
THE VIRTUAL ANNUAL GENERAL MEETING IN GERMANY: A THEORETICAL AND EMPIRICAL ANALYSIS OF DESIGN POSSIBILITIES AND FUTURE PROSPECTS

Patrick Ulrich^{*}, Ramona Zettl^{**}

^{*} Aalen University, Aalen, Germany; University of Bamberg, Bamberg, Germany

^{**} Aalen University, Aalen, Germany



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Abstract

The following study shows theoretical and empirical evidence regarding the use of virtual annual general meetings in Germany. This has become commonplace during COVID-19. At the moment, there is an ongoing discussion on the chances and disadvantages of virtual annual shareholders' meeting (AGM) in Germany.

1. INTRODUCTION

The annual shareholders' meeting (AGM) of a stock corporation usually proceeds as follows: "There are profits with the coffee, the management board is criticized with the snacks, and the actions of the management board are nevertheless approved for dessert" (Merschmann & Volmer, 2001).

The annual shareholders' meeting forms the cornerstone of sound corporate governance, in which shareholders exercise their rights and duties and thus help to influence the fate of the company. Despite existing options for using electronic means of communication, the German Stock Corporation Act (*AktG*) stipulates that shareholders'

meetings must always be held as a physical gathering of the shareholders, the executive board and the supervisory board at a specific location. The procedure for shareholders to pass resolutions has essentially remained unchanged for decades. However, since the COVID-19 pandemic, which led to sweeping restrictions on meetings, we have experienced a surge of digitalization in many areas of social and economic life. This did not stop at the convening of the shareholders' meeting in Germany: the virtual AGM was born.

In March 2020, the German legislature passed an emergency law legitimizing the annual general meeting in virtual form to ensure the ability of stock corporations to act during the Corona pandemic. Although this was only one of many measures taken in the Corona Act, hardly any topic is discussed more emotionally in this context: companies perceive increasing digitization as a positive further development, while shareholder representatives, see the holding of virtual general meetings as a massive restriction of shareholder rights.

However, the traditional annual general meeting has also been criticized for several years. It has been observed that attendance at German companies has fallen to 20% of the share capital, which is due to the fact that it is not easily accessible for many shareholders (Werner et al., 2011, p. 4). Moreover, it is time-consuming and cost-intensive for both investors and companies. Participation via the Internet, on the other hand, is location-independent, less costly for both parties, requires less time, and is also environmentally friendly. For the future, it is considered imperative to carry out a fundamental renovation of the AGM model.

This study examines the suitability of the virtual shareholders' meeting on the basis of a theoretical and empirical analysis and answers the question of whether it serves as a blueprint for the future design of shareholders' meetings in Germany. The aim is to find out how the interests of investors and companies can be reconciled and to make a recommendation for action.

2. BASICS

In order to be able to classify the annual general meeting, it is first necessary to consider all the bodies of the stock corporation.

The German stock corporation is legally constituted as a corporation and has three main governing bodies under German law:

- the board of directors;
- the supervisory board;
- the annual general meeting.

The organizational structure of stock corporations is laid down in the German Stock Corporation Act and largely does not permit any deviations. These can only arise in exceptional situations if this is permitted in Section 23(5) sentence 1 *AktG*. With regard to the structure

of competencies, however, the law does not permit any individual design options (Stein, 2016, p. 53). Each of the three corporate bodies carries out the competencies assigned to it independently of the other. No division is made between superordinate and subordinate organs (Drygala et al., 2012, p. 403). A distinction is made between management, control and decision-making bodies. Their tasks and interrelationships are explained further.

3. INCREASED VIRTUAL GENERAL MEETINGS IN GERMANY

The shareholder structures of many stock corporations became increasingly international at the beginning of the 21st century. Against this backdrop, German legislators took the cross-border exercise of shareholder rights as an opportunity to reform the law. In January 2001, the Act to Facilitate the Exercise of Voting Rights (*NaStraG*) came into force, offering stock corporations that hold their shares in registered form rather than as bearer shares the option of allowing shareholders to exercise their voting rights via the Internet. Shareholders can register for the virtual annual general meeting by e-mail and subsequently receive access data for online participation — the convening of a purely virtual annual general meeting without the presence of shareholders in the same place, however, was not given by the law. Ulrich Noack supported this legislation in 2001: “[...] The capital market in the 21st century is electronic and international. In the internal organization of stock corporations, it is still like the old Germans. That cannot be the future” (Noack, 2002, p. 620). The new law was intended to counteract declining numbers of participants, and Siemens can be taken as an example here: In 2000, only 25% of all votes were represented (Kiewitt & Möller, 2001).

The need to adapt German law to international standards was supported by the introduction of the German Corporate Governance Code (GCGC), as already described in Section 3.1.4. This chapter will now examine the guidelines and recommendations of the GCGC with regard to digitization.

In February 2002, the government draft of the Transparency and Disclosure Act (*TransPuG*) and the German Corporate Governance Code were finally adopted. The *TransPuG* is based on the proposals of the Government Commission on Corporate Governance. The content of the new regulations with regard to digitalization was as follows and was also rolled out to companies that hold bearer shares. The annual general meeting is to be convened via the newly established electronic *Federal Gazette* in accordance with Section 25 of the German Stock Corporation Act (*AktG*). In this context, the Code also stipulates that the notice of the annual general meeting must be sent electronically to all domestic and foreign financial service providers, shareholders and protective associations. The annual report is also to be published on the company's

website. Another point included in the GCGC is the simplification of virtual shareholders' meetings and the possibility for supervisory board members to participate by video conference. According to Bücker et al. (2020) it was inevitable to use modern technology due to the increasing internationalization of the shareholder base, to roll out information, communication and decision-making across Europe.

A key role with regard to digitization was played by the Act Implementing the Shareholders' Rights Directive in 2009 (the ARUG I) which now permitted the option of a virtual shareholders' meeting in combination with a physical shareholders' meeting for shareholders throughout Europe. This amending act adapted the Stock Corporation Act to the digital age. This facilitates the cross-border exercise of shareholder rights for investors who are unable to attend in person. The admissibility of hybrid general meetings was now given (Section 118 *AktG*).

In 2011, Munich Reinsurance Company and Allianz were the first German companies to introduce online voting from the time of convocation until the end of the general debate. At Allianz, around 8,000 shareholders, including mainly foreign investors, took advantage of this option. However, the online AGM did not catch on outside the DAX companies. Thomas Mayerhofer justifies this development by saying that the risk is too great for medium-sized companies, as the legal framework is not yet fully developed with regard to objections and challenges (Daum & Hammerschmidt, 2011, p. 60). The structure of the annual general meeting as an event as well as its function as a body has changed a great deal historically. In the 19th century, the annual general meeting without the right of co-determination and, therefore, without the inclusion of shareholders' interests evolved into a law on co-determination, which, however, could be undermined by the transfer of competencies within the organs. This overview justifies the strict separation of competencies between the corporate bodies today. The development shows a strong change in favor of the shareholders' rights. The exercise of these is also to be simplified by the addition of electronic means. Since the turn of the century, digitization has made its way into the processes leading up to and during the Annual General Meeting. ARUG II and the EU Regulation are helping to drive forward cross-border shareholder communication through digital solutions (Dobrzewski 2020, p. 13).

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