

# The draft Directive on Shareholders' rights - facilitating the cross-border exercise of voting rights

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# Proposal for a directive of January 2006 (COM(2005)685 final)

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- Scope: listed EU companies
- Point of departure: shareholder, not „ultimate investor“
- Pre General Meeting information
  - Notice periods
  - Notice content
  - Access to meeting documents
- Adding items to the agenda and proposing resolutions
- Access to the General Meeting – „record date“
- Rights in the General Meeting
  - Electronic participation
  - Right to ask questions
  - Postal vote and electronic voting
  - Intermediaries
- Post General Meeting Information



# Problems identified - reminder

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- Shareholders do not have access or at least not in time to the convocation of a general meeting and the related meeting documents;
- Share blocking is still widely used in the EU (even if the trend is now to move to a record date system);
- Proxy voting is subject to numerous constraints
- The use of electronic means currently is restricted in some Member States

# Compromise text (Coreper 19/01, JURI 30/01)

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## Problem: no timely access to information

- Notice period (Art. 5)
  - 21 calendar days for all GMs
  - Exception for certain EGMs: 14 days if access to voting using electronic means and GM decision (majority of 2/3 of voting rights)
- Content of the notice (Art. 5)
  - Day/Time/Place, Conditions for access (record date etc.), Voting procedures
- Adding of items to the GM agenda and tabling of resolutions (Art. 6) -Threshold: 5% max.
  - Deadlines ahead of GM to add items and (MS option) for tabling resolutions

# Compromise text (Coreper 19/01, JURI 30/01)

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## Problem: share blocking

- Access to the GM (Art. 7)
  - Abolition of share blocking
  - Replacement with a record date system
  - Max. 2 record dates per Member State (registered shares companies and companies using bearer shares) - to be published in the OJ
  - Max. 30 days before GM
  - min. of 8 days (second call: 6 days) between convocation and record date (stock lending!)

# Compromise text (Coreper 19/01, JURI 30/01)

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## Problem: restrictions to proxy voting

- Proxy voting (Art. 10 and 11)
  - Possibility to choose freely to whom to grant a proxy (natural or legal person)
  - Possibility for MS to require voting instructions from shareholders to proxy holders to prevent conflicts of interest
  - Electronic appointment of the proxy (email or secured website)
- Transition rule for appointment of members of the board (2+3 years)

# Compromise text (Coreper 19/01, JURI 30/01)

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## Problem: Restrictions to using electronic means

- Electronic participation and voting (Art. 8)
  - Abolition of restrictions in MS' laws
  - No obligation for companies – option
- Postal voting (Art. 12)

# Compromise text (Coreper 19/01, EP 15/02)

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## Other issues

- Scope: Listed companies, possibility to exempt UCITS and co-operatives
- Right to ask questions (Art. 9)
  - Obligation only to grant the right to ask questions either before or during the GM
- Special provisions for intermediaries that are legally recognised as shareholders (Art. 13)
- Post GM information (Art. 14 and 15)
  - Counting of votes – show of hands only where no shareholder requests a poll
  - Communication of voting results (website) by 15 days

# Recommendation on shareholders' rights

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- Impact assessment has begun end 2006
- Areas covered: (i) stock lending; (ii) language regime; (iii) Depository receipts (iv) duties of intermediaries / identification of shareholder and ultimate investor;
- Estimated adoption of the Recommendation: Sep/Oct 2007

## For more info

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[http://ec.europa.eu/internal\\_market/  
company/shareholders/indexa\\_en.htm](http://ec.europa.eu/internal_market/company/shareholders/indexa_en.htm)

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