percentage thereafter, as stipulated in the articles. For specific matters, such as amendments to the articles, 50% of share capital at 1 st call and 25% thereafter.	Yes, but never below the legal threshold
Sweden	Ordinary resolutions		2/3 for certain matters as specified in the articles of association or by the law	10 % of shareholders can block a grant of discharge for members of the board or the managing director 10% of all the shares may require a so called "minimum dividend" to be paid	Highest number of votes		Yes but only in certain issues and not below the legal threshold
Switzerland	Ordinary resolutions	Any resolution, if so provided by the articles. The articles must have been adopted with the same majority (in this case unanimity)	2/3 in case of alteration of the objects, issue of shares with increased voting powers, limitations of pre-emption rights, change of location, dissolution	10% of shareholders can requisition a meeting	Simple majority	For resolutions requiring a majority of 2/3 a quorum of 50%+1 is required	Yes
UK	Ordinary resolutions	Elective resolutions (private companies only)	75% for special and extraordinary resolutions 95% of shareholders can	10% of shareholders can requisition a meeting	Simple majority	Normally 2 members present in person or by proxy	Generally no. The articles may require a special resolution for certain matters

³² The articles of incorporation do not provide for specific standard thresholds. It is up to the shareholders to decide which threshold to adopt but they have to be careful not to set a 100% majority, which is prohibited

³³ The general shareholders' meeting may at any time settle or dismiss corporate actions for director's liability, provided that shareholders representing 5% of the capital do not object.

agree to a meeting
being held on short
notice

even though the
Companies Acts
do not

Voting thresholds are determined by company law. While in some instances articles of association can make these provisions either more or less restrictive, generally the minimum cannot be set below that provided for in company law. In addition, where the articles can provide for different rules, these generally apply to decisions that initially require a simple majority. France is an exception where the articles cannot alter any of the provisions of company law. In Austria company law provides for certain mandatory minimum quora (for example 75% for the exclusion of shareholders' pre-emptive subscription rights on capital increase) but otherwise permits reductions to "simple majority" for other kinds of decisions.

Most ordinary resolutions can be taken by a simple majority of those present at the meeting without any specific attendance quorum, except France, Greece, Italy, Spain and UK. The exceptions to this rule depend on the type of resolution and the importance of the decision to be taken. Such exceptions would include the alteration of the articles of association (or objects) of the company with these often requiring a minimum attendance quorum in addition to high percentage majorities in favour.

The percentage required to invoke a **blocking minority varies in the different countries and can be deduced from the figures in the column entitled "special/super majorities"**. For example, in Norway 90% of those present are required to vote in favour for resolutions which limit dividends. A blocking minority under those circumstances is therefore 11%. Minority shareholders benefit in certain countries from some additional protections. For instance in Finland, 10% of the shareholders can require a minimum dividend to be paid and the minority in most countries can request for a meeting to be called.

APPOINTMENT OF THE DIRECTORS, MANAGERS, AUDITORS AND APPROVAL OF THE PAYMENT OF DIVIDENDS

Table 14

	Who appoints the directors (resp. members of the supervisory body)	Who appoints the managers	Who appoints the auditors	Who approves the payment of dividends
Austria	The shareholders Employees In case of a vacancy, the court.	The supervisory board	The shareholders upon proposal from the supervisory board	The shareholders on the basis of proposal by the management and report submitted by the supervisory board
Belgium	The shareholders	The board of directors	The shareholders upon proposal by the board approved by the works council	The shareholders upon proposal of the board of directors
Denmark	The shareholders The articles can empower a committee of shareholders, a public authority or a third party to appoint one or more directors. For larger companies, employees may be entitled to elect some members of the board.	The board of directors	The shareholders	The shareholders to vote on the proposal made by the board. The amount proposed cannot be exceeded
Finland	The shareholders. The articles may stipulate that less than half of the members of the supervisory body shall be appointed in a different way, amongst others, by employees.	The board of directors	The shareholders If more than one is to be appointed, the articles may provide for alternative ways of appointment	The shareholders
France	The shareholders Employees	The board of directors or the supervisory council as the case may be	The shareholders	The shareholders
Germany	The shareholders Employees In case of a vacancy, the court	The supervisory body	The shareholders	The shareholders must ratify the management and supervisory board's recommendations on the appropriation of profits
Greece	The shareholders	The board of directors	The shareholders	The shareholders
Ireland	The shareholders The directors themselves (co-option) The articles may provide for special procedures for appointment	The board of directors	The shareholders	The shareholders to vote on the proposal made by the board. The amount proposed cannot be exceeded.
Italy	The shareholders	The board of directors	The shareholders	The shareholders upon proposal by the board of directors
Luxembourg	The shareholders Employees	The board of directors	The shareholders	The shareholders upon recommendation by the board of directors
Netherlands	For larger companies under the structure regime the supervisory board is self-elected (co-option) In the other cases the shareholders	The shareholders, unless appointment is made by the supervisory board pursuant to the structure regime.	The shareholders If the shareholders fail to appoint an auditor, the supervisory board or managers may do so	The shareholders
Norway	The shareholders For larger companies employees can elect one or more members of the board	The board of directors	The shareholders	The shareholders upon recommendation of the supervisory board
Portugal	The shareholders	Supervisory body	The shareholders	The shareholders
Spain	The shareholders	The board of directors	The shareholders	The shareholders.
Sweden	The shareholders, unless otherwise stipulated in the articles (however, at least half of the board must be appointed by the shareholders)	The board of directors	The shareholders If more than one is to be appointed, the articles may provide for alternative ways of appointment	The shareholders upon proposal made by the board. the amount cannot be exceeded
Switzerland	The shareholders	The board of directors	The shareholders	The shareholders
UK	The shareholders The directors themselves (co-option subject to re-appointment by shareholders at AGM)	The board of directors	The shareholders	The shareholders vote for a final dividend on the proposal made by the board. The amount proposed cannot be exceeded.

DIRECTORS

Where there is a two tier board, only the members of the supervisory board are referred to as directors.

As a general rule some or all of the supervisory body members are elected by the shareholders.

In case of a vacancy arising before the term of an appointment expires, the directors can fill the vacancy until the next meeting. Where such a vacancy arises in Austria and Germany, the managers and the supervisory board can apply to court in order to have members of the supervisory board appointed. Also in Germany such right of application to the court lies with a shareholder.

In some Nordic countries, the articles of association may set different rules. For example, in Denmark where public authorities may be empowered to appoint one or more members of the board.

In Austria, Denmark, Germany, Luxembourg, Norway and Sweden employees of companies of a certain size have the right to elect some members of the supervisory body. In Finland the articles of association may also provide employees with this right. Another example is in Austria where once the members of the supervisory board are elected, the works council may nominate one member for every two members of the supervisory board that have been elected by the shareholders. A variation exists in Norway where, for companies with more than 200 employees which require a supervisory body (known as a corporate assembly), 1/3rd of the members of the members of the supervisory body are elected by and from the employees.

In France the articles of association can allow the supervisory board to include salaried directors (administrateurs salariés) who are elected by the employees. Those so elected must hold shares in the company and an employment contract. Should the employees' shareholding reach 3%, then one or more salaried directors must be nominated by the general assembly.

In the Netherlands, works councils have the right to advise on the appointment of supervisory board members.

Under the "structure" regime, which is applicable to larger companies that meet certain thresholds regarding the size of the issued capital, they are required to establish a works council, and to have a supervisory board. Currently, the members of the supervisory board are not elected by the company shareholders but are self-elected. This system is under legislative review.

MANAGERS

It is generally the duty of the supervisory body, including both the unitary board and supervisory board where relevant, to appoint the members of the managerial body. This includes either the management board in the two-tier structure or a group of managers to whom the unitary board delegates authority in the one-tier system. In the Netherlands managers are elected by the shareholders, except where the "structure" regime applies.

AUDITORS

Auditors are appointed by the shareholders at general meetings.

In the Netherlands if the shareholders fail to give instructions, the supervisory board is entitled to appoint the auditors.

In Finland and Sweden, where companies appoint several auditors, one is appointed by the shareholders and the others appointed in another way in accordance with provisions within the articles of association.

Finally in Belgium, although the auditors are appointed by the shareholders, the procedure involves the works council with the larger companies. It is usual for auditors to be nominated by the board with agreement of a majority of the employees' representatives on the works council.

DIVIDENDS

Dividends are always approved by the shareholders upon recommendation of the board of directors or, where applicable, the management and supervisory boards.

IV. CHALLENGING DECISIONS IN COURT

Table 15

	Challenging decisions	Challenging directors or managers	Is there a minimum of shares required ?
Austria	Shareholders having objected to a decision during a meeting may challenge it. The court can annul the decision if the meeting was not convened properly or the shareholders were improperly excluded from voting. The court can annul the decision if the law or articles were violated	Shareholders have no right to challenge management or the members of the supervisory board in court. However they can vote to bring action against the members of the supervisory board for improper management which has led to losses. The supervisory board can and has to raise claims on behalf of the company also without a shareholder demand in its good judgement	Claims must be pursued either on the basis of a simple majority or upon demand by shareholders representing at least 10 % of the capital. If the claims arise out of facts constituted in the auditors' report, then a demand by shareholders representing at least 5% of the capital is sufficient.
Belgium	Decisions can be challenged by the shareholders meeting in case of irregularities that could have influenced the vote, violation of the rules governing meetings, ultra vires acts, exercise of suspended voting rights and lack of production of mandatory reports.	Individual shareholders have no right to challenge a decision of the board. The shareholders meeting can make a claim against the directors for improper management. The board members are jointly liable	In principle a simple majority. Nevertheless, minority shareholders representing at least 1% of the total votes can make a claim against members of the board of directors even if the discharge has been granted to the directors by the shareholders' meeting, provided however the claimants have not voted in favour of the discharge.
Denmark	A decision can be invalidated by the courts if it is unlawful or contrary to Company Act or the articles.	Shareholders can challenge directors and managers for improper management misconduct or negligence causing damages to the company.	No minimum
Finland	Decisions can be invalidated by the courts if they have not been taken in accordance with the rules of the meeting or contrary to Company Act or the articles	Directors and managers are liable towards the company. As a result actions are taken by the company itself. However shareholders can sue for damages if the Company Act and the articles of association have been violated.	Action may be brought by shareholders holding at least 10% of the total shares or holding at least the same number of shares as those having voted against the decision.
France	If the rules governing a meeting have not been respected, the meeting itself can be annulled. Decisions may be challenged if voting rights have been abused. Decisions taken on the grounds of abuse of proxy favouring some shareholder's own interest would be sanctioned with heavy fines and/or imprisonment	Shareholders can challenge directors for violation of the law and regulations applicable to limited liability companies, or of the articles of association and for improper management.	An individual action, possible only if a personal damage is established, is not subject to a number of shares. A company action would require a minimum of 5 % of the total share capital (or less if the capital exceeds 750.000 Euro)
Germany	Resolution can be declared void if : contrary to general principles of the Stock Corporations Act, the articles of association or public policy, the meeting was improperly convened, rules governing the meeting have not been respected. Decisions can be challenged especially if incomplete or false answers have been given to the shareholders. More generally, decisions can be challenged only by those having opposed them.	Generally shareholders have no right to challenge managers or directors. Claims for misconduct can only be asserted by the supervisory board. The stock corporation may only restrict or waive its rights in relation to the managers, if not objected to by 10 % of the shareholders	No minimum
Greece	Decisions can be invalidated by the court if they have not been taken in accordance with the rules of the meeting or contrary to Company Act or the articles	Every member of the board of directors is responsible to the company for any fault committed by him during the management of the company's affairs. The claim of the company against its directors arising from the management of the company's affairs shall be mandatorily asserted if the general meeting by an absolute majority so decides or after a request of the shareholders representing 1/3 of the paid up capital, provided that the loss incurred is not due to dole. In case of tortuous acts of the directors these claims can also be brought up by any shareholder of the company.	Generally 1/3 of the shares can request a court action.
Ireland	A decision can be challenged if it is "ultra vires" or illegal; if it has been taken in order to defraud the minority or if it has been adopted as an ordinary resolution when it should have required a special resolution.	In general no, unless the directors have been guilty of a breach of fiduciary duty.	No

	Challenging Decisions	Challenging directors or managers	Is there a minimum of shares required ?
Italy	Decisions can be challenged if they have been taken with procedural irregularities concerning the calling and the conduct of the meeting or for defects in the substance of the resolution	Yes, when the shareholder can allege a direct damage resulting from a director's misfeasance. In addition an action for inspection of the company by the trustee of a court can be brought if there is suspicion of serious breaches in the law by the management of the company.	No minimum
Luxembourg	Decisions can be challenged if they have been taken in breach of the rules governing meetings, with votes that had been suspended or there has been an abuse of majority (in this case the challengers must prove that the decision was taken to solely benefit the majority).	The directors are jointly liable towards the company. It is the company itself that can challenge the decisions of the board. The board is also liable for any damages caused by a violation of the law or articles even towards a person other than the company itself.	No minimum
Netherlands	Decisions can be challenged if they have been taken in breach of the rules governing meetings, if they are contrary to the principle of reasonableness and fairness or if they are contrary to the laws or articles of association	Shareholders can request an enquiry into the policy and conduct of the business by the Enterprises Division of the Court of Appeal. If misconduct is established, the shareholders can file an application to the said court to suspend or annul a decision, suspend or dismiss one or more managers or members of the supervisory board, etc.	For the application of an enquiry 10% of the capital is required, otherwise no limit
Norway	Decisions can be invalidated by the courts if they are contrary to Company Act or the articles of association	A shareholder is entitled to bring a claim for damages against the directors	10% of the shares needed to challenge directors
Portugal	Decisions can be invalidated by the court if they are contrary to company law or the articles of association	Shareholders are entitled to contest the misconduct of the directors or managers in court	No minimum
Spain	Whenever a resolution is against the law, the articles or the interests and rights of shareholders. Decision may be challenged for being "null and void" or voidable	Yes, they are liable towards the company as well as towards the shareholders	5% of the capital stock required to challenge decisions of the board. No threshold if there have been damages caused by violation of the law and articles of association.
Sweden	Decisions can be invalidated by the court if they are contrary to Company Act or the articles of association	Director and managers are liable towards the company. As a result actions are taken by the company itself. However shareholders can sue for damages if the Company Act and articles of association have been violated	Action for damages can be undertaken by individual shareholders. 10% of the share capital can sue the management on behalf of the company
Switzerland	The board and any shareholder may take legal action against the company to challenge resolutions which violate the law or the articles of association	In principle no. The only way to challenge a board resolution is to demonstrate that it is null and void.	No minimum
UK	Decisions can be challenged if they are ultra vires or illegal; where they amount to "fraud on the minority" by those controlling the company; where the contested action could only be taken by a special procedure (e.g. passing of a particular resolution) which was not followed; statutory claims for "unfairly prejudicial conduct"; statutory right to seek court review of certain actions approved by majority.	In general no, unless the directors have been guilty of a breach of fiduciary duty.	Certain statutory rights of objection require specific minimum shareholding, otherwise no ³⁴ .

In all countries it is possible to challenge the decisions taken at general meetings in the courts. Courts can generally invalidate such decisions if the correct procedures have not been observed during the meeting or the decisions taken by that meeting are in violation of the articles of association or company law or are deemed to be ultra vires.

The right to challenge directors or managers applies mainly to cases of mismanagement and misconduct. Individual shareholders are not always entitled to bring action against the members of the board either individually or collectively. For such action to take place, this would require a decision of the general assembly and in Austria, Belgium, Finland, Ireland, Luxembourg, Sweden and the UK, the case would be against the company itself.

³⁴ See the answer supplied under the respective table to question 4.1, 4.2 and 4.3

In Germany claims for damages as a result of misconduct of members of the company's management can only be brought by the supervisory board.

DISCLOSURE OF INFORMATION

Table 16

	Obligation to announce non commercially sensitive information	Obligation to announce commercially sensitive information
Austria	Yes There are rules on ad-hoc publication as well as on regular information to be provided (e.g. quarterly reports by listed companies).	A request for dispensation must be filed with the relevant regulatory body. Dispensation would be granted if non-disclosure would not be misleading for shareholders or the public
Belgium	Yes, without delay	Stock authorities can exempt the company from disclosing such information if detrimental to the company
Denmark	Yes, without delay	Exemptions may be granted, although this has never happened in practice
Finland	Yes, as soon as possible	Exemption can be granted by the FSA if the disclosure of the information is detrimental
France	Yes, as soon as possible	The company can decide, under its own responsibility to defer the disclosure of the information if it would prejudice the interest of the company
Germany	Yes, immediate and ad-hoc notice to the stock market authority, to the Federal Supervisory Authority and to the public	Dispensation can be granted by the relevant regulatory body upon application if disclosure of the information would prejudice the interest of the company
Greece	Yes, as soon as possible	No
Ireland	Yes, without delay	The exchange has the power to grant derogation
Italy	Yes, without delay	Regulatory authorities can exempt the company from disclosing such information if it has filed an application and if the non disclosing of such information would not be detrimental to shareholders
Luxembourg	Yes, as soon as possible	Stock authorities can exempt the company from disclosing such information if detrimental to the company
Netherlands	Yes, without delay	Dispensations can be obtained from the Stock Exchange
Norway	Yes, on the company's own initiative and as soon as possible	The company may pass on the information only to the general manager of the stock exchange (or another person authorised by him) imposing confidentiality restrictions on them. This should be requested in writing
Portugal	Yes, without delay	Dispensation can be granted by the relevant regulatory body upon application
Spain	Yes, as soon as possible	Dispensations can be obtained from the Stock Exchange regulatory body
Sweden	Yes, without delay	Dispensations can be obtained from the Stock Exchange regulatory body
Switzerland	Yes, without delay	Dispensations can be obtained from the Stock Exchange regulatory body
UK	Yes, without delay	The UK Listing Authority has the power to grant derogation

In the seventeen jurisdictions covered in this survey, there are varying obligations to make announcements of both commercially sensitive and non-commercially sensitive information.

For non-commercially sensitive information there is a requirement to announce in all jurisdictions but the promptness of the disclosure of the information varies. In some countries, such information has to be disclosed as soon as possible giving discretion to the company to decide the date of publication. In others, the same information has to be disclosed without delay, so resulting in that company not having any discretion of when to announce.

For commercially sensitive information, whilst the requirement is to announce the information, dispensation can be obtained from the stock exchanges or other relevant authorities, except in France, Greece and Norway. Further, in France, the company can decide what commercially sensitive information it does not wish to disclose.

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