

## Glass Lewis 2023 Policy Updates

The UK and Europe

December 2022

### Introduction

In November 2022<sup>1</sup>, Glass Lewis released their guideline updates for their main voting policies for 2023. The updates will be effective from the 2023 AGM season. Our memo summarizes the policy changes that will be applied across the UK and Continental Europe (as well as some specific updates for Germany, France, Switzerland and the Netherlands). The main changes relate to board accountability for climate-related issues, directors' external commitments, combined incentive plans, capital management matters and disclosure-related issues. Below we provide a concise review of the main changes.

### Updates in Common Across the UK and Continental Europe

#### Combined Incentive Plans

Glass Lewis has introduced a guideline dedicated to combined incentive plans (i.e. incentive schemes with a short-term performance period - typically one year - for the full award granted, followed by the payment of a portion of the award and the deferral of the remaining part, eventually subject to non-stretching performance conditions).

First, Glass Lewis states its scepticism regarding the introduction of such plans replacing a traditional structure consisting of a short- and long-term incentive scheme, "as this generally leads to a reduction of the portion of variable pay linked to performance" and "typically entails the removal of long-term performance conditions."

Therefore, "Glass Lewis will generally recommend that shareholders vote against a remuneration policy that includes a combined incentive plan, unless": (i) the vesting period lasts at least three years (ii) at least a portion of the award consists of equity or equity-based instruments, subject to time-vesting restrictions (iii) the deferred portion is subject to quantitative gateways/underpins (iv) the company has provided a strategic rationale for the plan.

Further, Glass Lewis expects companies replacing existing incentive schemes with a combined incentive plan to substantially reduce the total target and maximum award opportunity.

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<sup>1</sup> <https://www.glasslewis.com/2023-glass-lewis-policy-guidelines-updates-now-available-for-north-america-europe-uk-and-esg/>

## Linking Executive Pay to Environmental and Social Criteria

Given that the vast majority of European large- and mid-cap companies have included E&S metrics in at least one of the incentive schemes, Glass Lewis has clarified that companies that have not included such indicators in their incentive plans “would benefit from additional disclosure on how the company’s executive pay strategy is otherwise aligned with its sustainability strategy.”

## Remuneration Committee Discretion

Glass Lewis has clarified that extraordinary events that could justify adjustments to the incentive plans outcomes may however “be consequential to corporate performance results, impact the shareholder experience, and, in some cases, may present material risks. Conversely, certain events may adversely impact formulaic payout results despite being outside executives’ control.” As such, Glass Lewis expects companies to provide exhaustive disclosure regarding how the committee considered such events when applying discretion, or when refraining from exercising discretion.

## Cyber Risk Oversight

In this new section of the guidelines, Glass Lewis states that all companies should “provide clear disclosure concerning the role of the board in overseeing issues related to cybersecurity. We also believe that disclosure concerning how companies are ensuring directors are fully versed on this rapidly evolving and dynamic issue can help shareholders understand the seriousness with which companies take this issue.”

However, Glass Lewis will generally not make voting recommendations based on company’s disclosure or oversight of cybersecurity issues, but “will closely evaluate a company’s disclosure in this regard in instances where cyber-attacks have caused significant harm to shareholders and may recommend against appropriate directors should we find such disclosure or oversight to be insufficient.”

## ESG Initiatives – UK and Continental Europe Updates

### Board Accountability for Climate-Related Issues

Glass Lewis has introduced a new section of the guidelines, stating that “while all companies maintain exposure to climate-related risks, we believe that additional consideration should be given to, and that disclosure should be provided by, those companies whose GHG emissions represent a financially material risk. We believe that companies with this increased risk exposure, such as those companies identified by groups such as Climate Action 100+, should provide clear and comprehensive disclosure regarding these risks, including how they are being mitigated and overseen.”

Accordingly, where such companies have not provided thorough TCFD-aligned climate-related disclosures and/or have not explicitly and clearly defined board oversight responsibilities for climate-related issues, Glass Lewis “may recommend voting against the chair of the committee (or board) charged with oversight of climate-related issues, or if no committee has been charged with such oversight, the chair of the governance committee. Further, we may extend our recommendation on this basis to additional members of the responsible committee in cases where the committee chair is not standing for election due to a classified board, or based on other factors, including the company’s size and industry and its overall governance profile. In instances where appropriate directors are not standing for election, we may instead recommend shareholders vote against other matters that are up for a vote, such as the ratification of board acts, or the accounts and reports proposal.”

## UK-Specific Guideline Updates

### External Commitments

Glass Lewis will generally recommend against the election of a director who: (i) serves as an executive officer of a listed company while serving on more than one additional listed company boards; further, an executive “should not take on more than one non-executive directorship in a FTSE 100 company or other significant appointment”; or (ii) serves as a non-executive director on more than five listed company boards.

The existing assessment rules remain valid (such as non-executive board chair positions counted as two mandates). Glass Lewis has though clarified that it will generally not recommend against the election of an overboarded executive director at the company where he/she serves as executive, and will not recommend against the election of an overboarded director at a company where he/she serves as the board chair except when such director: (i) serves as an executive of another listed company; or (ii) serves as chair of three or more listed company boards; or (iii) is being proposed for initial election as board chair at the company.

Finally, Glass Lewis has specified that it “may also refrain from recommending against a potentially overcommitted director if the company provides a commitment that the director will sufficiently reduce their commitment level prior to the next annual general meeting, or otherwise presents a compelling rationale for the director’s continued service on the board.”

### Employee Representatives

Regarding the independence of directors, Glass Lewis has introduced a new directors’ classification category specific to employee representatives, also clarifying that such directors are not counted in the calculation of board independence.

### Pensions

Glass Lewis has clarified that, absent a compelling rational, pension provisions for both newly appointed and incumbent executive directors are expected “to be in line with those available to the majority of the wider workforce by the end of 2022.”

### Specific Authority to Issue Shares

Glass Lewis has introduced a section dedicated to authorities to issue shares for specific purposes outside of routine authorities, “such as financing a merger, acquisition or expansion, or otherwise refinancing a company.” Glass Lewis will evaluate such proposals on a case-by-case basis, weighing: (i) the number of shares to be issued and the dilution impact on shareholders; (ii) the issuance price and discount/premium; and (iii) the intended uses of proceeds from the issuance considering the company’s financial position and business strategy.

## Continental Europe Guidelines Updates

### Multi-Class Share Structures

Glass Lewis has introduced a new section dedicated to “multiple classes of shares that have the same economic stake in a company but with differing voting rights, or multiple classes of shares that have the same voting rights but differing economic stakes in a company.”

For companies seeking to adopt a multi-class share structure, “where the share class with superior rights is unlisted, in connection with an IPO, spin-off, or direct listing within the past year,” Glass Lewis will

generally oppose the election of the governance committee chair (or equivalent) or a representative of the major shareholder up for election (or, in cases where there are no board election, they may recommend against another relevant proposals, i.e. ratification of board acts) if the board: “(i) did not also commit to submitting the multi-class structure to a shareholder vote at the company’s first shareholder meeting following the IPO; or (ii) did not provide for a reasonable sunset of the multi-class structure (generally seven years or less).”

In the case of existing multi-class share structures, absent additional concerns, Glass Lewis “will not recommend shareholder action.” However, “where evidence exists that a company with a multi-class share structure, where the share class with superior rights is unlisted, is unresponsive to the concerns of minority shareholders [i.e. poor governance practices or board unresponsiveness], we may recommend that shareholders vote against the re-election of the governance committee chair (or equivalent).”

Finally, Glass Lewis will generally recommend in favour of proposals to unwind multi-class share structures, analysing “the impact on all equity holders of any financial compensation being offered to holders of shares with superior rights.”

### Disclosure of General Meeting Vote Results

Glass Lewis will recommend voting against the election of the governance committee chair or equivalent (i.e. board chair or Lead Independent Director) at European blue-chips or mid-cap companies that fail to disclose their previous annual general meeting vote results. This policy will be firstly applied starting from the 2024 proxy season, i.e. concerning the disclosure of the 2024 AGMs vote results.

### External Commitments

Glass Lewis will generally recommend against the election of a director who: (i) serves as an executive of a listed company while serving on more than one additional external listed company board; or (ii) serves as a “full-time’ or executive member of the board” – i.e. “directors that serve on a board in a ‘full-time’ or executive capacity without further defined responsibilities within the executive team (e.g. executive chair without CEO responsibilities)” - of a listed company while serving on more than two additional external listed company boards; or (iii) serves as a non-executive director on more than five listed company boards.

The existing assessment rules remain valid (such as non-executive board chair positions counted as two mandates). Glass Lewis has though clarified that will generally not recommend against the election of an overboarded executive director at the company where he/she serves as executive, and will not recommend against the election of an overboarded director at a company where he/she serves as the board chair except when such director: (i) serves as an executive of another listed company; or (ii) serves as chair of three or more listed company boards; or (iii) is being proposed for initial election as board chair at the company.

Finally, Glass Lewis has specified that it “may also refrain from recommending against a potentially overcommitted director if the company provides a commitment that the director will sufficiently reduce their commitment level prior to the next annual general meeting, or otherwise presents a compelling rationale for the director’s continued service on the board.”

### Pension Contributions

Glass Lewis has clarified its expectations “that companies should provide clear and individualised disclosure of executives’ annual pension contributions” and that, in the assessment of the at-risk portion of executive remuneration, it generally considers pension contributions as a fixed component of the pay package.

## Capital Management

On a case-by-case basis, for companies “with a clear and defined inorganic growth strategy and/or which are in a pre-revenue stage and highly dependent upon sources of external financing,” Glass Lewis may exceptionally recommend in favour of general authorities to issue shares or convertible debt in excess of normal limits (i.e. 10%-20% of issued share capital, depending on market best practice). However, Glass Lewis believes that companies seeking for the approval of such authorities should “provide shareholders with clear strategic rationale.”

## France-Specific Guideline Updates

### Merger of the Roles of Board Chair and CEO

The updated guidelines have clarified that Glass Lewis may recommend voting against the nominating committee chair or the board chair when, absent a cogent rationale, a company proposes to merge the board chair and CEO roles.

### Censors

Without prejudice to the existing guidelines regarding the appointment of censors, Glass Lewis has specified that “the presence of censors on the board must remain exceptional and be subject of specific justifications announced to the shareholders prior to the general meeting.”

### Exceptional Remuneration

According to Glass Lewis’ updated guidelines, companies should not grant special awards to departing CEOs (other than regular termination payments).

### Limits on Equity-Based Incentive Plan Proposals

When the beneficiaries of the plans also include lower-level employees, the limit for the total equity-based grant is 10% of issued share capital, instead of 5% as in the case of plans to which only corporate officers are eligible.

### LTI Grants and Outstanding Awards for Departing Executives

Apart from existing guidelines, Glass Lewis has specified that no LTIs should be granted in the last years of service to executives whose departure is planned. Furthermore, prorating outstanding equity awards for time served as executive should be the usual practice, but Glass Lewis believes that “the company should provide a compelling rationale when full vesting is maintained.”

### Employee Savings Plans

When the board’s aim is only to comply with legal requirements and recommend shareholders to vote against a proposal to approve an employee savings plan, also Glass Lewis will recommend voting against such plan.

## Germany-Specific Guideline Updates

### Classified Supervisory Board and Term Length

Starting from the coming proxy season, not only DAX companies, but also MDAX companies proposing five-year term supervisory board mandates without providing a compelling rationale, may receive an against recommendation from Glass Lewis on the re-election of the nominating committee chair. For all other CDAX companies, Glass Lewis “will note a concern and may recommend that shareholders vote

against the re-election of the nominating committee chair” in case of “further concerns with the composition or performance of the nominating committee.”

### Severance Policy

In this newly introduced section, Glass Lewis states that “shareholders can reasonably expect” companies to disclose which components of the pay package can be included in the calculation of the severance payments, also expressing a preference for the exclusion of the long-term incentive. Moreover, Glass Lewis also states that shareholders can reasonably expect companies “to differentiate their severance policies based on the possible circumstances of a management board member’s departure (i.e. resignation with or without good cause, termination by mutual agreement, termination with or without good cause)” and to disclose specific provisions in each of these cases (e.g. treatment of outstanding awards).

### Virtual Meetings

The guidelines for virtual meetings substantially reflects the existing policy of Glass Lewis Continental Europe Policy Guidelines. However, in addition, German companies “should proactively provide clear disclosure of the envisaged terms of shareholders’ participation in virtual meetings and any restriction thereto when seeking shareholder approval of the relevant article amendments, including a clear indication of when (or until when) shareholders will be able to submit questions and, if time limits are imposed, a rationale for such limits.”

Furthermore, Glass Lewis believes that “shareholders would benefit from additional disclosure clarifying the board’s intended usage of virtual meetings over the term of the authority.”

## Switzerland-Specific Guideline Updates

### Increases and Reductions of Share Capital

In light of the greater flexibility provided by the revised law (limits on capital increases/reductions of +/- 50% of issued share capital, authority length not exceeding 5 years vs. 2 years previously, Glass Lewis will continue recommending against authorities to issue shares without pre-emptive rights potentially exceeding 20% of issued share capital together with all existing or proposed capital pools (excluding authorities for specific purposes, e.g. equity plans), “at any time during the length of the authority.”

## Netherlands-Specific Guideline Updates

### Post-Employment Benefits

According to the new guidelines, Dutch companies should disclose: “(i) the length of the employment agreement, the length of any applicable notice period and the remuneration due to the management board member during such period; (ii) the terms of any pension arrangement(s) and the size of contributions due under such agreement(s); (iii) the treatment of outstanding awards upon termination, according to the different termination scenarios possible; (iv) the maximum payments due under any contractual severance agreement, including a potential non-competition clause.”

Moreover, Glass Lewis has clarified that, upon departure of a management board member, outstanding LTI awards should be prorated for time served in such capacity; if not, Glass Lewis expects “a thorough and compelling disclosure of the board’s strategic rationale for the full vesting of such awards.”

Finally, Glass Lewis “may recommend voting against the remuneration report where substantial severance payments have resulted in a significant tax penalty pursuant to Dutch law and have not been adequately explained or justified.”

### Supervisory Board Remuneration

Without prejudice to the existing guidelines, Glass Lewis may however accept the payment of supervisory board fees in the form of restricted shares, “provided these would not lapse upon termination and the company disclosed a compelling rationale in support of this remuneration design.”