

# Barriers to Shareholders Engagement



**EF** EuroFinuse

The European Federation of Financial Services Users  
Fédération Européenne des Usagers des Services Financiers



## Report on Cross-Border Voting

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## I. Executive Summary

- The right to vote at a general meeting is a fundamental shareholder right. Individual shareholders should have the opportunity to exercise their voting rights and take responsibilities as owners of listed companies also across borders.
- Despite the adoption of the Shareholder Rights Directive and the best practice standards developed and endorsed by the industry, there are still many obstacles and barriers investors have to face which continue to make cross-border voting a challenge. A significant increase in cross-border voting by individual shareholders cannot be expected unless their factual discrimination resulting from the obstacles described in this report is abolished.
- On a cross-border basis the burdensome document distribution through a complicated custodian chain is considered as the main obstacle. An EU-wide obligation for custodians holding shares in nominee accounts to pass information about the date of the general meeting and the agenda to shareholders is absolutely necessary to improve the current situation.
- On a local basis issuers offer to bear the costs of domestic custodians for contacting their customers (the issuer's shareholders) and sending out voting materials. These offers are however, usually made to domestic custodians only. Non-resident shareholders are put at a disadvantage since they are directly charged for the costs.
- Despite the fact that the Shareholder Rights Directive has required Member States to abolish share blocking and to replace it with a record date, share blocking still continues to be practiced by sub-custodians when it comes to cross-border voting.
- Further obstacles are quorum requirements, temporary registration requirements or early cut-off dates of custodians.
- On European level efforts are underway to reduce obstacles on cross-border voting, notably the Securities Law Directive and the Market Standards for General Meetings.
- From the individual investor's perspective the following issues are key to ensure an efficient cross-border voting process:
  1. An EU-wide information platform for individual shareholders.
  2. A service free of charge for individual investors.
  3. A scaling back of custodian and sub-custodian involvement and a reduction of the chain of intermediaries.
  4. The opening of competition to non-bank providers for shareholder identification and General Meetings services shareholders.
- The voting process on a cross-border basis must become simple, effective and efficient. The easier and cheaper it is for investors to vote at their companies' general meetings, the higher the number of individual investors that will start exercising their voting rights on a cross-border basis.

## II. Introduction

A key issue with regard to accountability of issuers to their owners i.e. the shareholders is the voting right. Ownership has become more widely spread, also across borders in recent years which naturally should result in an increased demand for cross-border voting.<sup>1</sup>

The importance of cross-border vote execution and the urgent need for a solution was already highlighted in the Report of the High Level Group of Company Law Experts<sup>2</sup> and since then has been acknowledged by the EU Commission not least through the implementation of the Shareholder Rights Directive (SRD).<sup>3</sup> However, the 2008 financial crisis has revealed deficiencies in corporate governance and a lack of shareholder engagement. As a result recent EC papers stress the issue of the growing divide between “legal” ownership by financial intermediaries (investment funds, life insurers, etc. who hold the rights attached to ownership but behave mostly as “agency” owners) and “economic” ownership (EU citizens who bear the rewards but also the risks of ownership without the ownership rights, especially voting rights at general meetings).

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<sup>1</sup> E.g. in the UK, foreign investors owned 41.2% of the value of the UK stock market at the end of 2010, up from 30.7% in 1998, according to the Office for National Statistics (ONS). See [http://www.ons.gov.uk/ons/dcp171778\\_257476.pdf](http://www.ons.gov.uk/ons/dcp171778_257476.pdf) for details. In Sweden, the figure rose from 34.6% to 39.2% between 1998 and 2012, see [http://www.scb.se/Pages/TableAndChart\\_7659\\_7.aspx](http://www.scb.se/Pages/TableAndChart_7659_7.aspx)

[http://ec.europa.eu/internal\\_market/company/docs/modern/report\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/report_en.pdf)

<sup>3</sup> Directive 2007/36/EC

The main reason being is that despite the adoption of the SRD in 2007, and the best practice standards developed and endorsed by the industry in 2010<sup>4</sup>, there remain many obstacles and barriers for investors which continue to pose a challenge to cross-border voting: costs, logistics but also (national) regulation, and (national) legal requirements make it difficult for institutional but especially individual investors to exercise their responsibilities as owners and make use of their voting rights cross-border.

Individual shareholders should have an opportunity to exercise their voting rights and take their responsibilities as owners of listed companies also across borders. With regard to institutional investors, proxy voting platforms like ProxyEdge from Broadridge or Votex from ISS have already been established. However, private/individual investors in Europe in fact do not have access to such platforms as they are costly and designed for “professionals”. To further promote individual shareholders using their voice and to facilitate cross-border voting within the EU, EuroFinuse cooperates closely with its founding member Euroshareholders and set up a web-based cross-border proxy voting platform **EuroVote**<sup>5</sup>

This report aims at summarising the main obstacles in the cross-border voting process experienced by individual shareholders. It further gives an insight into the practical experience of the **EuroVote** pro-

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<sup>4</sup> See Market Standards for General Meetings of the Joint Working Group on General Meetings (JWGGM):[http://www.ebf-fbe.eu/index.php?page=market\\_standards](http://www.ebf-fbe.eu/index.php?page=market_standards)

<sup>5</sup> See also p. 6 for details and <http://www.euroshareholders.eu/eurovote/view>

ject during the Annual General Meeting (AGM) season 2012 from the individual shareholders perspective. The report concludes with recommendations to overcome obstacles in the cross-border voting process for individual shareholders.

### III. EuroVote

**EuroVote** supports individual shareholders in exercising their voting rights at general meetings of listed companies in Europe through the network of national EuroFinuse and Euroshareholders member associations<sup>6</sup> in the issuers' countries. The objective is to make proxy process easy. The EuroVote service is free of charge for individual shareholders.

The web-based **EuroVote** platform<sup>7</sup> provides a list of companies selected for the respective **EuroVote** general meeting season as well as links to the necessary proxy forms in English. Shareholders find straight-forward instructions on how to pass the proxy but also additional information on the technical procedure to pass a proxy for each Member State. The expertise of the local shareholder associations ensures a responsible execution of votes taking into account local market standards.

The **EuroVote** Voting Guidelines<sup>8</sup> which are reviewed annually are disclosed on the

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<http://eurofinuse.org/member/externalmembers/1>

<http://www.euroshareholders.eu/member/all>

<sup>7</sup> <http://www.euroshareholders.eu/eurovote/view>

<sup>8</sup> The **EuroVote** Voting Guidelines constitute a European-wide set of general guidelines – adopted by Euroshareholders - according to which proxy votes will be executed in the framework of **Eu-**

platform to provide a clear and transparent guidance to shareholders throughout Europe if they intend to transfer their voting rights without distinct instructions.

During 2012, **EuroVote** offered the possibility to exercise votes at general meetings of all EuroStoxx 50 companies' and other major European general meetings.<sup>9</sup>

### IV. Cross-border voting process

Despite the harmonisation resulting from the Shareholder Rights Directive, voting procedures still vary significantly from country to country, and also within one country. This is due to the different legal backgrounds, and the existence of different types of instruments i.e. bearer and registered shares in some countries.

#### 1. Bearer Shares

Bearer shares are shares for which the issuer maintains no record of ownership. Ownership in bearer shares is transferred by buying the shares. The custodians handle the purchase of the shares and know the identity of shareholders. The custodians are solely able to provide shareholders with their confirmation of share ownership for a general meeting.<sup>10</sup>

The following (simplified) process describes voting procedures related to **bearer shares** on a national basis:

1. The issuer publishes the invitation and/or the agenda of the general meeting

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**roVote**, if no specific voting instructions have been received from shareholders.

<sup>9</sup> See Appendix, Table 1

<sup>10</sup> See Appendix, Figure 1

and sends it to the depository banks for distribution to the shareholders.

2. The shareholder who holds the shares at the record date<sup>11</sup> receives information and voting material through the banking system. If the shareholder decides to vote he or she forwards a respective request to the bank in order to receive an admission ticket.

3. The shareholder votes at the general meeting or asks a representative like a shareholder association to represent him or her at the general meeting.

4. In case of a vote representation the shareholder instructs his or her bank to forward the admission ticket directly to the representative.

## 2. Registered Shares

Registered shareholders are entered in the share register of the issuer. This means that in general the issuer knows the identity of its shareholders and is able to contact them directly.

The following (simplified) process is applicable for both national and cross-border voting procedures related to **registered shares** provided the shares are registered under the name of the shareholder:

1. The issuer publishes an invitation and/or an agenda of the general meeting.

2. The issuer sends the invitation and a request for an admission ticket directly to all shareholders entered in the share register at a certain date. The date is ei-

ther set by local law or included in the company's bylaws.

3. The shareholder sends the request for an admission ticket back to the company and in return receives the admission ticket.

4. The shareholder votes at the general meeting or asks a representative like a shareholder association to represent him or her at the general meeting.

5. In case of a vote representation the shareholder instructs the issuer to send the admission ticket directly to the representative.

## V. Obstacles to cross-border voting

The report examines different ways to enhance shareholder engagement at general meetings. For that reason the approach is organised by dividing the process into three phases: before, during and after the meeting.

The **EuroVote** project revealed the following obstacles in 2012:

### 1. Obstacles prior to general meetings

**Burdensome document distribution:** On a cross-border basis, obstacles have been observed in the process of receiving the necessary information and documents in sufficient time before the general meeting as well as in processing the necessary documents back to the issuer. Despite the existence of electronic means the transfer is still slow and cumbersome.

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<sup>11</sup> The record date is set by local law



**Complex custodian chain:** Regardless of the type of instrument (bearer or registered shares) the information flow from and to the issuer on a cross-border basis is normally processed through the custodian chain. The reason for this is that the local custodians do not register shareholders in the share register of non-resident issuers without an explicit request from the shareholder. This is different to the *modus operandi* on a local basis and makes the whole operation more burdensome than necessary.

*Example: In Germany banks are registering shareholders in the respective local issuer's share register by default.*

As individual shareholders normally are not aware of the different procedure on a cross-border basis, and not informed by their banks they do not ask for the registration of their foreign shares. Therefore, registered shares on a cross-border basis are treated like bearer shares: They are generally being held under a nominee (custodian bank) and in omnibus accounts. The whole process is handled entirely through the banking system. This means that a chain of intermediaries executes the requests for information and voting materials. In a cross-border voting process this chain is even longer and involves several layers of financial intermediaries. Where institutional investors may rely on the services of proxy voting providers to make sure that they receive the information and documents relating to general meetings such an opportunity in general does not exist for individual shareholders.

**No “push service”:** Shareholders whose shares are held under a nominee and who want to exercise their right to vote on a cross-border basis need to **actively seek the information** they need for each general meeting they intend to attend.

This is due to a missing EU-wide obligation for custodians holding shares in nominee accounts, to pass the information about the date of the general meeting and the agenda or invitation to the shareholder. The “push service” as it is established on a local basis in many Member States is therefore converted into a “pull service” for shareholders who want to vote cross-border.<sup>12</sup> This is an obstacle both for general meetings and specifically extraordinary general meetings (EGMs) with reduced invitation deadlines.

During the AGM season 2012 we have experienced that local **custodians** in Germany **have rejected a specific request from shareholders** to receive an admission ticket for a general meeting abroad. The reasons for the rejection were the missing infrastructure for processing such a request (“no standardised process implemented for cross-border voting”) or the general absence of such an offer for individual shareholders.

**Fees:** A second major obstacle for individual shareholders with smaller holdings is that custodians are **charging significant fees** for a request to receive an admission

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<sup>12</sup> Proxy advisory services and voting platforms for institutional investors often provide such a push service. Individual investors, however, do not have access to such services/platforms as they are costly and designed for institutional investors with large portfolios.



ticket for a general meeting.<sup>13</sup> Such custodian fees are being charged irrespective of the number of shares a shareholder holds in a company. The fee structure mainly prevents private investors to vote their shares either themselves or give a proxy to a shareholder association to vote on their behalf.

On a national basis issuers offer to bear the costs of domestic custodians for contacting their customers (the issuer's shareholders). These offers are however, usually made to domestic custodians only.<sup>14</sup> Non-resident shareholders therefore are put at a disadvantage, since they are directly charged for these costs.

Even in the case that the local custodian offered the service to the shareholder at reasonable costs or free of charge several other problems regarding cross-border vote execution became apparent.

#### **Increased documentation requirements:**

Shareholders are required to **provide more information** to receive an admission ticket for a general meeting abroad than for a local general meeting. Requested information are – beside name and address – also date and place of birth as well as the shareholder's Identity Card number.

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<sup>13</sup> Besides the fees of the local custodian that may vary from 0 EUR to 34 EUR, Clearstream fees amounting to EUR 39.50 per admission ticket are normally charged to the shareholder, too. Euroclear charges at least 55 EUR for meeting notification and proxy voting. This charge is raised to 85 EUR for Denmark, Finland, Norway, Portugal and Sweden, see General Fee Brochure (September 1, 2012):

[https://www.euroclear.com/site/publishedFile/MA0007\\_tcm86-109030.pdf?action=dload](https://www.euroclear.com/site/publishedFile/MA0007_tcm86-109030.pdf?action=dload)

<sup>14</sup> A positive exception is EADS, which compensates its German custodians for the processing of the AGM materials and the voting/proxy forms to its German shareholders.

*Example: Austrian law additionally requires a deposit confirmation issued by the deposit bank which needs to include – among others – information about the shareholder through reference of a valid name and address, date of birth in case of physical persons. In case of legal persons if applicable, registry and company registration number under which the legal person is registered in its country of origin, the deposit number or if not available, an alternative identification.*

*French issuers can ask their shareholders and/or the bank as the nominee shareholder to disclose the identity of the (end-) investor interested in voting its shares at a French general meeting. This demand cannot and will not be followed by a German custodian bank holding the shares for a German end-investor since German law for the protection of personal data does not allow the disclosure of the shareholders' identity without an explicit prior approval.*

Despite the amount of information, which is not requested by the issuers but by the intermediaries namely **Clearstream** and **Euroclear**, data provided by the shareholder is processed only partly, incorrectly or not at all: We have had many cases where the name on the admission ticket was misspelled, incorrect or where the request was lost or ignored somewhere in the chain of intermediaries.

One reason for this is the lack of disclosed identities of the sub-/custodians involved which leads to a **lack of responsibility in the custodians' chain**: The shareholder only has a contract with the first custodian bank in the chain (his/her deposit bank) but not with all the other intermediaries

involved.<sup>15</sup> No one feels responsible since no one has an economic stake in the shares or has to fear any sanctions for not fulfilling their duties.

Another reason is the **missing standardisation and automation of the proxy voting process** for individual investors at custodian level. At the moment all information through the chain of intermediaries is processed manually which is more prone to errors and miscommunication between intermediaries in the chain.<sup>16</sup>

*Example: We have observed that French custodians generally do not process the internationally used specific secured SWIFT messages they receive from German custodians without even informing their German counterpart. This results in requests for admission tickets getting lost in the chain. There are also Austrian issuers that deliberately make use of the legal possibility<sup>17</sup> to exclude SWIFT messages for deposit confirmations which are required to attend a general meeting in Austria.<sup>18</sup>*

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<sup>15</sup> See also Zetsche in Shareholder Passivity, Cross-Border Voting and the Shareholder Rights Directive, p. 49: “One of the key hurdles that hampers effective cross-border voting in Europe lies in the passivity and unwillingness of the custodians and depository banks to be involved in the voting process. ... Further, nominees and custodians along the chain typically do not have an economic stake in the shares. Consequently, these intermediaries show no propensity to support the exercise of their customers’ voting rights, ...”

<sup>16</sup> The Market Standards on General Meetings of the JWGGM (see footnote 4) tackle these problems. However, until now there is no agreed timeline for the final implementation of the Standards in Europe.

<sup>17</sup> See Para 262 Sec 20 Austrian Stock Corporation Act

<sup>18</sup> Austria has implemented a new law to implement the SRD. This law includes a temporary provision which allows issuers not to accept SWIFT mes-

The existing complexity in the custodian chain does not only increase the risk of errors but may also lead to situations where a custodian is entitled to vote instead of a shareholder.

**Share blocking:** Another problem we encountered is share blocking i.e. the practice under which shares when voted on are temporarily blocked from trading. Despite the fact that the Shareholder Rights Directive requires Member States to abolish share blocking and to replace it by a record date,<sup>19</sup> share blocking is still being practiced by certain sub-/custodians when it comes to cross-border voting. For instance in Denmark listed shares are held under nominee in an omnibus account. To vote these shares, shareholders have to open a so-called segregated account in his or her name which may take – on a cross-border basis – up to ten weeks. As long as the shares are held in this segregated account normally until the day after the general meeting, they are practically blocked from voting because a request to sell these shares would also have to be processed through the whole custodian chain which again would take a certain time.

The long custodian chain worsens the situation as shareholders have to follow dif-

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sages for the deposit confirmation. The SWIFT format is the normal format for information exchange between banks. This means that the deposit confirmation cannot be provided by non-Austrian banks to the Austrian issuer via SWIFT but that other means like fax etc. have to be used.

<sup>19</sup> The record date allows custodians to record a shareholder’s holding at a certain date. Once the record date has passed, shareholders may trade their shares with no impact on voting rights at the upcoming general meeting.

ferent share blocking policies of various sub-custodians.

**Temporary registration requirement:**

Some markets (like Sweden and Finland) require shares to be re-registered in the name of the beneficial owner (the shareholder) prior to the general meeting. In both countries the most commonly listed shares are held in the book-entry system maintained by Euroclear Finland or Sweden. To be able to vote at a general meeting, the shareholder must disclose his or her ownership and ask the custodian to ensure that the shares are re-registered in his or her name just for the general meeting (temporary registration), because Finnish and Swedish shares are by default registered in the name of a nominee (either Euroclear or the respective custodian). After the general meeting the shares will be re-registered in the nominee name. A further obstacle is that the temporary registration must be done well in advance. Moreover, confidentiality concerns for shareholders wanting to maintain their privacy can arise.

**Timeliness of information:** A further obstacle for individual shareholders to attend and vote at a general meeting abroad relates to the timeliness of information.

If shareholders request an admission ticket the request has to reach the issuer before the deadline indicated in the invitation to the general meeting. In order to be able to submit instructions the last custodian in the chain has to receive the request in due time before the issuer's deadline. This however, can only be ensured by custodians setting their own deadline for receiving request for admis-

sion tickets (so-called cut-off date). As a result non-resident shareholders who want to vote cross-border have less time to ask for an admission ticket than a national shareholder.

**Cut-off dates** for shareholders vary depending on the market requirements, the issuer's by-laws, and the custodians involved in the chain. Cut-off deadlines are set by custodians and from our experience each custodian in the chain on average adds up to two working days on top of the deadline set by the previous custodian. The ultimate cut-off date is therefore the aggregate of the cut-off dates set by all the intermediaries in the chain. In case of a record date being set shortly before the general meeting (which is the case for example in France and in the UK) the cut-off date may be set several days before that respective record date. Consequently, requests for admission tickets are processed by the custodians at the latest stage possible.

The obstacles for shareholders are therefore twofold: On the one hand they need to inform their custodian well in advance that they intend to attend and vote at a general meeting without being able to rely on the information provided by the company in the invitation where only the record date is disclosed. Additionally, early cut-off dates may deprive individual shareholders of the chance to make an informed voting decision as some countries like e.g. Belgium require voting instructions being processed together with the request for an admission ticket. On the other hand admission tickets for general meetings are usually issued on receipt of the record of share ownership only. There-

fore shareholders hardly receive admission tickets on time if their proof of shareholding is received by the issuer too close to the deadline. It has to be taken into account that the distribution of admission tickets to individual shareholders normally is done by regular mail and not electronically.

**Quorum requirements**<sup>20</sup> that still exist in countries like Spain or Italy are another obstacle for individual shareholders who usually attend the general meeting in person or through a representative (unlike institutional investors who usually execute their votes through the chain of custodians). An adjournment of a general meeting due to an insufficient quorum level may prevent non-resident shareholders from attending the meeting: if shareholders have a long way to travel to attend the general meeting. But how should a non-resident shareholder know if and which quorum is required for each general meeting in the relevant Member State and which of the three or four different meetings being convened is the one that will actually take place?

**Comprehensiveness of documents** for the general meeting: To enable shareholders to make a well-balanced use of their voting right it is crucial that they understand the proposals in the agenda for the meeting. It is therefore essential that any information contained in the agenda is described in such a manner that shareholders familiar with local practices and non-resident shareholders are able to under-

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<sup>20</sup> Quorum is a requirement to have a minimum capital share or a minimum number of shareholders being present or represented at a general meeting.

stand it. This also refers to the availability of documentation in English which is not always the case (e.g. in Spain it is very rare).

*Example: We point to the common practice in the UK or in France to refer to local law/regulation when explaining certain agenda items, e.g. capital increases.<sup>21</sup> For non-resident shareholders such references need further explanation to be understood.*

**Minimum holding requirement:** Spanish companies may include in their by-laws a specific requirement for a minimum holding to attend their general meeting. However, among the EuroStoxx 50 companies we noticed such a requirement only in the case of one Spanish issuer<sup>22</sup>.

**Other obstacles:** Excessive documentation requested by issuers that deviates from market practice in Member States is also considered an obstacle from the shareholder's point of view.

*Example: Swedish companies may require shareholders in addition to the temporary registration to announce their intention to attend the general meeting directly to the issuer. Such a practice is unknown in most EU Member States and constitutes an additional burden for shareholders outside of Sweden. Proxy representatives may be required to present a Power of Attorney, the original of which needs to be sent to*

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<sup>21</sup> See as examples the convocations for the AGMs 2012 of National Grid (items 20 and 21 of the agenda) and GDF Suez (items 4 and 5 of the agenda).

<sup>22</sup> BBVA requires a minimum shareholding of 500 shares to attend the general meeting. However, the issuer allows for pooling of shareholdings through proxy representative.

*the company in advance of the general meeting.*

*In Belgium we discovered the additional condition requiring the deposit of an original paper form signed by the shareholder indicating his intention to participate in the general meeting and the number of shares for which he wants to vote. The shareholder is obliged to use the original paper form prepared by the issuer even if he wants to process this request through the intermediaries' chain.*

## 2. Obstacles during general meetings

**Lost or missing admission tickets** resulting from non-standardised processes within the custodian chain may result in severe difficulties for individual shareholders to exercise their votes at a general meeting abroad. Without an admission ticket or – in some markets like France or the UK – at least a proof of shareholding issued by the intermediaries, access to the general meeting is impossible.<sup>23</sup> Although we have experienced that a proof of shareholding can be provided by email or fax on the day of the general meeting, such a possibility is normally not considered a feasible option for the individual shareholder and often not accepted by the issuer.

### Access to the general meeting

In some Member States e.g. France and Luxembourg, issuers may restrict access to the general meeting after a certain period of time (e.g. 5 minutes or 30 minutes after

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<sup>23</sup> Although we note that in some markets, like the UK, access is granted by showing the shareholder's ID card. In cases of nominee registration, this procedure, however, does not permit access when the admission ticket has not reached the shareholder before the meeting.

the start of the general meeting). This is also considered an obstacle with regard to travel arrangements of individual shareholders. In case of a late arrival of a non-resident shareholder we experienced his non-admittance to the general meeting and his exclusion from exercising the vote.

### Language

Another obstacle for individual shareholders is that general meetings at all EuroStoxx 50 companies are only rarely translated into English.<sup>24</sup> Also documentation available at the general meeting is often only available in the local language.<sup>25</sup>

### Right to ask questions

In all Member States shareholders have the right to ask questions at a general meeting. However, the implementation of this right differs significantly across Member States.

In Germany shareholders have the right to ask as many questions as they want without restrictions. The time to speak at the general meeting may be restricted (normally 5-10 minutes per shareholder) whereas in France it is common practice that individual shareholders may not ask more than two to three questions. In Spain questions usually will only be accepted if presented beforehand in writing to the issuer or notary public at the general meeting.

### Proxy representation

Shareholders who need to leave the general meeting before the start of the voting

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<sup>24</sup> Finnish, Swedish, Dutch – and a few German and French – (Euro)Stoxx 50 issuers offer translation services into English at their general meetings.

<sup>25</sup> We point to the German and the French market as examples.

procedure may encounter difficulties in transferring their voting rights. In Italy, Finland and France for example, issuers do not provide for a voting representative during the meeting who accepts voting shares according to the shareholder's vote instructions. In these countries a Power of Attorney may be given to the chairman of the meeting but only without voting instructions (so-called "carte blanche" in France). This may however, not necessarily reflect the shareholders will. As a consequence, shareholders need to pass their voting power to the chairman who can be expected to vote in line with the board proposals. An alternative could be to find another shareholder to exercise the vote on his or her instructions. This might become extremely difficult at large and anonymous general meetings for non-resident shareholders.

### **Voting procedure**

In the UK voting results are not announced on a regular basis at the general meeting since the votes are being often collected at the exit of the general meeting. Such information is only accessible the day after the general meeting via the Internet (issuer's website and the official mechanism for the storage of regulated information in the UK).

### **3. Obstacles after general meetings**

One of the main obstacles referred to by institutional investors that vote their shares through voting platforms<sup>26</sup> is the difficulty to receive a vote confirmation through the custodian chain. The receipt of a vote confirmation for which a stand-

ardised procedure has not yet been set up within the custodian chain, is not a problem for individual shareholders that attend the general meeting in person or through a representative.

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<sup>26</sup> Like ProxyEdge from Broadridge



## VI. Conclusions and Recommendations

### Conclusions:

Shareholder voting plays an essential role in the corporate governance of European listed companies. At the same time, cross-border share ownership has increased significantly over the recent years. These circumstances underline the need for a system that facilitates cross-border voting. Any barriers to cross-border voting can be considered as having a negative impact on the voting turnout at general meetings. **The existing obstacles described in this report discourage and hinder non-resident individual shareholders to attend general meetings abroad**, be it in person or through a representative. This lack of shareholder engagement will continue until the factual discrimination of individual shareholders described in this report is abolished.

Although the SRD has already improved the cross-border voting process **national laws have largely failed to improve the operation of cross-border voting systems**. New rules and requirements have been created in Member States that have in some cases made proxy voting even more complicated and ineffective. With regard to the custodian chain there still exist different processes and rules for each European market. As a result, although shareholders are legally entitled to vote they may be prevented from doing so in practice.

**To ensure effective cross-border voting in the EU the rules, systems and procedures need to be harmonised across the Member States.** Particular attention needs to

be paid to the roles and responsibilities of intermediaries in this process. We therefore see the **need for action by the EU Commission** to review the Shareholder Rights Directive and eliminate existing obstacles to cross border voting.

The upcoming European **Securities Law Directive** (SLD) expected to be adopted in December 2012 is supposed to prescribe a common framework within issuers and all intermediaries along the chain, that must enable investors in the EU to exercise their rights attached to the securities issued in the EU irrespective of national borders. This includes access to and voting at general meetings, directly or by proxies.

We expect that the **Market Standards for General Meetings** that have already been endorsed in 2010 but still need to be adopted will improve the cross-border voting process. These Standards intend to define the duties of the intermediary chain to support the information exchange between the issuer and the shareholder in a cross-border transaction. They cover – among others – the communication of the meeting notice from the issuer to the shareholder through the intermediary chain via electronic means, and the communication of the proof of shareholding. In addition, the Standards cover the support for shareholders in exercising their participation and voting rights.

**The Standards are currently subject to a gap analysis to assess the market practices and the legal and regulatory requirements that currently exist in the different European countries.**



### **Recommendations:**

From the individual investor's perspective the following issues ensure an efficient cross-border voting:

1. An **EU-wide information platform for individual shareholders** with all EU listed companies and all materials necessary to attend and vote at general meetings. Such a platform will increase individual investors' active participation in general meetings especially cross-border. The creation of a **uniform EU Proxy Form** for the representation at General Meetings would be a positive step forward.

But facilitation of voting at general meetings is only the first step – a further step should be the establishment of a forum for all investors to exchange their views on certain companies, and to take common actions whenever important shareholder rights or positions are endangered. Such a meta-platform would significantly improve shareholder cooperation especially cross border. We strongly encourage the EU Commission to support these initiatives while reviewing the Shareholder Rights Directive.

2. A **service free of charge for individual investors**. Issuers are interested in increasing attendance rates at their general meetings. Intermediaries should therefore be able to assist shareholders in cross-border voting against compensation by the issuers for the associated costs. Ensuring minimal costs however requires standardised, streamlined and automated time schedules and procedures, a goal which is not at all easy to achieve and not less challenging.

3. A **scaling back of custodian and sub-custodian involvement** and a reduction of the chain of intermediaries would increase efficiency of the voting process.

The voting process on a cross-border basis must become simple, effective and efficient, specific problems related to cross-border voting should be solved urgently. The easier and cheaper it is for investors to vote at general meetings of their companies, the more they will exercise their voting rights on a cross-border basis.

4. The actual **opening of competition in shareholder identification and General Meetings Services**.

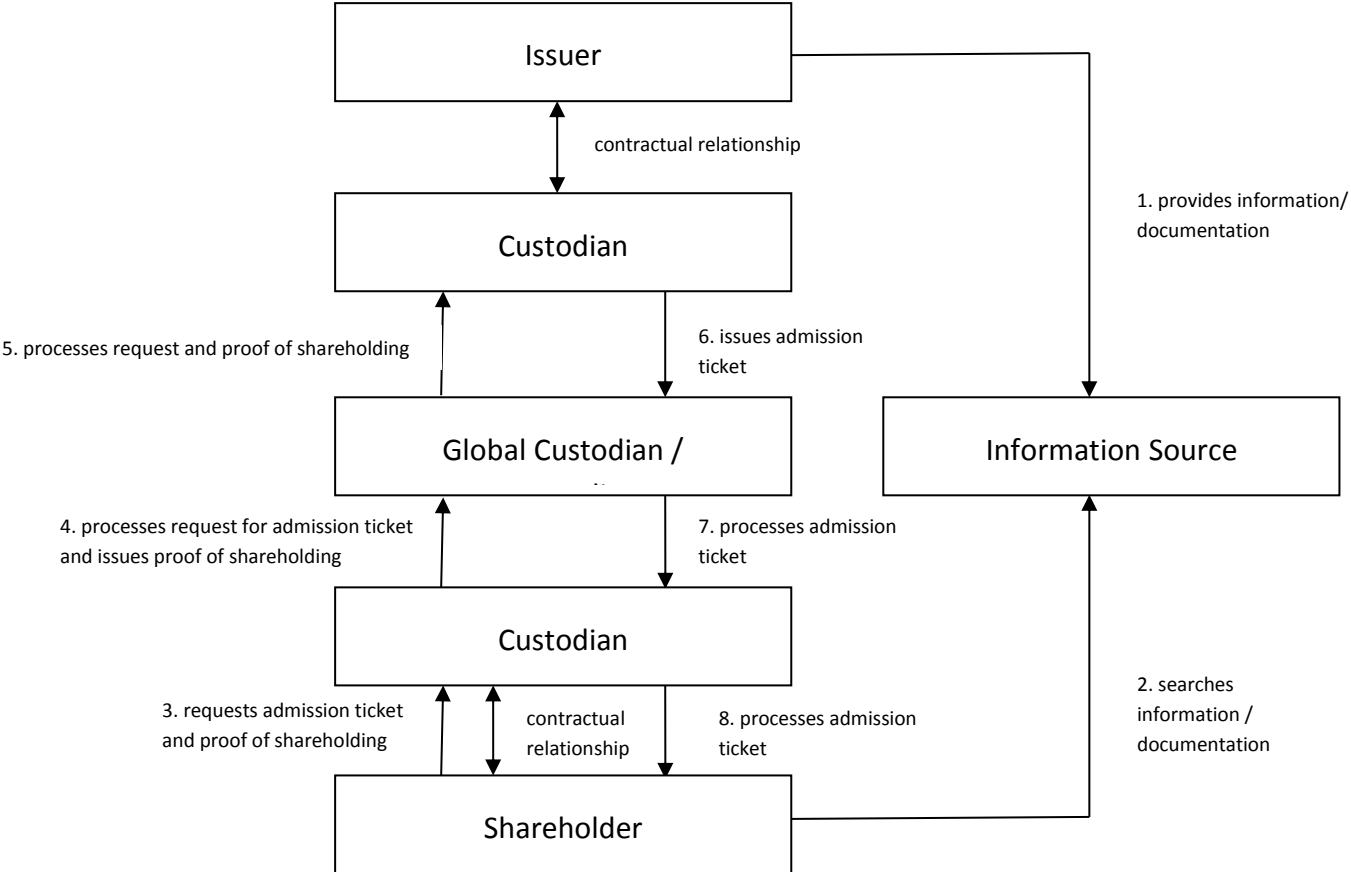
We believe opening up competition for these services to non-bank providers (and these are not "banking" or even financing services) would provide an incentive to existing providers to optimize their complicated and often ineffective processes and reduce their costs and prices. The EU Authorities should start by investigating and abolishing any barriers to entry.

## Appendix

Table 1: 2012 AGM representation offered through EuroVote

Company	AGM date
ADIDAS	10.05.2012
AHOLD	17.04.2012
AIR LIQUIDE	09.05.2012
AKZO NOBEL	23.04.2012
ALLIANZ	09.05.2012
ALSTOM	26.06.2012
ANGLO AMERICAN	19.04.2012
AB INBEV	25.04.2012
APRANGA	27.04.2012
ARCELORMITTAL	08.05.2012
ASMI	15.05.2012
ASTRAZENECA	26.04.2012
AXA	25.04.2012
BARCLAYS	27.04.2012
BASF	27.04.2012
BAT	26.04.2012
BAYER	27.04.2012
BG GRP	16.05.2012
BHP BILLITON P	20.10.2011
BMW	16.05.2012
BNP PARIBAS	23.05.2012
BP	12.04.2012
DAIMLER	04.04.2012
DELTA LLOYD	23.05.2012
DEUTSCHE BANK	31.05.2012
DEUTSCHE TELEKOM	24.05.2012
DSM	11.05.2012
E.ON	03.05.2012
ERSTE GROUP BANK	15.05.2012
FRANCE TELECOM	05.06.2012
GDF SUEZ	23.04.2012
GLAXOSMITHKLINE	03.05.2012
HEIDELBERG CEMENT	03.05.2012
HEINEKEN	19.04.2012
HENKEL	16.04.2012
HSBC	25.05.2012
IBERDROLA	22.06.2012
IMMOFINANZ	05.10.2012
ING GRP	14.05.2012
INVALIDA	30.04.2012
LUFTHANSA	08.05.2012
MERCATOR	30.03.2012
MERCK	20.04.2012
OMV	10.05.2012
REED ELSEVIER	24.04.2012
RIO TINTO	19.04.2012
SAINT GOBAIN	07.06.2012
SANOFI-AVENTIS	04.05.2012
SAP AG	23.05.2012
SAVA	24.05.2012
SHELL	22.05.2012
SNS REAAL	25.04.2012
STANDARD CHART.	09.05.2012
TEO	24.04.2012
TESCO	29.06.2012
TOTAL	11.05.2012
UNILEVER	09.05.2012
VIG GROUP	04.05.2012
VODAFONE GRP	24.07.2012
WIENERBERGER	11.05.2012
ŽEMAITIJOS PIENAS	27.04.2012

Figure: Voting process for non-resident shareholders holding bearer shares



## About EuroFinuse

The European Federation of Financial Services Users (“EuroFinuse”) is represented in all 27 EU Members States and counts more than fifty national and international member and sub-member organisations. In turn those count about four million individual members. EuroFinuse acts as an independent financial expertise centre to the direct benefit of the European financial services users (end-users, consumers, retail investors, etc.) and other stakeholders of the European financial services who are independent from the financial industry.

Since its creation in 2009 EuroFinuse’s<sup>27</sup> main objective has been to restore financial services consumers’ confidence. In order to do so EuroFinuse focuses on four key priorities<sup>28</sup>:

### Better protection of financial services users through

- fair, clear and comparable information;
- unbiased and competent advice;
- a badly needed EU-wide collective redress scheme;
- the elimination of tax discrimination against EU individual savers and investors; and
- consistency of financial consumer protection rules and enforcement whatever the financial product, service or distribution channel.

## Better transparency, liquidity, integrity, and efficiency of capital markets

The crisis has highlighted the failures of capital markets, especially but not only in the fixed income area. The “reintermediation” of capital markets by the banks should be limited and capital markets must serve primarily the investors and issuers’ interests, and not the interests of the the financial institutions.

### More responsible and competitive lending

The crisis has demonstrated that banks should get back to their core business of collecting deposits and lending to the real economy, with real competition, and without using central banks’, depositors’ and taxpayers’ money to fund high margin but risky investment and trading activities.

### Better governance of financial supervision

The European Authorities should put an end to the imbalance of representation of interests between the providers (the financial industries) and the financial services users and other independent non-industry stakeholders.

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<sup>27</sup> Previously EuroInvestors

<sup>28</sup> See also

<http://eurofinuse.org/about/downloadfile/55>

## Glossary

Definitions hereunder are for the purpose of this report only and are not necessarily meant to have any legal connotations.

**Beneficial Owner:** Shareholder or other natural or legal person who holds shares for its own account.

**Book-entry system:** A system that permits the electronic transfer of securities without a physical movement of share certificates in paper form.

**Custodian:** An organisation which holds and safeguards assets for a third party.

**Custodian Chain:** Sequence of custodian banks connecting the issuer (or his central securities depository) with the beneficial owner and vice versa in respect of securities held by book entry in an account.

**General Meeting:** Shareholders meeting as meant in the Shareholders Rights Directive 2007/36/EC

**Institutional Investor:** An organisation devoted to holding or managing assets, either for clients or for itself.

**Intermediary:** Financial institution that provides and maintains securities accounts.

**Invitation:** Operational notice of the general meeting

**Issuer:** Company issuing securities

**Nominee:** A person or firm into whose name securities are transferred in order to facilitate transactions, while leaving the customer as the beneficial owner.

**Omnibus Account:** An account in which money or securities for more than one beneficial owner are commingled by a custodian or a sub-custodian.

**Proxy Voting:** Voting on behalf of the beneficial owner.

**Proxy Voting Platform:** Electronic platform that allows (institutional) investors to cast their votes.

**Record date:** The record date allows custodians to record a shareholder's holding at a certain date. Once the record date has passed, shareholders may trade their shares with no impact on voting rights at the upcoming general meeting..

**Registrar:** An institution/organisation responsible for keeping records of shareholders.

**Segregated Account:** An account which holds customers funds separately from custodian funds.

**Share Blocking:** Restricting the rights of a beneficial owner to sell or otherwise transfer its shares which they are not subject to at other times.

**Share Register:** An official list of the shareholders in a company, held at the company's main office or at a registrar.

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