



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 20 February 2007**

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2005/0265 (COD)**

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**NOTE**

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from: General Secretariat  
to: Permanent Representatives Committee/Council  
Subject: 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  
– Outcome of the European Parliament's first reading  
(Strasbourg, 12 to 15 February 2007)

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**I. INTRODUCTION**

In accordance with the provisions of Article 251(2) of the EC Treaty and the joint declaration on practical arrangements for the codecision procedure <sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for a second reading and conciliation.

In this context, the rapporteur, Mr LEHNE (EPP/ED - DE), presented 36 compromise amendments to the proposal for a Directive, on behalf of the Committee on Legal Affairs. These amendments had been agreed during the informal contacts referred to above.

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<sup>1</sup> OJ C 148, 28.5.1999, p.1.

## II. VOTE

The plenary adopted the 36 compromise amendments to the proposal for a Directive. No other amendments were tabled. The amendments adopted correspond to what was agreed between the three institutions and ought therefore to be acceptable to the Council. Consequently, once the legal linguists<sup>1</sup> have scrutinized the text, the Council should be in a position to adopt the legislative act.

The text of the amendments adopted and the European Parliament legislative resolution are annexed to this note.

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<sup>1</sup> Delegations with legal-linguistic observations can send them to the secretariat of the Council's legal-linguistic service (secretariat.jl-codecision@consilium.europa.eu) until 05.03.2007, in order to prepare the legal-linguistic meeting with national experts.

## Shareholders' voting rights \*\*\*I

**European Parliament legislative resolution on the 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 (COM(2005)0685 – C6-0003/2006 – 2005/0265(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0685)<sup>1</sup>,
  - having regard to Article 251(2) and Articles 44 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0003/2006),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A6-0024/2007),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Asks the Commission to consult Parliament before finalising a Recommendation related to issues and topics in the context of the proposed Directive;
  4. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> Not yet published in OJ.

**Position of the European Parliament adopted at first reading on 15 February 2007  
with a view to the adoption of Directive 2007/.../EC of the European Parliament and of the  
Council on the exercise of *certain rights of shareholders in listed companies***

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular *Articles 44 and 95* thereof,

Having regard to the proposal from the *Commission*,

Having regard to the opinion of the European Economic and Social *Committee*<sup>1</sup>,

*Acting* in accordance with the procedure laid down in Article 251 of the Treaty<sup>2</sup>,

Whereas:

- (1) In its Communication to the Council and the European Parliament of 21 May 2003, entitled “Modernising Company Law and enhancing Corporate Governance – A Plan to Move Forward”<sup>3</sup>, 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<sup>4</sup>, 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.

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<sup>1</sup> OJ C 318, 23.12.2006, p. 42.

<sup>2</sup> *Position of the European Parliament of 15 February 2007.*

<sup>3</sup> COM(2003)0284.

<sup>4</sup> OJ C 104, 30.4.2004, p. 714.

- (3) Holders of shares carrying voting rights should be able to exercise *those* 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 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 **during a certain period before the meeting**, should be removed. However, this *Directive* does not affect existing Community legislation on units issued by collective investment undertakings or on units acquired **or** disposed of in such undertakings.
- (4) **The 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<sup>1</sup> imposes on issuers **an obligation** 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 of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities<sup>2</sup> focuses on the **information issuers** have to disclose to the market and accordingly does not deal with the shareholder voting process itself. **Therefore, certain minimum standards should be introduced with a view to protecting investors and promoting the smooth and effective exercise of shareholder rights attaching to voting shares. As regards rights other than the right to vote, Member States are free to extend the application of these minimum standards also to non-voting shares, to the extent that those shares do not enjoy such standards already.**
- (5) Significant proportions of shares in **listed companies** are held by shareholders who do not reside in the Member State in which the **company has its** 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 **general** meeting.

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<sup>1</sup> OJ L 390, 31.12.2004, p. 38.

<sup>2</sup> OJ L 184, 6.7.2001, p. 1. Directive as last amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).

- (6) Shareholders should be able to cast informed votes at, or in advance of, the **general 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, **timely notice should be given** of the general **meeting, and** shareholders should be **provided with** the complete information intended to be submitted to the general **meeting. The** possibilities which modern technologies offer to make information **instantly accessible** should be exploited. **This Directive presupposes that all listed companies already have an Internet site.**
- (7) **Shareholders should, in principle, have the possibility to put items on the agenda of the general meeting and to table draft resolutions for items on the agenda. Without prejudice to different time-frames and modalities which are currently in use across the Community, the exercise of those rights should be made subject to two basic rules, viz. that any threshold required for the exercise of those rights should not be higher than 5% of the company's share capital and that all shareholders should in every case receive the final version of the agenda in sufficient time to prepare for the discussion and voting on each item on the agenda.**
- (8) **Every shareholder should, in principle, have the possibility to ask questions related to items on the agenda of the general meeting and to have them answered, while the rules on how and when questions are to be asked and answered should be left to be determined by Member States.**
- (9) **Companies should face no legal obstacles in offering to their shareholders any means of electronic participation in the general meeting. Voting without attending the general meeting in person, whether by correspondence or by electronic means, should not be subject to constraints other than those necessary for the verification of identity and the security of communications. However, this should not prevent Member States from adopting rules aimed at ensuring that the results of the voting reflect the intentions of the shareholders in all circumstances, including rules aimed at addressing situations where new circumstances occur or are revealed after a shareholder has cast his vote by correspondence or by electronic means.**

- (10) *Good corporate governance requires a smooth and effective process of proxy voting. Existing limitations and constraints which make proxy voting cumbersome and costly should therefore be removed. But good corporate governance also requires adequate safeguards against a possible abuse of proxy voting. The proxy holder should therefore be bound to observe any instructions he may have received from the shareholder and Member States should be able to introduce appropriate measures ensuring that the proxy holder does not pursue any interest other than that of the shareholder, irrespective of the reason that has given rise to the conflict of interests. Measures against possible abuse may, in particular, consist of regimes which Member States may adopt in order to regulate the activity of persons who actively engage in the collection of proxies or who have in fact collected more than a certain significant number of proxies, notably to ensure an adequate degree of reliability and transparency. Shareholders have an unfettered right under this Directive to appoint such persons as proxy holders to attend and vote at general meetings on their behalf. This Directive does not, however, affect any rules or sanctions that Member States may impose on such persons where votes have been cast by making fraudulent use of proxies collected. Moreover, this Directive does not impose any obligation on companies to verify that proxy holders cast votes in accordance with the voting instructions of the appointing shareholders.*
- (11) *Where financial intermediaries are involved, the effectiveness of voting upon instructions relies, to a great extent, on the efficiency of the chain of intermediaries, given that investors are frequently unable to exercise the voting rights attached to their shares without the cooperation of every intermediary in the chain, who may not have an economic stake in the shares. In order to enable the investor to exercise his voting rights in cross-border situations, it is therefore important that intermediaries facilitate the exercise of voting rights.*
- Further consideration should be given to this issue by the Commission in the context of a Recommendation, with a view to ensuring that investors have access to effective voting services and that voting rights are exercised in accordance with the instructions given by those investors.*
- (12) *While the timing of disclosure to the administrative, management or supervisory body as well as to the public of votes cast in advance of the general meeting electronically or by correspondence is an important matter of corporate governance, it can be determined by Member States.*
- (13) *Voting results should be established through methods that reflect the voting intentions expressed by shareholders, and they should be made transparent after the general meeting at least through the company's Internet site.*

- (14) Since the *objective* 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 *that objective*.
- (15) ***In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making<sup>1</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,***

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 ***certain shareholder rights attaching to voting shares*** in ***relation to*** general meetings of ***companies which*** have their registered office in a Member State and whose shares are admitted to trading on a regulated market ***situated or operating within a Member State***.
2. ***The Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has its registered office, and references to the ‘applicable law’ are references to the law of that Member State.***
3. Member States may exempt from this Directive ***the following types of companies***:
  - (i) collective investment ***undertakings within*** the meaning of Article 1(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)<sup>2</sup>;

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<sup>1</sup> OJ C 321, 31.12.2003, p. 1.

<sup>2</sup> OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2005/1/EC of the European Parliament and of the Council.



- (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;

(iii) *cooperative societies*.

## Article 2 Definitions

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

- (a) ‘**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 of 21 April 2004 on markets in financial instruments<sup>1</sup>;
- (b) ‘shareholder’ means **the natural or legal person that is recognised as a shareholder under the applicable law**;
- (c) ‘**proxy**’ means the empowerment of a **natural or legal person** by a shareholder to exercise some or all rights of that shareholder in the general meeting in **his name**.

## Article 3 **Further national measures**

***This Directive does not prevent Member States from imposing further obligations on companies or from otherwise taking further measures to facilitate the exercise by shareholders of the rights referred to in this Directive.***

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<sup>1</sup> OJ L 145, 30.4.2004, p 1. Directive as last amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).

## CHAPTER II: GENERAL MEETINGS OF SHAREHOLDERS

### Article 4

#### Equal treatment of shareholders

The *company* shall ensure equal treatment for all shareholders who are in the same position with regard to participation and *the exercise of voting rights* in *the general meeting*.

### Article 5

#### *Information prior to the general meeting*

1. Without prejudice to *Articles 9(4) and 11(4)* of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids<sup>1</sup>, *Member States shall ensure that the company issues the convocation of the general meeting in one of the manners specified in paragraph 2 not later than on the twenty-first day before the day of the meeting.*

*Member States may provide that, where the company offers the facility for shareholders to vote by electronic means accessible to all shareholders, the general meeting of shareholders may decide that it shall issue the convocation of a general meeting which is not an annual general meeting in one of the manners specified in paragraph 2 not later than on the fourteenth day before the day of the meeting. This decision is to be taken by a majority of not less than two thirds of the votes attaching to the securities or the subscribed capital represented and for a duration not later than the next annual general meeting.*

*Member States need not apply the aforementioned minimum periods for the second or subsequent convocation of a general meeting issued for want of a quorum required upon the first convocation, provided that this Article has been complied with for the first convocation and no new item is put on the agenda, and that at least 10 days elapse between the final convocation and the date of the general meeting.*

2. *Without prejudice to further requirements for notification or publication laid down by the competent Member State as defined in Article 1(2), the company shall be required to issue the convocation referred to in paragraph 1 in a manner ensuring fast access to it on a non-discriminatory basis. The Member State shall require the company to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The Member State may not impose an obligation to use only media whose operators are established on its territory.*

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<sup>1</sup> OJ L 142, 30.4.2004, p. 12.

*The Member State need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders, provided that the company is under an obligation to send the convocation to each of its registered shareholders.*

*In either case the company may not charge any specific cost for issuing the convocation in the prescribed manner.*

3. The *convocation* referred to in paragraph 1 shall at *least*:
- (a) *indicate precisely when and where the general meeting is to take place, and the proposed agenda for the general meeting;*
  - (b) *contain 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. This includes information concerning:*
    - (i) *the rights available to shareholders under Article 6, to the extent that those rights can be exercised after the issuing of the convocation, and under Article 9, and the deadlines by which those rights may be exercised; the convocation may confine itself to stating only the deadlines by which those rights may be exercised, provided it contains a reference to more detailed information concerning those rights being made available on the Internet site of the company;*
    - (ii) *the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of proxy appointments; and*
    - (iii) *where applicable, the procedures for casting votes by correspondence or by electronic means;*
  - (c) *where applicable, state the record date referred to in Article 7(2) and explain that only those who are shareholders on that date shall have the right to participate and vote in the general meeting;*
  - (d) *indicate where and how the full, unabridged text of the documents and draft resolutions referred to in points (c) and (d) of paragraph 4 may be obtained;*
  - (e) *indicate the address of the Internet site on which the information referred to in paragraph 4 will be made available.*

4. *Member States shall ensure that, for a continuous period beginning not later than on the twenty-first day before the day of the general meeting and including the day of the meeting, the company shall make available to its shareholders on its Internet site at least the following information:*

- (a) *the convocation* referred to in paragraph 2;
- (b) the total number of shares and voting rights *at the date of the convocation (including separate totals for each class of shares where the company's capital is divided into two or more classes of shares)*;
- (c) *the documents to be submitted to the general meeting*;
- (d) *a draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, to be designated by the applicable law, for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added as soon as practicable after the company has received them*;
- (e) *where applicable, the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder.*

*Where the forms referred to in point (e) cannot be made available on the Internet for technical reasons, the company shall indicate on its site how the forms can be obtained on paper. In this case the company shall be required to send the forms by post and free of charge to every shareholder who so requests.*

*Where, by virtue of Articles 9(4) or 11(4) of Directive 2004/25/EC, or by virtue of the second subparagraph of paragraph 1 of this Article, the convocation of the general meeting is issued later than on the twenty-first day before the meeting, the period specified in this paragraph shall be shortened accordingly.*

#### Article 6

Right to *put* items *on* the agenda of the general meeting  
and to table draft resolutions

1. *Member States shall ensure that shareholders*, acting individually or collectively,
  - (a) have the right to *put* items on the agenda of *the* general *meeting*, *provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting*; and
  - (b) *have the right to* table draft resolutions *for items included or to be included on the agenda of a general meeting*.

*Member States may provide that the right referred to in point (a) may be exercised only in relation to the annual general meeting, provided that shareholders, acting individually or collectively, have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by those shareholders.*

*Member States may provide that those rights shall be exercised in writing (submitted by post or electronic means).*

2. Where *any of the rights specified in paragraph 1* is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the *company*, such minimum stake shall not exceed 5% of the share *capital*.

3. *Each Member State shall set a single deadline, with reference to a specified number of days prior to the general meeting or the convocation, by which shareholders may exercise the right referred to in paragraph 1, point (a). In the same manner each Member State may set a deadline for the exercise of the right referred to in paragraph 1, point (b).*

4. *Member States shall ensure that, where the exercise of the right referred to in paragraph 1, point (a) entails a modification of the agenda for the general meeting already communicated to shareholders, the company shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date or, if no record date applies, sufficiently in advance of the date of the general meeting so as to enable other shareholders to appoint a proxy or, where applicable, to vote by correspondence.*

#### Article 7

##### *Requirements for participation and voting in the general meeting*

1. *Member States shall ensure:*

(a) *that the rights of a shareholder to participate in a general meeting and to vote in respect of any of his shares are not subject to any requirement that his shares be deposited with, or transferred to, or registered in the name of, another natural or legal person before the general meeting; and*

(b) *that the rights of a shareholder to sell or otherwise transfer his shares during the period between the record date and the general meeting to which it applies are not subject to any restriction to which they are not subject at other times.*

2. *Member States shall provide that the rights of a shareholder to participate in a general meeting and to vote in respect of his shares shall be determined with respect to the shares held by that shareholder on a specified date prior to the general meeting (the "record date").*

*Member States need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders on the day of the general meeting.*

3. *Each Member State shall ensure that a single record date applies to all companies; however, a Member State may set one record date for companies which have issued bearer shares and another record date for companies which have issued registered shares, provided that a single record date applies to each company which has issued both types of shares. The record date shall not lie more than 30 days before the date of the general meeting to which it applies. In implementing this provision and Article 5(1), each Member State shall ensure that at least eight days elapse between the latest permissible date for the convocation of the general meeting and the record date, and in calculating that number of days those two dates shall not be included. In the circumstances described in Article 5(1), third subparagraph, however, a Member State may require that at least six days elapse between the latest permissible date for the second or subsequent convocation of the general meeting issued for want of a quorum required upon the first convocation and the record date, and in calculating that number of days those two dates shall not be included.*

4. *Proof of qualification as a shareholder may be made subject only to such requirements as are necessary in order to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.*

#### Article 8

##### Participation in the general meeting by electronic means

1. Member States shall *permit companies to offer to their shareholders any form of participation* in the general meeting by electronic means, *notably any or all of the following forms of participation:*

- (a) *real-time transmission of the general meeting;*
- (b) *real-time two-way communication enabling shareholders to address the general meeting from a remote location;*
- (c) *a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.*

2. *The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary in order to ensure the identification of shareholders and the security of the electronic communication, and only to the extent that they are proportionate to achieving those objectives.*

*This is without prejudice to any legal rules which Member States have adopted or may adopt concerning the decision-making process within the company for the introduction or implementation of any form of participation by electronic means.*

Article 9  
Right to ask questions

1. ***Every shareholder*** shall have the right to ask questions *related to items on the agenda* of the general meeting. ***The company shall respond to the questions put to it by shareholders.***
2. ***The right to ask*** questions ***and the obligation to answer are*** subject to the measures which Member States may take, or allow ***companies*** to take, to ensure the ***identification of shareholders,*** ***the*** good order of general meetings and their preparation and the protection of confidentiality and business interests of ***companies.*** ***Member States may allow companies to provide one overall answer to questions having the same content.***

***Member States may provide that a response shall be deemed to be given if the relevant information is available on the company's Internet site in a question and answer format.***

Article 10  
Proxy voting

1. Every shareholder shall have the right to appoint any other ***natural or legal person*** as a proxy holder to attend and vote at a general meeting ***in his name.*** ***The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to which the shareholder thus represented would be entitled.***

***Apart from the requirement that the proxy holder possess legal capacity, Member States shall abolish any rule of law which restricts, or allows companies to restrict, the eligibility of persons to be appointed as proxy holders.***

2. ***Member States may limit the appointment of a proxy holder to a single meeting, or to such meetings as may be held during a specified period.***

***Without prejudice to Article 13(5), Member States may limit the number of persons whom a shareholder may appoint as proxy holders in relation to any one general meeting. However, if a shareholder has shares of a company held in more than one securities account, such limitation shall not prevent the shareholder from appointing a separate proxy holder as regards shares held in each securities account in relation to any one general meeting. This does not affect rules prescribed by the applicable law that prohibit the casting of votes differently from the shares held by the same shareholder.***

3. ***Apart from the limitations expressly permitted in paragraphs 1 and 2, Member States may not restrict or allow companies to restrict the exercise of shareholder rights through proxy holders for any purpose other than to address potential conflicts of interest between the proxy holder and the shareholder, in whose interest the proxy holder is bound to act, and in doing so Member States may not impose any requirements other than the following:***

- (a) ***Member States may prescribe that the proxy holder disclose certain specified facts which may be relevant for the shareholders in assessing any risk that the proxy holder might pursue any interest other than the interest of the shareholder;***

- (b) *Member States may restrict or exclude the exercise of shareholder rights through proxy holders without specific voting instructions for each resolution in respect of which the proxy holder is to vote on behalf of the shareholder;*
- (c) *Member States may restrict or exclude the transfer of the proxy to another person, but this shall not prevent a proxy holder who is a legal person from exercising the powers conferred upon it through any member of its administrative or management body or any of its employees.*

*A conflict of interest within the meaning of this paragraph may in particular arise where the proxy holder:*

- (i) *is a controlling shareholder of the company, or is another entity controlled by such shareholder;*
- (ii) *is a member of the administrative, management or supervisory body of the company, or of a controlling shareholder or controlled entity referred to in point (i);*
- (iii) *is an employee or an auditor of the company, or of a controlling shareholder or controlled entity referred to in (i);*
- (iv) *has a family relationship with a natural person referred to in points (i) to (iii).*

*4. The proxy holder shall cast votes in accordance with the instructions issued by the appointing shareholder.*

*Member States may require proxy holders to keep a record of the voting instructions for a defined minimum period and to confirm on request that the voting instructions have been carried out.*

*5. 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 proxies from several shareholders, the applicable law shall enable him to cast votes for a certain shareholder differently from votes cast for another shareholder.*

#### Article 11

##### *Formalities of proxy appointment and notification*

*1. Member States shall permit shareholders to appoint a proxy holder by electronic means. Moreover, Member States shall permit companies to accept the notification of the appointment by electronic means, and shall ensure that every company offers to its shareholders at least one effective method of notification by electronic means.*



2. *Member States shall ensure that proxy holders may be appointed, and that such appointment be notified to the company, only in writing. Beyond this basic formal requirement, the appointment of a proxy holder, the notification of the appointment to the company and the issuance of voting instructions, if any, to the proxy holder may be made subject only to such formal requirements as are necessary to ensure the identification of the shareholder and of the proxy holder, or to ensure the possibility of verifying the content of voting instructions, respectively, and only to the extent that they are proportionate to achieving those objectives.*

3. *The provisions of this Article shall apply mutatis mutandis for the revocation of the appointment of a proxy holder.*

#### Article 12 Voting *by correspondence*

*Member States shall permit companies to offer their shareholders the possibility to vote by correspondence in advance of the general meeting. Voting by correspondence may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.*

#### Article 13 *Removal of certain impediments to the effective exercise of voting rights*

1. *This Article applies where a natural or legal person who is recognised as a shareholder by the applicable law acts in the course of a business on behalf of another natural or legal person (the "client").*

2. *Where the applicable law imposes disclosure requirements as a prerequisite for the exercise of voting rights by a shareholder referred to in paragraph 1, such requirements shall not go beyond a list disclosing to the company the identity of each client and the number of shares voted on his behalf.*

3. *Where the applicable law imposes formal requirements on the authorisation of a shareholder referred to in paragraph 1 to exercise voting rights, or on voting instructions, such formal requirements shall not go beyond what is necessary for the identification of the client, or for the possibility of verifying the content of voting instructions, respectively, and is proportionate to achieving those objectives.*

4. *A shareholder referred to in paragraph 1 shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares.*

5. *Where the applicable law limits the number of persons whom a shareholder may appoint as proxy holders in accordance with Article 10(2), such limitation must not prevent a shareholder referred to in paragraph 1 from granting a proxy to each of his clients or to any third party designated by a client.*

Article 14  
*Voting results*

**1. The company shall establish for each resolution at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favour of and against each resolution and, where applicable, the number of abstentions.**

**However, Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution.**

**2. Within a period of time to be determined by national law, which shall not exceed 15 days after the general meeting, the company shall publish on its Internet site the voting results established in accordance with paragraph 1.**

**3. This Article is without prejudice to any legal rules that Member States have adopted or may adopt concerning the formalities required in order for a resolution to become valid or the possibility of a subsequent legal challenge to the voting result.**

**CHAPTER III: FINAL PROVISIONS**

Article 15  
Transposition

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

**Notwithstanding the first subparagraph, Member States which on 1 July 2006 had in force national provisions restricting or prohibiting the appointment of a proxy holder in the case of Article 10(3), second subparagraph, point (ii), shall bring into force the laws, regulations and administrative provisions necessary in order to comply with Article 10(3) as concerns such restriction or prohibition by [...]² at the latest.**

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<sup>1</sup> **Twenty-four months following the entry into force of this Directive.**

<sup>2</sup> **Five years following the entry into force of this Directive.**

***Member States shall forthwith communicate the number of days specified under Articles 6(3) and 7(3), and any subsequent changes thereof, to the Commission, which shall publish this information in the Official Journal of the European Union.***

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*.

*Article 16*

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

*Article 17*

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament  
The President

For the Council  
The President