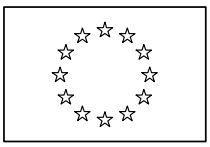

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.01.2006
COM(2005) 685 final

2005/0265 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1.1. Context

Shareholder participation is an essential precondition for effective corporate governance. However, EU-citizens holding shares in a listed company situated in another Member State often face severe problems when they wish to exercise the voting rights attaching to these shares and sometimes even encounter obstacles that make voting practically impossible. Nowadays, investors typically hold their shares through accounts opened with securities intermediaries, who, in turn, hold accounts with other securities intermediaries and central securities depositories in other jurisdictions. The legal constructs from which shareholders' rights emanate in the Member States are not always fully adapted to this modern form of intermediated holdings. The cross-border chains of intermediaries, therefore, make not only the communication process between issuers and shareholders, but also the voting process, more difficult.

The scope of this problem has broadened significantly in recent years and continues to grow as the cross-border nature of equity investment increases, which is further stimulated by the drive towards creating integrated financial markets in Europe and beyond. The growing proportion of share ownership by foreign investors is already posing the threat of EU listed companies being owned by a passive shareholder base. Moreover, existing legal obstacles to cross-border voting prevent small individual cross-border shareholders who are willing to exercise their voting rights from using means that would allow them to do so cheaply and simply.

In its "Action Plan on Modernising Company Law and Enhancing Corporate Governance in the European Union", the Commission considered, therefore, that there is a need to facilitate the cross-border exercise of shareholders' rights. It was recognised not only that access to general meetings and other rights related to general meetings should be open to shareholders independently of their country of residence in the EU, but also that a number of specific problems relating to cross-border voting would need to be solved.

The existing rules at EU level are not sufficient to attain this objective. Article 17 of the Transparency Directive[1] requires issuers to make available certain information and documents which are relevant to general meetings. However, such information and documents are to be made available in the issuer's home Member State, and Article 17 does not mention when and how these are to be made available. As a result, the general provision in Article 17 of the Transparency Directive does not address the specific difficulties of non-resident shareholders in obtaining access to information prior to the general meeting. Furthermore, the Transparency Directive

[1] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L390, 31.12.2004, p. 38

focuses on the information which issuers have to disclose to the market and thus does not deal with the shareholder voting process itself.

From September to December 2004 and from May to July 2005 the Directorate-General for Internal Market and Services carried out two public consultations on the enhancement of shareholders' rights, especially in a cross-border context. The aim of these consultations was to elicit the views of interested parties on the main obstacles to cross-border voting and on possible minimum standards which the Commission could propose in this field. Both consultations solicited a considerable number of replies from market participants across all interest groups, who showed significant support for the measures that had been put forward for discussion.

1.2. Objectives of the current initiative

From empirical evidence and the responses to the public consultations, it appears that the main obstacles to cross-border voting for investors are the following, in order of importance: the requirement to block shares before a general meeting (even where it does not affect the trading of the shares during this period), difficult and late access to information that is relevant to the general meeting and the complexity of cross-border voting, in particular proxy voting. Share blocking and the complexity of proxy voting also have a considerable impact on the costs of cross-border voting.

Abolishing existing constraints which hamper the voting process requires amendments to the relevant national legislations. A directive seeking to remove the key obstacles to the cross-border voting process and focusing on selected rights of shareholders in the general meeting seems the most appropriate type of instrument, if effective simplification of the cross-border voting process is to be achieved and the disparities between Member States reduced. Other topics covered in the public consultations, which are indirectly related to the exercise of voting rights, such as stock lending, depositary receipts or the rules governing languages, could form part of a Commission recommendation.

The current proposal for a Directive therefore pursues the following objectives:

(1) Ensure that all general meetings are convened sufficiently in advance and that all documents to be submitted to the general meeting are available in time to allow all shareholders, no matter where they reside, to take a reasoned decision and to cast their votes in time.

(2) Abolish all forms of share blocking. These should be replaced by a record date system to determine the entitlement of a shareholder to participate and vote in a general meeting.

(3) Remove all legal obstacles to electronic participation in general meetings. Where the issuer decides to make electronic means available to its shareholders, these make it much easier for the active shareholders to participate actively in the meeting. However, technology is not advanced enough to permit active electronic participation in all cases with a sufficient guarantee of security, and such facilities are costly to introduce. Therefore, there should not be an obligation for issuers to offer such a possibility to their shareholders.

(4) Offer non-resident shareholders simple means of voting without attending the meeting (voting by proxy, in absentia and by giving instructions).

2. COMMENTS ON SPECIFIC ARTICLES

2.1. Chapter I: General provisions

2.1.1. Article 1 – Subject matter and scope

The scope is limited to issuers of shares, taking account of the objective of the Directive to facilitate the exercise of voting rights of shareholders in general meetings. The definition includes also European Companies (SEs) which, according to Article 10 of the Statute for a European Company[2], are treated like public limited companies that have been founded under the law of the Member State where the SE has its seat.

Paragraph 2 contains a Member State option for an exemption for undertakings for collective investment in transferable securities, taking account of the fact that specific requirements are laid down elsewhere[3]. Where this option is used the proposed wording excludes the possibility of treating UCITS as issuers for the purposes of this Directive but does not prevent them from benefiting from the provisions in their role as shareholders of other companies.

2.1.2. Article 2 – Definitions

The definition of shareholders in point (c) only takes up the wording of points (i) and (ii) of Article 2(1) (e) of the Transparency Directive and thus excludes holders of depositary receipts from its scope. Although investors in depositary receipts should in principle also be entitled to determine how underlying shares are to be voted, the inclusion of receipt holders in the definition would not, of itself, necessarily lead to this result as the receipts, in practice, are often held by custodians and not by the investors themselves. Furthermore, the contents of issuing agreements on depositary receipts vary as far as voting rights are concerned and these differences usually also have an impact on the price of the receipts. Therefore, it seems more appropriate to deal with this issue in the context of a separate recommendation which will be able to take account of the specificities of this instrument.

Point (e) contains a definition of the term "proxy" which currently does not have an identical meaning in all Member States. In some Member States, a proxy is limited to the exercise of the voting right and so, for more comprehensive empowerments, a power of attorney is used. In others the proxy may potentially cover all rights of the shareholder in the general meeting. The proposal opts in favour of the latter alternative. The person empowered by proxy (who, in practice, is often also called "the proxy") is referred to in the text of the Directive as "proxy holder" (see proposed Article 10).

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2 Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE), OJ L 294, 10.11.2001, p. 1

3 in particular Council Directive 85/611/EEC of 20.12.1985 on the co-ordination of laws, regulations and administrative provisions relating to the undertaking for collective investment in transferable securities (UCITS), as last amended by Directives 2001/107/EC and 2001/108/EEC of the European Parliament and of the Council of 21 January 2002 (OJ L 41, 13.2.2002, p. 20 and 34 respectively).

2.1.3. Article 3 – More stringent national requirements

The Directive is a minimum harmonisation directive. It introduces minimum standards which ensure that shareholders have a timely access to complete information in relation to general meetings and have simplified ways of voting without attending the general meeting. Member States are left free to maintain or introduce provisions which are more favourable to shareholders.

2.1.4. Article 4 – Equal treatment of shareholders

The article takes up the general principle contained in Article 17(1) of the Transparency Directive and applies it to the rights of shareholders covered by this proposal for a Directive.

2.2. Chapter II: General meetings of shareholders

2.2.1. Article 5 – General meeting notice

Article 5 imposes on the issuer the obligation to send out to the addressee the meeting notice announcing that the meeting will take place and containing the basic information relating to the meeting. Under the mechanisms currently in use, in the case of bearer shares, the addressee would normally be the CSD, and in the case of registered shares, the registered shareholder. The addressees and the investor situated further down the chain will then be able to obtain the additional information set out in paragraph 3 from the sources indicated in the meeting notice.

2.2.2. Article 6 – Right to add items to the agenda of general meetings and to table draft resolutions

The right to add items to the agenda and to table draft resolutions enables shareholders to decisively influence general meetings. This right is usually reserved to shareholders holding a minimum proportion or number of shares. Some of the existing thresholds are unduly high. This article therefore confirms the right to add items to the agenda and to table draft resolutions as a matter of principle (paragraph 1), and introduces maximum thresholds at EU level. These thresholds have been determined with a view to lowering those currently applying in some Member States. However, where the thresholds in other national laws, are already lower than those proposed here, Article 6 - being a minimum harmonisation provision - is obviously not to be understood as encouraging these Member States to raise their thresholds. Furthermore, the article provides that the amended agenda and the new resolutions should be circulated to shareholders. This requires that items be added to the agenda and draft resolutions be tabled sufficiently in advance of the general meeting. The determination of the relevant deadline, however, is left to Member States.

2.2.3. Article 7 – Access to the general meeting

Paragraph 1 provides for the prohibition of all forms of share blocking. Share blocking deters investors from voting because it prevents them from selling their shares for several days before any general meeting. The financial risk associated with such a blocking period is very high, due to possible market fluctuations during the blocking period. Evidence also shows that share blocking arrangements which allow the disposal of shares during the blocking period, subject to a subsequent reconciliation of shares and votes, are not a satisfactory solution. One of the reasons is that the system is not understood by investors, who are often unaware of the

possibility of disposing of their shares during the blocking period. Furthermore, the reconciliation procedure, which is cumbersome, carries the risk of mistakes, as a result of which votes may be disregarded.

Paragraph 2 allows Member States to introduce a record date system as a requirement upon which access to the general meeting may be made conditional. The different processes for preparing general meetings and the ensuing needs in terms of timing differ considerably from one Member State to another; therefore, it does not seem appropriate to introduce a uniform record date at EU level. Paragraph 3 of the proposal therefore leaves it to national law to determine any such date, within a maximum period of 30 calendar days preceding the general meeting, and also to lay down the details of the procedure. However, in order to avoid certain shareholders being prevented in practice from participating and voting, it is made clear that no excessive formal requirements for the proof of ownership may be imposed in national law or in the articles of association.

2.2.4. Article 8 – Participation in the general meeting by electronic means

The article provides that all obstacles to electronic participation are to be removed. However, requirements relating to the identification of shareholders and the security of the electronic communication cannot be considered as barriers to electronic participation, as long as they are proportional to their objective.

2.2.5. Article 9 – Right to ask questions

Shareholders should be able to question management at general meetings, which are the main forum in which shareholders can exercise their rights and speak out. Furthermore, the right to ask questions would be devoid of any actual content if there were no corresponding obligation on the part of the issuer to reply to questions, subject to measures needed to ensure the good order of the meeting, confidentiality or the protection of business interests. A response is not necessary if the shareholder can obtain the relevant information easily because the issuer has made it available in the form of "frequently asked questions", e.g. on its website. In a cross-border context, it should be possible to ask questions remotely, e.g. at least by post, and there should be no obstacle to the use of electronic means. All replies to questions should be made easily available to all shareholders, irrespective of their residence, and this can be achieved in particular by publishing them on the issuer's website.

2.2.6. Article 10 – Proxy voting

The purpose of Paragraph 1 is to remove all existing limitations on the persons who may be granted a proxy, other than the requirement that the person holding a proxy should have legal capacity. Member States which do not impose any such constraints have not experienced any adverse consequences at general meetings as a result. However, some limitations may be justified where the proxy holder is in a situation giving rise to a conflict of interest. In such cases, Member States may decide that the appointment of such proxy holders is to be made subject to the issuing of formal voting instructions.

For the good order of general meetings, paragraph 1 provides for that one shareholder may only grant one proxy in respect of his entire voting entitlement. However, one person acting as a proxy holder should be able to hold proxies from more than one shareholder. Consequently, proxy holders acting on behalf of several shareholders should be able to cast

split votes in respect of any resolution, in accordance with the, possibly conflicting, voting instructions given to them by the shareholders.

Paragraph 3 makes it clear that proxy holders should in principle have the same rights as those which the shareholder would enjoy in relation to the general meeting. This should be limited, however, to proxy holders acting on behalf of one shareholder or of several shareholders with identical voting instructions. A proxy holder representing several shareholders with conflicting voting instructions should confine its role to voting.

2.2.7. Article 11 – Appointment of proxy holder

Article 11 prohibits unduly cumbersome formal requirements, proxy grants and the issue of proxy instructions. However, issuers need to be sufficiently certain as to the identity of the shareholder and the proxy holder. Member States, therefore, are given the possibility of imposing requirements or allowing issuers to impose requirements with regard to the identities of the shareholder and the proxy holder, subject to proportionality.

2.2.8. Article 12 - Voting in absentia

Where shareholders hold registered shares and are known to the company, the easiest and cheapest way to cast votes remains the postal vote. Such shareholders, therefore, should have this possibility. Issuers should remain free to offer in addition electronic voting facilities, whether by Internet or otherwise.

2.2.9. Article 13 – Voting according to instructions

Paragraph 1 establishes the right of those persons or entities that hold shares in the course of business on behalf of investors to hold such shares in individual or omnibus accounts. Individual accounts are more transparent and make the tracking of votes possible, but are more expensive to maintain than omnibus accounts, in which the shares of several clients are pooled. The choice between individual and omnibus accounts should exist because individual and collective accounts, for these reasons, do not appeal to the same kind of investors. In particular, collective accounts may be more attractive for individual investors for cost reasons.

Paragraph 2 explains that, in the case of omnibus accounts, the casting of votes may not be made subject to so-called re-registration requirements, i.e. the requirement that the intermediary temporarily segregate out each of its investors vis-à-vis the Central Depository ahead of the General Meeting in order to be able to exercise voting rights attaching to the relevant shares. This procedure, which exists in some Member States, is costly and time-consuming.

Paragraph 3 ensures that the persons or entities referred to in paragraph 1 have the possibility of exercising the voting rights attaching to the relevant shares if investors have given them voting instructions. This is currently not the case in all legal systems. Financial intermediaries have to keep evidence of such instructions for a minimum period, in case of disputes arising in relation to votes.

Paragraph 4 gives the right to such persons or entities, which hold shares of the same issuer in a collective account on behalf of several investors, to split the votes according to the voting instructions which investors have communicated to them.

Paragraph 5 provides that where the person or entity is registered as the shareholder for the account of different investors it should have the possibility of issuing proxies to each of these investors or to persons designated by them. This is a derogation from the general rule established in Article 10(1).

2.2.10. Article 14 – Counting of votes

This article provides that all votes cast in respect of any resolution must be taken into account when votes are counted. This is important in order to ensure that the voting results make the wishes of the shareholders fully transparent. It is also necessary for those investors who need assurance that their votes have actually been taken into account by the company.

2.2.11. Article 15 –Information after the general meeting

Results of votes are often given in the general meeting. However, those shareholders, especially non-resident shareholders, who did not attend the general meeting should also have access to these results. This can be achieved, at no specific cost for issuers, if voting results are published on the issuers' websites.

2.3. Chapter III: Final provisions

2.3.1. Article 17 – Amendments

Article 17 provides for an adaptation of Article 17 of the Transparency Directive in order to avoid the duplication of provisions with the same subject. Therefore, those parts of the article that are also being dealt with in the current proposal (former paragraph 2 (a) and (b)) have been deleted in the new Article 17. The article, however, should not be repealed in its entirety as it deals not only with information to be provided in the context of General Meetings but also, more broadly, with all information to be made available to shareholders and persons referred to in Article 10 of the Transparency Directive.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission[4],

Having regard to the opinion of the European Economic and Social Committee[5],

Having regard to the opinion of the Committee of the Regions[6],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[7],

Whereas:

(1) In its Communication to the Council and the European Parliament "Modernising Company Law and enhancing Corporate Governance – A Plan to Move Forward" of 21 May 2003[8], the Commission indicated that new tailored initiatives should be taken with a view to enhancing shareholders' rights in listed companies and that problems relating to cross-border voting should be solved as a matter of urgency.

(2) In its Resolution of 21 April 2004[9], the European Parliament expressed its support for the Commission's intention to strengthen shareholders' rights, in particular through the extension of the rules on transparency, proxy voting rights, the possibility of participating in general meetings via electronic means and ensuring that cross-border voting rights are able to be exercised.

(3) Holders of shares carrying voting rights should be able to exercise these rights given that they are reflected in the price that has to be paid at the acquisition of the shares. Furthermore, effective shareholder control is a pre-requisite to sound corporate governance and should, therefore, be facilitated and encouraged. It is therefore

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4 OJ C […] […], p. .
5 OJ C […] […], p. .
6 OJ C […] […], p. .
7 OJ C […] […], p. .
8 COM(2003) 284 final
9 OJ C104, 30.4.2004, p. 67

necessary to adopt measures to approximate the laws of the Member States to this end. Obstacles which deter shareholders from voting, such as making the exercise of voting rights subject to the blocking of shares by the shareholder, should be removed. However, this directive does not affect existing Community legislation on units issued by collective investment undertakings or on units acquired of disposed of in such undertakings.

(4) The currently existing community legislation is not sufficient to achieve this objective. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC[10] imposes on issuers to make available certain information and documents relevant to general meetings but such information and documents are to be made available in the issuer's home Member State. Moreover Directive 2001/34/EC focuses on the information which issuers have to disclose to the market and accordingly does not deal with the shareholder voting process itself.

(5) Significant proportions of shares in listed European companies are held by shareholders who do not reside in the Member State in which the companies of which they are shareholder have their registered office. Non-resident shareholders should be able to exercise their rights in relation to the general meeting as easily as shareholders who reside in the Member State in which the company has its registered office. This requires that existing obstacles which hinder the access of non-resident shareholders to the information relevant to the general meeting and the exercise of voting rights without physically attending the general meeting be removed. The removal of these obstacles should also benefit resident shareholders who do not or cannot attend the shareholders meeting.

(6) Shareholders should be able to cast informed votes at, or in advance of, the shareholders meeting, no matter where they reside. All shareholders should have sufficient time to consider the documents intended to be submitted to the general meeting and determine how they will vote their shares. To this end, sufficient notice of the general meeting should be given and shareholders should be provided timely with the complete information intended to be submitted to the general meeting for approval. Shareholders should, in principle, also have the possibility to add items to the meeting agenda, to table resolutions and to ask questions related to items on the agenda. The possibilities which modern technologies offer to make information instantly available and accessible should be exploited, also with a view to making information on the results of the vote available after the general meeting.

(7) Shareholders should have a choice of simple means to cast their votes without attending the shareholders meeting. Voting without attending the general meeting in person should not be subject to constraints other than those necessary for the verification of identity and the security of communications. Existing limitations and administrative constraints which make distance voting or proxy voting cumbersome and costly should be removed.

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[10] OJ L 390, 21.12.2004, p. 1.

(8) Since the objectives of the action to be taken, namely to allow shareholders effectively to make use of their rights throughout the Community, cannot be sufficiently achieved by the Member States on the basis of the existing Community legislation and can, by reason of the scale and effects of the measures, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve these objectives.

(9) In order to avoid duplication of provisions with the same subject-matter, Directive 2004/109EC should be amended,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject-matter and scope

1. This Directive establishes requirements in relation to the exercise of voting rights in general meetings of issuers that have their registered office in a Member State and whose shares are admitted to trading on a regulated market.

2. Member States may exempt from this Directive issuers which are

   (i) collective investment undertakings of the corporate type within the meaning of Article 1 (2) of Directive 85/611/EEC[11] and

   (ii) undertakings, the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of their underlying investments, provided that these collective investment undertakings are authorised and subject to the supervision of competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC.

Article 2
Definitions

For the purposes of this Directive the following definitions shall apply:

(a) 'issuer' means a legal entity governed by public or private law, including a state, whose shares are admitted to trading on a regulated market;

[11] OJ L 375, 31.12.1985, p3.

(b) 'regulated market' means a market as defined in Article 4(1), point 14, of Directive 2004/39/EC of the European Parliament and of the Council[12];

(c) 'shareholder' means any natural person or legal entity governed by private or public law that holds:

(i) shares of the issuer in its own name and on its own account;

(ii) shares of the issuer in its own name, but on behalf of another natural person or legal entity;

(d) 'credit institution' means an undertaking as defined in Article 1(1)(a) of Directive 2000/12/EC of the European Parliament and of the Council[13];

(e) 'proxy' means the empowerment of a natural person or legal entity by a shareholder to exercise some or all rights of that shareholder in the general meeting in his or her name and on his or her behalf;

(f) "omnibus account" means a securities account in which securities may be held on behalf of different natural persons or legal entities.

Article 3
More stringent national requirements

Member States may make issuers which have their registered office on their territory subject to requirements more stringent than those laid down in this Directive.

CHAPTER II: GENERAL MEETINGS OF SHAREHOLDERS

Article 4
Equal treatment of shareholders

The issuer shall ensure equal treatment for all shareholders who are in the same position with regard to participation and voting in its general meetings.

Article 5
General meeting notice

1. Without prejudice to Article 9(4) of Directive 2004/25/EC of the European Parliament and of the Council[14], any notice convening a general meeting on a first call shall be sent out by the issuer not less than 30 calendar days before the meeting.

2. The notice referred to in paragraph 1 shall at least contain the following:

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12 OJ L 145, 30.4.2004, p1.
13 OJ L 126, 26.5.2000, p. 1.
14 OJ L 142, 30.4.2004, p. 12

(a) a precise indication of the place, time and draft agenda of the meeting;

(b) a clear and precise description of the procedures that shareholders must comply with in order to be able to participate and to cast their vote in the general meeting, including the applicable record date;

(c) a clear and precise description of the available means by which shareholders can participate in the general meeting and cast their vote. Alternatively, it may indicate where such information may be obtained;

(d) an indication where and how the full, unabridged text of the resolutions and the documents intended to be submitted to the general meeting for approval may be obtained

(e) an indication of the address of the Internet site on which the information referred to in paragraph 3 will be posted.

3. Within the deadline provided for in paragraph 1, issuers shall post on their Internet sites at least the following information:

(a) the meeting notice referred to in paragraph 1;

(b) the total number of shares and voting rights;

(c) the texts of the resolutions and the documents referred to in point (d) of paragraph 2;

(d) the forms to be used to vote by correspondence and by proxy.

Alternatively to the forms provided for in point (d) it shall be indicated on the site where and how the forms can be obtained.

Article 6
Right to add items to the agenda of the general meeting and to table draft resolutions

1. Shareholders, acting individually or collectively, shall have the right to add items on the agenda of general meetings and table draft resolutions at general meetings.

2. Where the right to add items on the agenda of general meetings and table draft resolutions at general meetings is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the share capital of the issuer, such minimum stake shall not exceed 5% of the share capital of the issuer or a nominal value of EUR 10 million, whichever is the lower.

3. The rights referred to in paragraph 1 shall be exercised sufficiently in advance of the date of the general meeting, to enable other shareholders to receive or have access to the revised agenda or the proposed resolutions ahead of the general meeting.

Article 7
Admission to the general meeting

1. The right to participate and to vote in a general meeting shall not be subject to any condition requiring the shareholder to block the relevant shares by deposit or other means with a credit institution or another entity ahead of the general meeting, even if the blocking has no effect on the possibility of trading the shares.

2. The right to participate and vote in a general meeting of any issuer may be made subject to the condition that a natural person or legal entity qualifies as shareholder of the relevant issuer on a certain date prior to the relevant general meeting.

   The proof of the qualification as shareholder may be made subject only to such requirements as are necessary to ensure the identification of shareholders and to the extent that they are proportionate to ensure the identification.

3. The date referred to in the first subparagraph of paragraph 2 shall be fixed by each Member State for the general meetings of issuers having their registered office in that Member State.

   However, this date shall not be earlier than 30 calendar days before the general meeting.

   Each Member State shall communicate the date so fixed to the Commission which shall publish these dates in the *Official Journal of the European Union*.

Article 8
Participation in the general meeting by electronic means

Member States shall not prohibit the participation of shareholders in the general meeting by electronic means.

Requirements and constraints that act or would act as a barrier to the participation of shareholders in the general meeting by electronic means shall be prohibited, except in so far as they are necessary to ensure the identification of shareholders and the security of the electronic communication and are proportionate to ensure the identification.

Article 9
Right to ask questions

1. Shareholders shall have the right to ask questions orally at the general meeting and/or in written or electronic form ahead of the general meeting.

2. Issuers shall respond to the questions put to them by shareholders, subject to the measures which Member States may take, or allow issuers to take, to ensure the good order of general meetings and their preparation and the protection of confidentiality and business interests of issuers. A response shall be deemed to be given if the relevant information is available on the Internet site of the issuer in the form of "frequently asked questions".

3. Responses to shareholder questions referred to in paragraph 1 shall be made available to all shareholders through the Internet site of the issuer.

Article 10
Proxy voting

1. Every shareholder shall have the right to appoint any other natural person or legal entity as a proxy holder to attend and vote at a general meeting on his behalf. There shall be no restrictions as to the person who can be granted a proxy other than the requirement that the person possesses legal capacity.

   However, Member States may restrict the right of proxy holders to exercise the voting rights at their discretion in cases where:

   (a) they have a business, family or other relationship with the issuer,

   (b) they are a controlling shareholder of the issuer,

   (c) they belong to the management of the issuer or of one of its controlling shareholders.

   A shareholder may only appoint one person to act for him as a proxy holder in relation to any one general meeting.

2. A person acting as a proxy holder may hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented. Where a proxy holder holds a proxy from several shareholders, he may cast concurrent votes for and against any resolution and/or abstain from voting on such resolution in accordance with the voting instructions of the shareholders the proxy holder represents.

3. A proxy holder shall enjoy the same rights to speak and ask questions in general meetings as those to which the shareholder it represents would be entitled, unless instructed otherwise by the shareholder.

Article 11
Appointment of proxy holders

1. The appointment of a proxy holder and the issue of voting instructions by the shareholder to the proxy holder shall not be subject to any formal requirements, other than such requirements as may be strictly necessary for the identification of the shareholder and of the proxy holder.

2. Proxy holders may be appointed by electronic means subject to such requirements, other than that of an electronic signature, as may be strictly necessary for the authentication of the appointer and the identification of the proxy holder.

3. Requirements imposed by Member States under paragraphs 1 and 2 shall be proportionate to their objectives.

Article 12
Voting in absentia

1. Any shareholder of a listed company shall have the possibility to vote by post in advance of the general meeting, subject to such requirements as may be necessary to ensure the identification of shareholders and are proportionate to this objective.

2. Member States shall prohibit requirements and constraints which hinder the exercise of voting rights attached to shares by electronic means by shareholders who are not physically present at the general meeting, except in so far as such requirements may be necessary to ensure the identification of shareholders and the security of electronic communications and are proportionate to this objective.

Article 13
Voting upon instructions

1. Member States shall ensure that any natural person or legal entity that under their laws is allowed to hold securities in the course of a business for the account of another natural person or legal entity may hold such securities in either individual or omnibus accounts.

2. Where the shares are held in omnibus accounts, it shall not be permitted to require that they be temporarily registered in individual accounts, in order to be able to exercise voting rights attaching to these shares at a general meeting.

3. Persons referred to in paragraph 1 shall not be prevented from casting votes attaching to the shares which they hold for the account of another natural person or legal entity, provided they have been instructed to do so by such other person or entity The person or entity referred to in paragraph 1 shall keep a record of the instructions for a minimum period of one year.

4. Where a person or entity referred to in paragraph 1 holds shares of the same issuer in an omnibus account, it shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares.

5. By derogation from Article 10(1), third subparagraph, a person or entity referred to in paragraph 1 that holds securities in an omnibus account shall have the right to issue a proxy to every person on whose behalf it holds shares in such account or to any third party designated by that person.

Article 14
Counting of votes

For the purpose of counting votes, all votes cast in relation to any resolution submitted to the approval of a general meeting shall be taken into account.

Article 15
Post-General meeting information

1. Within a period of time which shall not exceed 15 calendar days following the general meeting, the issuer shall publish on its Internet site the results of the votes on each resolution tabled at the general meeting.

2. The results of the voting shall include for each resolution at least the number of shares in respect of which voting has taken place and the percentages of votes in favour of and against each resolution.

CHAPTER III: FINAL PROVISIONS

Article 16
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [31 December 2007] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 17
Amendments

With effect from the date specified in Article 16(1), Article 17 of Directive 2004/109/EC is amended as follows.

1. Paragraph 2 is replaced by the following:

   "2. The issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in the home Member State and that the integrity of data is preserved. In particular,

   (i) the issuer shall designate as its agent a financial institution through which shareholders may exercise their financial rights; and

   (ii) he shall publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion."

2. In paragraph 4, the words "paragraph 2(c)" are replaced by "paragraph 2, point (i)".

Article 18

This Directive shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

Article 19

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*