Shareholder Representation and Proxy Voting in the European Union: A Comparative Study

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I. Introduction

Recent research has shown growing interest in comparative studies on corporate governance and on shareholders' representation and proxy voting abroad in particular.[1] There are several reasons for this. First, the investors' internationalization of capital investments and the raising of funds globally by companies lead institutional and associations of private investors to ask how their interests are protected abroad. Second, the EU Commission aims at simplifying the operating regulations for public limited companies in the EU and therefore commissioned a comparative study dealing, inter alia, with shareholders' representation at general meetings in the EU member states.[2] Third, from a microeconomic point of view, the question is whether and what specific features of a given corporate governance system might contribute to better performance of the firms. Fourth, discontent with domestic regulations or the search for improvements of the local voting system leads quite naturally to the question of how this is organized in other legislations.

Of course, not all of these perspectives focus on the same points and follow the same lines. The global institutional investor will, for instance, be interested in learning about all different kinds of corporate governance features such as voting rights of shareholders and voting by a proxy, disclosure of financial information, takeover and insider regulations, transferability of shares, protection of minority rights, and so on. However, this paper will be confined to one specific aspect only, the exercise of the shareholders' voting rights at the general meeting. The paper is intended as the first part of a larger research project, which, as currently planned, will consist of three parts. As the first part, this article will attempt to describe the regulatory provisions and institutional arrangements concerning proxy voting in the EU member states according to information available at this time. In a second step, experts from the various countries will be asked to review the respective reports and add their own remarks on the practical functioning, criticisms of their systems and possible improvements as seen from their domestic perspective. A symposium as the final part of the project will then bring these experts together and give the chance to discuss international aspects of shareholder voting and policy recommendations.

II. Shareholder Voting: Reasons, Problems, New Issues

Shareholder voting is an integral part of the governance structure of publicly held corporations. Requiring shareholder consent for any fundamental change in corporate policy is a safeguard for the residual risk-bearers of a corporation against ex post expropriation by the management. The right to vote assures the shareholders that the basic terms of their investment cannot be altered without their approval. In essence, then, voting rights are to stockholders what covenants are to bondholders: by limiting managerial discretion, they serve as a protection against moral hazard.[3] Unlike bondholders, however, shareholders receive most of the marginal costs and benefits of fundamental corporate decisions. Thus, shareholders as residual risk-bearers have the appropriate incentives to decide on those matters.[4] Also, vesting voting rights in shareholders is the only feasible method to implement major improvements of corporate policy that affect the terms of their investment. Because of the dispersion of equity holdings, renegotiations are difficult to organize.[5] Moreover, renegotiations would require unanimity, thus giving veto power to all shareholders, including those who hold only a small fraction of shares. By allowing a majority to implement fundamental changes of corporate policy, however, veto power can only be exerted if a shareholder holds a substantial proportion of the shares; thus, a vetoing shareholder is forced to internalize at least part of the impact of his decision on firm value.

Unfortunately, voting as a decision mechanism suffers from collective action problems. Widely dispersed shareholders are likely to be "rational-apathetic" when it comes to acquiring information on changes of corporate policy proposed by management. The cost of informing oneself in order to cast an intelligent vote on a management proposal will exceed the expected benefits, even if one assumes that that vote will be decisive. Therefore, voters who hold only a small fraction of shares will remain rationally ignorant. If the management controls the agenda, as it does in most legal systems, shareholders will give their approval, assuming that the management acts on superior knowledge.[6] Moreover, even if some shareholders have determined that a particular proposal will result in a loss in share value, "free-rider" problems will discourage formation of an opposition. Each shareholder may gain from opposition, but each will gain more if other shareholders bear the costs. Shareholders are not rewarded for contributing to decision making. Thus, while it is better for all if everyone contributes, it is better for everyone not to contribute, with the result that the activities (information gathering, casting votes) will not be undertaken. There is no cost-sharing mechanism that forces all the shareholders who gained from the efforts of forming an opposition to pay for these activities.[7]

As a result, changes of corporate policy might be adopted even though they are value-decreasing. Selling shares is not a viable alternative; informed traders would anticipate the approval of a value-decreasing change of corporate policy, and they would lower their willingness to pay accordingly. Thus, investors cannot escape the detrimental effects of their collective action problems by selling shares. True, if a buyer acquires large blocks of shares, he can change the course of action of a particular firm and dismiss the incumbent management. Voting rights, then, help to provide incentives to the management to work hard on behalf of the shareholders because a poorly performing firm may become a target for a takeover. But large equity holdings come at a cost - they reduce liquidity in the market and thereby limit the informational content of share trading.[8] This cost is ultimately borne by the shareholders themselves, because reductions in market liquidity make performance evaluation of the management more difficult.[9]

This short overview of the microeconomic literature on shareholder voting shows that the right and possibility to vote remains the decisive feature of stock ownership in companies, be they privately or widely held. Our comparative study will show how easy or difficult informed voting by shareholders is made in the various legal systems; to what extent cost-reducing new technologies may be used and whether they allow for informed voting. Another important aspect is how and in what forms voting by proxies is admitted: May proxies be given to the incumbent management? May banks with business links to a company vote their clients' shares in the company at the same time? What incentives do proxies have to act solely in the shareholders' interest, and how and by whom are they compensated?

A third question will address the role of institutional investors in corporate governance: Are fund managers obliged to vote the shares they hold in their portfolios?

A last question in this context concerns the level of ease or difficulty for foreign institutional and private investors to exercise their right to informed voting: How are they informed about time, place and agenda of the meeting? Are there institutions in place which provide for a voting service? Are there specific obstacles to voting by foreign shareholders?

In what follows, a first attempt will be made to address these questions.

III. Austria

1. General Remarks

Austria's Company Law of 1965 (Aktiengesetz)[10] is modeled after Germany's postwar Stock Corporation Act (Aktiengesetz) of 1965, and many provisions are similar, if not identical. The AGM of an Austrian Aktiengesellschaft is convoked by the management board (Vorstand). It sets the agenda for the meeting, but shareholders can add items to the agenda if they surmount a threshold of 5%. The Aktiengesetz requires companies to publish an announcement of the general meeting, including the agenda, at least 14 days before the meeting in the domestic official gazette. As most shares are bearer shares, most companies require that shareholders prove their right to attend the meeting and vote by depositing shares with a custodian (a notary public, a bank) several days before the meeting. This is the common form in practice of proving ownership.

Under the Austrian Stock Corporation Code there is no proxy statement similar to that in the U.S. with detailed information on, e.g., the management's remuneration or grounds for the management's motions of the meeting's resolutions. Shareholders are notified of meetings by the meeting announcement published in the domestic media (official gazette and financial press) and by the information sent to them by the management through the custodian banks. As to foreign investors, it is up to banks, investment managers, or global custodians to pass the information on to the actual shareholders.

2. *Personal or Proxy Voting*

Shareholders of Austrian companies may not vote by mail. If they wish to vote, they must either attend the meeting in person or give a proxy to a representative who will act in their place.

A proxy may be given either to a bank or to another person. As a practical matter, most smaller shareholders are represented by their custodian banks. Most banks, especially the country's three largest banks (Bank Austria, Creditanstalt-Bankverein and Giro Credit), offer custodian services including voting the depositors' shares.

3. *The Role of the Banks*

The Stock Corporation Code permits a custodian bank to obtain a standing proxy from the shareholder. The standing proxy is valid for a maximum of 15 months, and the shareholder may revoke it at any time. If the bank is not given specific instructions by its clients, it may vote at its discretion.

Banks, especially the three big banks, hold substantial and long-term equity stakes in many Austrian companies, exercise influence by sitting on these companies' supervisory boards, and act as lenders as well as smaller shareholders' proxies. As such, they wield considerable power and play an eminent role in Austrian corporate governance. The system very much resembles the German one, with the exception that the influence of the Austrian state seems to be stronger through its control of the country's two largest banks.

IV. Belgium

1. General Remarks

The legal rules concerning general meetings and voting in Belgian public companies (société anonyme) are part of the "Lois Coordennées sur les Sociétés" which themselves form a part of the Belgian Commercial Code. The AGM is convoked by the administrative board (conseil d'administration) or by shareholders who hold at least 20% of the company's share capital. The majority of shares in Belgium are bearer shares. To reach these shareholders, the company must publish a meeting notice in the "Moniteur Belge" (the official gazette) at least eight days before the meeting, and two meeting announcements in at least two (national and local) Belgian newspapers eight days apart, with the last notice published no later than eight days before the meeting. Companies with registered shareholders only may send meeting announcements to them instead of following these publishing requirements.
Where shares are held in bearer form, the company will require that its shareholders prove their right to attend the meeting and cast their votes by depositing their shares with the company itself or a designated financial institution, at least three days before the meeting. Bearer and registered shares remain blocked until the day after the meeting.

Companies do not send proxy material and annual reports directly to bearer shareholders. Also do banks not usually inform their clients of forthcoming meetings. Bearer shareholders must find out about meetings from a newspaper, the official gazette or, on request, from the custodian bank.

2. Voting by Mail, in Person or by Proxy

Belgian law leaves it to the companies and their by-laws to decide whether shareholders can vote by mail or in person. Voting by mail, introduced in 1991, is still very rare, as companies must provide for this voting technique in their articles of incorporation and very few seem to do so.[11] Some companies even forbid mail voting. The reason for this hesitation seems to be the uncertainties connected with the identification of the shareholders when voting by mail. A shareholder may also designate an agent to vote on his behalf, provided the company's by-laws do not forbid it. Proxy voting is relatively frequent.[12] If admitted, a proxy can be given to another shareholder, to a relative, a lawyer, or to the custodian bank. Local custodians often act as voting agents for non-Belgian investors. In any event, shareholders must notify the company at least three days before the meeting that they intend to vote in person or by a proxy.

V. Denmark

1. General Remarks

Danish public limited companies (aktieselskab) are regulated under the Public Limited Companies Act (Lov om aktieselskaber). The AGM is convoked by the administrative board (bestyrelse). It sets the agenda for the meeting, but any shareholder can add items to the agenda. Danish companies must publish the ordinary meeting agenda between four weeks and eight days before the meeting. Most shares of publicly traded companies are bearer shares. To contact these shareholders, companies publish the meeting announcement and the agenda in the official gazette and a national newspaper. As to registered shareholders, company law requires firms to send the meeting announcement and the annual accounts to them personally if they so wish. There are no specific requirements for reaching foreign owners of bearer shares.
In order to be admitted to the general meeting, shareholders must have announced their wish to participate a few days (not more than five) before the general meeting.

2. Personal or Proxy Voting

Shareholders of Danish companies may not vote by mail. If they wish to vote, they must attend the meeting either in person or give a proxy to a representative who will act in their place. Shareholders can also appoint as a proxy the meeting's chairman, who essentially casts a pro-management vote.[13] The by-laws of a company may require that the proxy also be a shareholder. Shareholders must sign a written power of attorney with the proxy's name and the duration of the proxy which cannot exceed one year. The proxy must notify the company, at least five days before the meeting, that he plans to attend. As to foreign investors, banks and other financial institutions will typically act as their proxies.

VI. Finland

1. General Remarks

The rules and regulations for shareholders' meetings and voting by shareholders in Finnish public limited companies are laid down in the Finnish Companies Act of 1978. A fundamental reform ist right now under way. Shareholders' meetings are convened by the board only. In Finland shares are issued in registered form. It is therefore up to the by-laws of the companies to lay down whether the company will announce a shareholders' meeting by sending a notice to all registered shareholders or by publishing a notice in the official gazette and a national newspaper. The law does not require an announcement in the foreign press. All matters on which the meeting is asked to decide have to be sufficiently specified in the announcement.

Registration with the company's share register or with the Central Share Register of Finland serves as proof of ownership.

2. Personal or Proxy Voting

Shareholders of Finnish companies may not vote by mail. If they wish to vote, they must either attend the meeting in person or give a proxy to a representative who will act in their place. If a shareholder plans to attend a general meeting or send a representative, he must inform the company of the articles of association so prescribe. A deadline for notification may be stated in the articles of association or in the meering notice. A nominee without a written authorisation may not act as a proxy for the shareholder.

Nominee-registered shares (nominee registration being available only to foreign investors) entitle neither the nominee nor the shareholder to attend or vote at an AGM.

VII. France

1. General Remarks

The rules of French company law on general meetings and shareholder voting in public limited companies (société anonyme) are part of the Law No. 66-537 of July 24, 1966, on commercial companies. The AGM is convened by the administrative board (conseil d'adminitration) or, where applicable, by the managing board (directoire).[14] It sets the agenda for the meeting. A company must publish its meeting agenda at least 30 days in advance, and send out proxy documents and notice of the date at least 15 days before the meeting dates. Notice is made by mail to registered shareholders and by public announcement in newspapers and the financial press. Meeting agendas and details of the proposals are published in the official gazette ("Bulletin des Annonces Légales Obligatoires" - BALO).

French company law allows companies to require that shareholders own their stock as long as five days before the meeting date. Holders of bearer shares may have to prove ownership by depositing their stock with an institution designated by the company so that it may be blocked from trading until after the meeting.

Many foreign institutions own French stock through a custodian or subcustodian, which might in turn hold the shares under a street, or nominee, name. A stockholder owning bearer shares who wishes to vote by proxy must inform the custodian institution, which in turn asks the company to issue the appropriate forms. These are sent to the custodian 15 days in advance of the meeting, and then forwarded to the beneficial owner for instructions.

Interestingly, French pension funds (fonds d'epargne retraite) are required by law to vote shares held by them. The relatively new corresponding legislation was recently upheld by France's constitutional court.[15]

2. Voting by Mail (Fax) or in Person

Voting by mail is permitted by the law. Shareholders may also vote by fax, as long as they also mail the official ballot to the company.

Shareholders may, of course, also attend the AGM in person unless the company refuses to admit a shareholder who holds less than ten shares.

Ballots are designed to make it simple for shareowners to give their proxies to the chairman to vote as he sees fit on their behalf. Shareholders wishing to have their votes cast according to instructions on management proposals are assumed to vote for a proposal unless they signify the box corresponding to the proposal number.

3. Voting by Proxy; "Mandats en Blanc"

The shareholders may also be represented by a proxy who must either be their spouse or another shareholder. The scope of the proxy is regulated in detail by a decree[16], and, in principle, is not valid for more than one shareholders' meeting.

The board of directors (or the managing board) generally benefits from the possibility by being empowered "en blanc" (that is, without indicating the name of the proxy holder). However, the proxy form sent by the company to the shareholder must inform of this use (Decree art. 134).In addition, all proxy forms sent by the company must be accompanied by certain documents to inform the shareholder (Decree art. 133, amended by Decree of Jan. 2, 1968). These "en blanc" powers must be used by the president of the AGM to cast a vote in favor of the adoption of resolution proposals approved by the board of directors (or the managing board) and against the adoption of all other resolution proposals.

VIII. Germany

1. General Remarks

Germany has a special statute on public limited companies or joint stock corporations (Aktiengesellschaften), the Aktiengesetz of 1965. The largest part of this statute is mandatory. According to this statute shareholders' meetings are convened either by the management board (Vorstand) or shareholders owning 5% or more of the company's share capital. The announcement has to be published one month before the meeting in the official gazette and, if the by-laws of the company provide for that, in other newspapers. Only in a case where all shareholders are known by their name the company may invite them by letter.

As most shares in public limited companies are held in bearer form, the by-laws of the company may provide that the right to participate and vote at the meeting can only be exercised if the shares have been deposited with a notary public, a depositary bank or the company itself not longer than ten days before the meeting.

Under the German Stock Corporation Code, there is no proxy statement similar to that in the U.S with detailed information on, e.g., management compensation and the like. However, the agenda and the items on which the meeting is asked to make a resolution are published together with the announcement of the meeting. Shareholders with 5% or more shares may add items to the agenda. The announcement, the agenda with the proposals of management, and counter motions of opposing shareholders are also transmitted to the shareholders through depositary banks and shareholders' associations.

2. Personal or Proxy Voting

Shareholders of German companies may not vote by mail or electronic devices. If they wish to vote, they must either attend the meeting in person or give a proxy to a representative who will act in their place. A proxy may be given to any person (shareholder or not), to a bank or a shareholders' association. As a practical matter, most smaller shareholders are represented by their custodian banks. Most banks offer custodian services including voting the depositors' shares. German institutional investors such as insurance companies or investment companies are not obliged to vote the shares they hold. Pension funds have not played a practical role so far.

3. The Role of the Banks

The Stock Corporation Code permits custodian banks to ask their clients for a standing proxy. If given, the standing proxy is valid for a maximum of 15 months, and the shareholder may revoke it at any time. If the bank is not given specific instructions by its clients, it may vote at its discretion in the best interest of the shareholder.

Banks, especially the big banks, hold substantial and long-term equity stakes in many large German firms, exercise influence through their subsidiary investment companies and by sitting on the supervisory boards of large firms, and act as lenders and providers of all kinds of financial services to these firms as well as proxies of smaller shareholders, As such, they wield considerable power and play an eminent role in German corporate governance. Plans to curb this power have been discussed and on the political agenda for years. The outcome of the most recent parliamentary motions and plans of the federal government is not yet clear.

IX. Greece

The rules on shareholders' meetings and voting in a Greek public limited company (anonymi etairia) are part of the Greek Stock Corporation Code. The general meeting ist convened by the administrative board or by shareholders who hold together more than 5% of the share capital. The corporation must notify shareholders 20 days before by publishing a notice in the official gazette, and in at least one financial and one daily newspaper. Shareholders who want to attend the general meeting must deposit their securities with the Consignation and Loan Fund, any bank located in Greece, or at the company at least five days preceding the meeting. Proxy voting is permitted as long as the proxy documents are deposited with a bank or at the company at least five days preceding the meeting.

X. Ireland

The law of public limited companies of the Republic of Ireland is laid down in several Companies Acts and in court rulings. Normally the administrative board convenes the shareholders' meeting once a year. The shareholders are notified of this and of the items on the agenda. Proxy voting is allowed; the proxies may be shareholders or not. The by-laws of a company may state that it be notified at least 48 hours in advance if a proxy rather than the shareholder will attend the meeting. Shareholders may also solicit other shareholders for proxies; in such a case management has to hand out the other shareholders' names and address from the company's register. The cost of such a proxy solicitation, however, must be borne by the shareholder rather than the company.

XI. Italy

1. General Remarks

In Italy, the rules applicable to companies and public limited companies in particular (società per azioni) are those primarily contained in the Civil Code of April 21, 1942, Book V. These rules are complemented by various special laws. According to the Civil Code, shares may be registered or bearer. However, for tax reasons, the royal Decree of Act. 25, 1941 requires that "shares of companies having their registered office in Italy must be registered". In order to attend a meeting, shareholders must be registered in the company book or deposit their shares at the company's registered office or a designated depositary bank. The deposit date must be at least five days before the meeting.

The meeting ist called by the board of directors. It must be called by a notice published in the official gazette at least 15 days prior to the date set for the meeting. The list of issues to be discussed must be published as well. Companies usually announce their AGM also in the national press.

2. Voting in Person or by Proxy

After depositing their shares, shareholders receive an admission ticket for the meeting entitling them to vote either in person or by sending a representative. Italy's recently privatized listed firms are granted the right to introduce voting by mail, but this is not applicable generally.

If the shareholder has decided to vote by proxy, the name of the person voting for him must be on the admission ticket. The proxy is valid for the respective meeting only. Proxies in blank are forbidden. The Civil Code forbids delegating voting power to employees or members of the company's board, its subsidiaries, outside auditors, or to representatives of any bank. This latter regulation is a reaction to the former system in which banks used to cast smaller shareholders' votes, mostly in favor of large blockholders or the companies' managements. Circumventions by giving employees of a bank proxies seem possible. For companies with a share capital of L 50 billion or more, a single proxy agent may represent a maximum of 200 shareholders. Proxy voting in Italy seems to be prohibitively costly if professional proxy voting agents, usually attorneys or consultants, are asked to act because they often charge hundreds of dollars to attend a meeting.[17]

XII. Luxembourg

Company law in Luxembourg is codified in the Act on Commercial Companies of Aug. 15, 1915, and the Civil Code. AGM's of public limited companies are convened by the administrative board. The date and the agenda of the meeting must be published in the official gazette ("Mémorial") and in a local newspaper. Registered shareholders have to be invited by letter eight days in advance. Each shareholder has the right to attend the meeting personally or be represented by a proxy. The former rule that no shareholder may vote more than 20% of all shares and more than two-fifths of the shares present at the meeting has since been repealed.

XIII. The Netherlands

1. General Remarks

The rules of Dutch law on stock corporations (naamloze vennootschap) form a part of the Dutch Civil Code (2nd book of the Burgerlijk Wetboek as of July 26, 1976).

General meetings of shareholders of a Dutch public limited company are normally convened by the management board. The company must notify its shareholders of the meeting at least 15 days in advance. Most shares of large publicly traded companies are in bearer form. To reach them, corporations must publish an announcement in a national newspaper. Holders of registered shares get proxy materials and annual reports directly from the company. The agenda is either published as well or available to the public at the company's head office.

Bearer shareholders must deposit their shares, mostly five days in advance, to prove their ownership.

2. Voting in Person or by Proxy

Dutch corporations do not permit shareholders to vote by mail or fax. Shareholders must either attend the meeting in person or send a proxy to vote there.
The by-laws of a company may limit the power to vote by proxy. However, a shareholder can in any event give a power of attorney with the right to cast his votes to a notary public, an attorney, or an public auditor. Dutch law also does not prohibit that members of the management board or the supervisory board to act as proxies on behalf of other shareholders, but there is not widespread use made of this.

If not forbidden by the by-laws of the company, banks, accountants, attorneys, or brokers can act as a proxy for foreign shareholders as well as Dutch investors. Some seem to have refused to vote against managements' positions, despite instructions, because of their concerns for business relationships with the company. VEB, the

Dutch Shareholders' Association, also often acts as a proxy for its members and other shareholders.[18]

XIV. Portugal

1. General Remarks

The rules of Portuguese law on general meetings and shareholder voting in public limited companies by shares (sociedade anónima) are basically provided for by articles 373° to 389° of the Code of Commercial companies (Código das Sociedades Comerciais), enacted by the Decree-Law n° 262/86, of September 2, 1986.

The general meeting (assembleia geral) is usually convened by the board of administration, but the law gives this right also to the company's supervisory organs and to shareholder's owning 5% or more of the company's share capital. The announcement has to be published at least one month before the meeting in the official gazette ("Diário da República") and in a newspaper of the company's domicile; however, the by-laws of the company may provide for other forms of announcement, and, in cases where there are only registered shares, may substitute private letters for the public announcement.

2. Voting in Person or by Proxy

The concrete form by which voting rights are exercised by shareholders may be determined by the company's by-laws, by a general meeting decision, or by the president of the general meeting himself. Concerning the *voting in person,* there is of course no legal restriction except for the fact that the company's by-laws may require shareholders to hold a minimum number of shares in order to attend and to vote in the general meeting. Concerning voting by mail (or similar electronic devices, e.g., by fax), Portuguese law omits any express regulation, and part of the doctrine considers it as inadmissible. Finally, the law expressly permits shareholders to be represented by a proxy under the following conditions.

The company's by-laws may not forbid a shareholder to vote by a representative who must be its spouse or close relative, another shareholder, or a member of the board of administration; and it may allow the representation in all other cases. Should the same person represent more than five shareholders, the scope of the proxy suffers several legal and mandatory restrictions: namely, it is not valid for more than one general meeting, it may be revoked by the shareholder at any time, and it must indicate precisely the name of the proxy holder.

XV. Spain

1. General Remarks

The Spanish rules on public limited companies (sociedad anónima) have been reformed and are now codified in the Stock Corporations Act (Ley de Sociedades Anónimas) of December 22, 1989. Moreover, some provisions contained in the Trade Registry Regulations of 1996 (Royal Decree 1784/1996), and in the Securities Market Act of July 28, 1988, and in its regulations are relevant concerning the shareholders meeting and the proxy system.

General meetings of shareholders are nomally convened by the administrative board and must be, together with the agenda, announced at least 15 days in advance in the official gazette and a daily newspaper. The by-laws of a company may require that bearer shareholders prove their right to attend the meeting by depositing their shares five days before the meeting. Registered shareholders prove their right through registration in the company's books. The by-laws may furthermore provide that a shareholder must hold shares at least equal to one one-thousandth of the company's share capital to have the right to attend the meeting.

2. Voting in Person or by Proxy

Shareholders may vote in person or by a proxy. Some companies on some occasions have paid a premium for the participation in general meetings in order to obtain a more substantial attendance of shareholders.[19] The proxy mustbe in written form and is valid for one single meeting only. It is revocable at any time. The by-laws may also require that the proxy be given only to another shareholder of the company.

The Spanish Stock Corporations Act contains detailed rules for voting by publicly solicited proxies, whether they are solicited by the company's directors, a depositary bank, or other persons or institutions. In such a case the proxy must include the agenda and the request for specified instructions on how to vote; and it must indicate in what sense the proxy will have to cast his vote if no specific instructions are given to him. These conditions do not apply to the so-called family representation.

Investment firms (*Sociedades y Agencias de valores*) acting as depositaries cannot receive proxies from the shareholders.

XVI. Sweden

1. General Remarks

Swedish limited liability companies (*aktiebolag*) are regulated under the Swedish Companies Act of 1975.

The Act contains provisions concerning four corporate entities: the general meeting of shareholders, the board of directors, the managing director, and the auditors. The general meeting of shareholders is the supreme governing body of the company. The board of directors, which is usually elected in its entirety by the general meeting, is responsible for the organization of the company and the management of its affairs. The managing director, who is appointed by the board of directors, is in charge of the day-to-day management.

The convening of the general meeting is the responsibility of the board of directors. Notice of the general meeting shall never be issued earlier than four weeks before the meeting and, unless a longer period is stated in the articles of association, not later than two weeks before the meeting. The meeting shall be convened pursuant to the articles of association. For public companies this normally means that the notice is advertised in one or more daily newspapers.

In the notice, the items to be dealt with at the meeting shall be clearly stated. This also includes items that the law states must be dealt with at the meeting. Special regulations apply to certain items. For example, where the meeting is to deal with an amendment of the articles of association, the notice shall contain the essential contents of the proposed amendment. Similar regulations apply when the share capital is to be increased through a new issue of shares, when there is a proposal to issue convertibles or warrants, and also when there are proposals concerning the reduction of share capital. Matters not included in the articles may also be presented at the general meeting at the request of a shareholder, provided that he requests this early enough to include the matter in the notice convening the meeting.

2. Personal or Proxy Voting

Shares in a Swedish company must always be issued in the name of a specific person, so-called registered shares. In all companies, the board of directors shall maintain a register of all shares and shareholders. Public companies can facilitate its administration of shares by joining the Securities Register Center System. Briefly, this entails that a separate institution ("VPC") is assigned the task of maintaining the company's share register as well as processing all transactions concerning its shares. Traditional manual processing of share certificates and other legal documents pertaining to shares are thereby replaced by a computerized system.

In a "VPC company", a nominee - a bank or securities institution that is specially authorized to administer shares on behalf of shareholders - may be entered in the share register instead of the shareholder for the shares managed by the nominee.

A person who acquires a share is not compelled to be registered in the share register. However, he may only participate in the general meeting if he is registered.

Shareholders may also exercise their rights at a general meeting through a representative in possession of a written and dated proxy. Such a proxy is not valid for more than one year from its issuance. A proxy may be given to any person, to a bank, or a shareholders' association.
Shareholders may not vote by mail or electronically.

The ownership structure of Swedish public companies is dominated by institutional investors. Today more than 80% of the market value of all shares listed on the Stockholm Exchange is in the hands of institutions. These institutions - insurance companies, pension funds, etc. - are under no legal obligation to vote their shares.

XVII. United Kingdom

1. General Remarks

There are several acts on company law in the U.K.: the Company Act 1985 and the supplementary Company Act 1989 for England and Scotland and the Companies Order of 1986 and the supplementary Companies Order of 1989 for Northern Ireland (the latter with roughly the same rules as those contained in the Companies Acts). The Isles (Man, Jersey, Guernsey) have separate laws on companies.
Shareholders' meetings are convened by the board of directors. Notices and proxy documents are sent out no later than 21 days before an annual meeting. Because shares in Britain are almost always registered, rather than bearer, companies mail annual reports, meeting notices, the list of agenda, and proxy forms directly to shareholders as they appear on the register. When an investor owns stock through a custodian or subcustodian, which might in turn hold the shares under a street or nominee name, the burden is on the shareholder's local agent to pass the meeting information to the owner. The nominee may, however, be obliged to make available to investors who wish it copies of the the annual report and accounts and to arrange for them to attend and vote at shareholders' meetings.[20]

There is no requirement in British company law to "block" or deposit shares with an institution or the company itself before and during the meeting.

2. *Voting in Person or by Proxy*

Every person who is entitled to attend and vote at a general meeting may appoint another person, whether a member or not, to attend and vote in his place as his proxy. Every notice calling a general meeting must contain a statement of members' rights to appoint proxies. Proxy voting by mail is permitted and widely practiced by institutional investors.

If a group of shareholders wishes to obtain the support of other members for their proposals, they can, of course, solicit proxy appointments from those members and use their votes at the meeting in addition to their own.

3. *Institutional Investors and Duty to Vote*

The voting behavior of institutional investors in the U.K. is critical because U.K. institutional investors currently account for approximately 60% of stock market capitalization. A further 16% is accounted for by foreign investors who are primarily financial institutions: U.S. investors alone are responsible for an estimated 8% of the market's value. Other investors include private shareholders who account for an estimated 20% of the market. But even a proportion of these private holdings are also under the management of U.K. fund managers through PEP's and other pooled vehicles.[21] Recent research using major companies' own analysis of shareholder proxy votes has shown that voting levels seldom exceed 40% even on contentious issues. This analysis shows also, however, that voting levels have increased over recent years.[22] That may have to do with the discussion in the U.K. about the duty of institutional investors and their fund managers to vote. So far, other than under the ERISA legislation in the U.S.,[23] there exists no statutory obligation or regulatory provision for fund managers to vote the shares in funds managed by them. But the fiduciary duty of fund and investment managers to vote has recently been increasingly stressed.[24]

XVIII. Concluding Remarks

This paper deals with shareholder voting in the countries forming the European Union. The focus of the comparative study is on four points:

- How easy or how difficult is informed voting made in the various legal systems?

- Is voting by proxies permitted, and if so, in what forms and under what restrictions?

- What duties do institutional investors have with respect to voting the shares they hold in their portfolios?

Not surprisingly, the study shows quite some similar regulations and patterns. But there are also very distinctive features and institutions, and, not astonishingly, the different stages of development of the various capital markets is revealed. It will be up to further research to refine this preliminary picture, and add findings on the practical functioning, criticisms of the various systems, and proposals for further developments.

[1] For comparative studies on corporate governance see most recently *Wymeersch*, Corporate Governance: Converging Patterns? (paper, Melbourne Law School 1997) and the survey in *Baums*, Corporate Governance Systems in Europe - Differences and Tendencies of Convergence (Crafoord Lecture Lund, Sweden 1996), Fn. 1, 2. - For comparative reports and studies on shareholder voting see *Lerman/Davis/Arnold*, Global Voting. Shareholder Decisions 1991-1992 (IRRC Washington 1993); *Abad*, Das Institut der Stimmrechtsvertretung im Aktienrecht - Ein europäischer Vergleich -. Jur.Diss. (Münster) 1995; *La Porta/Lopez-de-Silanes/Shleifer/Vishny*, Law and Finance (1996); *Davis/Lannoo*, Shareholder Voting in Europe (CEPS Center for European Policy Studies 1997); *Davis Global Advisors*, Corporate Governance: An International Comparison (Newton, M.A. 1996); *Investor Responsibility Research Center/IRRC* (ed.), Global Shareholder Service Proxy Voting Guide. Washington D.C. (various country reports); *International Society of Securities Administrators/ ISSA* (ed.), Handbook, 4 vols, 6. ed. Zurich 1996.

[2] *European Commission* (ed.), The Simplification of the Operating Regulations for Public Limited Companies in the European Union. Final Report. Luxembourg 1995.

[3] *Easterbrook/Fischel*, The Corporate Contract, in: L. Bebchuk (ed.), Corporate Law and Economic Analysis (1990), at p. 186.

[4] *Easterbrook/Fischel*, The Economic Structure of Corporate Law (1991), at p. 67, 69.

[5] *Bebchuk*, Limiting Contractual Freedom in Corporate Law: The Desirable Constraints on Charter Amendments, in: Harvard L.R. 102 (1989), 1820.

[6] *Easterbrook/Fischel*, op.cit. (Fn. 4), at p. 67.

[7] *Gordon*, Ties that Bond: Dual Class Common Stock and the Problem of Shareholder Choice, in: L. Bebchuk, op.cit. (Fn. 5).

[8] *Holmström/Tirole*, Market Liquidity and Performance Monitoring, in: Journal of Political Economy 101 (1993), 678.

[9] *Holmström/Tirole*, op.cit.

[10] Bundesgesetz vom 31. März 1965 über Aktiengesellschaften (Aktiengesetz 1965), BGBl. 98/1965.

[11] However, according to a survey done by the IRRC in 1994 the majority of companies in the sample allowed for voting by mail; cf. *IRRC*, Global Shareholder Service Proxy Voting Guide 1995; Belgium, at p. 6.

[12] Differently *ISSA*, op.cit. (Fn 1), Vol. 1, at p. BE 58: Proxy voting is rare in Belgium.

[13] Cf. *IRRC*, Global Shareholder Service Proxy Voting Guide 1995: Denmark, at. p. 3.

[14] On the different organizational forms of a "société à conseil d'administration" and a "société à directoire" cf. *Guyon*, Droit des Affaires, Vol. 1, 9. ed. 1996, at p. 320 ff., 361 ff.

[15] Cf. *Davis Global Advisors* (ed.), Global Proxy Watch, Vol. 1 No. 17 of May 2, 1997. The law dates from March 25, 1997. The respective implementing decree has, however, not yet been published.

[16] Decree of March 23, 1967.

[17] Cf. *Lerman*, in: IRRC (ed.), Global Shareholder Service Proxy Voting Guide: Italy (1996), at p. 4.

[18] According to *Myers*, in: IRRC (ed.), Global Shareholder Service Proxy Voting Guide 1995: The Netherlands (1994), at p. 4. - For a discussion of reform plans see *Gelauff/den Broeder*, Governance of stakeholder relationships (1996), at p. 70 f.

[19] *ISSA*, supra Fn.1, Vol. 4, at p. ES 39.

[20] For more details see *Davies*, in: Gower, Principles of Modern Company Law (6. ed. 1997), at p. 596.

[21] Cf. the study by *Mallin*, Voting: The Role of Institutional Investors in Corporate Governance (1995), at p. 21 ff.

[22] Manifest (ed.), The Committee on Corporate Governance ("The Hampel Committee"), 1996, at p. 7.

[23] ERISA: Employee Retirement Income Schemes Act. On the duty to vote under ERISA, cf. e.g., *Langbein/Wolk*, Pension and Employee Benefit Law, 2nd ed. 1995, at p. 765 ff.; *The Conference Board*, Report No. 971 "Voting Corporate Pension Fund Proxies" (1991).

[24] Cf. *Mallin*, op.cit., at p. 4 ff.; furthermore (critical) *Stapledon*, Institutional Shareholders and Corporate Governance (1996), at p. 85 ff. and own recommendations at p. 285 ff.