

Promoting the evolution of the AGM

Harmonizing investor interests while fostering the development of the AGM

Table of Contents

- Introduction..... 3
 - 1 Virtual General Meeting in Germany 4
 - 2 ISS Benchmark Voting Policy 6
- Contact 9



Introduction

Deutsches Aktieninstitut advocates for the share – and for much else: as the voice of the capital market, we have been representing the interests of listed companies and other important actors on the capital market since 1953. With over 200 members, we represent more than 90 percent of the market capitalization of German companies. In addition, we provide the secretariat for the Commission of the German Corporate Governance Code (“Regierungskommission Deutscher Corporate Governance Kodex”).

This position paper was written as part of our AGM working group, which consists exclusively of German listed companies.

This paper comments on the proposed changes to ISS's Benchmark Policy. It is addressed not only to ISS, but more generally, to all investors in German stock corporations.

In the first section, we explain the virtual annual general meeting (AGM) in Germany. Introduced by the German legislator in 2022, the virtual AGM is unique in its design and guarantees even more shareholder rights than the physical AGM.

In the second section, we address the proposed changes to ISS's voting recommendations. We strongly oppose these changes, as they clearly contradict the concept of the German virtual AGM as intended and enacted by the German legislator. These changes hinder the further development and improvement of the AGM in Germany and do not reflect the preferences of many investors in German stock corporations.

1 Virtual General Meeting in Germany

The virtual AGM in Germany faced a rocky start. The virtual AGM format, which became necessary during the COVID-19 pandemic, drew strong criticism from shareholders and shareholder representatives. After the pandemic, the legislator established the virtual-only AGM format in 2022 as a permanent and equivalent alternative to the physical AGM. The legislator responded to the criticism of the virtual format during the pandemic by introducing a revised concept of the virtual AGM, which closely mirrors the traditional format of the physical AGM and guarantees equal shareholder rights in the virtual meeting. The legislator emphasized the equivalence of the virtual AGM and, in some cases, even granted shareholders more rights than the physical format. The new virtual AGM has been available and tested in practice for two years so far but has often been unfairly criticized due to the weaknesses of the previous format.

In practice, the new virtual AGM works exactly like the physical meeting. The detailed mandatory legal framework leaves almost no leeway for deviation from the legal set-up for physical AGMs.¹ Speeches, questions, follow-up questions and motions can be introduced live, just like at the physical meeting. Even the floor of a physical AGM is replicated in the digital format. Appropriate speaking time limits and other restrictions are the same as at the physical AGM. Of course, shareholders in Germany can also exercise their voting rights before and during the AGM. In addition to the rights available at the physical AGM, shareholders can submit statements before the AGM, which the company must then make available to other shareholders via its website. Furthermore, the same interaction is possible between shareholders and the management just as at physical AGMs. The criticism and demand for a livelier debate at AGMs in Germany exists in both formats. The restraint stems from the overly strict legal consequences of even minor violations of shareholders' right to information, which can result in the contestation and invalidation of the resolutions passed by the shareholders.

In Germany all shareholder rights are guaranteed by law.

One of the main advantages of the virtual AGM is its easy accessibility, as shareholders can attend and exercise their rights virtually from any location without having to travel to the meeting site. This clearly strengthens shareholder

¹ The law also includes the option that shareholders must submit their questions in advance and all further questions are then asked at the AGM. In conjunction with this option, shareholders' rights are fully guaranteed by law. However, with very few exceptions, this option does not play a significant role in practice.

rights and is therefore beneficial for shareholders, while also providing a modern, sustainable and cost-efficient way for the company to engage with its shareholders. In light of the increasingly international shareholder base of German companies, the simplified participation becomes even more important.



Simplified and cost-effective participation strengthens shareholder rights.

The number of shareholders attending the AGM is decreasing, regardless of the format. The virtual format can attract younger generations of shareholders in the long term, making it a future-oriented approach.



The virtual AGM is timely and future-oriented.

In summary, all shareholder rights are guaranteed in exactly the same way as at a physical AGM, and the virtual AGM offers clear advantages over the physical AGM. It is therefore not surprising that a slowly growing proportion of shareholders prefer the virtual AGM.



The number of supporters of a virtual AGM is growing.

We would also like to point out that in Germany the hybrid AGM, the legal basis of which was established in 2009 already, involves particular legal risks and is therefore not used by companies with a large shareholder base. Avoiding such legal risks is also in the interest of shareholders.

2 ISS Benchmark Voting Policy

We welcome the opportunity to comment on the proposed changes to the ISS Benchmark Voting Policy². The voting recommendations include two new criteria for virtual AGMs:

- Assurance that virtual-only meetings will only be convened in the case of extraordinary circumstances that necessitate restrictions on physical attendance;
- The use of past authorizations to hold virtual-only meetings and the accompanying rationale for doing so;

We take a very critical view of both criteria.

Especially, the new requirement for “assurance” means that the virtual AGM would only be allowed as an emergency measure during pandemic times or similar crisis situations. This ignores the fact that the German Stock Corporation Act ensures the exercise of shareholder rights in virtual AGMs to the same extent as in physical AGMs. This criterion also directly contradicts the existing criteria, which obviously assumes that a virtual general meeting can also be held under normal circumstances.

While we understand that ISS aims to address criticism from certain investors, it is important to remember that there are many supporters of virtual AGM among investors. Even the survey³ conducted by ISS shows that the required assurance is only supported by the two groups who are most negative on the virtual AGM. This means that at least 70 percent of investors will not support the introduction of this assurance. Additionally, there are investors who did not respond to this question, likely because they are not willing to indirectly bear the increased costs of a physical AGM.

Despite ISS's critical stance two years ago, investors overwhelmingly approved the last authorizations for the virtual AGM. An average of 87% of DAX40 shareholders voted in favor of an authorization in the Articles of Association that allows virtual AGMs to be held.

² Proposed ISS Benchmark Policy Changes for 2025 available at <https://www.issgovernance.com/policy-gateway/2025-benchmark-policy-consultation/>.

³ 2024 ISS Global Benchmark Policy Survey - Summary of Results available at <https://www.issgovernance.com/file/policy/active/Policy-Survey-Summary-2024.pdf>.

Beyond that, both new criteria are in any case too one-sided and do not accommodate the various wishes of investors. According to the survey 2024, the number of strong supporters of the virtual AGM (10.83% of investors) is now twice as high as the number of investors who strongly oppose it (5.73% of investors). If you include the investors who think it is best that the board decides freely to those that strongly support the virtual AGM, you end up with 22.93% of investors.

Proposed criteria do not accommodate the interests of different investors.

Based on the surveys conducted by ISS in recent years, the criteria should be relaxed rather than made stricter. According to the ISS surveys, the number of investors who strictly reject a virtual general meeting has decreased significantly, dropping from 37% to 5.73% since 2022⁴.

The trend in the ISS surveys suggests less strict rather than stricter criteria.

The new criteria seem to establish a one-size-fits-all approach across Continental Europe and do not take into account German specifics, including the German legislation on virtual-only AGMs. After intensive discussions and considerations of the concerns and interests of institutional investors and shareholder protection associations, the detailed and largely mandatory new concept of the virtual AGM guarantees and even extends all shareholder rights. Due to the equivalence of the formats, the legislator deliberately opted for a time-limited provision in the Articles of Association of the company that cannot be limited to specific purposes or situations. The proposed assurance (that virtual-only meetings will only be convened in the case of extraordinary circumstances that necessitate restrictions on physical attendance) would be a questionable circumvention, as such an assurance may not be included in the Articles of Association under German law. For this reason, your voting recommendations should not be based on any particular situation, but on the guarantee of shareholder rights.

The decisive factor is not just any situation, but the safeguarding of shareholder rights.

⁴ 2022 ISS Global Benchmark Policy Survey - Summary of Results available at <https://www.issgovernance.com/file/policy/2022/2022-ISS-Benchmark-Survey-Summary.pdf>.

Furthermore, the changes to the voting recommendations should also consider sustainability aspects in the interests of investors. As many thousands of shareholders sometimes attend a single AGM in Germany, the format is also a question of sustainability. A virtual AGM helps reduce CO2 emissions by minimizing company logistics and shareholders' travel. Not all investors are aware of this. We would very much welcome it if ISS could also provide information on sustainability aspects and the costs of a physical AGM in Germany in its future surveys. A number of international institutional investors consider cost of the AGM as money spent from shareholders and are thus cost conscious.



Promoting sustainability and reduction of costs should also be taken into account for investors.

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