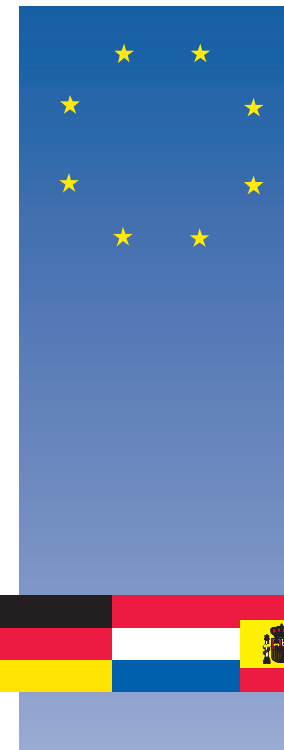




# EUROSHAREHOLDERS CORPORATE GOVERNANCE GUIDELINES 2000



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## Members of Euroshareholders

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<b>Denmark</b>	DSA Danish Shareholders Association	0045 45821591
<b>France</b>	ADAM Association pour la Défense des Actionnaires	0033 2 37367056
<b>Germany</b>	DSW Deutsche Schutzvereinigung für Wertpapierbesitz	0049 211 669702
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## Recommendations

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- 1 A company should aim primarily at maximising shareholder value in the long term. Companies should clearly state (in writing) their financial objectives as well as their strategy, and should include these in the annual report.
- 2 Major decisions which have a fundamental effect upon the nature, size, structure and risk profile of the company, and decisions which have significant consequences for the position of the shareholder within the corporation, should be subject to shareholders' approval or should be decided by the AGM.
- 3 Anti-takeover defences or other measures which restrict the influence of shareholders should be avoided.
- 4a The process of mergers and takeovers should be regulated and compliance with these regulations should be supervised.
- 4b If a shareholder's stake in the company passes a certain threshold, that shareholder should be obliged to make an offer for the remaining shares under reasonable conditions, i.e. at least the price that was paid for the control of the company.
- 5 Companies should immediately disclose information which can influence the share price, as well as information about those shareholders who pass (upwards or downwards) 5% thresholds. There should be serious penalties in case of non-compliance.
- 6 Auditors have to be independent and should be elected by the general meeting.
- 7 Shareholders should be able to place items on the agenda of the AGM.
- 8 In addition to the regular channels, electronic means should be used by a company to provide shareholders with price-sensitive information.
- 9 Shareholders shall have the right to elect members of at least one board and shall also be able to file a resolution for dismissal. Prior to the election, shareholders should be able to suggest candidate members to the board.
- 10a The membership of non-executives on the board, whether in a one-tier or a two-tier system, should be limited to a maximum period of twelve years.
- 10b No more than one non-executive board member should have served as an executive board member of the company.

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# Euroshareholders Corporate Governance Guidelines 2000

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## What is Euroshareholders?

The European Shareholders Group, “Euroshareholders”, is the confederation of European shareholders associations. It was founded in 1990 and is based in Brussels. At present, eight national shareholders associations are members of Euroshareholders.

The organisation’s overall task is to represent the interests of individual shareholders in the European Union.

The main objectives of Euroshareholders are:

- to support harmonisation at the EU level on issues such as minority shareholder protection, transparency of the capital markets and cross-border proxy voting;
- to enhance shareholder value in European companies;
- to support corporate governance issues at the European level.

In order to fulfil these objectives, Euroshareholders will regularly deliver opinions about issues concerning the shareholder’s position, carry out research and arrange for proxy representation of members at the various national annual general meetings.

## Introduction to the Euroshareholders Guidelines

In the 1990s, corporate governance was discussed in several European countries, as well as outside Europe. Many reports and/or recommendations about it were published at a national level, in which the attention centred upon the shareholder’s position.

In April 1999, the Organisation for Economic Co-operation and Development (OECD) published its general principles on corporate governance. The OECD principles aim at assisting “Member and non-member governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries...”.

Euroshareholders guidelines are based upon the same principles, but are more specific and detailed.

The Euroshareholders guidelines will – if adopted by companies and/or countries – result in an improvement in the rights and influence of shareholders. As far as the different national legal structures allow, Euroshareholders has tried to be as specific as possible in describing its view on the various corporate governance issues.

## I Objectives

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The special relationship which shareholders have with any company in which they participate – that they provide risk-bearing capital – justifies special attention to their interests and their position in general. The return for shareholders consists of dividends and the performance of the share price. The company's management should aim at maximising shareholder value in the long term, in order to ensure an adequate return for shareholders. The focus should therefore be upon long-term growth in the earnings per share, given a certain risk level. Shareholders should be informed about: (a) financial objectives; (b) strategy; (c) the company's prospects; and (d) sensitivity to external circumstances. Financial objectives can be defined, among other things, in terms of earnings per share, growth of earnings per share, return on investment, return on shareholders' equity, net income and net profit margin. Preconditions such as minimum solvency can also be included. In addition, companies should state when they intend to reach their objectives.

The good performance of a company's share price and a high valuation enables a company to issue additional shares to finance acquisitions and further growth.

### **Recommendation 1**

A company should aim primarily at maximising shareholder value in the long term. Companies should clearly state (in writing) their financial objectives as well as their strategy, and should include these in the annual report.

## II Influence of the shareholders/voting rights

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Shareholders should have significant influence over major changes in the company.

### **One share one vote**

The principle of "one share, one vote" is the basis of the right to vote. Shareholders should have a right to vote at general meetings in proportion to the issued shareholder capital. In line with this principle, certification (the Netherlands) should be terminated because it deprives the investor of his voting right and transfers influence to a trust office which lies within the company's own sphere of influence. Nor should companies issue shares with disproportional voting rights, intended to influence the balance of power within the annual general meeting (AGM).

Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person, by proxy or by other means such as electronic devices. Euroshareholders is in favour of using electronic devices to improve efficiency with regard to the exercise of voting rights. In addition – to increase the involvement of the shareholder with respect to business decisions made by the company, and in the light of the increased importance of foreign shareholders – an efficient proxy voting system should be established. Listed companies should bear the costs of such a system.

## Subject to shareholder approval

The following items should be subject to shareholder approval.

### A Mergers and takeovers

A merger or takeover situation has great impact upon the position of shareholders. Their approval in a general meeting or otherwise should be necessary for any change of control. Shareholders should be informed of any possible bid for the (shares of the) company, and whether the bid is proceeding or not. The target company should clearly state its position in respect of a (possible) bid, as well as the consequences of this standpoint.

### B Distribution of profits

Shareholders should be able to decide the distribution of the profits and the dividend, as well as the possible choice between dividend in cash or in stock. A low pay-out ratio can only be justified by a successful growth strategy.

### C Stock-option schemes

Given the fact that stock-option schemes – by giving up part of the upward potential of the share – exist at the expense of shareholders and, considering that shareholders have an interest in the effectiveness of incentives, stock-option schemes or any other share incentive scheme should be described in a separate document and should be approved by the shareholders.

### D Share buy-back programmes

Where a company's functional position is sound, share buy-back programmes can be used to increase shareholder value. Such a programme should only take place when it has a positive effect upon the earnings per share. Trading by a company in its own shares should not be an objective in itself, and should not be intended to influence the share price.

A share buy-back programme and the conditions under which it can take place should be approved by shareholders.

### E Capital increases connected with the exemption of pre-emptive rights of the existing shareholders

Capital increases which exclude the possibility for existing shareholders to maintain their relative interest in a company should be restricted. Therefore, the authority of the board to issue shares should not exceed the maximum period between two AGMs.

#### **Recommendation 2**

Major decisions which have a fundamental effect upon the nature, size, structure and risk profile of the company, and decisions which have significant consequences for the position of the shareholder within the corporation, should be subject to shareholders' approval or should be decided by the AGM.

### III Takeovers and defensive measures

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Widespread use of anti-takeover devices are a serious impediment to the functioning of the corporate-control market and can be used to shield the management from shareholder monitoring. In order to achieve the efficient and transparent functioning of the corporate-control market, effective regulation is necessary. Compliance with this regulation should be supervised.

**Recommendation 3**

Anti-takeover defences or other measures which restrict the influence of shareholders should be avoided.

In order to protect the interests of minority shareholders, there should exist an obligation for a dominant shareholder to bid for the remaining shares under reasonable conditions. This should become effective when a shareholder's stake passes a certain threshold. This threshold should be at least 25 per cent and not be higher than 33 1/3 per cent, at which level a shareholder can be considered to have a controlling interest.

**Recommendation 4a**

The process of mergers and takeovers should be regulated and compliance with these regulations should be supervised.

**Recommendation 4b**

If a shareholder's stake in the company passes a certain threshold, that shareholder should be obliged to make an offer for the remaining shares under reasonable conditions, i.e. at least the price that was paid for the control of the company.

## IV The right to information

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### Disclosure and transparency

A basic principle in any corporate governance framework is openness and transparency between the various corporate bodies. Disclosure plays a key role. Companies should disclose all relevant and important information to the shareholders, but at least the following:

- clear goals in financial terms and a clear corporate strategy;
- quarterly results;
- sensitive stock-related information, which shall be disclosed immediately;
- members of the board should be required to disclose their interests in transactions or matters affecting the company.

Additionally, transparency in the ownership structure is important. This includes the obligation to disclose any passing (upwards or downwards) of the thresholds – 5%, 10%, etc. – of the shares in the company. This information should immediately be made public.

#### **Recommendation 5**

Companies should immediately disclose information which can influence the share price, as well as information about those shareholders who pass (upwards or downwards) 5% thresholds. There should be serious penalties in case of non-compliance.

The annual report and the annual accounts are extremely important for shareholders, since these documents are needed to:

- judge the evolution of the company's results;
- judge the performance of the management;
- make investment decisions.

Shareholders should therefore be allowed to elect the auditors.

#### **Recommendation 6**

Auditors have to be independent and should be elected by the general meeting.

Furthermore, information concerning the agenda or other matters pertaining to a general meeting should be published in good time. At the general meeting a company has the obligation to answer all questions put, unless this would seriously damage its interests. The minutes of a meeting should be (a) taken by an appointed secretary and (b) checked by an independent person or organisation. The minutes should be made available to shareholders as soon as possible, and should be properly distributed before the next general meeting. The debate at the general meeting should be recorded on tape and

the recording made be available to the shareholders in the event of any disagreement. In order to broaden shareholder participation and to enlarge the desirable dialogue at the general meeting, shareholders should be given the opportunity to place items on the agenda of the AGM, subject to reasonable restrictions.

**Recommendation 7**

Shareholders should be able to place items on the agenda of the AGM.

As a consequence of the increased importance of international investment, and in order to improve communication with and amongst shareholders, a company should make every effort to enhance their participation through means which make use of modern technology, such as the internet.

In addition to the regular channels, electronic means should be used by a company to provide shareholders with price-sensitive information, which should include, but not be limited to:

- the annual report;
- press releases;
- the articles of association;
- the agenda and the minutes of the AGM;
- other information concerning the AGM.

**Recommendation 8**

In addition to the regular channels, electronic means should be used by a company to provide shareholders with price-sensitive information.



## V Role of the board(s)

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Various board structures exist in different countries. In general, there are two structures. In the so called “one-tier” system, a single body incorporates both management and supervisory functions. In the “two-tier” system, the two functions are divided over two bodies. In order to be able to effectively fulfil the respective responsibilities, members of a one-tier board should nevertheless have a significant degree of independence between the executive members and the non-executive members. In both the one-tier and the two-tier system, at least some of the members of the board – or of one of the two boards – should be elected by the AGM.

### **Recommendation 9**

Shareholders shall have the right to elect members of at least one board and shall also be able to file a resolution for dismissal. Prior to the election, shareholders should be able to suggest candidate members to the board.

### **The executive board members**

The board of directors is responsible for the management of the company and therefore for setting the company’s objectives, defining its strategy and policy and the ensuing development of results. The executive members should report to the non-executive members or the members of the supervisory board on the company’s objectives and strategy, and the associated risks. The members of the board are also responsible for adequate disclosure to shareholders.

The primary responsibility of the executives for effective systems of internal control follows naturally from their responsibility for the company’s strategy and the achievement of its business objectives.

### **The non-executive board members**

Non-executive members of the board, as well as – in a two-tier structure – members of the supervisory board are concerned with the supervision of management policy and the general state of affairs in the company. Their main tasks are (in order of importance):

- to control and supervise the executive board members;
- to ensure the good quality of the executive board;
- to advise the executive board.

In order for the non-executive board members to be effective, the period they should serve on the board without being (re-)elected by the AGM should be limited to twelve years. Furthermore, the number of executive board members who can serve later as non-executive should be limited to one. In order to be able to exercise his duties properly, the number of his board memberships as a non-executive should be limited.

**Recommendation 10a**

The membership of non-executives on the board, whether in a one-tier or a two-tier system (member of the supervisory board), should be limited to a maximum period of twelve years.

**Recommendation 10b**

No more than one non-executive board member should have served as an executive board member of the company.

A special committee should be established to set the remuneration of the directors. The principles upon which this remuneration are based should be published in the annual report. The payment of executive directors can to some extent be flexible – related to the company's profitability – but shall not exceed double the fixed payment.