

# CROSS-BORDER VOTING - HURDLES IN A UNIFIED EUROPE

Oliver Linde

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# Overview

- 1. Introduction**
- 2. The Importance of Votes**

**Drivers of effective cross-border voting:  
where are the potential hurdles?**

- 3. Equity Ownership Transparency**
- 4. Effective Document Distribution (outbound communication)**
- 5. Registration Procedures**
- 6. Voting Procedures**
- 7. Effective Retrieval of Votes (inbound communication)**

- 8. Some Conclusions**



## 2. The Importance of Votes

### Why care?

- › **Insight into the composition of the shareholder base**
- › **Solutions to the disintermediation of voting responsibility from beneficial owner through voting agent**
- › **Understanding of vote leverage by proxy advisors (via recommendations), key holders (via voting guidelines)**
- › **“Early warning” function on dissent, activism**
- › **Avoidance of coincidental majorities (low quorums)**
- › **Assurance of successful outcomes (resolution approval)**
- › **Advance notice of likely vote outcomes in advance of actual deadlines and the Meeting**

### 3. Equity Ownership Transparency

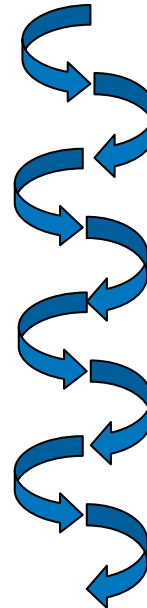
**Poor transparency of equity ownership makes it difficult to reach out to the correct vote decision makers in a targeted manner:**

- › **Bearer shares: who are the holders – fundamentally?**
- › **Registered shares: who is behind Street Names, nominees, stock lending accounts?**
- › **Aggregated positions: how can these be split down to more specific holdings?**
- › **Derivatives: who has lent shares out, who has voting authority?**
- › **All of the above: filing regimes give limited**
- › **Market intermediaries: who else is involved**

## 4. Document Distribution (outbound communication)

Long holding chains with multiple, sometimes inter-dependent market intermediaries provide opportunities for breakdowns in communication either way:

- › **Beneficial Owner**
- › **Investment Manager**
- › **Custodian**
- › **Sub-Custodian**
- › **Broadridge**
- › **Proxy Voting Provider**
- › **Anmeldestelle/Registrar**
- › **Company**



## Document Distribution (cont'd)

**This is exacerbated by the patchwork of information distribution systems behind cross-border equity ownership:**

- › **Different processes and rules for each European market**
- › **Paper-based versus electronic arrangements**
- › **High fluctuation in institutional back offices, and redundancies**
- › **German retail: issuers are at the mercy of depositary banks (opt-outs?)**
- › **Tangent: introduction of SEC notice and access rules regarding ADR proxy voting\***

› \* Securities Exchange Act of 1934, Rules 14a-3,1 14a-7,2 14a-16,3 14a-101,4 14b-1,5 14b-2,6 14c-2,7 and 14c-38

## 5. Registration Procedures

**Onerous registration procedures, share blocking (real or perceived), or other vote entitlement processes can contribute towards dampening the enthusiasm of especially non-domestic holders planning to vote:**

- › **Lack of knowledge of such procedures**
- › **Fear of restricted fungibility (misunderstandings regarding blocking etc., or poor trade execution)**
- › **De facto blocking by sub-custodians**
- › **Perception issues: registration requirements are not blocking requirements**
- › **Germany: no longer a blocked market, but myths persist**

## 6. Voting Procedures

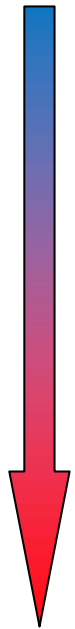
**There is no general standard regarding how Meeting documents are made accessible nor what language is included regarding the issuance of proxy votes:**

- › **English is a common denominator in many markets, and certainly in all European markets (Notice of Meeting, Invitation/Proxy Card)**
- › **The availability of some type of “proxy voting instructions” document is becoming more prevalent**

## Voting Procedures (cont'd)

Timing issues continue to arise from non-alignment of various deadlines (within and outside of the Company's sphere of influence) related to the voting process, including in Germany:

- › Publication Date for Annual Accounts - Company
- › Record Date (bearer shares) - Company
- › Registration Deadline (bearer shares) - Company
- › Date of Publication of Meeting Research - Proxy Advisors
- › Proxy Voting Deadline - Institution's Custodian
- › Proxy Voting Deadline - Institution's Proxy Voting Provider
- › Proxy Voting Deadline - Institution's Custodian
- › Proxy Voting Deadline - Company
- › Meeting Date - Company



## 7. Retrieval of Votes (inbound communication)

**For both registered as well as bearer shares (and ADRs), transparency over actual voted positions remains poor:**

- › **“Block instructions” behind street names are tough to crack**
- › **Vote reports from intermediaries ISS/RiskMetrics or Broadridge give few clues to underlying holder identities**
- › **Not even the institution voting has confirmation of validly accepted instructions**

## Retrieval of Votes (cont'd)

Proxy advisors are proving to be a two-edged sword (from an issuer's point of view), providing a degree of cross-border voting standardisation via electronic platforms on one hand, and strong influence over Meeting outcomes on the other:

- › Aggregators of vote instructions from institutional clients (example: Votex) - **GOOD!**
- › Influencers of voting outcomes through the issuance of Meeting-based research (examples: ISS/RiskMetrics, ECGS members, iVox) - **GOOD OR BAD?**
- › Flanked by a surge over the past years in institutions' own voting guidelines - **GOOD OR BAD?**

## 8. Some Conclusions - Germany

### Germany: improvements as of 2007

- › **UMAG** - introduction of a record date system (removal of deposit requirement for bearer shares)
- › **Internet voting, English-language proxy voting documents, early publication of Notice of Meeting** - issuers are becoming more “user-friendly”
- › **RibG** - introduces and improved filing regime which gives slightly better transparency of equity (and derivative) ownership, provides opportunity to investigate register entries

## Some Conclusions - Recommendations

**Every vote counts, and it is a messy job:**

- › **Talk to everyone (front and back offices)**
- › **Find pragmatic solutions to systemic bottlenecks or inefficiencies (outbound and inbound)**
- › **Distrust assurances that “the votes are in the mail”\***
- › **Work with the investor community to understand drivers of vote apathy**
  
- › **Make your Meeting advisors work for their money**
- › **See Manual “Shareholders’ Meetings in Europe”, 2008, published by DSW/ECGS and sponsored by Georgeson, for a pan-European comparison**
  
- › \* “Citi to Cut 52,000 More Jobs”, Financial Times, 18 November 2008

# Contact

**Oliver Linde**  
**Managing Director, Corporate Advisory**  
**68 Upper Thames Street**  
**London EC4V 3BJ**  
**United Kingdom**

**T + 44 (0) 20 7019 7060**  
**M + 44 (0) 791 941 1272**  
**E [oliver.linde@georgeson.com](mailto:oliver.linde@georgeson.com)**