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The Electronic Participation in Corporate Bodies in Lithuania from a Comparative Perspective

RESEARCH ARTICLE

IVAN ROMASHCHENKO
VIRGINIJUS BITĖ
*Author affiliations can be found in the back matter of this article

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ABSTRACT

Due to the COVID-19 pandemic, many jurisdictions around the world embarked on a path towards the speedy digital transformation of their corporate governance regulations. Lithuania is one of the countries where electronic participation in the general meetings of shareholders was stipulated back in 2009. Based on the experience gained during the pandemic, this was substantially changed in November 2022. This development raises the question of whether these novelties will suffice, or whether the further enhancement of Lithuanian company law is required. Therefore, this article aims to study the regulation of electronic participation in corporate bodies in Lithuania in a comparative context and to suggest improvements. To achieve this goal, two EU jurisdictions were selected for comparative analysis: Estonia and Germany. In addition, two surveys were carried out among Lithuanian law firms: one in 2022 and the other in 2023. Our study shows that practitioners treat the new amendments as sufficient and effective, but some amendments regarding the identification and verification of shareholders would be welcomed.

CORRESPONDING AUTHOR:
Ivan Romashchenko
Mykolas Romeris University, LT
iromashchenko@gmail.com

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1. INTRODUCTION

The COVID-19 pandemic fostered the development of technologies in corporate governance. Since it began, hybrid and virtual meetings of corporate bodies have become the reality in many jurisdictions. Even though the coronavirus era seems to have come to an end,[1] a future where electronic means are broadly used in corporate governance is before us and needs exploration. Businesses have well realised the advantages of meetings held using digital technologies. For public companies with thousands of shareholders the differences in the cost and convenience of holding a virtual meeting and renting a hall for an in-person meeting are self-explanatory. Coupled with the ever-growing trend of digitisation in many areas of social life and the threat of potential future pandemics, hybrid and virtual meetings of shareholders have become the "new normal".[2]

Even though meetings held using digital technologies offer many benefits, they have also brought some serious risks related to the verification of a person's identity and the inherent technical problems.[3] In addition, the use of digital technologies has created some obstacles for minority shareholders in exercising their rights. As the comparative study of Zetzsche and others has shown, there is a need to adjust the rules on virtual meetings of shareholders to make sure that shareholders are afforded the same rights as in face-to-face meetings, particularly the right to ask questions and to comment on resolutions.[4] If minority shareholders are not provided with these rights, it might lead to situations where managers and controlling shareholders would feel tempted to abuse their positions. It surely does not mean that the opinion of the majority shareholders is not relevant. To the contrary, it is normal in corporate decision-making that decisions and choices of the majority prevail over the minority's.[5] However, the significance of protecting minority shareholders' rights should not be underestimated. At least several reasons have been outlined in literature to support the need of minority shareholders' protection in a digital age: by protecting minority shareholders a country contributes to the competitiveness of its companies and increases investors' confidence in its economy.[6] Considering the fact that the future of general shareholders' meetings has a digital agenda, where the rights of minority shareholders may be infringed, it is important to analyse regulations providing for virtual and hybrid meetings from the viewpoint of different types of stakeholders, including minority shareholders.

The article is structured as follows. Part 2 contains a literature review. Part 3 describes the article's methodology. Part 4 deals with the digitalisation of corporate governance in selected EU jurisdictions, namely Estonia, Germany, and Lithuania. It is worth mentioning that the statutes of Estonia, Germany and Lithuania are investigated in terms of their strong connection to EU law sources that accelerated digitalisation processes. Part 5 presents and discusses the results of the two surveys described above from a comparative perspective to elaborate recommendations for the improvement of Lithuanian company law. Finally, Part 6 presents the conclusion, where the key results and recommendations are summarised.

2. LITERATURE REVIEW

Publications on virtual shareholder meetings appeared long before the pandemic started. Delaware was one of the pioneer jurisdictions in the world to foresee the possibility of virtual meetings of shareholders for the years to come.[7] According to the 2000 amendments to the Delaware Code, boards of directors could authorise participation of stockholders and proxyholders in a meeting of stockholders by means of remote communication or in a fully virtual meeting.[8] Later several other states in the US followed Delaware's lead: the states' approaches on this matter were well summarised and discussed in Fairfax's paper.[9]

According to Nili and Shaner's study, in the first decade after the amendments were adopted, meetings held using electronic means received mixed feedback: some companies abandoned the idea of holding them while others preserved it only on paper.[10] It was only after 2009 that the number of virtual shareholder meetings started to grow considerably every year.[11] As Fontenot noted in her publication, one provider of shareholder meeting technology, Broadbridge Financial Solutions Inc. reported a sharp increase in the number of virtual meetings: from one meeting hosted in 2009 to 53 meetings in 2014, and then 155 in 2016.[12]

States in the United States were not the only jurisdictions where virtual meetings of shareholders were studied in the 2000s. For instance, Boros in her articles explored the mechanisms of voting in meetings held using technologies in Australia, the UK, and the US,[13] as well as the basics of legislation dealing with virtual meetings.[14] National legislators and courts in different countries clearly moved in the direction of recognising the use of technologies in the activities of corporate bodies.

Twenty years after the relevant changes in Delaware, the topic of hybrid and virtual meetings of shareholders quickly gained relevance due to the outbreak of COVID-19.[15] As has been eloquently stated in a publication by Fontenot, Bevans, and Nix, it was the virtual shareholder meeting explosion in 2020.[16] The percentage of virtual meetings in 500 of S&P companies in the US in 2020 increased rapidly from 12 per cent in the first quarter to 80 per cent in April to mid-May.[17]

In Europe the wave of COVID-19 in 2020 also led to the widespread use of digital technologies in corporate governance. Governments in many European countries enacted regulations to facilitate meetings of corporate bodies in companies. Company law studies published in 2020 in Europe focused on the electronic participation of shareholders in meetings either from a domestic perspective,[18] or from a comparative one. For instance, Vutt discussed the Estonian experience together with the laws of Germany and the UK;[19] Borselli and Ferrando Miguel presented a paper focusing primarily on the UK, Germany, France, Italy and Spain, and occasionally dealing with other jurisdictions.[20] Some scholars analysed the use of technologies in corporate governance within the broader set of challenges posed by COVID-19 towards corporate law.[21]

In 2021–2023, there were more studies commenting on the use of technologies in corporate bodies of European companies and analysing their experience either in a national,[22] or in a comparative context.[23] Besides scholarly literature, special reports were prepared to focus on corporate governance issues following the crisis, including the ICLEG report[24] and the OECD report.[25]

Lithuania belongs to the group of jurisdictions where electronic participation in general meetings of shareholders has been available since before the pandemic. Due to this, there was no urgency in taking any governmental measures in response to the COVID-19 outbreak to allow electronic participation of shareholders in general meetings. However, in November 2022, new changes to the Lithuanian law regarding general meetings with electronic participation were adopted.[26] These amendments present an interesting legislative novelty, which raises the question of whether these changes will suffice or whether more enhancement of Lithuanian company law is required. These new changes have not been sufficiently studied in the recent publications on comparative company law. Lithuanian experience regarding hybrid and virtual meetings of shareholders has mainly been described and analysed in the ICLEG and OECD reports on a European or global scale,[27] in the Mikalonienė's[28] publication and succinctly in Bitė's paper.[29] To fill this gap we aim to focus on the recent Lithuanian legislative experience regarding the electronic participation in corporate bodies and to study it in a comparative context.

3. METHODOLOGY

Our main research goal, therefore, is to study the regulation of electronic participation in meetings of shareholders and other corporate bodies in Lithuania in a comparative context and to suggest improvements. Among other things, this article analyses how the November 2022 changes were implemented by companies in Lithuania based on the publicly disclosed information. For a broader picture of how electronic participation was employed in Lithuania during the pandemic, we address the official news published by Lithuanian companies listed on the Nasdaq Stock Exchange[30] during the period between 2020 and 2023. It is noted that the Lithuanian presence on the stock market is very small – there are only 16 companies in the main list.

A legal comparison method is used in our research. Two jurisdictions were selected to study how corporate governance regulations were digitised therein and to find any useful insights for Lithuania: Estonia and Germany.

Estonia was chosen as it is a country that has been at the verge of digitalisation and one of the pioneer jurisdictions that has embraced eGovernment initiatives.[31] As Teichmann observed, Estonia has consistently committed itself to digitalisation in the recent years.[32] For years Estonia has offered legal text and incorporation forms in English.[33] Its unique e-residency program allowed foreign nationals to acquire the status of e-resident from an Estonian embassy to be able to use the country's electronic administrative procedures.[34] In addition, it is a jurisdiction belonging to the continental European family, similarly to Lithuania, and modelled on German law.[35]

It would also be practical to look at German law as it often serves as the origin and the source of inspiration for other countries of the European continental family, including Estonia. Additionally and similar to Lithuania, Germany has also recently (in 2022) enacted new changes for the introduction of virtual general meetings of shareholders in public companies.[36] The latter changes have already been thoroughly discussed in academic circles in Germany,[37] and the results of this discussion are helpful in our comparative analysis and in suggesting any recommendations for Lithuania. Finally, all three countries in focus (Estonia, Germany, and Lithuania) are EU Member States with positive experiences of implementing EU directives.

To better understand the issues of corporate governance that companies have faced in Lithuania, we also carried out two anonymous surveys by using the Google Forms platform among representatives of large, middle-sized and small law firms in Lithuania. The first survey was carried out in February–March 2022.[38] We selected law firms from the list of firms provided by The Legal 500 in the jurisdiction's overview.[39] The following law firms were approached: CEE Attorneys, Ellex, Sorainen, WALLESS, ILaw/Lentax, Motieka&Audzevičius, SPS LEGAL, Glimstedt, Triniti Jurex, COBALT, Deloitte Legal, PWC Legal, TGS Baltic, Eversheds Saladzius, and Sulija & Partners. We carried out the first survey in February–March 2022. Overall, we approached 15 law firms and 25 company registration agencies, and we received 13 answers, all from law firms (4 large law firms and 9 small or medium-sized law firms). The company

registration agencies did not provide any answers to the survey. This survey touched upon the online formation of companies and corporate governance in Lithuania. The results of the survey have already been reflected in our earlier publication.[40]

The second survey was launched to understand whether artificial intelligence, algorithms and platforms were used in corporate governance in Lithuania and what the opinions of lawyers were regarding the law adopted in November 2022.[41] The first part of the second survey (artificial intelligence/algorithms/platforms) goes beyond the scope of the present article. For this article we only analysed the part of the survey containing feedback regarding the November 2022 amendments. For the second survey, 18 law firms were approached in February–March and June 2023: the same law firms as before,[42] and also Citco Vilnius, MZ-Legal, and Bartkus&Partners. All the mentioned law firms have been known for providing services in commercial law, company law, corporate governance, and finance. We received 15 responses (6 large law firms, 8 small or medium-sized law firms and 1 individual law practitioner). For both surveys law firms were contacted with questions regarding both private and public companies, and some questions were formulated even more generally – regarding legal entities.

4. THE DEVELOPMENT OF ELECTRONIC PARTICIPATION IN THE LAWS OF ESTONIA, GERMANY, AND LITHUANIA

4.1. IMPLEMENTATION OF ELECTRONIC PARTICIPATION FOLLOWING THE SRD I

Rules regarding the electronic participation of shareholders in general meetings were implemented in Lithuania long before the COVID-19 pandemic. At the time of adoption of the Lithuanian Law on Companies (2000),[43] electronic participation in corporate bodies was not a widespread phenomenon. In 2009, a law providing for major statutory changes in the use of technologies in Lithuanian companies was adopted.[44] These amendments allowed the transmission of a voting ballot for a general meeting of shareholders by means of electronic communication, under the condition that the security of transmitted information was ensured and the identity of shareholders was determined.[45] By the same Act, participation in general meetings of shareholders by electronic means was allowed – it became the right of a company to make such participation and voting possible.[46] According to the law, in case a company stipulated any requirements and restrictions for electronic participation, they should be introduced to the extent that they are necessary to ensure the security of transmitted information and to determine the identity of shareholders, and only in a manner proportionate to achieving the declared goals.[47] These changes were aimed at implementing the provisions of Shareholder Rights Directive I (hereinafter SRD I).[48] It is the Directive's premise that the constraints introduced by Member States should exist as far as they are necessary for the verification of identity and the security of electronic communications, as well as being proportionate to achieve the objectives.[49] The 2009 amendments went even further than the Directive requires, as electronic participation was allowed in all types of companies – not limited to listed ones.

The latter changes were not very specific as to which corporate body could decide to allow participation in general meetings of shareholders by electronic means: a general meeting of shareholders, a supervisory board, a management board, or a manager (CEO) of a company.[50] It was only prescribed that in case a company wished to use the opportunity to organise a meeting digitally, the procedure of voting by electronic communication had to be specified in the convocation notice.[51] Considering that the function of convening a general meeting of shareholders was entrusted to the management board, or with the manager of the company if the management board was not formed,[52] there were grounds to say that the convening body would prepare a convocation notice. However, it was not made sufficiently obvious that the convening body, i.e., the management board (or CEO), had to decide on electronic participation, and it followed that corporate directors alone were able to decide on the issue, unless the articles of association provided otherwise.[53]

The 2009 law allowed electronic voting not only for shareholders, but also for members of a supervisory board[54] and for members of a management board,[55] subject to the same conditions. For this, the company's decision was not required. The latter digital innovations in the functioning of a supervisory board and a management board are not specified in SRD I, but in general they are in line with the enabling approach of this instrument.

Estonia has been at the forefront of digital transformations in corporate governance.[56] Similar to Lithuania, it implemented the provisions of SRD I regarding the possibility of electronic participation in shareholders' general meetings of listed companies in 2009.[57] Compared to the Lithuanian approach, in Estonia the method of regulation appears to have been more detailed. According to the 2009 Act, the articles of association could provide for electronic participation in general meetings of shareholders in listed companies in Estonia in one of the following ways: the first option is participation in a general meeting by means of real-time, two-way communication throughout the general meeting, or in another similar electronic way. Under this option, the shareholder should be able to watch the general meeting from a remote location, to vote using electronic means throughout the general meeting

on each resolution draft and to address the general meeting at the time determined by the chair of the meeting. The second option is electronic voting.[58] This option was available not only to listed companies, but also to other private and public companies. It meant that shareholders could vote on the items included in the agenda of the general meeting using electronic means prior or during the general meeting if this was technically secure.[59] As opposed to the virtual or hybrid meeting, under this mechanism voting could take place before the meeting. Thus, it was comparable to the submission of a general ballot in Lithuanian company law. Under this scenario, the general meeting of shareholders could also be transmitted in full or in part in real time via the Internet so that shareholders could watch it without participating. Overall, all three options of participation via electronic means as provided by SRD I[60] were, in a certain way, stipulated in the Commercial Code of Estonia in 2009.

An important difference between the regulation in Estonia and in Lithuania was the area where the company had to stipulate the mechanism of electronic participation in general meetings. As opposed to the regulation in Lithuania, the 2009 Estonian Act indicated that the articles of association of a company could provide for electronic participation through a virtual or hybrid meeting in listed companies,[61] or through electronic voting in all types of companies.[62] The articles of association could also describe procedural aspects of electronic voting or choose to leave this part for the management board to specify, bearing in mind the need to ensure the security and reliability of shareholder identification and electronic voting. For public companies voting by mail, using a special form was also allowed when the articles of association provided for it.[63]

Germany also took the path of deeper digitisation practices in corporate governance in 2009 when the Act implementing SRD I was adopted.[64] Among others, this Act provided for changes allowing for participation in a general meeting of shareholders without being physically present at the location and by exercising voting rights by electronic means (postal voting), with the possibility of audio and video transmission of the meeting.[65] The electronic participation of shareholders in these meetings pursuant to these legislative changes was not unconditional, but required amendments to the articles of association in the form of a clause allowing electronic participation or by authorising the management board to decide on electronic participation. Supervisory and management boards could also go virtual even before SRD I was implemented.[66] However, to comply with the duty of care, supervisory boards were recommended to physically meet at least once a year.[67] Therefore, the physical format in meetings of corporate bodies was still the preferred one.

4.2. LEGISLATION AS A RESPONSE TO THE COVID-19 PANDEMIC

The wave of COVID-19 caused changes in the corporate statutes of numerous countries. However, this did not happen in Lithuania, where no special rules were introduced in response to the COVID-19 pandemic.[68] In contrast to Lithuania, in 2020 Estonia promulgated a special Act to expand the use of digital technologies in corporate decision-making.[69] According to the Act, shareholders might participate in all types of companies without being physically present at the meeting either by means of real-time, two-way communication or by other similar electronic means, allowing them to observe and speak at the meeting while being distanced and to vote in the adoption of decisions.[70] The same format was allowed for supervisory board meetings in public companies. In other words, the Act granted all types of companies the opportunity to hold meetings of shareholders with electronic participation. It also permitted meetings with the electronic participation of supervisory board members in public companies, unless the constituent document provided otherwise.[71] In addition, in the face of the pandemic the law allowed simplified procedures of voting before the meeting and without convening the meeting.[72] With the latter amendments, the Estonian regulation became more flexible and approached the method of regulation used in Lithuania, as it was no longer necessary to provide for electronic participation in the articles of association. At the same time, as noted by scholars, shareholders have faced less predictability while companies have tended to use the simplest tools of distance voting, without creating special electronic environments for these purposes.[73] Although the wording of these changes has an enabling stance ('a member of a body of a legal entity may participate in the body's meeting and exercise their rights by electronic means'[74]), from the decision-making perspective it was not clearly stated which corporate body in the company had to decide on the form of the meeting (virtual, physical or hybrid). Moreover, in the case of a virtual or hybrid meeting, the exact electronic means to be used were not specified. More flexibility in regulation gives wide leeway for the management board to decide on the exact electronic means to be used for the purposes of electronic participation, unless the articles of association preclude these specific electronic means from being chosen.[75] Essentially, the Estonian legislator chose an opt-out approach in regulating the format of electronic participation. In the absence of any specific regulations in the articles of association, it is for the management board to decide how exactly the electronic means might be used at the general meeting of shareholders.

Germany belongs to the group of jurisdictions which, along with Estonia, introduced special measures as a response to the COVID-19 pandemic[76] in the form of a

special Act.[77] Unlike the legislation in Estonia, this Act had a temporary effect for general meetings in private and public companies – until 31 August 2020.[78] The main focus of the changes was on the general meeting of shareholders as the central organ of corporate decision-making.[79] For public companies, the regulation allowed electronic participation in general meetings of shareholders and in meetings of supervisory boards without the need for a special clause in the articles of association.[80] Similarly, for private companies, resolutions of shareholders were allowed to be made in writing without the prior consent of shareholders.[81] It should be mentioned that the regulation was not changed considerably for private companies in Germany, because even before the pandemic private companies enjoyed more freedom and could introduce videoconferences or other hybrid forms in their articles of association.[82]

While the latter change was the only one for private companies, for public companies these amendments were more extensive and sophisticated. Four conditions were foreseen in order to hold a virtual general meeting of shareholders: video and audio transmission of the entire meeting; shareholders should be provided with the right to exercise voting rights via electronic participation; shareholders should be provided with the right to ask questions; and shareholders should be provided with the right to object to resolutions in case they have already exercised their voting rights on that matter. Additionally, both the management board and the supervisory board had to approve the virtual mode of the meeting.[83] Despite the outlined requirements, a great number of German public companies held virtual meetings in 2020.[84] Although these novelties were regarded as a short-term solution to the COVID-19 crisis,[85] the technical side of the implementation of this law was viewed as successful from the start.[86] Thus, commentators saw the future of electronic participation in general meetings of shareholders as having potential – especially the hybrid format meeting[87] – but encouraged companies to create the necessary conditions for the exchange of views, questions and answers among shareholders.[88]

In the second half of 2020, German legislators extended the effect of GesRuaCOVBekG until 31 December 2021.[89] These statutory moves were predictable considering the epidemiological situation, but there was also an understanding that the German Stock Corporation Act needed a slightly more permanent modification instead of a temporary solution.[90] However, before a permanent change was to happen, German legislators extended the effect of the regulations for the second time[91] so that the public began to prepare for another year (2022) of virtual meetings of shareholders.[92]

In July 2022, the German Parliament adopted the expected changes to introduce virtual general meetings in public companies on a permanent basis.[93] As a result of these amendments, two brand new articles were added to the Stock Corporation Act (Art. 118a 'Virtual general meetings' and Art. 130a 'Right to speak and comment at virtual general meetings'), and some amendments were made to other articles.[94] In addition, the new act extended its effect to other business forms of legal entities, namely partnerships limited by shares (KGaA) under Art. 278(3) of the AktG.[95] Compared to the previous temporary law, which was designed to regulate general meetings of shareholders during the COVID-19 pandemic, this Act specified a longer list of requirements to be fulfilled for organising a virtual general meeting. Similar to the previous regulation, the conditions for having virtual meetings include: full video and audio transmission of the meeting; the exercise of shareholders' voting rights by means of electronic communication; and the opportunity to object to resolutions of the general meeting. New conditions and requirements include: the requirement to provide shareholders with the right to submit motions and nominations for election via video communication; the electronic right to information; the availability of the management board's report if the management decides that shareholders' questions must be asked before the meeting; the possibility to speak at the meeting; and the electronic right to comments. Therefore, compared to the previous COVID-19 legislation, the new Act contains more guarantees for the exercise of shareholders' rights, particularly at the meeting. Conversely, during the pandemic, shareholders in Germany in most cases had to passively listen to the audio and video broadcast of the meeting.[96] Yet, as far as the grounds for avoidance of the resolutions adopted by the general meeting are concerned, the law has deterred shareholders from instituting proceedings based on violations caused by technical disruptions.[97] An action based on the violation caused by technical disruption can be brought only in cases where the company acted with gross negligence or intentionally.[98] For these cases companies would bear the secondary burden of proof so that they would be required to at least explain the circumstances within their area of competence and provide internal information that shareholders would not be able to collect.[99]

The principal difference between the temporary COVID-19 legislation and the new Act is the return to the pre-pandemic rules, where the articles of association should provide for or authorise the management board to provide for a virtual general meeting.[100] Only for the transitional period until 31 August 2023 was it permitted to hold virtual general meetings without explicit indication in the articles of association, subject to the decision of the management board, approved by the supervisory board.[101] As for hybrid meetings, it is also for the articles of association to provide for electronic participation in the general meeting or authorise the management board to

provide that shareholders can participate without being present at the location and can exercise their rights by means of electronic communication.[102]

This Act on the introduction of virtual meetings was the result of positive experience of virtual general meetings in 2020 and 2021.[103] Easier shareholder participation and improved informing of shareholders were outlined among the main benefits of virtual general meetings in Germany.[104] By empowering shareholders, the legislator made the virtual meeting format closer to the in-person format of general meetings.[105] Still, by some characteristics this type of meeting has its unique features. As opposed to face-to-face meetings, some online format restrictions exist only in virtual meetings. For instance, in virtual meetings, for technical reasons only one person can speak at a time, and in these meetings specifically, technical issues can cause substantial problems.[106] In addition to some inherent concerns in virtual meetings, some criticism was voiced towards the Act for not being a fundamental reform as called for by practitioners and academics, and for not dealing comprehensively with the threat of predatory shareholders.[107] For instance, the new Act provided shareholders with a mechanism in which to ask questions three days before the general meeting and then to ask supplementary questions directly at the meeting based on the answers of the management board. This mechanism was heavily criticised for carrying the risk that the answers of the management board would be instrumentalised to prepare many new inquiries.[108] The latter extensive right to ask questions was viewed as unattractive for both shareholders and companies that might be forced to return to the face-to-face mode of general meetings.[109] Nevertheless, these critical remarks were viewed as merely suggestions for improvement: overall, the new Act was praised for moving in the right direction. [110]

4.3. POST-COVID-19 CHANGES IN LITHUANIAN COMPANY LAW

The latest amendments to the Lithuanian Law on Companies (hereinafter LoC) regarding the use of digital technologies in corporate governance took place in 2022.[111] These changes were not connected to the implementation of any EU law sources and covered several areas of corporate governance, including broader digitalisation rights. One of their key provisions is that shareholders owning together or separately 10 or more percent of share capital (if the articles of association do not provide for a lower limit) have the right to decide on the possibility of participating online in the general meeting.[112] Before these amendments, only the company could decide on the format of the meeting. It is still within the competence of the management board to determine the specific procedure of participation and voting using electronic means,[113] even where it is the shareholders who initiated the convening of the meeting.

The 2022 changes also allowed for the stipulation in the articles of association that general meetings are exclusively held electronically if all shareholders agree to it.[114] More detailed rules about the verification of shareholders' identities were also added. Generally, in public companies (ABs), the identity of shareholders has to be verified before the meeting and prior to each question, except for meetings where shareholders participate electronically, or where participation is in writing or by filling out a general ballot.[115] In the case of private companies (UABs), this issue is left to companies' self-regulation. Additionally, the amending Act allowed for the formation of the minutes of these meetings and the general ballot electronically, using qualified electronic signatures.[116]

The main idea of these changes was to create more favourable business conditions by removing the existing obstacles in the regulatory environment. Legislators encouraged the use of electronic means in general meetings of shareholders for the latter to become a simpler, smoother and cheaper process.[117] Although physical meetings were inserted in the law as the default option, shareholders were provided with the autonomy to turn to a hybrid or virtual format for their participation in these meetings, beyond the discretion of corporate directors.[118] However, despite the advantages of electronic participation in general meetings of shareholders, ABs in Lithuania did not use this tool for convening ordinary meetings in the first half of 2023.[119] Taking into account that companies in Lithuania have the obligation to hold an annual meeting of shareholders no later than four months after the end of the financial year,[120] in 2023 there were no annual meetings of shareholders of listed companies where shareholders participated electronically. Moreover, electronic participation was rarely used in previous years (2020–2023): due to the COVID-19 pandemic, shareholders were often urged to use another tool for distant voting in advance – the general ballot.[121] Snaigė AB is a rare example of a listed company that allowed the participation of shareholders by electronic means in a meeting in February 2021.[122] This was an unexpected finding because in terms of protection of minority shareholders' rights electronic participation offers more opportunities for shareholders. Through electronic participation shareholders may exercise their right to information by asking questions and commenting in real time, and participation costs are also saved. Therefore, it is safe to assume that the future promises more widespread use of the electronic participation in Lithuanian companies.

The reasons for the scarce use of electronic participation in general meetings of listed companies in 2020–2023 could lie in the absence of 'efficient and reliable electronic solutions', as one company noted.[123] Another consideration for the rare use of electronic participation might be that voting by general ballot results in broader flexibility as ballot voting is less time-

consuming than the electronic participation. In the next chapters we look for issues in the regulation of electronic participation in corporate bodies of companies in Lithuania based on a comparative overview of the other jurisdictions in focus and the results of a survey carried out among law firms in Lithuania.

5. EVALUATING THE ELECTRONIC PARTICIPATION IN CORPORATE BODIES IN LITHUANIA

In this chapter we discuss the process and results of the digitalisation of corporate governance in Lithuania by looking at the results of online surveys and comparing the achievements in corporate governance digitalisation in Lithuania with those of the other jurisdictions. As mentioned, two surveys were carried out among representatives of law firms in Lithuania. The results of these online surveys are presented and discussed from a comparative perspective to suggest recommendations for the improvement of company law in Lithuania.

5.1. THE SURVEY OF FEBRUARY–MARCH 2022, AND ITS DISCUSSION

It should primarily be emphasised that our first survey took place in February–March 2022, meaning that the results of our survey do not reflect the opinions of surveyed lawyers regarding the effect and consequences of the changes adopted in Lithuania in November 2022.[124] According to the results of this survey, 9 respondents out of 13 stated that they organised (consulted on) meetings of corporate bodies online, while 4 out of 13 answered negatively. Among those 9 respondents who organised (consulted on) meetings of corporate bodies online, 5 indicated that they experienced issues when organising (consulting on) those meetings, while 4 reported no issues.

When those 5 respondents who reported issues in organising online meetings of corporate bodies were asked about the essence of their issues, different answers were given. One respondent mentioned that the procedure was not precisely described by the law and there were discussions on how such meetings should be duly formalised and organised. Another respondent complained about the difficulty of ensuring a safe vote, collecting the signatures of the participants, and achieving the approval of notaries on the decisions of a remotely organised meeting. The problem of collecting signatures among participants was mentioned a few more times, namely in the context of documents e-signed by foreigners.

To overcome the existing issues, the respondents who reported them suggested that the procedure and the requirements of online meetings need to be described more precisely in the law and that foreign e-signatures should be recognised. As for the remark about foreign e-signatures, this shortcoming has already been dealt with by the State Enterprise Centre of Registers of the Republic of Lithuania, as we have established in our previous article.[125]

Additionally, the 13 respondents expressed their opinions on whether they found the regulation of organising meetings of corporate bodies online to be sufficient: 4 respondents answered 'Not applicable/No opinion'; 2 respondents found it absolutely sufficient; 4 fairly sufficient; 2 absolutely insufficient; and 1 fairly insufficient. Therefore, 6 respondents out of 13 found the regulation sufficient. Respondents whose answer was not 'Absolutely sufficient' were asked how the legal regulation of online corporate governance could be improved. In reply to this question, the respondents noted that online meetings could be more precisely regulated and better scrutinised by describing which tools can be used, how the participants should be identified and how the adopted decisions need to be formalised.

The 13 respondents were also asked whether they found the processes of organising meetings in corporate bodies online effective: 2 respondents chose the option 'Not applicable/No opinion'; 4 found the regulation absolutely effective; 5 fairly effective; and 1 fairly ineffective. So, in general, most respondents were satisfied with the regulation, viewing it as effective (9 respondents out of 13). Respondents who did not find the regulation absolutely effective opined that clear rules on filming, recording and online tools should be in place to improve it, while others just reiterated their previous comments.

The remarks of respondents about the effectiveness and sufficiency of the regulation of online corporate meetings need some evaluation in the context of the November 2022 changes to the LoC, which was in focus of our second survey. Therefore, it is worth considering whether the latter law has already improved the situation and whether the mentioned comments are still relevant. We focus on the November 2022 changes to the LoC in the second section of this chapter.

5.2. THE SURVEY OF FEBRUARY–MARCH AND JUNE 2023, AND ITS DISCUSSION

The second survey touched upon the November 2022 amendments to the LoC in Lithuania.[126] The key novelty of the November 2022 changes was the introduction of the right of shareholders to decide on the use of electronic means for the purposes of participation in the general meeting.[127] Before the amendments came into force, it was in the competence of the management bodies to decide on this matter. In addition, it was permitted to provide in the articles of association that all general meetings are held electronically[128] and to form the minutes of meetings and the general ballot using qualified electronic signatures.[129] Also, in case

of the online participation of some shareholders, the identity of shareholders would have to be verified before the meeting and prior to each question, but this rule would not apply in case shareholders were to participate electronically.[130]

Compared to the first survey, where there were 13 respondents, the second survey had 15 respondents. In reply to the statement that the recent (as of November 2022) changes to the Lithuanian LoC on electronic participation in general meetings of shareholders had improved corporate governance, 10 respondents out of 15 agreed, 2 respondents disagreed, 2 chose the option 'Maybe', and 1 selected the option 'I don't know'. Despite the different reactions regarding the first topic, almost all respondents (14 out of 15) were positive in assessing whether the recent changes were sufficient: 14 respondents found them fairly sufficient, and only 1 respondent chose 'Not applicable/No opinion' regarding this question.

Finally, respondents were asked whether they found the recent changes to the Lithuanian LoC on electronic participation in general meetings effective: 13 respondents out of 15 saw them as fairly effective, while 2 respondents assessed them as fairly ineffective.

One of these 2 dissenting respondents noted that electronic participation in general meetings was possible even before the latest amendments. This respondent also claimed that electronic general meetings were not popular due to the additional burden on companies (a 1.5–2-fold increase in work) and since there were not many companies where the participation of shareholders was necessary. In the opinion of this respondent, a good solution could be to establish that electronic general meetings are mandatory for companies with a certain number of shareholders – e.g. listed companies. This suggestion seems interesting to consider, as such changes would most definitely make electronic meetings more popular and would effectively increase the number of meetings in this format. However, the introduction of this approach might seem rather frustrating for companies, especially for those used to face-to-face meetings. In addition, despite the advantages of virtual and hybrid meetings, the grounds for this move seem lacking. That is why it is not recommended to embrace this approach entirely.

Another respondent opined that there should be no amendments because the law should be neutral regarding the form of activities (digital/non-digital) at the corporate level (shareholders' meetings, board meetings, etc.). This view is also interesting to consider, but it contrasts with the fact that in the EU and in many national statutes electronic participation in general meetings has been regulated. That is why, although it might be tempting, it has so far not been very realistic to produce legislation which would universally regulate all forms of meetings of corporate bodies.

There were also several other comments from the respondents. It seems that the procedure of implementation of the changes might take some time, as one respondent opined that the effect of the law in practice had not yet been seen because many clients had not yet amended their articles of association to enable the electronic participation of shareholders. Another respondent noted that the law allowed shareholders' meetings to be more easily organised but did not fully protect shareholders' options if the company had imposed measures that were too strict or inconvenient. One more respondent noted that these changes gave more clarity and flexibility regarding electronic participation in general meetings, allowing innovative companies to completely withdraw from physical meetings ever being organised.

Finally, one respondent suggested that the law should state the procedure of identification. It is worth saying that some procedural aspects have indeed already been covered by the Act, for example, how the minutes of meetings should be formalised with new, more precise rules on the verification and identification of shareholders. Still, although a large part of these changes dealt with procedural aspects, many of them in essence were substantial rather than procedural. The approval of the procedure for the voting of shareholders during the meeting has largely been left to the competence of the management board.[131] Further indirect evidence of the need for more regulatory focus on procedure in electronic general meetings is the absence of annual general meetings where electronic tools were used in listed companies in Lithuania in 2023.[132] Naturally, the statistics of general meetings in listed companies do not show the whole picture, as non-listed public companies and private companies might tend to employ electronic means in general meetings or hold virtual meetings. In addition, excessively detailed regulation would perhaps hinder the flexibility of relations.

Nevertheless, it appears that there are grounds to find the above comment relevant for the consideration of future changes in the LoC. Lithuanian companies and their shareholders would only benefit if there was a more unified understanding of how participants of general meetings might exercise their corporate rights in the electronic format. The laws of Estonia and Germany might be used to provide some ideas and solutions on this matter.

As has been seen, the regulation in Estonia is not far more detailed than in Lithuania. After the 2020 COVID-19 amendments, all shareholders were entitled to participate remotely in general meetings by means of real-time, two-way communication or by other similar electronic means, allowing them to observe and speak at the meeting while being away and to vote on the adoption of decisions.[133] Although this concise statutory clause does not offer many details, it makes a crucial point: that shareholders should be able to observe and

speak at the meeting. In fact, this issue has occupied the minds of scholars: How can we ensure that shareholders are able to exercise their rights to comment, speak, ask questions and object using electronic means?[134] It would be a step in the right direction to foresee that shareholders in virtual and hybrid meetings should be able to express and exchange views in real time.

To ensure the exchange of views during virtual meetings, the recent amendments to the German corporate law have provided for some requirements, including detailed provisions on how shareholders can exercise their right to information and to comment at the meeting.[135] Despite some criticism of the new law in German theory and practice, as has been discussed above, there is nonetheless consensus about the need to give shareholders the right to speak and to ask questions in virtual meetings. It is a basic premise that any shareholder can exercise the right to participate in the meeting regardless of the amount of the shareholding.[136] The right to information and the right to speak can be restricted only if its excessive use jeopardises the course of the meeting.[137] German law has allowed shareholders to ask questions in advance by sending them to the management board prior to the meeting, as well as to ask supplementary questions and questions regarding new matters raised directly at the meeting. Due to the risk of abuse of this right by predatory shareholders, said mechanism might be borrowed partially, so that shareholders are entitled to ask questions during the meeting only if they touch upon obstacles that arose during the meeting and that could not have been known before the meeting. Otherwise, questions should be asked prior to the meeting – Lithuanian law already knows this mechanism.[138]

Solutions to improve the procedure of the identification and voting of shareholders in case of electronic participation might be sought not only in the laws of other countries, but also in positive examples demonstrated by some businesses. One such example in Lithuania was the extraordinary general meeting of the shareholders of Snaigė AB, held on 11 February 2021, where shareholders could participate by electronic means. The procedure of participation was rather precisely described in the annex to the convocation notice.[139] All shareholders willing to participate electronically first had to notify the company in advance about their willingness to do so and had to send a copy of their personal identity document. These shareholders were sent the following information: a link to join the procedure for registration and identification of shareholders; a link to the meeting; and an identification password. Shareholders had to join the procedure for registration and identification, where they were identified through video camera: they had to show their personal identity document and to recite the password.[140] The person registering meeting participants checked whether the data provided by shareholders and the password coincided with the information owned by the company. In case of successful registration, the shareholders could join the meeting. After joining the meeting, all shareholders were allowed to speak – shareholders with the largest number of shares were the first to exercise this right. To vote, shareholders had to say their name and express their will: for or against a certain item in the agenda. The instructions also touched upon technical requirements, troubleshooting, collections of personal data, and the language of the document.

This example of the use of electronic means in a general meeting might not be without its flaws: identification by document and password could not fully prevent another person with similar appearance and in possession of the required information from registering for the meeting. A general ballot signed by qualified electronic signature would be more reliable as an identification tool because it would give trustworthy information that the signature belonged to the shareholder. Therefore, an identification procedure by video camera whereby a person shows an identification document and recites a password might be practical to identify a person for the purpose of the exercise of other shareholders' rights, namely the right to comment and to ask questions, while for the exercise of the right to vote it would still be preferable to use electronically signed general ballots. Therefore, it appears most secure for the purpose of voting to have an electronic environment used by the company in case of virtual or hybrid meetings which could enable shareholders to upload general ballots signed by qualified electronic signatures in real time.

Considering the above-mentioned, the Lithuanian LoC might be supplemented with provisions clarifying the identification procedure in case of remote electronic participation. It might be added that shareholders identified through real-time, two-way video and audio connection (e.g. by presenting their identification document, reciting a password, etc.) can participate in the meeting by exercising their rights to comment and to ask questions, unless otherwise provided by the articles of association or the decision of the management board (or by the manager in case of the absence of the management board). However, the registration and identification of shareholders for the purpose of voting need more reliable solutions. Therefore, shareholders identified by audio and video connection should not generally be allowed to vote unless the articles of association or the decisions of the management board (or by the manager in case of the absence of the management board) provide otherwise.

5.3. OTHER COMMENTS IN A COMPARATIVE CONTEXT

Although there were no comments from respondents about the source of regulation for virtual and hybrid

meetings of shareholders, it would benefit clarity and certainty if the law identified the legal basis for the electronic participation of shareholders in a general meeting. For instance, according to the German law on the introduction of virtual general meetings, the articles of association should provide for or authorise the management board to provide for a virtual general meeting.[141] Estonia does not possess the same type of regulation: shareholders are entitled to participate in general meetings using electronic means of communication unless the articles of association provide otherwise.[142] This essentially means that the management board in Estonian companies is free to choose the exact electronic means of communication to be used for the general meeting if the articles of association give no hint on this matter.[143] The law on private companies in Germany is also rather abstract regarding the exact body to decide on the electronic participation of shareholders in general meetings. These gaps in regulation are expected to be filled with respective clauses in the articles of association.

It is interesting to elaborate, using the example of German law on public companies, what does it mean for a virtual meeting of shareholders if the legislation requires that the articles of association provide for or authorise the management board to provide for a virtual meeting of shareholders. A provision in the articles of association granting virtual meetings or authorising the management board to provide for a virtual meeting has to be limited in time – maximum five years.[144] Under this approach the default format of a general meeting is face-to-face. For the change in the articles of association it would be required that a qualified majority of shareholders (at least three quarters of the share capital)[145] approved the amendments to the articles of association. In other words, without controlling shareholders (if there are any) it would not be possible to change the articles of association, meaning that minority shareholders would not be able to participate electronically without prior approval from the majority. On the other hand, in case the articles of association provide for virtual meetings, it would mean that for the maximum five years[146] all general meetings of shareholders should be virtual. However, there is no guarantee that it would be convenient for shareholders in the next five years or so. That is why it is more recommended in German academia to use a more flexible and less stringent alternative for public companies, that is to give the option of authorisation to the management board.[147]

In Lithuania, before the November 2022 amendments the law specified that 'the company may provide for a possibility for shareholders to attend the general meeting of shareholders and to vote by means of electronic communications.'[148] This regulation was rather abstract as it was not clear which body had to decide on the approval of electronic participation in the general meeting. At present, the rule in the LoC is worded in a way to provide for inclusive shareholder participation:[149] 'the company must provide for a possibility of electronic participation if shareholders holding at least one tenth of shares requested it, if the articles of association do not provide for a lower threshold'.[150] This provision is a step towards shareholder empowerment, but it still lacks clarity on which corporate body should decide regarding the use of electronic means. One might argue that this gap is filled by another clause, which says that the company's management board approves the description of the procedure for participation and voting in the general meeting by means of electronic communication.[151] Nevertheless, it still remains debatable whether the law properly protects shareholders with less than one tenth of share capital.[152] Those minority shareholders would be better protected if the management board was entitled to allow the use of electronic means in general meetings at its discretion so that any shareholders, even with less than one tenth of shares, could ask the management board to authorise the use of electronic means for the general meeting. Therefore, to clarify how the rules on electronic participation of shareholders in general meetings should be applied and to enable the protection of all shareholders in a company, it is suggested to stipulate that the management board (or the manager, if there is no management board) is entitled to decide whether shareholders should have the right to participate in the general meeting electronically, unless the articles of association require that all meetings are held electronically or preclude the management from deciding on the use of electronic means by shareholders at general meetings. This novelty might co-exist with the provision enabling minority shareholders owning at least one tenth of shares to request the use of electronic means during the general meeting.

6. CONCLUSION

The Lithuanian law has contained rules on the electronic participation in general meetings since long before the COVID-19 pandemic. There was no need to provide for additional regulation during the pandemic, as opposed to in some other jurisdictions (e.g. Estonia and Germany). In 2022, based on the experience gained during the pandemic, Lithuanian legislators adopted changes to the LoC. These changes have been treated by practitioners as sufficient and effective: inter alia, they deal with procedural and substantial aspects of digitalised corporate governance.

Despite these recent innovative changes to the Lithuanian law, our study has shown that some amendments to the LoC would still be welcomed. It would be instrumental to add more details on the procedure

of identification and verification of shareholders during general meetings in case those are held using electronic means. It is suggested that the real-time, two-way video and audio identification of shareholders or their representatives during general meetings might be employed to allow shareholders to use their rights to comment and to ask questions at the meeting, unless otherwise provided by the articles of association or the management board's decision. However, shareholders identified this way should generally not be allowed to vote unless the articles of association or the decisions of the management board (or the manager, in case of the absence of the management board) provide otherwise. For voting, it would be more reliable and secure to use the real-time submission of the general ballot signed with a qualified electronic signature through a special electronic environment. In addition, German experience might be partly borrowed to organise general meetings in Lithuania by allowing shareholders participating online to ask questions directly at the meeting if they touch upon new matters that could not be known prior to the meeting.

Finally, additional changes to the LoC regarding the corporate body to decide on electronic participation would be an advantage. The management board (or manager/CEO in case of its absence) might be entrusted with this function unless the articles of association require that all meetings are held electronically or preclude the management from deciding on the use of electronic means by shareholders at general meetings. This right of the management board might co-exist with the right of minority shareholders with one tenth of share capital to request the use of electronic means in the general meeting.

NOTES

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98 Ibid, Art. 243(3), sentence 2.

99 *Diesel Process* [2020] BGH v. 25.5.2020 – VI ZR 252/19, BGHZ 225, 316, marginal number 36.

100 Act of 20.07.2022 (n 37), Art. 2(4) (new Art. 118a of the Stock Corporation Act).

101 Ibid, Art. 3 (change to the Introductory Act to the Stock Corporation Act).

102 German Stock Corporation Act (Aktiengesetz) (n 98), Art. 118(2).

103 Hopt (n 22), 569. It should be noted that during the pandemic supervisory boards in German companies also widely met in the form of video conferences (see: Thomas Kremer and others, 'Virtuelle Gremiensitzungen im Rahmen einer nachhaltigen Unternehmensführung' [2021] DB 1145).

104 Julian Redeke, 'Virtuelle Hauptversammlungen börsennotierter Aktiengesellschaften — "Virtual Insanity"?' [2022] Die Aktiengesellschaft 98, 110.

105 Hoppe (n 22), 592.

106 Walch and Häuslmeier (n 3), 128.

107 Hopt (n 22), 576, 578.

108 Ibid, 574.

109 Georg Franzmann and Stefan Rothweiler, 'Das Auskunfts- und Rederecht nach dem Gesetz zur dauerhaften Einführung virtueller Hauptversammlungen von Aktiengesellschaften' [2022] Die Aktiengesellschaft 809, 820.

110 Schirmer (n 38); Hopt (n 22), 578.

111 Amendments – the Act XIV-1540 (n 27).

112 Ibid, Art. 4(2) (amended Art. 21(4)).

113 Ibid, Art. 12(1) (amended Art. 34(1)).

114 Ibid, Art. 4(2) (amended Art. 21(4)).

115 Ibid, Art. 6(3) (supplemented Art. 27(10)).

116 Ibid, Art. 8(1) (amended Art. 29(3)), Art. 9 (amended Art. 30(4)).

117 Explanatory note to the draft bill amending Articles 2, 15, 17, 21, 27, 28, 29, 30, 30^1, 32, 34, 37, 37^2, 40, 42, 45, 47, 47^1, 51 and 78, annex, and supplementation with Article 46-1 of the Law on Companies of the Republic of Lithuania, Document No. XIVP-1854 (22.07.2022) <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/25521d90f24011ecbfe9c72e552dd5bd?jfwid=6i50l5mz5> Accessed 14 April 2023.

118 Mikalonienė (n 29), 220.

119 This conclusion is based on the notices published on the Nasdaq Baltic website <https://nasdaqbaltic.com/statistics/en/news> accessed 11 June 2023.

120 Law on Companies (n 53), Art. 24(1).

121 Annual General Meeting of Shareholders of AB Linas Agro Group is convened on 29.10.2021. Published: 07.10.2021 15:30:00 CEST <https://view.news.eu.nasdaq.com/view?id=-b1b7a2ff6485161876c8b5cb582f1398f&lang=en&src=listed> accessed 20 April 2023; Notice on the Convened Annual General Meeting of Shareholders of AB Klaipėdos nafta. Published: 2023-04-28 15:00:00 CEST <https://view.news.eu.nasdaq.com/view?id=bee1c62d6db838fbb1be838b02080ce3e&lang=en> accessed 20 April 2023.

122 Convocation of the Extraordinary General Meeting of Shareholders of Snaigė AB. Published: 18.01.2021 16:25:36 CET <https://view.news.eu.nasdaq.com/view?id=b7b80b8c4eb640218ff60d65fb4a1164e&lang=en&src=listed> accessed 20 April 2023.

123 Regarding questions that shareholders of AB Klaipėdos nafta asked in advance. Published: 09.04.2020 07:39:45 CEST <https://view.news.eu.nasdaq.com/view?id=be7691a082aec6f-25fdbd88b5805d3fa6&lang=en&src=listed> accessed 20 April 2023.

124 Amendments – the Act XIV-1540 (n 27).

125 Bitė and Romashchenko (n 41), 30.

126 As we have mentioned earlier herein, a part of the second survey on the use of artificial intelligence, algorithms, and platforms was not used for this study as it exceeds its boundaries.

127 Amendments – the Act XIV-1540 (n 27), Art. 4(2) (amended Art. 21(4)).

128 Ibid.

129 Ibid, Art. 8(1) (amended Art. 29(3)), Art. 9 (amended Art. 30(4)).

130 Ibid, Art. 6(3) (supplemented Art. 27(10)).

131 Amendments – the Act XI-354 (n 45), Art. 12 (amended Art. 34(1)).

132 This conclusion is based on the notices published at the Nasdaq Baltic website <https://nasdaqbaltic.com/statistics/en/news> accessed 11 June 2023.

133 Act adopted on 18.05.2020 (n 70), § 1 (supplemented § 331 of the law on the General Part of the Civil Code), § 6 (amendments to the Commercial Code).

134 Hopt (n 22), 572.

135 Act of 20.07.2022 (n 37), Art. 2.

136 Münchener Kommentar zum Aktiengesetz (4th ed., C.H. Beck 2018), Art. 118, marginal number 53 (right to participate), marginal number 74 (right to speak).

137 Ibid, Art. 118, marginal note 76.

138 Law on Companies (n 53), Art. 16-1.

139 Convocation of the Extraordinary General Meeting of Shareholders of Snaigė AB. Published: 18.01.2021 16:25:36 CET <https://view.news.eu.nasdaq.com/view?id=b7b80b8c4eb640218ff60d65fb4a1164e&lang=en&src=listed> accessed 20 April 2023.

140 The latter example of video identification of shareholders for the general meeting is not the only one. When the Latvian listed company AS HansaMatrix notified its shareholders about its annual meeting, it was specifically indicated that shareholders' video identification would take place on the day of the meeting. All shareholders were expected to present their identification documents on camera so that the chair of the meeting could compare the image of the shareholders with the image shown in the ID. During the identification, the head, shoulders, face, and the image with the face on the document had to be made clearly visible without shading. See: Notification on convocation of annual general meeting of shareholders of AS HansaMatrix on 31.05.2023. Published: 28.04.2023 17:53:41 CEST. <https://view.news.eu.nasdaq.com/view?id=bea5eb4e1ef51ab589fd8df8b3db5c704&lang=en&src=listed> accessed 11 May 2023.

141 Act of 20.07.2022 (n 37), Art. 2(4) (new Art. 118a of the Stock Corporation Act).

142 Act on Amendments (n 70), § 1 (amendments to the law on the general part of the Civil Code).

143 Vutt and Vutt (n 76), 455.

144 German Stock Corporation Act (Aktiengesetz) (n 98), Art. 118(4), (5).

145 Ibid, Art. 179(2).

146 The exact time period can be shorter than five years: for instance, shareholder protection associations and institutional shareholders call for two years (see Hoppe (n 22), 588).

147 Hoppe (n 22), 588; Walch and Häuslmeier (n 3), 109.

148 Amendments – the Act XI-354 (n 45), Art. 9 (amended Art. 21(4)).

149 Mikalonienė (n 29), 221.

150 Amendments – the Act XIV-1540 (n 27), Art. 4(2) (amended Art. 21(4)).

151 Amendments – the Act XI-354 (n 45), Art. 9 (amended Art. 21(4)).

152 Mikalonienė (n 29), 220.

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AUTHOR AFFILIATIONS

Ivan Romashchenko orcid.org/0000-0003-1542-2874
Senior Researcher (Law), Legal Technology (LegalTech) Centre, School of Law, Mykolas Romeris University, LT

Virginijus Bitė orcid.org/0000-0003-3902-0175
Professor (Law), Institute of Private Law, School of Law, Mykolas Romeris University, LT

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