

STATEMENT

Investors' Advocates Call for Enhancements to Hybrid AGMs and Shareholder Representation Frameworks, Decrying Virtual-Only Meetings

1 February 2024 | After the 2023 AGM season and looking ahead to the 2024 season, BETTER FINANCE and its member organisations voice concerns about the erosion of shareholder rights. Inadequate rules for Virtual Annual General Meetings (AGMs) in some Member States highlight the need for broader engagement and representation frameworks for investors to truly benefit from digitalisation.

The AGMs Pillars and Impact of Covid-19

AGMs are the cornerstone of shareholder democracy and a vital component of corporate governance in listed companies. These meetings are the sole legally binding platform for shareholders – as co-owners – to voice their opinions on a company's policies and decisions, notably on ESG matters. At AGMs, individual investors have the unique opportunity to interact directly with their peers and with the management.

Back during the Covid-19 pandemic, BETTER FINANCE & DSW already voiced concerns about the erosion of shareholder rights. The emergency rules affected AGM practices across the EU, leading to closed-door meetings, exclusively virtual AGMs, or even restrictions allowing only proxy representation. These changes adversely affected shareholder engagement.¹

Virtual Shifts: Impact on EU Shareholder Rights

In the 2023 post-pandemic AGM season, many EU companies once again opted for virtual-only AGMs, invoking cost and convenience. This shift brought to light varying AGM practices, exposing structural issues affecting shareholder rights in many Member States, including limitations on voting, motions, and Q&A sessions.² Instances of mere broadcasting (without interacting capabilities), technical glitches, and forms of digital exclusions resulted in reduced attendance, eroding patterns of shareholder relations. Similar problems were noted in some hybrid AGMs, where the imbalance between in-person versus virtual participation arrangements exposed uneven rights among shareholders.

In the end, virtual AGMs frequently compromise open discussions, not only between shareholders and management but also among shareholders themselves, as well as media access. In addition, some issuers' attempts to undermine the relevance of the AGM by organising public relations events, such as 'open house' activities, conflict with the goal of fostering a European investor culture.

BETTER FINANCE criticises both the companies implementing virtual AGMs that undermine shareholder rights and the Member States whose legislative measures endorsed the erosion of the traditional AGM model, overlooking safeguards. Consequently, we advocate for actions to counter these trends and guarantee inclusive democratic Shareholders' Meeting's practices, both nationally and across borders.

¹ See BETTER FINANCE and DSW Study "The future of shareholder meetings", December 2020, <https://betterfinance.eu/publication/the-future-of-general-shareholder-meetings-a-better-finance-dsw-study-on-the-2020-virtual-shareholder-meetings-in-the-eu/>

² Ex: in Germany, the Act on Virtual General Meetings of Listed Companies (effective July 27, 2022) allows virtual-only AGMs, leading to reduced rights at 35% of 350 German general meetings during the 2023 AGM season. Similarly, in Italy, a draft law proposes virtual-only AGMs held behind closed doors, with proxy voting authority for company representatives.

See: <https://www.dsw-info.de/presse/pressemittelungen-2023/dsw-hv-report-2023/>

A Failing EU Engagement Framework

Investigations by BETTER FINANCE have uncovered a failing EU framework for cross-border shareholder engagement³: 52% of shareholders are unable to attend or vote at AGMs in another EU Member State, whilst 63% of the voters found the process difficult.⁴ This underscores the need for enhancing operational rules to streamline an intricate participation system. In essence, European investors require better cross-border access to AGM services and careful consideration of their voting preferences. Priority should be given to improving digital channels between investors and issuers rather than imposing AGM restrictions, which, under the pretext of virtualisation, have had adverse effects. Additionally, frameworks for transition investing neglect engagement metrics and fail to promote impact, hindering the full potential of funds and firms in the greening of their activities.⁵

Call for a Hybrid AGMs Model with Equal Rights, Regardless of Participation Method

BETTER FINANCE advocates for the EU-wide adoption of a balanced and inclusive hybrid AGM model. This model should seamlessly integrate the advantages of virtual attendance with the traditional in-person experience, guaranteeing equal rights and a transparent, secure framework for both attendees and issuers. This approach, favoured by most retail investors and all associations⁶, will enhance stakeholder involvement and shareholder accessibility, thereby democratising decision-making and catalysing sustainable governance efforts.

A successful hybrid model will leverage digital tools, enabling active, remote shareholder engagement (beyond mere broadcasting and with no limitations). On the virtual side, this notably includes provisions for real-time Q&A and live remote voting, coupled with streamlined processes for submitting motions. For on-site attendees, shareholders' rights must remain unaltered and inclusive, with no restrictions based on shareholding or threshold requirements. **Optimising proxy representation processes is also vital** to prevent any loss of votes and to ensure accurate representation of all shareholders' perspectives.

Urging Modern, Inclusive and Value-Aligned Representation for All Investors

Moreover, a framework that allows independent investor associations to represent both direct and indirect shareholders through delegated vote casting should be implemented, thereby advancing a broader representation that mirrors the stake of retail investors. Correspondingly, asset managers' engagement policies need to better acknowledge fundholders' sustainability preferences and ensure their effective integration within an extended SRD framework. Promoting robust stewardship duties must ensure that actions are informed and performed in line with clients' best interests obligation.

For BETTER FINANCE and its member organisations:

“Technological progress should fortify, not undermine, shareholder rights. It is time to embrace inclusive digitalisation, exemplified by a hybrid AGM model that cultivates authentic shareholder-company connections and upholds equal rights. Corporate governance and stewardship duties alike must leverage this digital transformation to facilitate voting and preference consideration for all investors, including via smartphones.”

To achieve this, we call on the EU Commission to seize the SRD II review, aiming to both endorse an efficient hybrid AGM model across the EU and bolster the rights and representation of all shareholders. For the imminent 2024 AGM season, we urge national and EU policymakers, along with issuers, to promptly address technological challenges and legal ambiguities associated with online events, while simultaneously preserving the integrity and significance of physical AGMs.

³ In 2022, less than half (48%) European Shareholders were able to attend (or cast a vote) at the AGM of a company located in another Member State, while 64% of them incurred intermediaries' fees in the process. See: <https://betterfinance.eu/publication/barriers-to-shareholder-engagement-srd-ii-revisited/>

⁴ Owning shares in a company based in another EU country is often through complex chains of intermediaries. Obtaining ultimate share-ownership proof—required to attend a general meeting, ask questions and/or vote—can be time-consuming, difficult and costly.

⁵ See BETTER FINANCE on “Transition investing”, <https://betterfinance.eu/publication/transition-investing-key-challenges-and-opportunities/>

⁶ Over 70% of retail investor associations (2023 data) and about 60% of individual investors (2020 data) favour hybrid AGMs, and more under safeguards. Physical AGMs-only are the second preferred option and lastly, virtual-only AGMs garner only 0 to 10% of preferences.