

MORROW SODALI

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PROXY UPDATE

ISS AND GL PROXY VOTING GUIDELINES: 2019 UPDATES FOR COMPANY PROPOSALS

Institutional Shareholder Services (ISS) and Glass Lewis (GL) have published their guideline updates for the 2019 proxy season. Most updates contain codifications and clarifications of pre-existing policies or alignments with local legal or best practice provisions.

Combining policy updates across multiple markets allows to detect general trends at both proxy advisors. Overall, policies focus on the Board of Directors, such as collective and individual Director accountability, diversity, independence or Board skills and respective disclosure. Of note, both proxy advisors hold off from significant amendments to their expectations on executive remuneration as EU markets are starting to implement the Continental Europe Shareholder Rights Directive II. Below is a summary of the key policy changes and additions for continental Europe, the UK and Ireland, Russia and Turkey.

Board of Directors

BOARD PROFILE	
For IBEX35 and Russian blue-chip companies, GL will include an analysis of the Board members' skills and expertise in their research reports.	Spain, Russia
GL expect all FTSE100 and blue-chip issuers to provide "meaningful disclosure in line with developing best practices standards" regarding the skills and experiences of their Board members.	Continental Europe, UK
GL may recommend against nomination committee Chairs at SDAX, MDAX and DAX companies if they do not provide a meaningful profile of the Supervisory Board's skills and expertise.	Germany

DIRECTOR INDEPENDENCE	
As already announced in 2018, the level of Board independence ISS requires will take the shareholder structure of a specific company into account. ISS will recommend against all non-independent nominees if less than one-third of board members are independent.	Continental Europe
In addition, at non-controlled ⁽¹⁾ , widely held ⁽²⁾ companies, ISS will oppose all non-independent nominees if fewer than 50 percent of the board members elected by shareholders (excluding employee representatives) would be independent.	Continental Europe, excluding Portugal, Greece
GL clarify their approach to assessing conflicts of interests, considering the individual professional service relationship, but also the independence profile of the board and its key committees overall as well as general conflict mitigation procedures.	Continental Europe
GL may recommend against the Chair of the nomination committee at SDAX, MDAX and DAX companies if they do not provide an individual independence assessment of their Directors.	Germany
GL clarify that they will analyse the independence of Directors as stipulated by the company case-by-case if their independence assessment deviates from the Code.	Russia
Following changes in the Danish Recommendations, GL will recommend withholding support from any appointments of executives to the Board .	Denmark

DIVERSITY	
In line with changes to the Italian Code, GL expects disclosure on gender diversity for proposed Director slates and statutory auditors.	Italy
GL will consider disclosure on the gender pay gap as well as the executive pipeline when assessing diversity concerns at Board level.	UK
GL requires the Board to ensure that executive officers implement a diversity and non-discrimination policy.	France
In line with Spanish Company Law, GL clarify that they expect companies to publish a diversity policy including diversity targets, measures to achieve these targets and results in the reporting period. If targets have not been reached an explanation should be provided.	Spain
As gender quotas have become applicable for all Belgian companies, GL have removed exceptions from their recommendation policy.	Belgium
GL may recommend against the nomination committee Chair at all-male Boards unless a compelling rationale is provided and a target for female representation has been set.	Germany, Switzerland
If Boards do not comply with the legislation on gender diversity ⁽³⁾ GL will recommend against the election of the nomination committee Chair – or alternatively, if the Chair is not up for election, against all representatives of the overrepresented gender.	Netherlands

(1) ISS defines companies as controlled if a shareholder, or multiple shareholders acting in concert, control a majority of the company's equity capital. Voting rights are not considered.

(2) ISS defines companies as "widely held" based on their membership in a major index and/or the number of ISS clients holding the securities.

(3) 30% minimum representation of each gender.

COMMITTEE COMPOSITION

GL clarify that they expect Directors with conflicts of interest to refrain from serving on any key committees.	Continental Europe
GL clarify that they accept 50% committee independence where the committee has an even number of members and the Chair is considered independent (otherwise: majority).	Germany
GL confirm that they take information on intended committee composition following a general meeting into account when analysing the meeting agenda.	Austria, Switzerland

AUDIT COMMITTEE

ISS extend independence requirements for audit committees previously only applicable in Belgium, the Netherlands and Switzerland to all widely-held companies: one-third of the audit committee members must be independent ⁽⁴⁾ and 50% excluding employee representatives. The committee must be chaired by an independent Director. Otherwise, ISS will recommend against the appointment of non-independent nominees .	Continental Europe
Following an update in the Icelandic corporate governance code ISS will not support executive Directors on the committee .	Iceland

REMUNERATION COMMITTEE

For consistency, ISS will apply their existing remuneration committee independence requirements only to widely-held companies.	Belgium, Netherlands, Switzerland
Following an update in the Icelandic corporate governance code ISS will no longer support executive Directors on the committee .	Iceland

NOMINATION COMMITTEE

Following an update in the Icelandic corporate governance code, ISS requires nomination committees to be composed of mainly non-board members.	Iceland
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GOVERNANCE TRACK RECORD

ISS specify that, in addition to material governance failures at the company, “egregious actions related to the director’s service on other boards that raise substantial doubt about that individual’s ability to oversee management and to serve the best interest of shareholders at any company” will be taken into account “under extraordinary circumstances” when assessing Director elections.	UK & IE
GL may hold committee Chairs and members to account for a failure to react to shareholder dissent.	UK

(4) Except in markets where 50% non-shareholder representation is required by law.

OVERBOARDING

Following the promotion to developed market status by FTSE Russell in 2018, **ISS** will apply their European overboarding policy to Polish issuers:

- Directors may not hold more than five mandates in total, with Chair and executive mandates counting as two and three mandates, respectively.
- Executive Directors may not hold another non-executive Chair mandate.

Poland

MEETING ATTENDANCE

ISS has merely edited its standard recommendation to still **oppose the re-election of directors** that have repeatedly been absent at board and committee meetings (less than 75% attendance) without providing a suitable explanation.

UK & IE

DIRECTOR TERMS

In line with the requirements of the Greek corporate governance code, **ISS** will recommend **against Greek director elections** for terms exceeding four years.

Greece

BOARD EVALUATION

Following changes in the Danish Recommendations, **GL** will recommend **against the Chair of the nomination committee** – or, in the absence of a nomination committee, against the Chair of the Board – if the Board does not implement an annual internal and triennial external review of its effectiveness.

Denmark

RELATED PARTY TRANSACTIONS

GL clarify that related party transactions fall under the authority of the Board, unless shareholders with at least 5% of the share capital request a general meeting for their approval.

Greece

APPOINTMENT PROCEDURE

GL have codified that they allow the possibility that the Board of Directors may propose a Director slate for election in the Articles of Association. **GL** assess slates proposed by the Board in the same way as slates proposed by shareholders.

Italy

Remuneration

PAY-FOR-PERFORMANCE MODEL	
Like ISS in their European pay-for-performance model, GL clarify that they are using realised pay figures when assessing the link between pay and company performance.	UK, Continental Europe
PERFORMANCE CRITERIA	
GL 's best practice recommendations on French say-on-pay proposals now require companies to include at least one ESG related performance metric in executive incentive plans.	France
CAPS ON VARIABLE PAY	
In line with Dutch legislation, GL now reference in their guidelines that financial institutions under the WBFO cannot pay variable remuneration exceeding 20% of fixed pay.	Netherlands
ANNUAL BONUS	
After recent debates on excessive bonus payments for average or poor performance, ISS will recommend against the remuneration policy in case it sets the bonus payout at target at more than 50% of the maximum bonus opportunity unless the company provides a sound and justifying rationale.	UK & IE
LONG-TERM INCENTIVE PLANS	
GL clarified that the lack of a long-term incentive plan does not necessarily lead to a negative recommendation on a remuneration report for companies outside the BEL20.	Belgium
ISS will recommend against remuneration policies with long-term incentive plans of less than five years total vesting and holding periods in line with the 2018 UK Corporate Governance Code recommendation. Also, ISS encourage issuers to set performance periods longer than three years.	UK & IE
In case of significant downturns in share price, the underlying number of shares required to fund stock-based awards grows. Consequently, in such cases ISS may now recommend opposing the remuneration report if the remuneration committee does not consider reducing the size of long-term awards at settlement.	UK & IE
In adherence to the guidelines of the Investment Association, when approving new or amended long-term incentive plans ISS will consider whether more than 10% of the outstanding share capital can be issued under all incentive schemes or more than 5% of the issued share capital under executive schemes in any rolling 10-year period.	UK & IE

(5) Except in markets where 50% non-shareholder representation is required by law.

CLAWBACK PROVISIONS

GL recommend Danish companies to include recovery provisions in their remuneration policies going forward.	Denmark
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SHAREHOLDING REQUIREMENTS

Noting that shareholding requirements post-employment are increasingly popular and in anticipation of the FRC endorsement of the 2018 corporate governance code, ISS will consider in their recommendation if the remuneration policy specifies post-employment shareholding requirements comprising both, vested and unvested shares.	UK & IE
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TERMINATION PAYMENTS

GL requires post-employment benefits under non-compete agreements to be staggered over their duration and does not support any such post-employment payments to executives who are retiring or are over 65 years old.	France
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GL codified that, in line with the Code, severance payments should be capped at two years' total pay and subject to performance conditions.	Spain
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PAY-RATIO

GL clarify that disclosed pay-ratios by themselves will not have an impact on their voting recommendations.	UK
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NON-EXECUTIVE PAY

Considering board-related fees shall be coherent to similarly-sized companies in the same sector, ISS may oppose to the remuneration report if non-executive directors' fees are excessive relative to sector and size peers.	UK & IE
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GL expect companies to define and disclose the role of the Board Chair on a forward-looking basis. GL may recommend against the Chair of the nomination committee if related information is not disclosed and Chair compensation indicates that the Chair role may be akin to a executive or full-time position.	Switzerland
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SHAREHOLDER VOTE

In line with the Danish Recommendations, GL now expect a vote on the remuneration policy at least every four years in addition to publication of executive pay in an annual remuneration report.	Denmark
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With the implementation of the Shareholder Rights Directive II in Greece, GL expect a vote on the remuneration policy at least every four years, in addition to an annual advisory vote on the remuneration report.	Greece
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GL clarify that they expect a shareholder vote on the remuneration report in the event of material changes or significant free-float shareholder discontent at a previous remuneration vote.	Germany
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In line with existing guidelines for continental Europe, GL specify that they require Swiss companies to respond explicitly to significant shareholder discontent related to remuneration proposals at a previous general meeting.	Switzerland
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Share Capital

CAPITAL AUTHORISATIONS	
In adherence to the guidelines of The Pre-Emption Group, ISS will oppose authorisations to issue equity of issuers that have exceed such authorisations previously approved by shareholders over multiple years.	UK & IE
As announced in 2018, ISS will no longer support capital authorisations exceeding 50%/10% with/without pre-emptive rights (previously: 100%/20%) from 2019 onwards.	Continental Europe
GL clarify that they will recommend against capital increases exceeding 20%/10% with/without pre-emptive rights in addition to a 10% authorisation only to be used in mergers and acquisitions.	Netherlands

SCRIP DIVIDEND ALTERNATIVE	
Proposals for scrip dividends have become routine across Europe. ISS codify their existing analysis approach assessing scrip dividends on a case-by-case basis. Specifically, ISS expect the proposal to contain a cash-option and alignment with market standards.	Continental Europe

SHAREHOLDER RIGHTS	
GL clarify that they will oppose all article amendments introducing double voting rights.	Belgium
GL include details of the role of continuity foundations at Dutch companies in their policy.	Netherlands

Audit

LEAD AUDIT PARTNER	
After a sequence of high-profile corporate audit related concerns in the region, which triggered higher scrutiny regarding external auditors, ISS will oppose the (re-)election of the external audit firm or audit fees in case the lead audit partner(s) is linked to a significant audit controversy at any other public company. Similarly, ISS will review the relationship of the lead audit partner(s) (previously: audit firm) to determine their relationship with the company and potentially recommend against their appointment if ISS considers them affiliated.	Continental Europe, UK & IE
ISS will recommend against audit related proposals in continental Europe where the auditor name has not been published.	Continental Europe

AUDITOR TENURE	
GL clarify that they consider the tenure of the auditor when the effectiveness of the auditor is in question, e.g., in the event of audit controversies.	Russia, Continental Europe

AUDIT COMMISSION

GL clarify that, although the Audit Commission is no longer required following changes to the LJSC in 2018, **GL** will recommend **against proposals to abolish Audit Commissions** unless a compelling rationale is provided.

Russia

Annual Reports

ANNUAL REPORTS

Upon the amendment of the AIM Rules, **ISS** expects AIM listed issuers to provide details of compliance against their chosen corporate governance code.

UK & IE

Charitable Donations

CHARITABLE DONATIONS

GL will recommend **against charitable donations** where insufficient information on future donations has been provided.

Turkey

Social and Environmental Issues

SOCIAL AND ENVIRONMENTAL ISSUES

ISS will “examine primarily” (previously: take into consideration) whether implementation of a **shareholder proposal related to “E” or “S”** is likely to enhance or protect shareholder value. In identifying the key factors to consider when assessing social and environmental issues and issuing voting recommendation on these matters, **ISS** will now take into account if there are significant controversies, fines, penalties, or litigation associated with the company’s environmental or social practices.

UK & IE,
Continental Europe,
EMEA Regional,
Israel, Russia,
and Kazakhstan

GL specified their assessment approach of environmental and social risk oversights. For companies with material oversight issues and all blue-chip issuers, **GL** identify the responsible Director or committee in their research. **GL** will note when such oversights have not been adequately reflected in the companies’ governance documents and may recommend against their appointment if related risks have not been properly managed or mitigated and affect or “threaten” shareholder value.

UK, Russia,
Continental Europe