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Annex to 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

IMPACT ASSESSMENT

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1. EXECUTIVE SUMMARY

According to the information gathered in this document the rising percentage of share ownership by foreign institutional investors already creates a risk that the current EU listed companies be owned by a passive shareholder base. Moreover, legal obstacles to cross-border voting may prevent small individual cross-border shareholders willing to exercise their voting rights from reaping the benefits expected in the near future from the technological advances of electronic voting are. Shareholder participation being an essential precondition for an effective corporate governance, EU listed companies are facing the risk of suffering from a structural disadvantage vis-à-vis their US and Asian competitors.

1.1. The terms of the problem

The complexity of cross-border voting mechanisms across the EU not only discourages institutional shareholders from voting in several circumstances, but it also translates directly into higher voting costs (compared to domestic voting) charged by intermediaries to shareholders in case they vote. Moreover, an important part of the costs of the present situation are the opportunity costs of not intervening: the removal of obstacles to cross-border voting would significantly increase the cross-border voting record of institutional shareholders and would make cross-border voting for small individual shareholders a real possibility in a near future.

Removing obstacles to domestic and cross-border shareholder rights is a key prerequisite for the development of stock markets in the EU and to facilitate financial market integration in the EU. This is all the more true since in EU Member States stock markets still play a lesser role in corporate finance compared to the US.

1.2. Objectives

The following structure of objectives has been defined:

General objectives:

- To strengthen shareholders´ rights and the protection of third parties
- To foster efficiency and competitiveness of business.

Specific objectives

- To allow shareholders to play their full role in the decision-making process of the company.

Operational objectives

To reduce cross-border voting costs.

- To allow for an increase in voting rates by cross-border shareholders.
- To increase the cross-border share ownership.

1.3. Main policy options and impacts

- *Scope*: considering the expected impact it seems appropriate that the proposed instrument only should cover listed companies. Given that the number of unlisted companies is much higher and the cross-border ownership of them is very low, extending the proposal to unlisted companies would dramatically increase implementation costs without significantly increasing the benefits.
- *Regulatory instrument*: The present situation does not allow cross-border shareholders to participate actively in the decision-making process of the company, with important negative economic effects. Some kind of action must therefore be proposed. A recommendation would not ensure that measures required to tackle cross-border voting barriers will be taken at national level. A directive is the best suited instrument to guarantee minimum common standards while respecting national specificities. Compared to a regulation, a directive is the less onerous way of achieving the objectives defined, taking into account the proportionality principle.
- *Proxy voting:* This Impact Assessment proposes to introduce minimum standards, removing all existing restrictions in national laws regarding proxy voting. This could lower the cost for shareholders of voting by proxy or by giving instructions to their intermediaries, and could increase the voting records of cross-border shareholders.
- *Share blocking:* The proposal is to prohibit share blocking and to replace it by a record date, leaving flexibility to Member States to determine the applicable record date. This option would allow shareholders to trade shares and to vote, while reducing costs and increasing attendance rate.
- *Information related to GMs:* Minimum standards should be introduced regarding (i) a minimum notice period for convening a general meeting; (ii) the obligation for issuers to specify the location from which the information relating to GM and a description of voting procedures can be obtained; and (iii) the requirement for issuers to post GM-related documents on the company website. These measures would reduce the information costs of shareholders, thereby lowering the overall voting costs and encouraging them to vote.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

In its Final Report issued on 4 November 2002[1], the **High Level Group of Company Law Experts** (the so-called Winter Group) identified shareholder protection as a key issue for ensuring good corporate governance, with particular emphasis on the elimination of obstacles to cross-border activities. The report indicates a number of specific obstacles concerning the entitlement to vote, admission to general meetings, information and documentation, and shareholders' rights at the general meeting. The Winter Group also recommended that the Commission, as a matter of priority, set up a specific project to build a regulatory framework for shareholder information, communication and decision making that would facilitate the participation of shareholders across the EU and, where possible, outside the EU, in the governance of European listed companies.

[1] http://europa.eu.int/comm/internal_market/en/company/company/modern/consult/report_en.pdf

In a Communication adopted on 21 May 2003, the Commission presented its **Action Plan "Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward**".[2] Following the Winter Group's recommendations, the Commission included the enhancement of the exercise of the rights of listed companies' shareholders across the EU as a priority among the objectives of the Action Plan. The Commission further considered that the necessary framework should be developed in a Directive since an effective exercise of these rights requires a number of legal difficulties to be solved. The Commission invited interested parties to comment on the Action Plan.[3] A very large majority of respondents to the public consultation supported the proposal to enhance the exercise of their rights by shareholders of listed companies.

In September 2004, the services of the Internal Market Directorate launched a **first public consultation on shareholders' rights and cross-border voting**.[4] The objective of the consultation was to gather the views of interested parties with regard to existing obstacles to cross-border voting and, more generally, to the exercise of shareholders rights in the general meetings of listed companies. Respondents to the consultation generally expressed a strong support for an EU-initiative on shareholders' rights, which would introduce minimum standards, while both avoiding over-regulation and leaving it to Member States to regulate in detail where necessary (see Annex 4).

In the light of the responses to this first consultation, the Services of the Internal Market Directorate-General decided to launch a **second public consultation,** which was published on 13 May 2005**.**[5] The objective of this consultation was to elicit comments on a focused set of possible initiatives aimed at removing obstacles to the exercise of cross-border voting rights.[6] Respondents to the second consultation generally considered that the consultation paper addressed most of the key obstacles to the cross-border exercise of shareholders' rights and that the minimum standards proposed, if put in place, would significantly facilitate cross-border voting (see Annex 5).

With the aim to provide a factual basis for the expected costs and benefits of the various options identified through the two public consultations, the Services of the Commission distributed two questionnaires (see Annex 6 and 7) to a number of issuers and intermediaries. A fundamental role in reaching respondents was played by members of the Company Law Expert Group and by the Advisory Group on Corporate Governance and Company Law, to whom the questionnaires were initially distributed. The data provided by the answers to these questionnaires have helped to evaluate the economic impact of the options discussed in the two open consultations.

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2 http://europa.eu.int/comm/internal_market/en/company/company/modern/index.htm

3 See synthesis of results on http://europa.eu.int/comm/internal_market/en/company/company/modern/governance-consult-responses_en.pdf

4 See http://europa.eu.int/comm/internal_market/company/docs/shareholders/consultation2_en.pdf for the text of the second consultation. The deadline to provide answers is the 15 July 2005.

5 http://europa.eu.int/comm/internal_market/company/docs/shareholders/consultation2_en.pdf

6 The Commission initiative on shareholders' rights should be seen as complementary to the removal of legal obstacles to an efficient cross-border clearing and settlement. Following to the two Giovannini Reports, a Legal Certainty Group has been established to consider all legal obstacles to cross-border clearing and settlement. For more information see http://europa.eu.int/comm/internal_market/en/finances/mobil/clearing/index.htm

Finally, in February 2005, a Steering Group was formed to monitor the progress of the impact assessment of the present proposal. The Steering Group was made up of representatives of the several Directorates-General who responded to the invitation of DG Internal Market and Services to join the Steering Committee (DG Employment, Social Affairs and Equal Opportunities, DG for Enterprise and Industry, DG for Economic and Financial Affairs) and included a representative of the Secretariat-General. The Group met three times to evaluate the advance of the impact assessment, to provide guidance and drafting contributions and to approve the final document.

3. THE ECONOMIC RELEVANCE OF CROSS-BORDER VOTING: THE ECONOMIC CASE FOR INVESTOR PROTECTION AND CORPORATE GOVERNANCE

3.1. Introduction

The separation of ownership and entrepreneurial control is a central feature of a modern market economy and implies a specific interaction between the creator of a business idea and the investor with the necessary capital to convert that idea into reality. Consequently, the common theme in the corporate governance-related literature is the existence of this principal-agent problem. For public companies, the principal-agent problem arises in the relationship between shareholders and management, a relationship which can only be efficient if the interests of the management and the investors can be appropriately aligned. The challenge is how to ensure that the agent (management) acts in the best interests of the principal (the shareholders), in conditions where their respective interests may diverge, where management enjoys an informational advantage and where shareholding may be so diffuse as to restrict the scope for collective action and control.

Economic research suggests that corporate governance and investor protection result in a better resource allocation and higher economic growth through (i) a direct channel of superior company management – with proxy voting providing a supportive control tool -, and (ii) an indirect channel through broad and liquid financial markets generated by shareholder rights.[7]

3.2. Superior company management

A host of findings in the economic literature highlight the relevance of corporate governance for efficient resource allocation. The absence of efficient corporate governance structures leads to companies deviating from their first-best strategy and pursuing a sub-optimal investment and hiring path, thus lowering economic growth by engaging in corporate over- or under- investment which ultimately leads to the destruction of shareholder value (Gugler et al. 2001, Richardson, 2002). Weaker investor protection structures are considered to lead to underinvestment and overstaffing (Emmons and Schmid, 2001) and corporate structures that hinder efficient shareholder protection result in lower growth and less spending on innovation (Morck et al., 1998, 2004). Some studies suggest that managers insulated from takeovers prefer to enjoy a quiet life, which causes an overall decline in productivity and profitability in affected

[7] A full list of all the references cited here can be found in **ANNEX 2** of this Impact Assessment. For a brief survey see also Walkner (2004), Issues in corporate governance, Economic Papers n. 200, European Commission.

firms (Bertrand and Mullainathan, 2003). Good corporate governance can also be considered to facilitate corporate restructuring, as companies turn more quickly to new areas of growth, whereas bankruptcy may ensue when management fails to invest resources profitably. In that respect, flawed corporate governance structures in banks can lead to particularly grave economic problems (Peek and Rosengreen, 2003).

This latter issue is addressed by proxy voting contests, which can occur when shareholders disagree with the incumbent management on corporate strategy. Proxy voting contests – facilitated through intra-shareholder communication possibilities - have the advantage of keeping pressure on company management (Bebchuk and Hart, 2002)[8]. Empirical studies confirm its value as an external corporate governance control tool (Mulherin and Poulsen, 1998). Other findings suggest that shareholder proposals are targeted at poorly performing firms (Karpoff et al., 1996).

3.3. Broad and liquid capital markets

Investor protection leads to broader and more liquid financial markets. Corporate governance and investment decisions are linked insofar as outside investors – facing the risk of expropriations by management or larger shareholders - will be more willing to buy shares in corporations where management strategies and actions are properly supervised and where minority investors enjoy a high level of protection. Not surprisingly, empirical analysis suggests that the level of shareholder protection correlates *positively* with company valuations (La Porta et al., 1997, 1999a, 1999b, 2000, 2002, Barontini and Siciliano, 2003, Doidge, 2004) and *negatively* with the valuation of controlling block votes, due to the reduced possibility for dominant shareholders to extract private benefits (Nenova, 2003, Giannetti and Koskinen, 2004). The latter encourages larger shareholders to sell shares, thus contributing to broader and more liquid capital markets. A larger financial sector, in turn, leads to higher economic growth (see box).

Box: The Importance of the Financial Sector for Economic Growth

The financial sector – through both capital markets *and* banks - plays an essential role in the economy by, *inter alia*, transforming assets, facilitating risk management, financing trade, enabling capital accumulation, and spurring technological innovation. These important functions would suggest a positive correlation between financial sector development and economic performance, although causality could operate in either direction. While theoretical and empirical work in the field of financial development and economic performance is relatively new, evidence would seem to confirm the importance of a developed - hence efficient – financial sector in boosting economic performance (King and Levine, 1993, Beck et al., 2000, Beck and Levine, 2004, Levine, 1991, 1997, 2002, 2003, Levine and Zervos, 1998, Levine et al., 2000, Wurgler, 2000, Rousseau and Wachtel, 2000, Dolar and Meh, 2002, Arestis et al., 2001, Kahn, 2000, Trabelsi, 2002, Greenwood and Jovanovic, 1990, Thiel, 2001). It is noteworthy in this context that financial sector development particularly favours the financing conditions for those firms with a lack of internal funds, such as smaller or newly established companies (Beck et al. 2004, Rajan and Zingales, 1998, 2003).

[8] The authors note that a combination of proxy voting *and* takeover bids is the most effective combination.

4. THE PRESENT SITUATION[9]

To vote on shares in a listed company located in a Member States, for shareholders in another Member State or from outside the EU, is often either very difficult and cumbersome or even practically impossible. This problem is becoming all the more urgent as the cross-border nature of equity investment is increasing and is actively stimulated by the drive to create integrated financial markets in Europe and beyond.

Investors in European listed companies face particular problems if they reside in countries other than where the company is registered. Nowadays, investors typically hold their shares in securities holding systems through accounts with securities intermediaries, who in turn hold accounts with other securities intermediaries and central securities depositories in other jurisdictions. These cross-border chains of intermediaries cause particular problems in the process of communicating with - and actual voting by - such shareholders.

According to the information compiled in this document, the rising percentage of share ownership by foreign institutional investors creates a risk of EU listed companies being owned by a passive shareholder base. Moreover, present legal obstacles to cross-border voting may prevent small individual cross-border shareholders willing to exercise their voting rights to reap the benefits of the fast technological advances of electronic voting. Shareholder participation being an essential precondition for an effective corporate governance, EU listed companies are facing the risk to have a structural disadvantage vis-à-vis their US and Asian competitors.

4.1. How many foreign shareholders?

The conclusion that can be drawn from the studies mentioned in chapter 2 is that the protection of shareholder rights is a key precondition for economic growth in the EU. It is however necessary to appreciate to what extent shareholder protection in the EU means cross-border shareholder protection. Available data show that a significant level of foreign ownership already characterizes the ownership structure of listed companies across the EU. According to FESE, the weighted average of the non-resident investors' proportion of the listed shares of European markets was 29% in 2003 (Annex 1, Table 1). Moreover, a significant part of these foreign shareholders seems to be made up of non-resident institutional investors[10].

Annex 1, Table 2 shows the presence of foreign shareholders in several EU and EES countries: at the lowest end of the range are Iceland, Cyprus, Italy and Germany, where foreign shareholders own under 20% of total shares; on the other end of the range are countries such as Hungary, The Netherlands and the Slovak Republic, where foreign ownership of listed companies reaches 70%-80%.

There are also signs that foreign share ownership in the EU is rising fast in recent times. Annex 1, Table 7 indicates that the foreign shareholder base has increased with more than 16% during 2004. These figures, although based on a limited sample of 38 EU

[9] A synthesis table of the issues discussed in the present chapter are illustrated in Annex 11.

[10] FESE, Share Ownership, cit., p. 1.

companies, suggest a tendency towards a fast increase of cross-border ownership for EU listed companies.

The conclusion is that foreign (cross-border) shareholders constitute a sizable and increasing percentage of the shareholder base in several EU Member States.

4.2. Do foreign shareholders vote?

In the previous paragraph we said that a sizable amount of the shareholders in EU listed companies are cross-border shareholders.

The next logical step is to look at how many foreign shareholders show up to vote. Unfortunately information in this field is extremely difficult to collect, as we have been informed by all representatives of Member States' governments to whom we submitted an ad-hoc questionnaire. However, the available data tell us that foreign participation at general meetings is poor.

With regard to the attendance of foreign shareholders at annual general meetings (AGMs) of some German and Finnish listed companies, the figures in Annex 7 show a very low attendance rate at GMs of foreign shareholders, both with regard to total share capital and, more important, with regard to the percentage of shares owned by foreign shareholders.

An important caveat should be made with regard to controlling foreign shareholders, or in any case to foreign shareholders who have a sizable participation in the company. The case of Polish listed companies (Annex 7) shows that in such cases foreign shareholders do manage to be present at GMs and to vote.

Of course, this could just mean that small non-controlling cross-border shareholders are not interested in voting as is the case with domestic non-controlling shareholders. In this case the low voting rates could be explained by the minority shareholders' "rational apathy" as well as by the legal obstacles to cross-border voting. However, the fact that significantly (and sometimes dramatically) fewer foreign shareholders (as a percentage of total shares owned by foreign shareholders) show up to vote at GMs than domestic shareholders (as a percentage of total shares owned by domestic shareholders) (Annex 7) suggests otherwise.

The conclusion of this paragraph is that much fewer foreign shareholders show up to vote than domestic ones. This raises the point of the existence of obstacles to cross-border voting.

4.3. Complexity of cross-border voting[11]

Because of the existence of cross-border chains of intermediaries, cross-border voting usually requires the recourse to global custodian banks (or their proxy vendors), who in turn must engage proxy-related services from its network of local market sub custodians. The resulting local fees are typically passed on by the global custodian to the underlying

[11] Unless otherwise specified data provided in this paragraph come from answers to the questionnaire reported in Annex 5.

institutional voter or beneficial owner. Moreover, many local markets have specific voting requirements that incur additional fees.

Proxy voting and re-registration requirements

There are at present many constraints which still make proxy voting in some Member States unduly cumbersome. These limitations relate mainly to the persons that may be appointed as a proxy, the number of proxy appointments which any one proxy may hold or the formal requirements for a valid appointment of proxies. Some companies pay the service provider a fixed amount for the "global portfolio" of voting rights and are, therefore, not affected by differences in national cost requirements. However, in relationships settled on the basis of single transactions, the differences in voting costs are immediately reflected in the service fees charged by the provider.

The regulation in place in countries such as Sweden, Denmark, Belgium, Poland, Portugal and Finland require the setting up of notarised powers of attorney for the shareholder to empower the sub-custodian to represent it and to vote at the GM. The UK pension fund Hermes stresses that these costs are so high that they might discourage even small funds (not just small individual shareholders) from voting.

On the other hand, as stressed by Dexia Asset Management (DAM), countries like Germany, The Netherlands and France allow voting through a proxy who is appointed by the issuer and receives instructions from the shareholders; the votes can be sent over through specific voting instruction forms or by internet that allow the investor to vote in absentia and to limit his administrative and travel expenses.

Finally, as shown in Annex 3, question 9, there are also differences in the methods to appoint proxies, the identity of proxies, the number of shareholders who may be represented by the same person, and the power of proxies at GMs:

- *the methods to appoint proxies*: while a few countries have no mandatory rules on proxy voting (Finland) or on proxy voting methods (mail, electronic voting, video conference, like in France), a written, and in some cases dated and signed proxy is required in many European jurisdictions (e.g. Denmark);

- *who can be appointed as a proxy*: a proxy can only be held by another shareholder or members of his family (e.g. France) or cannot be held by the company's directors or supervisory board's members (e.g. Hungary), a member of the Company (Ireland) or a company's employee (Poland). On the other hand in the UK and in Germany a proxy can be granted to anyone, including banks and shareholders' associations.

- *the number of shareholders that may be represented by the same person*: limitation on the number of proxies a single person may hold according to the size of the company (Italy); one and the same representative may represent several shareholders at a time, but one shareholder may be represented by only one representative (Hungary, Poland).

- *the powers of proxies at GMs.* In some Member States' laws, proxies currently do not have the same powers at the GM as actual shareholders, such as the exclusion of these persons from the right to speak or the fact that their votes are disregarded in votes on show of hands.

Share blocking

Although some Member States have taken steps to reform the law in this area, the practice of share blocking, *i.e.*, the obligation to deposit or block shares for a few days before the General Meeting to be able to vote, can still be found in several EU jurisdictions. As can be seen in Annex 3, question 9, the practice is mandatory in some Member States, and the blocking time varies between 3 and 7 days before the date set for the GM; in other jurisdictions (e.g., Austria, Italy, Netherlands, Spain) articles of association may require that shareholders have to deposit their shares.

The reason why share blocking facilities exist is to ensure that those who show up to vote at general meetings are actually shareholders on the day of the vote. However, share blocking is very costly for shareholders as it prevents them from negotiating shares up to weeks in advance of the general meeting.

Share blocking is considered by the vast majority of institutional investors as one of the greatest obstacles to voting. Indeed, it appears that many institutional investors will choose not to vote rather than to be prevented from selling their shares at any time. Voting is often considered as not being worth the financial risk associated with the immobilisation of shares. According to Institutional Shareholder Services (ISS), it is fairly common practice for clients to maintain a standing instruction of 'no action' – or not voting – in markets that practice share blocking.

As a matter of fact, few Member States still legally impose the immobilisation of shares as a pre-requisite to vote. Some of the Member States that imposed the blocking of shares have recently opted for a framework under which the ownership of shares is verified during a few days before the General Meeting, but which leaves shareholders free to sell shares during that period. If they do so, intermediaries are to inform issuers of any such disposals to enable the reconciliation of holdings and votes shortly before the meeting takes place. Votes which no longer correspond to the number of shares actually held at the moment of reconciliation are disregarded. However, it appears that few cross-border investors understand that these verification systems allow them to dispose of their shares during the verification period, or procedural obstacles seem to prevent them from doing so[12]. As a result, they tend to continue to consider countries which have such systems as imposing genuine share blocking. This circumstance is also confirmed by ISS[13], which

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12 For instance Hermes referring to the French case stated that (La lettre de l'AFGE, n. 6, Juin 2005): "Il nous a été indiqué que le décret du 3 mai 2002 a modifié le système et que désormais pour les investisseurs, le blocage des titres peut avoir lieu à J-1 15h. Dans la pratique, ce n'est pas le cas. Peu de sociétés ont réduit leur immobilisation des titres, et elle est encore fréquemment de cinq jours. Dans la pratique la contrainte est véritable pour les actionnaires car les titres sont bloqués jusqu'à la deuxième convocation, date à laquelle les AG ont lieu dans la majorité des cas. Nous estimons que la durée moyenne de blocage des titres en France est de 15 jours…Nous sommes conscients que les changements législatifs ne font plus en principe obstacle à la cession des titres, mais la pratique est encore toute autre. Un investisseur qui souhaite vendre tout ou partie de ses titres doit d'abord les faire débloquer, et il est rare que les intermédiaires effectuent les corrections de bonne volonté. »

13 "Much confusion persists with regard to share blocking in the mind of the institutional voter, given that blocking regulations have changed, and continue to do so, in several blocking markets. Uncertainty over whether a market practices a 'hard' block (liquidity is frozen) or 'soft' block (shares may still trade) is common, as is uncertainty over whether or not shares may be unblocked once they have been blocked prior to a meeting (France, yes; Greece, no)."

adds that its clients (institutional investors and global custodian banks) show much greater likelihood to vote in markets which do not practice blocking than in those which do, as can be seen in Annex 1, Table 8.

DAM is convinced that especially for institutional shareholders, share blocking is one of the most important reasons that prevent issuers from participating in AGMs of issuers, because of the impact it can have on the investment process. According to DAM share blocking provisions prevent investors from voting for the complete position they hold, in order to avoid a negative influence on the investment process. This leads investors, such as the Dutch Corporate Governance Research Foundation for Pension Funds (SGCOP), to have approximately only 50% of their shares voted in the relevant markets, leaving the other 50% unvoted. Many investors, however, simply await better regulation and will not vote their shares in "blocking markets" at all – or only in exceptional cases. Another estimate, provided by Robeco, is that 30% of total EU cross-border votes are lost due to share-blocking requirements across EU Member States.

This deterrent also appears to be working in EU Member States where share-blocking is only optional and where provisions vary per company. According to Hermes, this is due to the fact that custodians and proxy agencies tend to interpret legal provisions in a conservative and risk-adverse way, and normally apply a worst case scenario approach to these matters. Hence, an investor might see his shares blocked in, say, a French company, even if that particular company no longer applies share-blocking. In Hermes' view, such evidence demonstrates that voting is an area where flexibility is detrimental, as the existence of a multitude of differing statutory provisions creates confusion and induces custodians to implement a minimum common denominator.[14] According to data reported by Hermes, there is a correlation between de facto share-blocking provisions and "free-float" (not just cross-border) vote (see Annex 1, Table 5).

Access to GM-related information

The late availability of GM-relevant information, incomplete information, resolutions in summary form and overly short notice periods are among the major obstacles which non-residents face in practice. Investors' positions are confirmed by the information provided by our comparative legislative database (see Annex 3). Significant differences can be observed among EU Member States in both the minimum and maximum time limits for the issuance of a formal GM notice, varying from 8 days (Denmark, Luxembourg) to two months (in Finland). Moreover, dissemination by electronic means is allowed in only some Member States: for instance in Belgium shareholders may individually accept to receive the notice as well as the agenda by electronic means (written approval is required) while in Germany invitation must even be disseminated by the official electronic national gazette (the "Elektronischer Bundesanzeiger") and further information may be disseminated electronically at the shareholder's request etc.

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[14] Moreover, the existence of quorum requirements – which *per se* cannot be considered to be a problem – might *de facto* extend the blocking period considerably. Indeed, in some countries shares shall be blocked 5 days ahead of the date fixed for the first call of the general meting ("GM") and remain blocked till the day after the GM, which might be held on second or even third call, with a total blocking period that can reach 30 days. Given that it cannot be foreseen with certainty whether the GM will go on second or third call, the uncertainty over the length of the whole blocking period acts as a further discouragement to investors.

Electronic voting

According to our comparative legislative database (Annex 3), electronic voting for shareholders not physically present at the GM is not allowed in several European jurisdictions (e.g. Germany, where it is only allowed to give instructions electronically until the end of the GM to the proxy voter who himself has to be present in the meeting). In the UK, where the appropriate arrangements are in place, a member can vote indirectly by electronic means in the sense that proxy forms can be lodged electronically. In some countries new draft laws will make electronic voting possible.

4.4. Costs of domestic versus cross-border voting[15]

The complexity of cross-border voting mechanisms across the EU not only discourages institutional shareholders from voting in several circumstances, as illustrated in the previous paragraph, but it also translates directly into higher voting costs (compared to domestic voting) charged by intermediaries to shareholders in case they vote.

For HSBC Bank (HSBC), the costs to exercise one's voting rights cross-border at a single meeting vary according to EU countries from nil to £500 (about 741 Euros). According to DAM, the administrative costs of cross-border voting increases the cost by about 100% compared to domestic voting. An analogous evaluation is shared by Arbeitskreis Namensaktie. DSW (the German Shareholders' association) says that because of cross-border voting costs, only few German shareholders are interested in voting in person at Annual General Meetings in Europe.

In particular, companies willing to exercise their voting rights abroad have to call upon specialised service providers like ISS, Euroclear, Clearstream or similar bodies. These service providers charge either a flat fee for a "global portfolio" of voting rights or a separate fee for each voting procedure. Tariffs are negotiable and bargaining power depends on other business done with the respective custodians. From this it follows that cross-border voting for individual shareholders is particularly expensive if not prohibitive, all the more so since intermediaries appear to charge "flat fees" irrespective of the number of shares held.

Overall, there is agreement that voting costs vary significantly across EU Member States. Voting in countries such as Belgium, Sweden and in general Scandinavian countries appears to be more expensive than in countries like Germany, Austria or The Netherlands. The bulk of the costs appears to be linked to national-specific regulations within the EU. Hermes estimates that these kinds of costs add up to 88% of total voting costs (see Annex 1, Table 3). The costs of cross-border voting lead qualified intermediaries to conclude that the cost of voting for beneficial owners on an individual basis can be prohibitive.[16]

A more detailed analysis shows which aspects of the cross-border voting process are the most cost intensive for investors.

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15 Unless differently specified data provided in this paragraph come from answers to the questionnaire reported in Annex 5.

16 Information provided by Euroclear.

Proxy voting and re-registration requirements

Key factors differentiating voting costs across EU countries are divergent proxy practices applied across the EU and the obligation either to vote through a proxy of the corporation or to be present physically.

In the UK, CREST charges €0.43 per voting instruction for its members, although this may rise to an estimated €8.70-€10 when a holder uses either a specialist voting provider, a Custodian or other type of intermediary and their charges are taken into account. Due to the complexity of cross border voting, ICSDs tend to charge more for voting and charges are around €50-60 per vote.[17] For Scandinavian countries, such costs are even higher (on around €85). An important component of this cost is the need to register the securities at the CSD temporarily out of a nominee name and into the beneficial owner's name as a precondition for exercising the voting rights linked to the securities.

According to Hermes, regulations in countries such as Sweden, Denmark, and Finland require custodians to register their clients' shares into local accounts several days prior to the GM date. After the GMs, the shares will be re-registered in their original accounts. Such Scandinavian requirements offer no obvious advantage, but on the other hand they imply clear costs for global custodians and their underlying clients, i.e. about €50-100 per registration (i.e. per account for each GM).

Finally, proxy-voting costs should also include the costs of proxy solicitation. Shareholder activism often implies seeking the support of other shareholders for the approval of a resolution filed by a minority shareholder. According to Hermes, the rules and formalities for proxy solicitation differ dramatically in Europe. In the UK, for instance, the request for proxy solicitation would be included in the proxy documents produced and distributed by the company to all the shareholders at no significant cost for the activist. In Italy, on the other hand, the request for proxy solicitation is not included in the company's proxy documents, and its production and distribution is at the expenses of the activist group. Including proxy solicitation costs into total voting costs, Hermes estimates that for an active shareholder proxy solicitation weights about 43% of total voting costs (see Annex 1, Table 4)[18].

Share blocking

Share blocking is not only a factor rendering cross-border voting too complex but it may also entail considerable costs.

Due to the practice of share blocking, investors may lose valuable returns if they vote all their shares. As long as shares are blocked, they can not be traded nor can they be lent to other market participants. The returns lost can go up to several basis points. Hermes evaluates the costs caused by share-blocking requirements at 59% of total voting costs for investors (see Annex 1, table 3).

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17 Estimations provided by Euroclear.

18 Another important cost connected with the role of active shareholder seems to be the lack of clarity on concert party rules. Hermes remarks that the regulations of some Members State currently do not differentiate control-seeking actions from the co-operation of institutional investors aiming at developing a shared message to companies. Hermes estimates that the lack of clarity implies costs representing 3-27% of the total costs for active ownership activities

GM-related information costs

There also appear to be extra costs charged by financial intermediaries to convey information to the investor about the existence of a shareholders' meeting. According to Arbeitskreis Namensaktie, the data-transfer from a foreign shareholder to the company will almost certainly incur bank expenses above the "national" level, i.e. for the data transfer within one member state. If banks are willing to pass on shareholder data they can be expected to charge the shareholders for this "extra service". Indeed, not all banks appear to pass on the information about foreign companies to their clients.

This kind of information barriers appears to be mostly a problem for smaller shareholders. Large institutional shareholders have access to different means of communication. For example, they check the announcements from the websites of the blue chip companies or, as stressed by Hermes, they have access to electronic platforms that allow them to identify upcoming general meetings, match them with the relative holdings, view the agenda and send voting instructions to the custodians. DAM evaluates the cost for this kind of services at 10% of total proxy voting costs.

On the other hand, a major setback appears to concern the availability of proxy/voting information, particularly with regard to both the timing of the release of the documents, and the minimum disclosure requirements. For HSBC, the unavailability of proxy/voting information impairs their ability to vote. According to Bundesverband Investment und Asset Management (BVI), the insufficient availability of proxy voting information constitutes the biggest hurdle to efficient cross-border execution of voting rights. According to Fortis and Rabobank, the lack of adequate and timely information on agenda items implies a cost equal to 50%, while for Hermes the same estimation is at about 12% of total voting-related costs for investors, particularly in terms of time spent contacting companies for clarifications and additional information (see Annex 1, Table 3).

Box: Estimating the economic distortion of the barriers to cross-border voting†

It is hard to estimate the economic effect of the barriers to cross-border voting. In order to give an idea of the negative effect derived from these obstacles, we will try to estimate the economic distortion of the fact that foreign shareholders face big practical problems to exercise their voting rights, making this exercise either impossible or highly burdensome.

We are going to consider that the obstacles to cross-border voting are so high that it becomes impossible for foreign shareholders to exercise their rights*. In practical terms, this impossibility of voting means that foreign shareholders are buying non-voting shares. It is well-known in the economic literature that the price of voting shares is higher than the one of non-voting shares**. Applied to our case, this means that shareholders pay the price of voting shares to receive what in practical terms are non-voting shares.

The result is an economic distortion that can affect the investment decision of investors, thereby distorting the allocation of resources. This economic distortion can not be used as a direct estimation of the cost of the existing barriers but it gives an idea of the extent of the problem we are talking about.

1. *Estimate of the value of the shares owned by foreign shareholders in the EU-25*.

   Table 1 in Annex 10 provides the stock market capitalization of the 25 Member States and the estimations of foreign ownership of listed companies in 23 of them. According to these figures, the value of listed companies´ shares held by foreign shareholders in these 23 Member States can be estimated at 2.237.326 million euro. This value would be higher if account is taken of the 2 Member States for which there are no available data.

2. *Estimate of the difference in price between voting and non-voting shares in Europe.*

   The average price difference between voting and non-voting shares can be estimated by analyzing stock exchange data for companies that issue multiple shares. In particular, we focus on companies that issue two types of shares which differ in the voting rights attached. Based on Bloomberg data, 136 companies from 13 countries were identified that issue such pairs of shares. Analyzing the prices of these shares, it appears that, on average, the price for voting shares is 19.13% higher than for non-voting shares. The conclusion is that shareholders value the option to vote and to influence corporate policy by a markup of almost 20%.

3. *Estimate of the economic distortion*.

   If, as assumed, foreign shareholders are holding non-voting shares but they have paid the price of voting shares, they have actually paid an overprice of 19.13%***. In practical terms, this means that the shares for which they have paid a price of 2.237.236 million euro have got a real value of 1.877.979 million euros. This difference of 359.257 million euro is the economic distortion brought about by the existence of barriers to cross-border voting.

Conclusion

The practical impossibility for foreign shareholders to exercise their rights to vote, means that they are actually holding non-voting shares for which they have paid the price of voting ones. This economic distortion, estimated as 359.237 million euro, can not be considered as the cost of the existing barriers, but it gives an idea of the size of the problem we are dealing with.

This overprice paid by foreign shareholders creates a domestic bias for investment decisions, reducing the efficiency of the allocation of resources in the European economy. If barriers disappeared, this domestic bias would be reduced, which would help the financing of projects with higher probabilities to create value. The outcome would be a more productive use of capital, yielding a higher level of employment and higher economic growth.

† For a more detailed illustration of the material covered in the present box see Annex 10.

* This assumption can be considered excessive because it is true that some foreign shareholders attend general meetings and exercise their voting rights, and considering that no foreign shareholder has got voting rights means overestimating the impact. However, on the other hand, the existing barriers are also applicable to domestic shareholders who in some cases find it very difficult to exercise their rights. Therefore, we do not take this effect into account and that means that the calculations are underestimated.

** Some examples are:

- Zingales (1994) "The Value of the Voting Right: A Study of the MilanStock Exchange Experience"
- Muravyev (2004) "The Puzzle of Dual Class Stock in Russia Explaining the Price Differential between Common and Preferred Shares"
- Nenova (2002) "The value of corporate voting rights and control: A cross-country analysis"

*** This estimate is quite conservative. We are not taking into account the fact that usually non-voting shares have got more favourable economic rights, so we are underestimating the real value of voting rights.

4.5. The cost of doing nothing

Finally, an important part of the costs of the present situation is represented by the opportunity costs of not intervening. As revealed by the answers to the ad-hoc questionnaire submitted to qualified issuers and intermediaries (Annex 6), the removal of these obstacles would significantly increase the cross-border voting record of institutional shareholders and would make cross-border voting for small individual shareholders a real possibility.

(i) Proxy voting

With regard to proxy voting, while ABN AMRO agrees with the necessity to introduce minimum requirements concerning the length of notice period, DAM agrees that an uniformisation of the rules to grant a proxy/register in the different EU member states would improve the present situation, allowing a reduction of voting costs, especially in cross-border situations, by 30%-40%. On the same point, the estimation made by Fortis and Rabobank is of a 25% reduction of costs and a 50% increase of voting records. According to DSW, the abolition of restrictions as to the person of the proxy, the form in which a proxy may be granted and the powers linked to the proxy would bring about a reduction in voting costs of 20%. On the same point, SGCOP estimate is between 10% and 40%.

(ii) Share-blocking requirements

All financial intermediaries who have replied to the question as to which effect a complete abolition of share blocking would entail, took the view that such a measure would increase their voting records significantly. Thus, according to HSBC a complete abolition of share blocking would encourage many more shareholders to exercise their voting rights. According to SGCOP, the introduction of a uniform record-date system would lead to an increase in voting of up to 50% and ROBECO estimates this increase at approximately 30% in Europe. DAM considers that the complete elimination of share blocking requirements would mean that the funds of DAM would be able to vote for the complete position they hold and that the importance of their vote on the general meeting would increase. In terms of the number of shares voted for, it would increase the level from 35% to 100% of the position held. This would mean an increase in the proportion of votes cast and in the number of companies where DAM would cast its votes. According to Hermes, the complete abolition of share-blocking requirements all over Europe could induce a significant number of investors to vote in Continental Europe. In particular, Hermes estimates that the abolition of share-blocking throughout the European Union could improve the attendance rate of institutional investors by 20%-49% (see Annex 6). Finally, according to the Dutch electronic voting bureau the abolition of share blocking requirements (and as a consequence the correct use of a record date) would reduce the complexity in the whole chain of intermediaries and would make it easier to determine who is shareholder and for how many shares a shareholder wishes to vote. Making the abolition mandatory would put the required pressure on banks to act and to address this issue.

In terms of costs, ROBECO estimates that their costs of communication and administration with different parties would go down by at least €5,000 for the shares voted today, while the risk of incurring far more significant costs (possibly over 100,000's of € if all their shares were to be voted) would be prevented.

(iii) Information on agenda items at GM

As to the impact of the lack of timely/exhaustive information on agenda items at the GM, respondents to our ad-hoc questionnaire agreed that the minimum standards for pre-General Meeting communications should ensure that shareholders, no matter where they are based, are in a position to take informed decisions. Minimum standards at EU level should take particular account of cross-border voting situations and should relate to the timing, the means of dissemination and the content of the notice, as well as to the dissemination and content of the material relevant to the General Meeting.

This position met the consensus of the overwhelming majority of respondents to the first and second consultations, who expressed support for EU minimum standards for the disclosure and dissemination of the GM notice and GM-related materials prior to the GM. Within this category, a large majority of respondents suggested that EU minimum standards should relate to the content, timing and dissemination methods of both GM notices and other GM-related material.

The effect of improved information standards on the institutional investors' propensity to vote would be significant. For instance, with reference to the specific issue of allowing electronic voting in all EU Member States, Arbeitskreis Namensaktie reports that in the experience of companies like DaimlerChrysler AG or Allianz AG, both with about 40,000 shareholders registered for electronic information, up to 80 % of electronically informed shareholders tend to react after having received the electronic information, either by ordering admission cards or by giving power of attorney and instructions to the companies' proxies. This reaction ratio is several times higher than the reaction ratio on paper information. More in general, as shown in Annex 6, question 4, several intermediaries consider that enabling electronic voting in absentia would significantly lower the cost of voting. This could entail an increase in the voting participation, which could be particularly important for institutional investors. According to Bundesverband Investment und Asset Management (BVI), the removal of legal obstacles to participation and voting by electronic means will presumably lead to a considerable increase in the cross-border voting activities of management companies. Such an increase in voting ratios is quantified by other intermediaries at between 20-25% (ABN AMRO, Fortis and Rabobank) and 75% (DAM).

4.6. Does the Union have the right to act?

Having identified the problem and its underlying causes, it is necessary to verify whether the EU has the right to act on it and whether it is better placed than the Member States to tackle the problem.

The subject of the obstacles to the exercise of voting rights of cross-border shareholders created by the regulatory obstacles at national level falls within Article 95 of the Treaty. Moreover, although the problem falls under a competence shared by the Union and the Member States, the problem cannot be sufficiently solved by the Member States. As will be detailed in par. 5.1.2.1 below, actions of Member States alone would not make a reduction of cross-border voting costs possible.

5. OBJECTIVES

The Commission has underlined that its actions at EU level in the area of company law should pursue the two following general objectives: to strengthen shareholders' rights and third parties protection and to foster efficiency and competitiveness of business.

To achieve these overall objectives, a specific objective is defined, which is to allow shareholders to play their full role in the decision-making process of the company.

In line with the conclusions drawn under Chapter 3, the present proposal aims at suppressing the factors that prevent cross-border shareholders from voting in several circumstances as well as simplifying the cross-border voting mechanisms that are currently responsible for high voting costs. In particular, the operational objectives of the present proposal are (i) to reduce cross-border voting costs so as to (ii) allow for an increase in voting rates by cross-border shareholders and (iii) for an increase in cross-border share ownership.

Removing obstacles to domestic and cross-border shareholder rights is a key prerequisite for the development of stock markets in the EU and to facilitate financial market integration in the EU. This is all the more true since, as widely recognised in the financial literature, stock markets in EU countries still play a lesser role in corporate finance compared to the US[19].

Box: Effects of Reducing Cross-border Voting Costs

General objectives

- Fostering efficiency and competitiveness of business
- Developing stock markets in the EU and facilitating financial market integration in the EU
- Strengthening shareholders' rights and third parties protection

Specific objectives

- Allowing shareholders to play their full role in the decision-making process of the company

- Operational objectivesReduction in cross-border voting costs
- Increasing voting rates by cross border shareholders
- Increasing cross-border share ownership

These immediate objectives support the more general objectives set out by the Lisbon Strategy, the agenda for reform launched by the European Council in March 2000. In its

[19] See for instance Bart, Caprio and Levine, The Regulation and Supervision of Banks Around the World. A New Database, February 2001

communication of 2 February 2005[20] the Commission launched "A Renewed Lisbon Action Programme", which identifies new actions at European and national level that help to see our Lisbon vision achieved. In this context, financial markets figure prominently among the focused set of key reforms identified to complete the single market.

6. POLICY OPTIONS AND IMPACT[21]

In this chapter we examine the costs and benefits of the policy options which in principle are available and we compare them for their adequacy to pursue the objective of removing obstacles to domestic and cross-border shareholder rights.

6.1. Main policy options

*6.1.1. **Scope***

Listed vs. unlisted companies

As a matter of principle, for listed companies a certain level of uniform, compulsory, substantive rules may be required to sufficiently protect both shareholders (investors) and creditors. For genuinely closed companies, there should, generally speaking, be a wider scope for the parties to determine autonomously the structure of the company and the rights, responsibilities and obligations of those participating in it.

Besides, minority cross-border shareholder base for non-listed companies across the EU is not significant: Considering that, out of a total number of 4,806,896 companies across the EU[22], only about 9,500 are listed, extending the present proposal to unlisted companies would mean multiplying the implementation costs by more than 4 million with a very limited impact on benefits.

Any measures aimed at facilitating cross-border voting rights should apply to all companies whose shares are admitted to trading ('listed companies'), because there is a public interest in the governance of companies whose shares are offered to the public.

However, nothing in the present proposal would prevent Member States to extend such measures to all companies with publicly raised capital, *i.e.*, those whose shares are not admitted to a regulated market but have nonetheless, in certain Member States, a dispersed ownership structure.

The present proposal adopts the definition of listed companies provided by Directive 2004/39/EC, i.e. companies formed under the laws of a Member State and whose securities are admitted to trading on a regulated market in one or more Member States.

However, any EU instrument on shareholders' rights in listed companies should not apply to listed collective investment undertakings (CIS) that fall within the scope of the UCITS

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20 European Commission, Communication to the Spring European Council. Working together for growth and jobs: A new start for the Lisbon Strategy. Communication from President Barroso in agreement with Vice-President Verheugen. Brussels, 02.02.2005. COM(2005)24.

21 Annex 7 contains a synthetic diagram of the policy options examined in thisand the following chapter.

22 Active companies in 2001. Source: Eurostat.

Directive, or represent an equivalent undertaking. UCITS funds and their management companies operate in a strictly defined regulatory environment and are subject to specific governance mechanisms to protect the rights of their investors/shareholders. A UCITS fund represents a mere pool of assets. It should therefore be viewed as a financial product which has taken the legal form of a corporate entity, not as a business.

Cross-border vs. domestic measures

The measures within the scope of the present initiative should not lead to a differential treatment between domestic and cross-border shareholders. The final aim is to ensure that there is no distinction between the process for shareholder voting, whether the shareholder is located in the jurisdiction of the issuer company or outside such jurisdiction.

Several of the proposed measures cover domestic as well as cross-border voting, as the obstacles to cross-border voting also constitute obstacles to domestic voting. Moreover, if the scope of the proposed measures was limited to cross-border voting alone, companies and intermediaries would need to put in place two separate processes for cross-border voting and for domestic voting respectively.

6.1.2. Type of regulatory instrument

6.1.2.1. First option: doing nothing

The first possibility from a policy point of view would be to leave the present situation as it is. As shown in paragraphs 3.3, 3.4, and 3.5, this would mean leaving the existing cross-border voting costs untouched, which are in the first place connected to the following aspects: (i) proxy voting; (ii) share-blocking requirements; (iii) costs due to lack of timely/exhaustive information on agenda items at the general meeting of shareholders (GM). These obstacles make cross-border voting prohibitively expensive for small shareholders, and very costly for institutional investors.

As demonstrated under par. 3.5, in order to completely assess the price of non-intervention, it is also necessary to consider the opportunity cost of not removing the existing legal barriers, *i.e*. the foregone savings.

Moreover, the costs caused by cross-border voting obstacles are likely to increase further as financial integration in the EU continues. As shown in par. 3.2, cross-border share ownership in the EU has already reached a significant level and there are signs that it is rising fast.

Finally, looking at the current legislative trend in EU Member States, does not indicate more than slow progress on this subject. As revealed by the comparative legislative database (Annex 3) and from the answers to the First and Second consultations (Annex 4 and 5), initiatives at Member State level do not seem to lead towards a prompt removal of existing cross-border voting obstacles. As stressed below in par. 5.2 and 5.3, all the stakeholders consulted recognized, explicitly or implicitly, that uncoordinated initiatives at Member-State level do not credibly guarantee a short-term solution.

6.1.2.2. Second option: adopting a recommendation

Another option for addressing cross-border obstacles to shareholders' rights is for the Commission to approve a recommendation. This instrument guarantees a maximum flexibility

on the part of Member States, which are free to implement it into their national systems to the extent they deem opportune. The Commission has recently chosen such an instrument with regard to directors' independence and remuneration[23], the reason being that for such subjects national legal systems present large differences. Besides, Member States normally do not regulate such subjects with binding measures, but with "soft law" measures such as non-mandatory corporate governance codes.

Adopting a recommendation would not guarantee the introduction of minimum uniform standards in those few key domains which are the origin of cross-border voting costs. Concerning share blocking, as shown in par. 4.4, what deters investors is the possibility that such a requirement be present at national or company level. With regard to proxy voting, the main source of cost stems from some national provisions that considerably increase the costs to vote. Concerning cross-border investors' access to GM-related information, investors request that minimum standards be guaranteed across the EU. With regard to these three specific issues, a recommendation would not give the necessary guarantee that measures required to significantly (if not radically) reduce cross-border voting costs would be taken at national level.

This conclusion is shared by qualified representatives from the industry who answered to the ad-hoc questionnaire on the costs of cross-border voting. Respondents specified that the reduction of the costs of the various obstacles can only be achieved by an intervention at EU level which would have binding effect.

Overall, the consultation process revealed the strong interest of issuers in having an active shareholder base. This interest relates first of all to the necessity of certain EU companies to reach the quorum required for a valid shareholders' meeting. As we have seen in paragraph 3.4, sizable proportions of total voting shares across EU Member States are already controlled by foreign shareholders, and in some Member States foreign shareholdings are already between 70% and 86% of total voting shares. A further reason is that EU listed companies are increasingly aware that an active shareholder base is a key precondition for company efficiency. This increasing concern on the part of issuers finds confirmation in the figures provided in Annex 1, Table 6, which show that large listed companies place so much value on shareholders' participation that they are even ready to pay attendance bonuses to investors willing to vote - either in person or by proxy - at the GM.

These conclusions are also shared by the participants in the European Corporate Governance Forum (ECGF). At its second meeting on 20 June 2005 all Forum members pointed out that clear, consistent rules on shareholders' rights throughout the EU would be the basis for the Union's flexible approach to corporate governance. Without having stringent EU rules that ensure that shareholders are effectively able to exercise their control function in the companies, the EU would, like the US, have to go down a much more prescriptive road on the questions of substance and would have to replace the (then too weak) private control by a control by the public authorities. The final message of the Forum members is that a directive to enable shareholder voting is needed. This view was also shared by participants in the Corporate Governance Conference, organised by the Luxembourg Presidency, which took place on 28 June 2005.

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[23] See http://europa.eu.int/comm/internal_market/company/independence/index_en.htm for the Recommendation on independent directors and http://europa.eu.int/comm/internal_market/company/directors-remun/index_en.htm for the Recommendation on directors' remuneration.

Finally, adopting a recommendation would still give the Commission the option to intervene at a later stage to introduce uniformity where necessary. If EU Member States did not adopt the recommendation and if there were individual complaints from investors or other parties concerned, then the Commission could bring the case to the European Court of Justice on the grounds that there are obstacles to the Internal Market that need to be removed. However, the attractiveness of such an option is significantly weakened by the following points:

– at the moment the caseload on discrimination against shareholders is extremely limited and consists essentially of cases of limited scope[24];

– even in case the Commission adopted a recommendation and there were individual complaints against Member States not adopting the recommendation and the Commission were able to find legal arguments acceptable to the European Court of Justice to find Member States to be in breach of the Treaty, the entire process would take up one or more decades, as demonstrated by the time it took to establish the jurisprudence commonly identified around the Centros case.

6.1.2.3. Third option: Regulation

A regulation would introduce a uniform treatment, irrespective of national specificities. This path is normally only taken by the Commission in the field of company law in particular circumstances, such as the introduction of a new type of company model, for instance the European Company[25].

Adopting a regulation would guarantee the introduction of a tight common framework for cross-border related issues. However, the costs of a regulation would be verysignificant, since it would not be possible to guarantee flexibility for national specificities, which are a very important aspect of company law across the EU-25.

Such regulatory choices would be in contrast with national specificities deeply embedded within corporate law and corporate governance across Europe. In the first place, the specificities of industrial structure across the EU-25 Member States are such that it is not possible to identify a unique model for EU listed companies inasmuch as they differ significantly in size, relevant market, shareholder base. Moreover, there are significant differences that characterize legal traditions across EU Member States, so that the legal structure of listed companies across the EU inherits the specificities of, among others, the Napoleonic Code, Common Law, Germanic Law, Scandinavian Law and the legal system adopted by the new EU Member States.

Finally, as can be seen from the next paragraph, a Directive would make it possible to guarantee minimum common standards together with the necessary flexibility to provide for national specificities.

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[24] see for instance: http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/939&format=HTML&aged=0&language=EN&guiLanguage=en

[25] http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/1195&format=HTML&aged=0&language=en&guiLanguage=en

6.1.2.4. Fourth option: Directive

In view of the complexity of many of the issues at stake and the specificities of EU company law systems, the adoption of directly applicable rules through a regulation is probably not the most desirable and efficient of way of achieving the objectives pursued. However, as set out above, a recommendation appears not to be the appropriate means either, since the legal barriers currently in place in most Member States need to be removed: market forces can solve only some of the technical problems associated with the voting process, and this only in the long term; therefore, a mix of regulation and deregulation is required to remove existing legal barriers and harmonise the laws among Member States.

The instrument of the directive allows for national specificities, while introducing basic common minimum standards. This flexibility that a directive allows for, compared with a regulation, has led the Commission to frequently use this instrument in the field of corporate law and corporate governance. Most recently, on 27 and 29 October 2004, the Commission adopted proposals for two directives aimed at amending the existing 2nd, 4th and 7th Company Law Directives[26].

The conclusion that a directive is the instrument best suited to guarantee minimum common standards while respecting national specificities was shared by the majority of respondents to our first and second open consultations and by the participants to the European Corporate Governance Forum.

6.1.2.5. Subsidiarity and proportionality

A directive would also be the instrument best suited from the point of view of subsidiarity and proportionality[27]. As for the **subsidiarity principle**, it is clear from par. 5.1.2.1 above that actions of Member States alone would not reduce cross-border voting costs (sufficiency criterion). From par. 5.1.2.2 it is clear that the proposed action would also bring added value over what could be achieved by Member States action alone (benefit criterion). As for the **proportionality principle**, from par. 5.1.2.3 and 5.1.2.4 it is clear that choosing a directive instead of a regulation would represent the least onerous way to reduce cross-border voting costs across EU Member States, something which is also confirmed by the replies to our implementation questionnaire.

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[26] http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/1318&language=en&guiLanguage=en

[27] Article 5 (ex Article 3b) of the Treaty Establishing the European Community and the Protocol attached to the Treaty of Amsterdam (http://europa.eu.int/eur-lex/en/treaties/selected/livre345.html) give guidance on the meaning and application of **subsidiarity** in EU law. Subsidiarity can be applied only to non-exclusive Community competences and to legislation introduced for the first time. If these conditions are met the action can be tested against the principle of subsidiarity in law. EU law requires two criteria to be met. The action must be necessary because actions of Member States alone will not achieve the objectives of the action (the sufficiency criterion), and action must bring added value over and above what could be achieved by Member State action alone (the benefit criterion).
Proportionality is a long-standing principle of European law, although the introduction of Article 5 has reinforced the need to apply it. Proportionality only comes into effect if and when the legitimacy of action is decided with reference to the objectives of the Treaty and the principle of subsidiarity. According to the principle of proportionality, any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty. This can be translated as meaning that the least onerous means must be adopted (the suitability criterion).

6.1.3. A separate directive vs. amending the Transparency Directive

Since 1979, European legislation imposes obligations with regard to the treatment of shareholders of listed companies[28]. In addition to treating all shareholders who are in the same position equally, issuers are to ensure that all necessary facilities and information to enable shareholders to exercise their rights are available. These obligations were updated and enhanced in the **Transparency Directive**[29]**,** which establishes minimum requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market within the EU.

The Transparency Directive does not appear to be the appropriate instrument in which to insert provisions which would alter the manner in which shareholders meetings are convened and the way in which information on general meetings is communicated to shareholders. The reason for this lies with the scope of the Transparency Directive.

The Transparency Directive applies to "issuers whose securities are already admitted to trading on a regulated market situated or operating within a Member State" (Article 1). This includes not only issuing companies which are incorporated in an EU Member State, but also non-EU issuers, whose shares are admitted on an EU regulated market. However, general meetings are usually governed by the legislation of the company's country incorporation. Unlike the Transparency Directive, EU provisions relating to general meetings would entail amendments to the national company law legislations under which the companies concerned are incorporated. As a result, such provisions would not be enforceable against non-EU companies and can only be imposed on EU companies. In addition to creating complicated conflict of law issues, any attempt to impose company law requirements on non-EU companies would considerably diminish the attractiveness of EU listings for these companies.

6.2. Main barriers to be tackled

A Directive should concern at least the major factors identified by industry representatives as the main causes for the current high costs of cross-border voting.

6.2.1. Proxy voting and voting upon instructions

Option A: maintaining the present situation

With regard to the powers of proxies in shareholders meetings, proxies do not always hold all the rights which shareholders enjoy with regard to the participation in the General Meeting. As can be seen in Annex 3, questions 9 and 10.3, shareholders currently generally have the right to vote by proxy in all Member States. However, as we have seen in par. 3.3, the

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[28] Schedule C (2) of Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing. Council Directive 79/279/EEC, as amended, was codified in 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 the information to be published on those securities.

[29] Directive of the European Parliament and of the Council on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC; adopted on 17 December 2004. http://europa.eu.int/comm/internal_market/securities/transparency/index_en.htm

successful exercise of proxy voting (in particular on a cross-border basis) is still hindered by a series of differences.

Closely linked to the question of proxy voting is the one of voting upon instruction which also needs to be addressed in this context. This situation arises where an intermediary is registered as the (formal) shareholder so that the investor who does not hold a legal right can not issue a proxy but only an (internal) instruction to the intermediary. These instructions currently are subject to certain restrictions in Member States that considerably reduce the effectiveness of this possibility. In several Member States, intermediaries at present are not allowed to:

– hold shares in pooled accounts, something which is not allowed in all markets.

– cast split votes for shares held in the same account, which would enable them to cast a single vote with 'x' shares in favour and 'y' shares against the resolution (or even 'z' shares in the case of abstention), instead of only one vote per investor. This possibility currently does not exist in all markets either[30].

All these obstacles make it at present difficult and costly for shareholders who are unable to attend the GM to vote through proxies or to give voting instructions to their intermediaries.

Option B: introducing minimum standards

All the restrictions mentioned above should be removed, such that shareholders would be given the possibility to:

– appoint any other natural person or legal entity as a proxy to attend and vote at a General Meeting on his behalf. There would be no restrictions as to the person who can be granted a proxy other than the requirement that the person possesses legal capacity; no restrictions as to the number of shareholders

– grant a proxy through electronic form, subject to such requirements as may be strictly necessary for the authentication of the appointer and the identification of the proxy holder;

– a proxy shall enjoy the same rights to speak and ask questions in General Meetings as those to which the shareholder it represents would be entitled.

A person acting as a proxy holder would be able to hold a proxy from more than one shareholder without limitation as to the number of shareholders represented. Where a person holds a proxy from several shareholders, it would be permitted to 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.

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

Where a proxy holder represents only one shareholder or several shareholders who have given the proxy holder identical voting instructions, such proxy holder would enjoy the same rights to speak and ask questions in General Meetings as those to which the shareholder it represents

[30] Information provided by Deminor and Hermes in their answer to the first consultation.

would be entitled, unless the shareholder or any of the shareholders who have appointed the proxy holder decided otherwise.

However, Member States may restrict the right of proxy holders who have a business, family or other relationship with the issuer, a controlling shareholder of the issuer, the management of the issuer or of one of its controlling shareholders, to exercise the voting rights at their discretion. Moreover, a shareholder would be able to appoint only one person to act as a proxy holder in relation to any one General Meeting.

The measures referred to in this option would lower the cost for shareholders to vote by proxy or to give voting instructions to their intermediaries. This reduction in costs, as seen in section 3.5, is estimated by different intermediaries between 20 and 40% of the total voting cost. Such measures would also be cost-effective, since they are of an enabling nature and would allow a higher degree of market intervention. They would require a modest level of implementation costs, since shareholders would make recourse to them only if interested (for instance in the case of electronic proxy) and issuers would have to make minimum efforts to adapt to them. The other main impact of this option would be an increase in voting records that, according to Fortis, could achieve a 50%.

Option C: harmonising conditions

All the restrictions mentioned in Option A should be removed (as in Option B), with the difference that the Directive would also altogether prevent the designation of proxies who have conflicts of interests.

The interest of such an option would be to provide uniform strong guarantees in favour of shareholders against conflicts of interest. The benefits of options B would also be achieved. However, the risk of such an option would be that it would leave no flexibility at Member-State level to allow for specificities in national legal structure.

The conclusion is that the Commission considers option B best suited to remove obstacles to proxy voting while allowing for flexibility at Member-State level.

6.2.2. Share blocking

Option A: maintaining the present situation

As we have seen in par. 3.3, mandatory share blocking prevents shareholders from trading shares up to weeks in advance to the General Meeting.

While the reason why share blocking facilities exist is to ensure that those who show up to vote at GMs are actually shareholders on the day of the vote, share blocking is still very costly for shareholders.

The risks entailed by the present situation is that shareholders, and particularly institutional investors, find it very costly to block shares ahead of a GM and are discouraged to vote altogether.

Option B: introducing minimum standards

This option would consist of a prohibition of mandatory share blocking, while leaving Member States the choice to enable share blocking at the choice of the issuer.

The advantages of such an option would be to leave flexibility at State and company level to choose between share blocking and record date. The record date system would give the person recorded as the shareholder on the date the right to exercise the rights of a shareholder in the General Meeting.

The cost of such an option is that in countries where share blocking is enabled, shareholders face high transaction costs to find out which companies apply share blocking, and tend not to vote in any case (see par 3.4).

The risks of such an option would be that shareholders would still be discouraged from voting in those Member States where enabling share blocking would be allowed.

Option C: introducing minimum standards (ii)

This option would consist of a prohibition of share blocking, both mandatory and enabling.

The advantages of this option would be that, where record date is adopted, shareholders would be allowed to trade shares and to vote at the same time.

The cost would be that reconciliation would still be possible[31]. In those MS where such an option has already been introduced, experience has shown that this system still (wrongly) is being perceived by investors as enabling share blocking.

The risk would be that shareholders would still be discouraged to vote in some MS.

Option D: harmonising conditions (i)

This option would consist of a prohibition of share blocking, both mandatory *and* enabling. Share blocking would be replaced with a record date.

The rationale for this is that, in practice, where issuers are free to decide to impose share blocking or a record date, financial intermediaries often tend to consider share blocking as the prevailing rule. This avoids the task of checking the position of each issuer and the risk of mistakes (see paragraph 3.5). The record date should be sufficiently close to the General Meeting to limit as much as possible the number of persons 'recorded' as shareholders on the record date that would no longer be shareholders on the date of the General Meeting. On the other hand, it should leave intermediaries sufficient time to transmit the vote or the instructions to the issuer.

Given these different needs that have to be taken into account and that may be subject to technological change over time, the exact determination of the applicable record date should be left to Member States.

The advantages of such an option would be that shareholders would be allowed to trade shares and to vote at the same time, while there would be flexibility at Member-State level to fix the record date. Voting costs would be much lower than those presently entailed by share blocking.

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[31] Reconciliation is the requirement to deposit shares with the possibility to sell them subject to a subsequent reconciliation of the voting rights.

All intermediaries consulted thought that a complete abolition of share blocking would dramatically increase the attendance rate of institutional investors and the voting rate (see section 3.5). Furthermore, communication costs would be reduced.

Such an option would entail minor transaction costs for shareholders to identify the relevant record date.

Option E: harmonising conditions (ii)

This option would consist of a prohibition of share blocking, both mandatory and enabling, and of introducing a mandatory record date, *and* fixing the date.

The benefits of such an option would be the same as the previous one, while the cost is that there would be no flexibility at Member-State level to adapt the record date to national specificities.

The conclusion is that the Commission considers option D best suited to lower voting costs for institutional investors.

6.2.3. Information related to GMs

There is a general agreement among the industry, ECGF members and respondents to the two open consultations on the necessity to guarantee, through the introduction of minimum standards, that cross-border shareholders have access to essential information prior to shareholders' meeting. In particular, the majority of respondents to the two consultations agreed on the need to introduce minimum standards on the different aspects of shareholders' participation to the GM.

6.2.3.1. Notice periods for convening a general meeting

Option A: maintaining the present situation

As can be seen in Annex 3, question 4.1, significant differences among European Countries can at present be observed in both the minimum and maximum time limits for the issuance of a formal GM notice, varying from eight days (Denmark, Luxembourg) to two months (in Finland)

The advantage of the present situation is a high flexibility level both at State level and for issuers.

The costs of the present situation are that very close notices are allowed in several Member States, which entails high information and voting costs for cross-border shareholders, who may be even unable to vote due to short notice.

Option B: introducing minimum standards

This option would consist of introducing a minimum notice period, setting a balance between the need to leave investors sufficient time to consider how to vote and cast their votes 'in absentia', and the need for companies to have the ability to react swiftly to events.

The benefit would be to allow cross-border shareholders to receive GM information in time to vote. There would also be flexibility for issuers to introduce longer minimum terms. That is

why the Commission considers option B best suited to enhance company disclosure standards.

6.2.3.2. Content of the notice and information relevant to the General Meeting

Option A: maintaining the present situation

In several Member States there is no obligation for issuers to specify where GM-related documents can be obtained, or the voting procedures.

While this situation entails low communication costs for issuers, there are high voting costs for cross-border shareholders.

Option B: introducing minimum standards

This option would entail a mention of the location from which the information relating to the General Meeting can be obtained or downloaded, and a clear description of the voting procedures.

Such an option would make it easier for all shareholders, in particular for non-resident shareholders, to exercise their voting rights, while requiring minor extra communication costs for issuers. That is why the Commission considers option B best suited to enhance company disclosure standards.

6.2.3.3. Electronic availability of notice material

Option A: maintaining the present situation

In several Member States it is not allowed to post GM-related documents on the company website.

While this situation entails low communication costs for issuers, there are high voting costs for cross-border shareholders.

Option B: introducing enabling minimum standards

This option would entail allowing issuers to post GM-related documents on the company website.

The benefit of this option is that the electronic availability of the notice and the material relevant to General Meetings (notices, resolutions, supporting documents, description of shareholders rights, explanation of the means to exercise such rights, proxy forms), in addition to existing dissemination requirements, would considerably facilitate access to such documents, especially for cross-border investors.

The extra communication costs required would have to be borne only by those issuers who want to build a website.

Option C: introducing mandatory minimum standards

This option would *require* issuers to post GM-related documents on the company website. For issuers, this would entail the cost of building a new website or (in case they already have one),

to adapt it, to maintain it and to update the information provided. According to several internet service providers, the cost of building a new basic website can be between 2,000 and 6,000 EUR, depending on the country, with an annual maintenance cost between 200 and 1,000 EUR. However, it should be taken into account that the large majority of EU listed companies already have a website, so that requirements under this option would not imply appreciable additional costs.

The benefits would be that all shareholders would have the possibility of consulting this information on the Internet, reducing their information cost to vote. While the greatest benefits would be for cross-border shareholders, who are normally those who have the greatest problems to have access to information through traditional means, the present provision would also be of use to national shareholders, who also have to face information costs to obtain GM-related information. That is why the Commission considers option C to be the best suited to enhance company disclosure standards.

6.2.4. Electronic voting in absentia

Option A: maintaining the present situation

As can be seen from Annex 3, questions 8.1 and 8.2, electronic voting in absentia is not allowed in several European jurisdictions (e.g. Germany, where instructions may be given to the proxy voter electronically until the end of the GM). In the UK, where the appropriate arrangements are in place, a member can vote indirectly by electronic means in the sense that proxy forms can be lodged electronically. In some countries new draft laws will make electronic voting possible.

This means low communication costs for issuers but high information costs for cross-border shareholders.

Option B: introducing enabling minimum standards

As showed in par. 3.5, cross-border shareholders would significantly benefit from the possibility of participating in General Meetings in absentia by electronic means. So would any resident shareholder who simply cannot attend the meeting. Because of the costs associated with the relevant technology, however, issuers should at this stage not be subject to any requirement to offer electronic means of participation but they should be free, under the applicable national law, to offer their shareholders this possibility if they want to. This is all the more true since there are already signals that the introduction of electronic voting facilities can increase attendance rates at GMs. For instance, in countries where this is allowed, DAM already makes recourse, as much as possible, to voting in absentia or electronic voting, as long as an audit trail is provided, while Hermes considers that the impact of electronic voting (directly from investors to issuers) might be significant, not only in terms of savings on the process (along the chain), but also in terms of reduction of mistakes, and the improvement of verification systems. These conclusions are also shared by a clear majority of respondents to the first consultation, who considered that requirements on companies regarding the venue of the GM that would act as a barrier to the development of electronic means of participation should be removed. However, an almost equal majority insisted that any provisions on electronic participation should strictly be of an enabling nature.

Option C: introducing mandatory minimum standards

This option would entail requiring *all* listed companies to provide their shareholders with facilities for electronic voting in absentia.

The interest of such an option would be the same as the former, that is, lowering information costs for cross-border shareholders.

However, imposing such a requirement on all listed companies may not seem appropriate as not all issuers have a significant number of cross-border investors (see par. 3.1 above). That is why the Commission considers it more appropriate to adopt option B and enable listed companies to introduce facilities for electronic voting in absentia.

6.2.5. Being granted a power of attorney

Option A: maintaining the present situation

As can be seen from Annex 3, question 10.2, beneficial investors are not allowed to receive (full) power of attorney in several EU States.

The consequence is that, where he is not the legal shareholder, the beneficial investor cannot (fully) take part in GMs. The risk entailed by this situation is that issuers may be confronted with a passive shareholder base.

Option B: introducing minimum standards

Under this option the investor should be able to receive a power of attorney from the intermediary. This power of attorney should allow him to speak and vote at the General Meeting exactly as if he/she/it were a shareholder.

This provision would remove one of the obstacles to shareholder activism.

The costs of such a provision would not be very important: Hermes evaluates them at 1% of total voting costs (Annex 1, Table 3). Besides, such costs would be fully internalized, as they would only be borne by beneficial investors wishing to take part in general meetings. The conclusion is that the Commission considers this option appropriate to guarantee a higher level of shareholder participation.

6.2.6. Right to ask questions, to add items to the agenda and to table resolutions

Option A: maintaining the present situation

As it can be seen in Annex 3, question 7.1, shareholders are not allowed to ask questions at or before general meetings in several EU States. As can be seen in Annex 3, question 7.2, in most, but not all EU Member States shareholders are at present allowed to add items and place resolutions (for instance in Spain and Italy shareholders do not have the right to file items on the agenda). Moreover, minimum thresholds vary widely: holdings required to file items on the agenda vary across countries from 1% to 20% of the share capital (5% in Austria, Germany, 10% in Poland, 20% in Belgium).

The present situation guarantees low administrative costs for issuers. Besides, it reflects the significant diversity across EU Member States in terms of different legal origins, company

size and structure. However, it also creates information barriers for shareholders. The risk incurred is to have a passive shareholder base.

Option B: introducing minimum standards (i)

Under this option shareholders would be able to question management at or before General Meetings, to add items and to place resolutions. However, safeguards and limitations would also be introduced to avoid that shareholder meetings become unmanageable.

Under this option, most shareholders would have the possibility to ask questions, add items and place resolutions. However, this option would also entail higher administrative costs for issuers, whose GMs would be longer and more difficult to organise.

Option C: introducing minimum standards (ii)

Under this option all shareholders would be able to question management at or before GMs, to add items and to place resolutions without limitations.

However, this option would also entail very high administrative costs for issuers, whose GMs would be very difficult to organise. Moreover, very long and possibly confusing GMs would also represent a cost for shareholders themselves, who might not be able to make up their mind about the key company issues. The risk entailed would then be to have a passive shareholder base. The conclusion is that the Commission considers option B more appropriate to guarantee an active shareholder participation at GMs without imposing too heavy administrative requirements on issuers.

6.3. Secondary issues

6.3.1. Stock lending

Option A: maintaining the present situation

In most EU Member States stock lending is at present exclusively subject to contract and to codes of best practice, which does not seem to create problems with regard to cross-border voting and which guarantees low administrative costs for all contractual parties involved.

However, lenders and borrowers might not be aware of voting consequences of stock lending, with the potential risk of a passive shareholder base.

Option B: introducing minimum standards

Under this option minimum transparency requirements would be introduced at EU level to ensure that shareholders are aware of the consequences of securities lending on voting rights.

This option would entail extra administrative costs for all contractual parties involved. The risk is that such costs could outweigh benefits: Because stock lenders and borrowers normally are professional investors, they may already be aware of the voting consequences of stock lending. For this reason the Services of the Commission consider it more appropriate to leave the matter to the appreciation of Member States by issuing an ad-hoc recommendation.

6.3.2. Depositary receipts

Option A: maintaining the present situation

At present holders of depositary receipts often do not have the right to vote on the underlying shares.

However, lenders and borrowers may not be aware of the voting consequences of stock lending, with the potential risk of a passive shareholder base.

Option B: introducing minimum standards

Under this option depositary receipts holders would be granted the same rights as the shareholders, or have the possibility either to vote directly or to issue voting instructions.

This option would entail extra administrative costs for all contractual parties involved. Even in this case, the risk is that such costs could outweigh benefits: depositary receipts being traded mainly by professional investors who are aware of all consequences of holding depositary receipts, they may already be aware of the voting consequences of depositary receipts. For this reason the Services of the Commission considers it more appropriate to leave the matter to the appreciation of Member States by issuing an ad-hoc Recommendation.

6.3.3. Language of the meeting notice and materials

Option A: maintaining the present situation

At present it is allowed in all EU Member States to post GM-related documents in other languages, in addition to the national language. However, this is rarely the case.

This means low communication costs for issuers but high information costs for cross-border shareholders.

Option B: introducing mandatory minimum standards

Under this option the use of a second language would be mandatory.

The interest of such an option would be that information costs for cross-border shareholders would be lowered. As for its cost, if translation costs at about €30 per page and the number of pages to be translated is conservatively estimated at 100, translation costs would be around €3,000.

However, imposing a requirement on all listed companies to translate General Meeting documents may not seem adequate since, as we have seen in par. 3.1, not all issuers have a significant number of cross-border investors. That is why the Commission considers it more appropriate to leave the matter to the appreciation of Member States by issuing a recommendation**.**

6.3.4. Registration as nominees

Option A: maintaining the present situation

Shares held cross-border are usually held via chains of intermediaries. In registered share systems, the custodian closest to the issuer will often, though not always, be registered as a shareholder in relation to the shares which it actually holds on behalf of its clients. In several EU States intermediaries, at present, are not required to disclose whether they vote on behalf of their clients (Annex 3, question 10.1).

The benefit of this option is that intermediaries bear low communication costs. Besides, clients' privacy is respected, which is sometimes a fundamental reason why investors decide to prefer a given market above others.

The cost of the present situation is that it is not clear to the issuer whether the intermediary votes on behalf of a client or as an investor. As we have seen in par. 5.1.2.2, shareholders are normally very keen to have an active shareholder base. Identifying their shareholders is one of the preconditions for issuers to request more active shareholder participation. So the risk of the present situation is that issuers have a poor knowledge of their shareholder base and may be prevented from soliciting active shareholder participation.

Option B: introducing minimum standards (i)

This option would require that, where an intermediary is registered as a shareholder in accordance with the applicable national provisions, this information should be disclosed to the issuer for transparency reasons. The procedure of how such disclosure is to take place is left to national law.

The interest of such an option is that it would allow issuers to have more complete information about their shareholder base.

However, this measure would entail additional costs for intermediaries, who would have to disclose when and to what extent they vote on behalf of their clients.

Option C: introducing minimum standards (ii)

This option would entail an obligation for intermediaries to disclose the identity of their clients.

The interest of this option is that it would allow issuers to have even more complete information about their shareholder base than option B.

However, such an option would force intermediaries to incur extra communication costs. Besides, some privacy-conscious investors may be discouraged from voting in the EU and choose alternative geographic areas for their investments, with the risk that the combined costs of such an option could outstrip its benefits. The conclusion is that the Commission considers that introducing minimum standards could entail costs that are higher than the expected benefits. This issue, therefore, will not be addressed in the proposal.

6.3.5. Identifying the ultimate accountholder

The measures illustrated in the three preceding paragraphs represent an answer to the request expressed by the majority of respondents to the two open consultations (Annex 4 and 5), who sustained the principle that investors should be allowed to exercise their voting rights. The choice to intervene where the real cost problems are would mean to attack the sources of the cross-border voting costs and consequently increase the possibility for even very small shareholders to ask their intermediaries to make use of voting facilities and, reciprocally, the probability that intermediaries will provide them with this possibility.

However, as a further measure it is also possible to consider the introduction of a legal entitlement for 'ultimate investors' or 'accountholders' to directly control the voting rights attached to the shares they have invested in. The main advantage of defining the 'ultimate investor' (or ultimate accountholder) would be to enshrine his entitlement to direct how his shares are voted, instead of leaving this to contractual agreements. Such a legal right would also be enforceable and would therefore ensure that no one, except the ultimate investor, actually decides how his shares are to be voted.

Presently the shareholders to whom their intermediaries do not forward GM documents are mainly those holding only very small numbers of shares, who, banks assume, are not interested in voting. As illustrated in par. 3.5, under the present cost constraints, cross-border voting is very costly for very small shareholders. This is probably the reason why their intermediaries often do not offer their retail clients such services.

If a requirement were introduced for intermediaries to ask their clients whether they want to be forwarded information about GMs and to channel their voting instructions up the voting ladder, intermediaries would probably ask their clients fees that would induce their clients just to dismiss the offer. If such a requirement were introduced, it would probably have no relevance in practice.

In order to render any such provision effective, the Commission would have to propose a harmonization of the fees that intermediaries would be allowed to charge for such services and possibly, as respondents to our voting costs questionnaire suggested, even the obligation for issuers to pay for these fees instead of their shareholders. This would introduce rigidity in the tariff structure of intermediaries and extra costs on the part of issuers, thereby altering the functioning of the price mechanism for both categories, with unpredictable consequences. This is not to mention the deadweight costs required by the permanent negotiation mechanism that would be necessary to establish such a uniform fee and to keep it abreast with the evolution of technology. The same goes if the Commission required intermediaries to ask for a "reasonable fee" or any similar expression.

As an additional cost of such a measure, we should also consider the cost of introducing a definition of "ultimate investor" or, more in general, a definition of who is supposed to be notified by whom. In this respect, respondents to the first and second consultations on shareholders' rights showed a general consensus on the principle that the entitlement to control the voting right should rest with the person having the genuine economic interest in the shares but could not agree on a specific definition of the person that should be entitled to control the voting right attached to shares.

The conclusion on this point is that for the moment there is no clear consensus about a cost-efficient way to directly require that investors be informed about their voting rights. Since, as mentioned in par 1.1, the Legal Certainty Group is conducting an extensive consultation process in this area, the subject will not be touched upon in the present proposal for a directive.

7. DISTRIBUTION OF IMPACTS ON VARIOUS STAKEHOLDERS

The present proposal would have different impacts on the various categories of relevant stakeholders. In the first place **issuers** should be considered, who would be the direct recipients of the legislative measures contained in the present proposal since they would have to implement many of the proposed measures. Issuers should benefit from a higher shareholder participation in GMs and in company life in general. This should ensure a better monitoring of management and of controlling shareholders. On the cost side, the present proposal does not bring about significant additional costs for issuers: many of the measures suggested are of an enabling nature, so that issuers not interested in adopting them would not be forced do so.

Institutional investors that own cross-border shares in their portfolios are supposed to be the main beneficiaries of the present proposal, since they are in the short term supposed to gain more from a reduction in cross-border voting costs.

As for **small individual investors**, reductions in cross-border voting costs elicited by the present proposal should allow them, in the near future, to reap the benefits of the advances in information technology. Although electronic voting by distance is too costly for the moment, especially for individual shareholders, technological progress could allow for reducing such costs dramatically in the near future. It is therefore important to remove legal obstacles in order to allow the use of such facilities.

The impact of the present proposal on **voting services providers** is not so clear-cut. Some will possibly experience a reduction in their workload, since fewer obstacles to cross-border voting may make some of their services redundant. In this case an increase of the general welfare should correspond to their negative wealth effect. But the lowering of cross-border voting barriers should also allow other intermediaries to enter the voting service market with more cost effective products. Even from the voting services industry point of view, the present proposal could end up in promoting a growth in the recourse to voting services, as lower costs could induce more individual shareholders and institutional investors to make recourse to such services in order to vote at GMs.

As for **other remaining stakeholders**, such as issuers' employees, it is not possible to give an estimate of the effect of the present proposal. As said, the impact of the present proposal is to reduce cross-border voting costs, to increase shareholder participation in company life and the quality of company management. This should lead to more efficient listed companies, which in principle should have a positive effect on employment. However, the chain of causalities being very long, it is not possible to propose quantitative estimations, although it would be possible to say that a more efficient corporate Europe should have a positive effect on employment. Moreover, there is no environmental impact of the present proposal.

Finally, the impact of the present proposal on **EU Member States** should be to reinforce the ability of shareholders to exercise their control function on listed companies' management.

This market-friendly approach should allow national regulators to do without more prescriptive corporate governance measures, which are always more costly in terms of negative side effects.

Annex 9 provides a detailed treatment of the impact of each proposed measure on the various relevant stakeholders.

8. MONITORING

A few indicators and mechanisms could be introduced to help monitoring the implementation and assessment of the future impacts of the directive:

- yearly questionnaire distributed to intermediaries for three years after the coming into force of the directive to ask for an assessment of the cross-border voting costs. This would allow the impact of the directive to be monitored at least from the point of view of institutional investors;

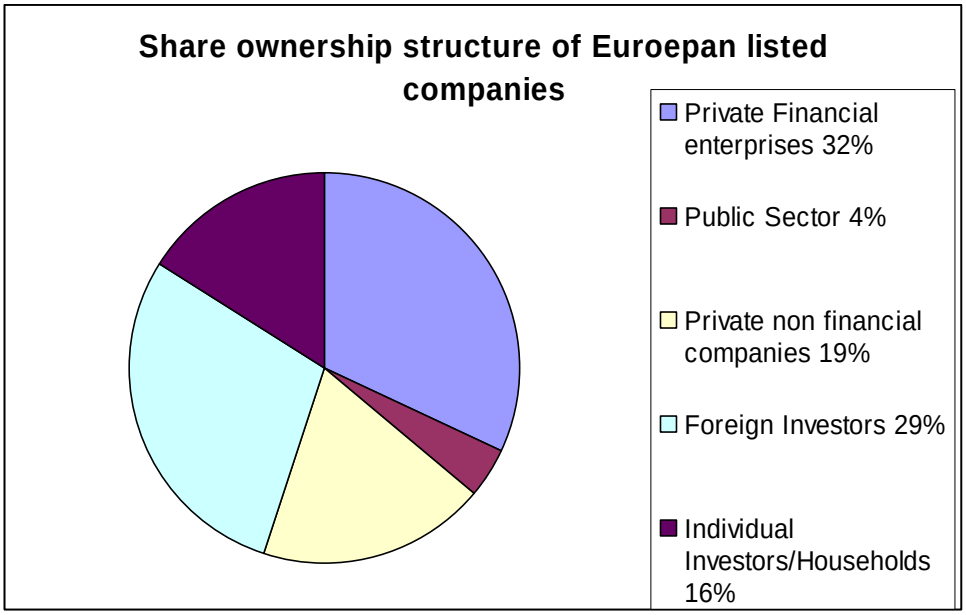
- yearly contacts with national authorities and FESE for three years after the coming into force of the directive, to monitor the evolution of cross-border share ownership in the EU.

- yearly contacts/questionnaires with the main intermediaries and with issuers for three years after the coming into force of the directive, to monitor the evolution of voting rates at GMs by cross-border shareholders.

These instruments would allow to evaluate three years after the entry into force of the directive whether (i) cross-border voting costs will have been significantly reduced; (ii) the present trend towards an integration of the shareholder market will have continued; (iii) percentages of cross-border minority shareholders showing up to vote at GMs will have increased.

ANNEX 1: TABLES

Table 1



Source: FESE, Share Ownership, cit., p. 2.

Table 2

Foreign ownership of listed companies in 2004 in some EU-EES countries (percentage of total shares)

Belgium	40
Cyprus	10
Denmark	27
Finland	46
France	35
Germany	17
Greece	31
Hungary	72
Iceland	7
Italy	14
Lithuania	52
Malta	31
Norway	28
Poland	53
Portugal	39
Slovak Republic	86
Spain	35
Sweden	33
The Netherlands	69
United Kingdom	32

Source: FESE.

Table 3 – Voting costs charged to investors by voting intermediaries

Costs for investors	**Estimates range from a minimum to a maximum value**			
	%			
Understanding the framework - Costs due to lack of harmonisation (E)	11.1			
Voting platform (F)	1.8			
Powers of attorney (E)	1			
Re-registration of shares (E)	4.5			
Share-blocking (E)	58.9			
Voting in remote areas (E)	0.3			
Lack of voting in absentia facilities (E)	0.2			
Voting recommendations (F)	9.8			
Lack of timely/exhaustive information on agenda items (E)	12.4			
Total	**100**			
*) "F" stands for fixed costs, due to setting up a global voting system. "E" stands for ad hoc costs due to voting in European countries.				

Source: Hermes.

Table 4 - Costs for Active owners

Costs	**Percentage estimates**			
		%		
Voting costs (Total from Table 7)		47%		
Lack of clarity on concert party rules		10.2%		
Proxy solicitation - for active investors		42.8%		
Class actions and Derivative actions		n/i		
Total costs		100%		

Source: Hermes.

Table 5

"DE FACTO" SHARE-BLOCKING PROVISIONS AND "FREE-FLOAT" VOTE

Countries	Attendance rate of the free float	Market practice rules (driven by custodians' internal rules)	Legal rule
Belgium*	20.00%	- Deadline to send proxy voting instructions to custodians: 7 days prior to GM - Blocking: 6 days ca	Share-blocking: Generally 3-6 days before meeting
France*	17.45%	- Deadline to send proxy voting instructions to custodians: 8 days prior to GM - Blocking: 5 days ca. Actually, blocked shares can be traded up to 3 ay prior to GM. Trading would imply cancellation of votes cast	Prior to the reform[32] the blocking date used to be 5 days before the meeting. Nowadays, unless the shareholder's name is recorded in the company shareholders list (if any) prior to the meeting, the "Freezing" of the shares to be voted (*immobilisation or certificat d'indisponibilité des actions*) is still requested by French law. However the NRE decree allows for a defreezing prior to the GM in case of the sale of the shares.
Germany*	10.05%	- Deadline to send proxy voting instructions to custodians: 7 days prior to GM - Blocking: 6 days ca. Actually, blocked shares can be traded up to 3 any prior to GM. Trading would imply cancellation of votes cast	Blocking has been abolished in 2005. It used to be about 5 days before GM
Italy*	4.40	- Deadline to send proxy voting instructions to custodians: 7 days prior to GM - Blocking: 6 days ca.	Used to require a 5 days blocking period. Current rules vary from company to company (with a maximum blocking period of 2 days before GM)[33]. However most of the custodians still apply a blocking system.
Netherlands*	12.95%	- Deadline to send proxy voting instructions to custodians: 5 days prior to GM - Blocking: 5 days ca	Blocking has been abolished by the Law 15 December 1999, art. 2:119, which establish record date procedure (max 7 days ahead of GM). Prior to the reform the blocking date used to be 5-6 days before the meeting.
Sweden	45%**	Record date	Re-registration 10 days prior to GM
UK	40.20%-53.20%	Record date	Record date: 48 hours before the GM

*) 2003 data

[32] Regulation has been amended by Decree dated May 3, 2002 (art. 38 modifying art. 136 of the Decree dated March 23, 1967).

[33] As per Vietti reform and companies articles of association amended after 1/1/2004.

**) Data based on a small sample
Source: Deminor country ratings 2003-2004, Manifest Voting Review 2004, JP Morgan internal rules manual 2004-5, Hermes calculation

Table 6

Value of shareholders participation

In 2003 and 2004 the following Spanish companies paid an *attendance bonus* to the investors that voted at their GMs either in person or by proxy:

Company	**Date of the GM**	**Attendance rate**	**Total bonus paid**	**Market cap**	**% of bonus on market cap**
Telepizza	29/06/2004	54.71%	€ 244,660	€ 353,283,892	0.07%
Vidrala	22/06/2004	82.46%	€ 448,088	€ 240,350,000	0.19%
Repsol	31/03/2004	67.53%	€ 16,488,982	€ 20,583,757,986	0.08%
Iberdrola	10/05/2003	48.01%	€ 4,328,436	€ 13,126,855,851	0.03%
Average			**€ 5,377,542**		**0.09%**
Source: Gerogeson Shareholder, quoted by Hermes					

Table 7

EUROSTOXX50*: ownership structure

Comparison 2004-2003

Shareholders	Shares held (percentage of share capital)					
	AVERAGE		MAX		MIN	
	2004	2003	2004	2003	2004	2003
Core shareholders	19,89	24,06	60,98	67,60	0,00	0,00
Domestic Inst. Inv.	17,22	18,43	34,40	42,50	0,40	3,91
Foreign Inst. Inv.	41,95 (+16.6%)	35,96	75,00	79,00	8,87	7,59
Private Shareholders	19,59	19,83	40,50	43,70	7,61	7,07
Treasury Shares	1,35	1,71	8,00	9,80	0,00	0,00

Source: GSC Proxitalia

* The sample considered here includes 38 of the 50 companies of the Eurostoxx50 index.

Table 8

Percentage of votable share positions notified by ISS to institutions which subsequently are voted by those same institutions (June 2003- June 2005).

Market	Blocking	Vote Return Rate
Australia	no	67.6%
Spain	no	71.2%
UK	no	76.6%
Argentina	yes	49.2%
Austria	yes	34.0%
Belgium	yes	32.8%
France	yes	37.6%
Germany	yes	49.4%
Greece	Yes	20.5%
Netherlands	Yes	43.9%
Portugal	Yes	34.2%

Source: ISS.

ANNEX 2: BIBLIOGRAPHY OF ECONOMIC STUDIES ON THE RELATIONSHIP BETWEEN CORPORATE GOVERNANCE, FINANCIAL DEVELOPMENT, AND ECONOMIC PERFORMANCE

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ANNEX 3: COMPARATIVE LEGAL DATABASE IN THE EU

COMPARATIVE TABLE*ON SHAREHOLDERS' RIGHTS IN EU - MEMBER STATES

* based on an OECD table, which was recently updated by representatives of the EU - Member States at the request of the Commission

No. 1	**Bearer/Registered shares of listed companies**
No. 2	**Shareholder entitlement to vote at GMs**
No. 3.1	**GM notice – Notice period**
No. 3.2	**GM notice – How is notice given**
No. 4	**Electronic dissemination of information relating to the GM of a listed company**
No. 5.1	**Admission to the GM – Record date (for listed companies)**
No. 5.2	**Admission to the GM – Share blocking**
No. 5.3	**Admission to the GM – Registration procedure for shareholders to attend the GM of a listed company**
No. 6.1	**Quorum of shareholders required for a valid GM**
No. 6.2	**Majority of votes necessary to pass a resolution at a GM**
No. 7.1	**Right to ask questions**
No. 7.2	**Right to place items on agenda and table resolutions**
No. 8.1	**Distance voting – Voting by post**
No. 8.2	**Distance voting – Electronic voting**
No. 9	**Proxy voting**

No. 10.1	**Shares held in custody – Intermediary holding shares of a listed company on behalf of its client obliged to designate identity of the client to the company**
No. 10.2	**Shares held in custody – Intermediary holding shares of a listed company on behalf of its client obliged (at the clients request) to allow the client to exercise the voting rights in the client's own name**
No. 10.3	**Shares held in custody – Intermediary allowed to vote for shares in custody without a special proxy**
No. 10.4	**Shares held in custody – Explicit instructions from shareholders necessary in order for the intermediary to vote**
No. 11.1	**Post-GM – Dissemination by issuer of minutes and voting results**
No. 11.2	**Post-GM – Proxy holder obliged to confirm to shareholder how proxy was executed**

No. 1	Bearer shares of listed companies allowed	
Austria	yes	bearer shares more common than registered shares
Belgium	yes	bearer shares more common than registered shares
Cyprus	yes	Bearer shares not common
Czech Republic	yes	
Denmark	yes	
Estonia	no	all shares of public limited companies registered in Estonia are registered at the Estonian Central Register of Securities
Finland	no	
France	yes	
Germany	yes	
Greece	yes	bearer or registered shares at the will of the company; exception only to those form of companies who from the law are obliged to have registered shares (ex: Media and real estate companies)
Hungary	yes	but not possible to issue bearer shares any more
Iceland	no	
Ireland	yes	bearer shares rare
Italy	yes	issuance of bearer shares is not generally permitted; listed companies are allowed to issue bearer shares only in the form of saving shares (a class of shares without voting rights and granting special economic rights)
Latvia	yes	
Lithuania	no	
Luxembourg	yes	
Malta	yes	only allowed if authorised by its memorandum and articles of association but very uncommon.
Netherlands	yes	
Norway	no	

Poland	yes	only bearer shares of Polish companies are listed; registered shares may have the status of being "in public trading", which necessitates their electronic form (so called "dematerialisation") and submits them to the requirements of the Law on Public Trading in Securities; such shares may not however be subject to trading on a regulated market
Portugal	yes	
Slovak Republic	yes	
Slovenia	yes	all shares of listed companies registered in Slovenia are registered at the Slovenian Central Register of Securities
Spain	yes	according to Spanish law it is not allowed, but bearer shares are more common than registered shares
		shares can be nominative or in bearer form
Sweden	no	
United Kingdom	yes	but rarely issued

No. 2	**Shareholder entitlement to vote at GMs**	
Austria	yes	except for: shares that have not been fully paid for; shares owned by the company or its affiliated companies (or by another person on their account); preference shares without voting rights; certain cases of conflict of interest; cases of sanctions for violations of the Takeover Act
Belgium	yes	except for: - shares that have not been paid up in full ; - shares owned by the company (or by persons acting on behalf of the company) or by subsidiary companies; - shares that have been pledged: where the company is the secured creditor, it may not vote at the GM; - major shareholdings which have not been declared, subject to the publication of a notice by the Banking, Finance and Insurance Commission or to a Court decision; - shares that are subject to a compulsory buy-out procedure (subject to a Court decision); - shares that have several owners (subject to a company decision)
Cyprus	Yes, subject to articles	
Czech Republic	yes	except for: cases of conflicts of interest, cases of sanctions for breach of duty

Denmark	yes	
Estonia	yes	except for shares owned by the company
Finland	yes	except for: shares owned by the company, certain cases of conflict of interest
France	yes	except for: shares that have not been paid for, cases of sanctions for breach of duty, cases of conflicts of interest
Germany	yes	except for: shares owed by the company, shares of subsidiary companies, shares possessed by a person on account of the company, shares possessed by a company that does not comply with certain information obligations, cases of conflicts of interests
Greece	yes	
Hungary	yes	except for shares owned by the company and shares that have not been paid for
Iceland	yes	
Ireland	yes	subject to articles of association (Treasury shares may not be voted)
Italy	yes	except for: shares that have not been paid for; shareholders' conflict of interest; cases of sanctions for breach of legal provisions, either applicable to any limited company (e.g. shares owed by the company itself; shares held by a controlled company;) or applicable only to listed companies (e.g. omitted disclosure of a shareholders' agreement; omitted disclosure of holdings of more than 2%; in cross-shareholding, shares exceeding holding limits set by law, etc.)
Latvia	yes	
Lithuania	yes	except for: shares owned by the company, shares that have not been paid for, cases of conflicts of interest, cases share ownership is contested, cases of sanctions for breach of duty
Luxembourg	yes	
Malta	yes	subject to articles of association and except for shares held by the company itself
Netherlands	yes	except for: shares owned by the company and shares owned by a subsidiary of the company
Norway	yes	in principal all shares have equal vote in a GM, but articles of association can establish limitations on voting rights for persons or share class
Poland	yes	except for: shares owed by the company and shares that have not been paid for; there can be other limitations dealing with the shareholder which are imposed by articles of association or resulting from not making some statutory duties; generally the pledge of shares does not unable shareholders to execute the right to vote. Exceptionally, a pledge contract regarding registered shares (which have not been admitted to public trading) may entitle the pledgee to exercise voting rights, when such a pledgee is additionally entered in the company register as a person entitled to vote (compare point 14 below)

Portugal	yes, can be altered by articles of association	every shareholder, with a minimum of 1 vote, has the right to participate at a GM; in principle, the rule of 'one share one vote' prevails; this rule can be waived by the articles of association, but must respect a minimum of one vote for each 1000 euros of capital; in addition, the articles of association can establish voting caps, i.e. that shareholders cannot exercise their voting rights above a certain threshold (this voting restraint may be stipulated for all shares issued by the company or for shares of a certain class, but may not depend on individual shareholders)
Slovak Republic	yes	exceptions: The company is not allowed to exercise voting rights attached to shares owned by the company (i.e. own shares) and as well to shares acquired by the controlled entity in cases where controlled entity a) acts on account of another person, save the case where it acts on account of the controlling entity or of the company being controlled by the same controlling person; b) is a stockbroker, and in case of acts being undertaken within the scope of its business of stockbroker; or c) it has gained the position of the controlled person only after the acquisition of shares (transposition of Article 24a of Directive 77/91/EEC as amended by Directive 92/101/EEC)
Slovenia	yes	except for: own shares, shares that have not been paid for and if the articles of association state that the right to vote can not be exercised if only certain amount is paid for, shares that have not been granted a permission for transfer, cases of conflicts of interests
Spain	yes, can be altered by articles of association	
Sweden	yes	
United Kingdom	yes, can be altered by articles of association	company's articles may provide that the holders of certain classes of share have no (or reduced) voting rights; however, the default position under Table A[34] (regulation 54) is that all members[35] have the right to vote both on a show of hands (one vote per member) and on a poll (one vote per share) , and that a member cannot exercise the voting rights attached to a share if he has not paid all sums payable by him in respect of that share

[34] Status of articles - "Table A": Every company registered under CA 1985 has articles, but there is no requirement for companies limited by shares to register their own articles. If a company does not register articles, and to the extent that any articles it does register are silent on certain topics, CA 1985 provides that its articles will follow the model set out in the Companies (Tables A to F) Regulations 1985 as "Table A". No company is obliged to adopt any provision of Table A. The majority of private companies either do not register any articles (and therefore have all their articles supplied by Table A), or adopt Table A with only slight modifications. Listed companies generally do register their own articles, but even these are often similar to Table A in form, effect or scope.

No. 3.1	GM notice – Notice period	
Austria	14 days	at least **14 days** must transpire between the day of the (last) publication of a convocation to a GM and the day of the GM
Belgium	24/15 days	- notice to be published in the Official Gazette ("Moniteur belge") at least **24 days** before a GM (or, in case of companies applying the record date, **24 days** before the record date); - in addition (except for the annual GM that takes place at the venue, date and hour mentioned in the articles of association, provided its agenda is limited to the approval of the annual accounts and of the reports of the board of directors and auditor, and to the discharge of the directors and auditor), notice to be published in a nationally circulated newspaper at least **24 days** before a GM (or, in the case of companies applying the record date, **24 days** before the record date); - in addition, for registered shares: notice to be sent at least **15 days** before a GM by ordinary mail (or by any other means accepted by each shareholder individually (written agreement required). if registered shares: the notice can be sent by recorded delivery at least **15 days** before a GM (no publication in the Official Gazette or in the newspapers is required)
Czech Republic	30 days	an invitation to a GM or an announcement of its being held must be published at least **30 days** before the day of the GM
Cyprus	21/14 days	At least 21 days notice for an annual GM. At least 14 days notice when an extraordinary resolution is being voted upon, and at least 21 days when a special resolution is being voted on (extraordinary GMs) Longer notice period can be stated in the articles of association
Denmark	28-8 days	notice given not earlier than **4 weeks** and, if articles of association do not state a longer period, not later than **8 days** before the GM

[35] Unless a company's articles provide otherwise, "**members**" in this context means those who are listed as members of the company in its register of members, and does not include holders of bearer shares.

		no later than **8 days** before a GM, the agenda and complete wording of any resolution proposed shall be available for inspection by shareholders in the company's office and sent to those registered shareholders who have so requisitioned
Estonia	21 days (annual GM)	notice at least **3 weeks** in advance unless the articles of association prescribe a longer term (in case of an annual GM)
	7 days (extraord. GM)	
		notice at least **1 week** in advance unless the articles of association prescribe a longer term (in case of an extraordinary GM)
Finland	70-17/30 days	notice issued no earlier than **2 months** and, provided that the articles do not stipulate a longer period, no later than **1 week** prior to the record date
		notice sent no later than **30 days** before a GM if certain matters on agenda
France	30 days	Notice of the GM (= "avis de réunion") must be published at least **30 days** before the GM and must contain the agenda and the text of the resolutions which the Board intends submitting to the GM. A Notice of Call (= Avis de convocation) must be published at least 15 days before the GM. It contains the same information as the Notice of the GM and any modification to the agenda and proposed resolutions.
Germany	1 month	notice 1 month before a GM
Greece	20 days	notice at least 20 full days before each GM (ordinary or extraordinary); the day of the meeting and the day of the publication of the agenda are not included
Hungary	30 days	notice no less than **30 days** before the first day of a GM
Iceland	28 days -1 week	notice given not earlier than **4 weeks** and, if articles of association do not state a longer period, not later than **1 week** before the GM
		no later than **1 week** before a GM, the agenda and complete wording of any resolution proposed shall be available for inspection by shareholders in the company's office and sent to those registered shareholders who have so requisitioned
Ireland	21 days	a copy of every balance sheet including every document required by law, which is to be laid before an annual GM of a company together with a copy of directors and auditors reports sent to every member of the company not less than **21 days** before a GM
Italy	15 days	notice at least **30** days before a GM; in case of a GM convened at shareholders' request, the term is reduced to **20 days**
Latvia	30 days	notice at least 30 days before a GM
Lithuania	30 days	notice at least 30 days before a GM
		if the GM is not held in the absence of quorum, the shareholders must be notified of the repeat GM at least 5 days before the day of this GM; the repeat GM shall be convened at least 5 days and within 30 days after the day of the GM which was not held

		no time limit - upon written consent of all shareholders who hold shares conferring voting rights
Luxembourg	16+8 days	notice published twice prior to a GM with an interval between the two publications of at least **8 days** and the second publication shall occur **8 days** prior to the GM (if bearer shares issued)
		notice at least **8 days** before a GM, notice maybe sent to all shareholders if shares in registered form only
Malta	14 days	at least 14 days notice should be given in writing; provided that a meeting of the company shall notwithstanding that it is called by a shorter notice, be deemed to have been duly convened if it is so agreed by all the members entitled to attend and vote thereat
Netherlands	15 days	notice at least **15 days** before a GM
Norway	14 days (articles may state shorter or longer period)	company is only obligated to notify shareholders with a known address
		all shareholders have to be notified in writing at latest 2 weeks before the GM (articles of association can state a longer or shorter time limit)
Poland	21 days	notice at least **3 weeks** before a GM
Portugal	30 days or 21 days	at least **1 month** before a GM must transpire between the day of the last **publication** of a convocation to a GM and the day of the GM:
		in case convocations are sent to shareholders by **registered mail**, at least **21 days** must transpire between the day of the issue of the letters and the date of the GM
Slovak Republic	30 days	notice at least **30 days** before a GM
Slovenia	1 month	Notice at least **1 month** before GM
Spain	15 days	notice at least **15 days** before a GM
Sweden	42-28/14 days	notice not more than **6 weeks** and not less than **4 weeks** prior to a GM (annual GMs and extraordinary GMs where the resolution to be submitted to the GM involves an amendment to the articles of association)
		notice not more than **6 weeks** and not less than **2 weeks** before a GM (other types of extraordinary GMs)
United Kingdom	21/14 days	**21 days**' notice for an AGM), **14 days**' when an extraordinary resolution is being voted upon, and **21 days** when a special resolution is being voted on (extraordinary GMs); **longer notice period** (but not a shorter one) can be stated in the articles of association for any of these

the UK Listing Rules (paragraph 12.43A) require UK listed companies to comply with certain provisions of the Combined Code on Corporate Governance, or explain why they have not done so. In relation to notice of AGMs, the Code (paragraph D.2.4) states that companies should give **20 working days'** notice

in certain limited circumstances (e.g. where all the members agree), a meeting can be called on shorter notice; special notice (28 days) must be given to the company where members submit a resolution on certain subjects (e.g. removal of a director)

No. 3.2	GM notice – How is notice given	
Austria	convocation in the official gazette and all designated journals	convocation in the official gazette ("Wiener Zeitung") plus in all journals designated for announcements by the company; if the company has issued only registered shares, the articles of association may declare convocation by registered mail as sufficient
Belgium	official gazette, local paper, ordinary mail, recorded delivery, other means (subject to approval)	notice to be published in the **Official Gazette** ("Moniteur Belge") and (except for an AGM that takes place at the venue, date and hour mentioned in the articles, provided the agenda is limited to the approval of the annual accounts and of the reports of the board of directors and auditor, and to the discharge of the directors and auditor) in a **nationally circulated newspaper**. in addition, for registered shares: notice to be sent by **ordinary mail** or by **any other means accepted** by each shareholder individually (written agreement required) if all shares are registered shares: notice can be sent by recorded delivery (no publication in the Official Gazette, nor in the newspapers required)
Cyprus	in accordance with articles of association	Notice for an annual GM in writing. Pursuant to Company law, company's articles of association left to decide how notice for a GM shall be given. If the company articles do not make provision, notice shall be served on every member in the number required by law (i.e. in writing and by post.) According to the Listing Rules, the notice is given to the members of the company through a circular or other document distributed to them, plus a relevant announcement is published in at least one daily, nation-wide newspaper. The announcement is previously submitted in triple to the stock exchange.
Czech Republic	mail, announcement	published **in the manner determined by the articles of association**, but at least in **one nation-wide daily** specified in the articles of association (in case of companies with bearer shares) **sent to each and every shareholder** (in case of companies with registered shares)
Denmark	public announcement, electronic notice	notice made **under provisions of articles of association** a **written notice** sent to all and any of the shareholders entered in the register of members who have so requisitioned a **public announcement** in two leading newspapers if shares may be made out to bearer no later than 8 days before the GM the agenda and complete wording of any resolution proposed to be taken at a GM shall be available for inspection by shareholders in the company's office and sent to those registered shareholders who have so requisitioned possibility of an electronic notice if allowed by the articles of association or if stated in an agreement between a company and its individual shareholder. However, electronic communication cannot be used where a company' s announcement must be done via public notification through

		public announcement except in two cases (the subscription list and notice convening the general meeting).
Estonia	registered mail ; daily national newspaper	a **written notice by registered mail** to all shareholders to addresses entered in the share register of the company; no written notice to individual shareholders but a notice published in at least one **daily national newspaper** if the public limited company has more than 100 shareholders (the threshold should be lowered to 50 shareholders, according to a recent draft of an amendment to the Commercial Code)
Finland	in accordance with articles of association	notice made **in accordance with articles of association (**and listing agreement) sent to every shareholder whose address is known to the company if certain important matters on agenda
France	official gazette and website	Notices of GM and notices of call must be published in the **official digest of mandatory legal announcements** *Bulletin des annonces légales obligatoires* – BALO, **and on the websites of the issuer and the securities regulator** (AMF).
	+ post and e-mail	In addition, the Notice of Call is automatically sent to registered shareholders by **post, or by e-mail** to those registered shareholders who have requested it; if shares belong to persons collectively through a mutual fund, the Notice of Call sent to the company that administers the fund
Germany	official gazette and mail	published at least in the electronic **National Gazette** elektronischer Bundesanzeiger invitation, agenda etc. ; if shareholder known by name by the company invitation can be sent to the shareholder directly or in the case of bearer shares to his Bank, which has to forward them to the shareholder
Greece	official gazette and nationwide economical and political newspaper	With the publication of the invitation of the GM. The invitation includes the agenda, the date , the time and the place of the meeting and it is published in the Official Greek Gazette, in a daily political newspaper, a daily economical newspaper and, if the seat of the company is outside Athens, in a local newspaper. All the above are submitted and listed in the Registry of companies
Hungary	daily nationwide newspaper and electronic data transmission network or daily news medium published by Authority	notice published (i) in a daily newspaper of nationwide circulation and (ii) in an electronic data transmission and data storage public network that is operated by the Authority, or one that is recognized and approved by the Authority, used for the publication of information received from actors of the capital markets, or (iii) in a daily news medium published by the Authority, or one that is recognized and approved by the Authority, used for the publication of information received from actors of the capital markets Substantial data contained in the report prepared pursuant to the Accounting Act, and in the report of the board of directors and the supervisory board shall be communicated to the shareholders by the board of directors of a close company at least fifteen days in advance of the general meeting.
Iceland	written notice,	notice made **under provisions of articles of association** a **written notice** sent to all and any of the shareholders entered in the register of members who have so requisitioned
	(draft: electronic notice)	any agenda and complete wording of any resolution proposed to be taken at a GM, as well as annual accounts, shall be available for inspection by shareholders in the company's office and sent to those registered shareholders who have so requisitioned

		envisaged possibility of an **electronic notice** if allowed by the articles of association or if stated in an agreement between a company and its individual shareholder; electronic communication cannot be used where a company' s announcement must be done via public notification through the Official Gazette
Ireland	mail or e-mail	notice must be **in writing**, but **e-mail** communication also permitted if agreeable to both the shareholder and the company Listing rules of the Irish Stock Exchange states that a company must ensure that at least in each Member State in which its securities are listed all the necessary facilities and information are available to enable holders of such securities to exercise their rights. In particular it must: (a). inform holders of securities of the holding of meetings which they are entitled to attend; (b). enable them to exercise their right to vote, where applicable; and (c). publish notices or distribute circulars giving information on: (i) the allocation and payment of dividends and interest; (ii) the issue of new securities, including arrangements for allotment, subscription, renunciation, conversion or exchange of the securities; and (iii) redemption or repayment of the securities
Italy	official gazette or newspapers	notice must be published in the **Official Gazette** of the Republic of Italy or in the **newspapers** indicated in the company's articles of association
Latvia	newspaper or mail	**announcement in the newspaper Latvijas Vēstnesis** and in **at least one other newspaper** (company with bearer shares) **written notices by registered mail** to shareholders recorded in the shareholders' register (company with registered shares)
Lithuania	daily newspaper or delivery against acknowledgement of receipt or mail	published in the **daily newspaper** indicated in the Statutes or delivered against acknowledgement of receipt sent by **registered mail** to each shareholder
Luxembourg	twice in official gazette and newspaper	published twice in the Memorial, the **Luxembourg official gazette**, and one **Luxembourg newspaper** (if bearer shares issued) maybe sent to all shareholders by **registered mail** (if shares in registered form only)
Malta	in writing	by ordinary mail, subject to other requirements specified in the articles of association.
Netherlands	nationwide newspaper or letter to all shareholders if known by name	**nationwide newspaper** (not official gazette), or, if registered shares are issued, the articles may state that notice is sent by letter to shareholders recorded in shareholders register; a new (draft) law will make notice by electronic means possible.

Norway		written notice (e-mail communication is allowed if the shareholders has accepted this) to all shareholders with a known address at least 14 days before the GM, or the articles of association can decide a longer notice period
Poland	official gazette	articles of association may provide additional way of notice
Portugal	public announcement, registered mail	according to the rules foreseen in the Portuguese **Companies Code**, in principle, convocations must be **published**
		articles of association may admit written notices by **registered mail** instead of publication of announcements if all shares are nominative
	company's website and CMVM information disclosure system	articles association may also require **other ways** of notice
		under Companies Law notices are published in the **National Gazette** ("Diário da República") and in one **regional circulated newspaper** based in the same place as the company's head office or, if the latter does not exist, in one of the **newspapers of greatest readership** therein.
	or electronic disclosure system made available by the operator of the market where the securities are listed	besides attaining to Companies Code's rules, Portuguese listed companies must also comply with **Security Law** requirements:
		according to Portuguese Securities Markets Commission's regulations, listed companies are obliged to place on their **website** the convocations for GM, during the 30 days preceding the date of the GM
	or	additionally, convocations to GM must also be disclosed in **one** of the following means:
	- market bulletin	**- CMVM information disclosure system**
	or	**- electronic disclosure system made available by the operator of the market where the securities are listed**
	- mass-circulation newspaper in Portugal	**- market bulletin**
		- mass-circulation newspaper in Portugal
Slovak Republic	mail and nationwide paper	invitations sent to all shareholders to the address of registered office or the residence stated in the register of shareholders (companies with registered shares)
		invitations published in **nation-wide periodic press publishing stock market reports** if articles of association do not establish **other determined nation-wide press**; invitations sent by **registered mail** to the owner of bearer shares to an address stated by him and at his expense if the owner of bearer shares has arranged, as a surety for the settlement of expenses associated with it, a right of lien in favour of the company at least one company share (companies with bearer shares)
		articles of association can establish also **other means of publishing**
		obligatory publishing of invitations in **nation-wide periodic press publishing stock market reports** for listed public limited liability companies
Slovenia	official gazette	published in the **Uradni list Republike Slovenije** and either at **stock exchange web page** or in **daily newspaper published national wide**

Spain	official gazette and provincial paper	published in the **Official Bulletin** of the Mercantile Register and in one of the **daily newspapers of greatest readership within the province**
Sweden	official gazette and nationwide paper	convened pursuant to the **articles of association** advertisement in the **Official Swedish Gazette** and **one nationwide daily newspaper** (public companies)
United Kingdom	post to member's registered address; may be notified by electronic means with member's agreement	the method by which notice of meetings is communicated is, in the first instance, a matter for the **company's articles**; Table A (regulation 112) provides that notices will be valid if sent by post to a member's registered address (i.e. the address which appears against his name in the company's register of members) recent amendments to CA 1985 have made it possible for companies to communicate notices to members by **electronic means** regardless of what their articles say, subject to the individual member's agreement; such communications may refer members to a website rather than sending the notice itself in e.g. an e-mail under the Listing Rules, if there is a need to communicate with holders of listed bearer securities (unusual in the UK context) the company must publish an advertisement in at least one national newspaper and giving an address or addresses from which copies of the notice can be obtained.

No. 4	Electronic dissemination of information relating to the GM of a listed company	
Austria	no rules	
Belgium	yes	holders of registered shares may individually accept to receive the notice as well as the agenda by electronic means (written approval required); otherwise, the agenda has to be disseminated in the same way as the notice (publication in the official gazette, in the newspaper, recorded delivery, ordinary mail, etc (see n°3 above)); additional dissemination by electronic means is not prohibited.
Cyprus	no	
Czech Republic	no rules	no specific rules; however, it is assumed that electronic dissemination allowed (as a subsidiary mean) if stipulated in the articles
Denmark	yes	dependant on whether electronic communication is allowed by the articles of association or if stated in an agreement between a company and its individual shareholder
Estonia	yes/ no rules	allowed (except for a notice to a GM)
Finland	yes (articles)	articles of association can state that e.g. notices to GMs are, in addition to other means of giving notice, to be conveyed electronically
France	yes	Notices of Meeting and Notices of Call are to be posted on the websites of the issuer and the securities regulator. They contain the agenda and the resolutions. The Notice of Call can also be sent by e-mail to those registered shareholders who have requested it
Germany	yes	invitation must be disseminated by the official electronic National Gazette, further information may be disseminated electronically by shareholder's request
Greece	no	
Hungary	no rules	in practice, it is usual for listed companies that the information on GM, the conditions for exercising of rights and different proposals are available and can be downloaded on their home pages or home pages of the stock exchange
Iceland	no (but envisaged)	
Ireland	yes	possible if both the company and the shareholder agree; neither the company nor the shareholders compelled to receive/issue documents by electronic means; new Companies Act currently being drafted will provide for a company to use electronic communication with its shareholders as if this was provided for in the articles of association

Latvia	no rules	
Lithuania	no rules	no specific explicit rules; however at least 10 days before the GM the shareholders are granted access to the documents available to the agenda of the GM, including draft decisions and the request filed to the Board or in some cases to the manager by the conveners of the GM
Italy	yes	dissemination of documents by electronic means is allowed; however, time, place and agenda of GMs must be published in the Official Gazette or in the newspaper indicated by the articles of association
Luxembourg	soon	recently adopted a law regarding electronic commerce according to which electronic documents can be, under certain conditions, assimilated to written documents
Malta	possible	subject to an agreement between the issuer and the shareholders
Netherlands	no	best practice in the Netherlands Corporate Governance Code is that information will also be provided via electronic means
Norway	yes	all information from the company to the shareholder may be given by electronic means, if the shareholder has expressly accepted this
Poland	no	
Portugal	yes	listed companies are obliged to have a website where they must release, among others, convocations for the GM, during the 30 days preceding the date of the GM, and the proposals presented for discussion and voting in the general meeting, during the 15 days preceding the date of the GM; however, the documentation to the annual GM must also be disclosed physically, at the head offices of the company, 15 days before the GM
Slovak Republic	no rules	no specific rules; however, it is assumed that electronic dissemination of information is allowed if stipulated in the statutes (except for invitation or notice to a GM which must be sent by mail or published depending on a form of securities) - but not as an exclusive form for disseminating information
Slovenia	no rules	no specific rules for electronic and distance voting; special forms of voting may be provided by the articles of association; any important event must be published on the stock exchange web page **or** in daily newspaper published national wide
Spain	no	
Sweden	no	
United Kingdom	yes	if a shareholder agrees, GM notification, access to annual reports etc and notification of proxies through electronic means are permitted; however, distribution of information by traditional means cannot be refused if a shareholder requires it shareholders allowed to lodge proxies electronically if company makes an address available for the purpose

No. 5.1	Admission to the GM – Record date (for listed companies)	
Austria	no	
Belgium	yes (if in the articles)	record date system can be established by articles of association; such record date has to be fixed **at least 5 business days and at most 15 (calendar)days** before the date of a GM; number of shares held by each shareholder at 24h of the record date is stated in a register; once the shares recorded, shareholders can trade their shares without losing their voting right at the GM
Czech Republic	yes for uncertificated (book-entered) shares	if a company has issued uncertificated (book-entered) shares, its **articles of association or resolutions** may appoint a date, which is decisive for one's attendance at a GM (maximum is 7 days before a GM), if not set by articles, then the 7th day before a GM is the record date
Cyprus	no	No record date as such, although companies may close their register of members for a maximum of 30 days in any one year
Denmark	yes (see no. 4)	
Estonia	no	a record date of **10 days** shall be introduced according to a recent draft of an amendment to the Commercial Code; whereas deviations therefrom shall be allowed in the articles of association
Finland	yes	record date is **10 days** before a GM;
France	no	Shareholders wishing to vote have to **immobilize their shares for 5 days prior to the GM. This does not preclude them from selling part of all of their shares**. If they do so after they have voted by post or internet or after they have appointed proxies, their custodian must advise the issuer of the change in their holding, so that the number of votes cast can be adjusted
Germany	no	draft of new Stock Corporation Act 2005 proposes the introduction of a **record date 14 days** before GM
Greece	yes	**5 days** prior to a GM
Hungary	yes (if in the articles)	in practice the record date is generally one week before the general meeting. During this period the share register will be closed, there is no more possibility to float shares
Iceland	no	but registration of ownership in register necessary for exerting voting rights at GM
Ireland	no	share registers of companies who trade uncertified securities may be frozen 48 hours prior to a GM
Italy	yes (if in the articles)	articles of association may limit attendance to GMs only to shareholders who have deposited their shares (or the certification issued by a custodian) within the term set in the articles of association; the term may not exceed **2 days before the GM**; since listed companies have dematerialized shares, physical deposit is replaced by a communication from the authorized intermediary

Latvia	no	
Lithuania	yes	**5 business days** prior to a GM
Luxembourg		
Malta	yes, if in the articles	the memorandum and articles of association may provide that during 30 days in any one year the register of members is closed and no new particulars may be entered
Netherlands	yes, optional for AGM	**maximum of 7 days** prior to a GM
Norway		no
Poland	yes	in case of publicly traded companies shareholders have to deposit with the company the depositary certificates of ownership issued by the entity handling shareholder's securities account **at minimum 7 days before a GM.** It is important to say, that possessing shares in the term of 7 days before a GM is not the only condition to exercise a right to vote. Shareholder has to poses shares in the date of GM. To provide this, shares indicated in a depositary certificate are blocked on shareholder's securities account till the date of termination of GM. Owners of registered shares ought to be entered in the company register **at minimum 7 days before a GM**, while holders of bearer shares other than those already admitted to public trading – ought to deposit their shares **at minimum 7 days before a GM**.
Portugal	no	no legally established record date; however, usually articles of association require shareholders to hold their shareholdings for a certain period of time (no minimum or maximum mandatory limits) prior to the date of the GM in order to be able to vote in that GM; as there is no record date, shareholders must have the right to vote at the moment of the GM to be entitled to vote at the GM; the method used to ensure that shareholders have the right to vote at the moment of the GM is share blocking
Slovak Republic	yes	For the recognition of rights of shareholders (right to participate in a GM, right to vote etc.) for shares issued in the form of a database entry the decisive day is the day determined in the invitation to the GM or in the announcement of the holding of the GM. Such a date may correspond to the date of the holding of the GM or to a previous date, however **up to 5 days** before the date of the holding of the GM. If the relevant date is not provided in any above mentioned way, the relevant date will always be the date of the GM.
Slovenia	yes (if in the articles)	notice of attendance (and being registered as shareholder) **at least 3 days** prior the GM
Spain	yes	under articles of association, shareholders rights to attend a GM can be subject to prior approval; no such prior approval can be requires in the case of owners of nominative shares or of shares which are represented by account entries that were registered in the respective registers **at least 5 days** before the date of the GM, or by the owners of bearer shares who deposited their shares, or when applicable, their certificates proving that such shares have been deposited, with an authorised custodian entity, at least 5 days before the GM and in the manner envisaged in the articles of association

Sweden	yes	**10 days** prior to a GM; shareholder who acquires his shares between the record date and the date of a GM may not participate at the GM; the right to participate remains vested in the transferor
United Kingdom	yes (in practice)	any company may **close its register of members** for any time or times not exceeding **in total 30 days in any year** ; companies participating in the electronic transfer system may specify (i) a time not more than 48 hours before the GM by which a person must have been entered on the register in order to have the rights to attend and vote at a GM; and (ii) a day not more than 21 days before notices of a GM are sent out for the purposes of determining who is entitled to receive the notice

No. 5.2	Admission to the GM – Share blocking	
Austria	yes (if in the articles)	if the articles require that shareholders have to deposit their shares at a notary public or a bank for the GM (which is common practice), shareholders who have done so can only trade their shares if they return the deposit certificate, thereby renouncing the right to participate in the GM
Belgium	yes (share blocking 6 – 3 working days before a GM)	to participate in a GM, shareholders must deposit their bearer shares at the venues indicated on the convocation, or procure a certificate established by the custodian of the bearer shares certifying that these shares shall be blocked until the date of the GM; the procurement of a certificate is an accepted practice in Belgium, but it is not provided for by the Company Code; these formalities must be fulfilled within the time limit stipulated in the articles, which shall be no more than 6 and no fewer than 3 business days before the date set for the GM
Cyprus	no	
Czech Republic	yes (share blocking)	shares blocked in time between the record date and date of a GM (shares are blocked at the time when a company requests the statement from the registry for the purpose of GM; the blocking time shall not exceed 7 days)
Denmark	no	
Estonia	no	
Finland	no	changes in the ownership of shares occurring after the record date do not affect the number of votes of the shareholder nor his right to participate in the GM and a shareholder does not have to interrupt his trading if he wants to participate in the GM (no share blocking)
France	no	Shareholders wishing to vote have to **immobilize their shares for 5 days prior to the GM. This does not preclude them from selling part of all of their shares**. If they do so after they have voted by post or internet or after they have appointed proxies, their custodian must advise the issuer of the change in their holding, so that the number of votes cast can be adjusted
Germany	no	draft for new Stock Corporation Act 2005 proposes clarification and the introduction of a record date; generally no share blocking
Greece	yes	Share blocking lasts for five days before the GM. A shareholder who acquires his shares between the record date and the date of the GM , unless the rest shareholders agree differently, can not participate in the GM.
Hungary	yes	share blocking before a GM in the case of uncertificated (dematerialised) securities: if a shareholder wishes to exercise his shareholder's rights in person, the account holder shall issue a so-called ownership certificate of the uncertificated (dematerialised) security (not to be considered as a security); the ownership or the deposit certificate shall indicate the name of the issuer and the class of the share, the quantity of shares, the name of the securities intermediary or the custodian and their signatures, and the name (corporate name) and address (corporate domicile) of the shareholder in respect of registered shares. An ownership or deposit certificate issued to permit its holder to attend the company's general meeting shall remain

		valid until the date of the general meeting, including the second meeting if reconvened; following the issue of an ownership certificate no changes may be entered on the securities deposit account; further transactions booked on the securities deposit account only if the ownership certificate withdrawn; custodian shall place the share certificate placed in his custody at the shareholder's disposal when requested for the purpose of exercising ownership rights share blocking before a GM in the case of printed and deposited securities: depends partly on the issuer's decision, because the joint-stock company's resolution to accept deposit certificate required; deblocking only if the deposit certificate withdrawn account holder or custodian must inform the joint-stock company of the issue of an ownership certificate serving the purposes of GM rights or a deposit certificate prior to the GM
Iceland	no	
Ireland	no	shares not generally blocked from trading between the record date and the date of the GM; exceptionally, the Irish Stock Exchange would allow a suspension of trading if they were satisfied that the market could not operate smoothly or for the protection of shareholders
Italy	yes (if provided by articles)	when deposit of shares (or equivalent mean for dematerialized shares described under question 5) is required by the articles of association, share blocking may also be provided for until the GM is held
Latvia	no	
Lithuania	no	shares not generally blocked from trading between the record date and the date of the GM; however, the Vilnius Stock Exchange has a right to suspend the share trading on the day of GM, if any important decision according to agenda of GM should be taken (increase or reduce of share capital, change of nominal value of shares, convert of shares, approve annual account)
Luxembourg	no	
Malta	no	a shareholder who acquires his shares between the record date and the date of the GM may not participate at the GM
Netherlands	no	no statutory share blocking; however, the articles of association may provide that bearer shares must be deposited with the company with a maximum of 7 days prior to AGM (with share blocking as a result); however, public companies may as an alternative use a record date (with a maximum of 7 days prior to AGM) which prevents share blocking.
Norway	no	
Poland	yes (share blocking 1 week before GM)	holders of bearer shares shall have the right to attend a GM provided they deposit their shares with the company at least 1 week before the date of the GM and do not withdrawn them before its conclusion; instead of the shares, certificates may be issued as evidence of depositing shares with a notary, a bank or a brokerage house based in Poland, that have been specified in the announcement relating to the convention of the GM; shareholders of the publicly traded companies shall deposit with the company a depository certificate issued by the entity handling shareholder's investment account
Portugal	yes	share blocking is mandatory when the Financial Intermediary who holds the account issues ownership certificates;

		considering that in Portugal all shares listed in a regulated market shall be deposited in a Financial Intermediary, and that shareholders must prove that they have the right to vote at least at the moment of the GM, the issue of ownership certificates is the only mean available to prove shareholders' capacity to vote
Slovak Republic	yes (up to 5 days before GM)	Central Depositary or a member of Central Depositary shall register suspension of right to trade with shares on the basis of order for registration of such suspension. Order for suspension can be submitted e.g. by issuer of shares for a period **up to 5 days** before GM of a listed company.
Slovenia	no	according to The Official Ljubljana Stock Exchange Rules them. Management board may temporarily suspend trading in specified securities on the stock exchange for maximum of 10 business days, if well-founded circumstances exist, requiring protection of investors' interests. (153. člen Pravil borze)
Spain	yes (if in the articles)	
Sweden	no	no statutory share blocking
United Kingdom	no	

No. 5.3	Admission to the GM – Registration procedure for shareholders to attend the GM of a listed company	
Austria	yes (if in the articles)	
Belgium	yes (if in the articles)	formalities required for admission to GM stipulated in articles
Cyprus	no	
Czech Republic	no	
Denmark	yes (if in the articles)	articles of association may state shareholders' duty to give notice of attendance of a GM, no longer than 5 days before the GM; the articles of association may further require that the shares have been entered in the company's register of shareholders
Estonia	no	
Finland	yes (if in the articles)	no statutory registration procedures articles of association may state shareholders' duty to give notice of attendance of a GM, no longer than 10 days before the GM
France	no	
Germany	yes (if in the articles)	articles of association may state shareholders' duty to give notice of attendance of a GM
Greece	yes	shareholders provide a certificate by the Depository that shows the number of the shares they own; the shares are then blocked for 5 days before the GM
Hungary	yes	registration rules on attending GM are generally determined in the Articles of Associations a shareholder entitled to take part at GM when he is registered in the share register if any ownership or deposit certificate is issued to permit its holder to attend the company's general meeting, the securities intermediary or the custodian shall notify the limited liability company prior to GM in writing or in the form of an electronic document executed by a qualified electronic signature
Iceland	yes (in the articles)	no statutory registration procedures
Ireland	no	
Italy	no	a scrutiny of the right to attend the meeting is done at the GM
Latvia	yes (if in the articles)	
Lithuania	yes	the shareholders present at the GM are registered in the shareholder registration list; the shareholder registration list indicates the number of votes

		granted to each shareholder by the shares held by him
Luxembourg	yes (if in the articles)	
Malta	no	
Netherlands	yes (if in the articles)	
Norway	yes (if in the articles)	shareholders have a right to attend the GM, and this right may not be restricted in the articles of association. Articles of association may state shareholders duty to give written notice of attendance beforehand
Poland	yes	in case of publicly traded companies shareholders have to deposit with the company the depositary certificates of ownership issued by the entity handling shareholder's securities account authorised custodians or brokerage houses at **minimum 7 days before a GM;** owners of registered shares ought to be entered in the company register **at minimum 7 days before a GM**, while holders of bearer shares other than those already admitted to public trading – ought to deposit their shares **at minimum 7 days before a GM** and may not withdraw them until after a GM. It is necessary to explain that listed companies may have listed shares which (have to be admitted to public trading) as well as non-listed shares which are admitted to public trading, as well as bearer or registered shares which are not admitted to public trading and exist in the form of documents.
Portugal	yes (if in the articles)	articles of association may state shareholders' duty to give notice of attendance of a GM (shareholders required to register with the Chairman of the GM according to the procedure set out in the notice calling the GM)
Slovak Republic	no	
Slovenia	yes (if in the articles)	articles of association may state shareholders' duty to give notice of attendance of a GM at least 3 days before the GM
Spain	yes (if in the articles)	
Sweden	yes (if in the articles)	articles of association may provide that shareholders must notify the company of their intention to participate at a GM by a date specified in the notice convening the GM (but not be earlier than 5 days before the GM)
United Kingdom	no	

No. 6.1	Quorum of shareholders required for a valid GM	
Austria	no	articles may require a certain quorum, but this is rarely the case
Belgium	yes (for certain types of decisions)	quorum required: - amendment to the articles of association (including increase of capital, winding up, etc…), merger and division, limitation or suppression of pre-emptive rights : the half of the company's registered capital; - amendment to the objects of the company, acquisition or sale of the company's own shares, transformation of the company: the half of the company's registered capital and the half of the total amount of securities that do not represent the company's registered capital; - amendment to the rights of certain categories of securities or replacement of certain categories of securities by other ones (if there are several categories of securities in the company): the half of the securities in each category; if the quorum is not fulfilled, a second GM shall be convened **without any quorum** required **the articles** can reinforce these requirements or require a quorum for other types of decisions
Cyprus	yes	The number of members who are required to for a quorum and be present is fixed by the articles. If the articles do not contain a provision as to quorum three members shall consist a quorum.
Czech Republic	30% of capital	shareholders representing 30% of capital, unless articles demand higher ratio (50% of subscribed shares with voting rights at the constituent general)
Denmark	no	however, resolutions to alter the articles of association at least two-thirds of the voting share capital shall be represented at the general meeting or any further requirements stipulated in the articles of association or the special rules on a larger majority.
Estonia	50% + 1	a GM is competent to adopt resolutions if over one-half of the votes represented by shares are present unless the articles of association prescribe a greater representation requirement. If the quorum is not met, the management board shall, within three weeks but not earlier than after seven days, call another meeting with the same agenda. The new general meeting is competent to adopt resolutions regardless of the votes represented at the meeting.
Finland	no	apart from certain resolutions: a resolution amending the articles of association requires the consent of shareholders whose rights are diminished by the amendment
France	yes	AGM: 25% of voting shares on a first call, no quorum on a second call. Resolutions adopted by simple majority EGM: 33.3% of voting shares on a first call, 25% on a second call. Resolutions adopted by 2/3 majority
Germany	no	

Greece	1/5 of the paid in capital	a quorum of 1/5 of the paid in capital is required for a GM to be valid; for a number of issues explicitly stated by law a quorum of 2/3 of the paid in capital is required in order to hold vote in a GM
Hungary	at least ½ of all votes	a quorum: shareholders representing more than 1/2 of the votes embodied by shares with voting rights present; statutes may stipulate a higher rate if GM fails to have quorum, the repeated GM shall, unless otherwise provided by the statutes, have quorum on the issues of the original agenda irrespective of the number of those present
Iceland	no	no statutory provisions
Ireland	yes	likely to be deviated from in practice for listed companies through their articles of association
Italy	AGM: at least 1/2 of the capital/whatever part EGM: least 1/2 of the capital/ more than 1/3 of the capital/ at least 1/5 of the capital	AGM: first call: **at least 1/2 of the capital** (represented by shares giving voting rights in that GM) second call: the GM is valid **whatever part of the capital** (as defined above) is represented EGM: first call: **at least 1/2 of the capital** (as defined above); articles may provide for a higher threshold second call: **more than 1/3 of the capital** (as defined above) articles may provide for a higher threshold following calls: **at least 1/5 of the capital** (as defined above) Company's articles may provide for a higher threshold
Latvia	no (except if it is in articles)	a meeting of stockholders is entitled to take decisions irrespective of the equity capital represented there if the articles of association do not specify a representation norm
Lithuania	more than 50% of all votes	a GM may take decisions and is valid if attended by shareholders who hold shares carrying **more than 1/2 of all votes**. After the presence of a quorum has been established, the quorum remains continuously throughout the GM. If a quorum is not present, the GM is considered invalid and a repeat GM must be convened, which is authorised to take decisions only on the issues on the agenda of the GM that has not been held and to which the quorum requirements is not applied.
Luxembourg		
Malta	depends on the Article, otherwise 2 shareholders present	if there is no provision in the articles of association, 2 shareholders personally present shall be a quorum
Netherlands	no	quorum not necessary for validity AGM, except for certain resolutions
Norway	no	
Poland	no (except if it is in articles)	in general, GM is valid regardless of the numbers of shares represented therein; the articles of association may impose quorum requirements; in particular cases there are statutory quorum requirements

Portugal	no (if articles does not state otherwise)	except if otherwise determined in the articles of association, the general rule is that a GM is valid no matter what the number of shareholders present or represented may be, i.e., there is no minimum quorum requirement; there are relevant exceptions: 1/3 of the share capital must be present or represented in the GM to validly pass resolutions concerning the (i) amendment of the articles of association, (ii) mergers, (iii) division of the company, (iv) transformation of the company, (v) liquidation of the company and (vi) any other matter regarding which the law requires a qualified majority to pass a resolution; in case the quorum requirements are not met, in a successive GM having the same agenda, the GM is valid no matter what the number of shareholders or the amount of share capital present or represented may be
Slovak Republic	no	neither quorum of shareholders nor quorum of shares is required for a GM to be valid
Slovenia	no	
Spain	yes (25% of shareholders)	at the first GM, minimum of 25% of the shareholders if this requirements are not fulfilled, at the second GM the quorum is not needed, except in some cases when special quorum is needed (for instance in the case of increase or decrease of the company's capital)
Sweden	no	However, in some cases a resolution to amend the articles of association requires the consent of a majority representing a certain percentage of the capital in the company.
United Kingdom	yes	as a matter of general law, a GM cannot transact business unless a quorum is present; however, it is for companies to set out in their articles what will be the quorum for their GM; Table A specifies that two persons must be present, each of whom must either be a member or a proxy entitled to vote at the GM; similar provision is made in section 370(4) of CA 1985, but this will only apply if a company has excluded the relevant provision of Table A and not made other provisions of its own on the subject

No. 6.2	Majority of votes necessary to pass a resolution at a GM	
Austria	simple majority of the votes cast (for normal resolutions)	certain resolutions require qualified majorities (e.g. amendments of the articles of association: 75% of the share capital represented at the GM)
Belgium	50% of the votes +1 (for normal resolutions)	- general rule: 50% of the votes +1 - amendment to the articles of association, merger, division, limitation or suppression of pre-emptive rights: 75% of the votes, - amendment to the objects of the company, acquisition or sale of the company's own shares, transformation of the company: 80% of the votes, - amendment to the rights of certain categories of securities or replacement of certain securities by other ones (if there are several categories of securities in the company): 75% of the votes in each category. - winding-up of the company if its net assets are below ¼ of the company's registered capital: 25% of the votes certain types of mergers, divisions and transformations require unanimity the articles can reinforce these majority requirements
Cyprus	simple majority for ordinary resolutions	A special resolution can be passed by a majority of votes not less than ¾. An extraordinary resolution by a majority of ¾.
Czech Republic	simple majority/ 2/3 majority/ ¾ majority	simple majority as a general rule (articles may define higher majority) [the law requires 2/3 majority for other important matters, 3/4 for approval of a merger or division; if unequal exchange ratio is proposed in case of division, then 90% majority is required, etc)
Denmark	yes	a simple majority of votes unless otherwise decided in the articles of association. A number of resolutions and amendments of the articles of association require a larger majority (possibly at least 2/3, if more classes of shares then of each class, and up to 100 % depending on the nature of the resolution)
Estonia	50% +1	A resolution of a general meeting is adopted if over one-half of the votes represented at the general meeting are in favour unless the law or the articles of association prescribe a greater majority requirement. In the election of a person at a general meeting, the candidate who receives more votes than the others is deemed to be elected.
Finland	over 50 %	as a general rule, over 50 % of votes; some resolutions require a higher majority (e.g. a resolution amending the articles of association; resolutions where a higher majority is prescribed in the directives)
France	Over 50% in AGM	Majority expressed as majority of votes cast in the meeting

	Over 66.6% in EGM	
Germany	at least 50 % and one share of votes present	but for certain resolutions a higher quorum may be necessary
Greece	absolute majority	the decisions are taken with absolute majority of the represented votes but for specific subjects, explicitly stated by law, the 2/3 of the represented votes are required
Hungary	simple majority/¾ majority	simple majority to take a common decision a ¾ majority for basic fields determined in laws or in the articles of association
Iceland	simple majority/2/3 of votes cast and 2/3 of capital behind votes cast	for amendments of articles: 2/3 of votes cast and 2/3 of capital behind votes cast
Ireland		depends upon the type of resolution being voted upon
Italy	AGM: **majority of votes** EGM: **2/3 of votes**	AGM: **majority of votes**; articles may require a higher percentage (except for approval of annual accounts and appointment/removal of members of company's bodies) EGM: **2/3 of votes**; articles may require a higher percentage
Latvia	no rules	
Lithuania	more than 50% of all votes carried by the shares held by the shareholders attending the GM; in particular cases not less than 2/3 or 3/4	normally a decision of the GM is considered taken if **more votes** of the shareholders have been **cast for it than against it**; for particular decisions a qualified majority vote is necessary that is **not less than 2/3 of all the votes** or **not less than 3/4 of all votes** carried by the shares held by the shareholders attending the GM (the Statutes of the company may prescribe a larger majority for all cases)
Luxembourg		
Malta	yes	extraordinary resolution = not less than 75% in nominal value of the shares represented and entitled to vote at the GM and at least 51%, or such other higher percentage as the memorandum or articles may prescribe, in nominal value of all the shares entitled to vote at the GM. ordinary resolution = more than 50% of the voting rights attached to shares represented and entitled to vote at the GM, or such other higher percentage as the memorandum or articles may prescribe

Netherlands	50% + 1 vote	for certain AGM resolutions a supermajority is required; the articles may require a supermajority in general
Norway		generally a majority of the votes cast is necessary, amendments to the articles of association requires that two thirds of the votes cast as well as two thirds of the capital that are represented at the GM votes in favour.
Poland	absulute majority of votes	the articles of association may provide other rules; in case of the most important resolutions there are statutory required majorities higher than absolute majority of votes
Portugal	simple majority of the votes cast	general rule: the approval of resolutions requires the simple majority of the votes cast; exceptions: the approval of resolutions concerning the (i) amendment of the articles of association, (ii) mergers, (iii) division of the company, (iv) transformation of the company, (v) liquidation of the company and (vi) any other matter regarding which the law requires a qualified majority to pass a resolution, requires two thirds of the votes cast
Slovak Republic	simple or 2/3 majority	GM rules by the majority vote of the attending shareholders, unless Commercial Code or the Articles of Association require another majority. A decision of the GM on a change of Articles, raising or reducing registered capital, authorisation of the Management Board for raising registered capital according to the Section 210 of Commercial Code, issuing priority bonds or exchangeable bonds, cancelling the company or change of the legal form shall require a two-thirds majority of the votes of shareholders present and a notarised deed. A two-thirds majority of the votes of shareholders present shall also be required for the acceptance of a decision of the GM on the termination of trading with company shares on the market of quoted securities. Articles may establish a higher amount of votes necessary for the acceptance of a resolution of the GM Any decision of the GM to amend the rights attached to a certain class of shares requires the approval of a 2/ 3 majority of holders of such shares
Slovenia	yes	general : simple majority ; in some cases the articles of association can define higher majority; majority of three quarter (change of articles of association. etc.) ; shareholders' consent : for a resolution placing additional obligations on shareholders
Spain	yes (simple majority of present shareholders)	as a rule, the simple majority of shareholders participating at the GM, except in some cases when a different majority is required
Sweden	More than 50 per cent of votes.	Certain resolutions (eg. amending the articles of association) require a higher majority.
United Kingdom	more than 50% of those voting, or 75% of those voting, depending on the type of resolution	for listed companies, there are three types of resolution: ordinary, extraordinary and special resolutions; CA 1985 prescribes that certain matters must be the subject of extraordinary or special resolutions, and other matters may be made the subject of them in the articles; both these types of resolutions require the support of 75% of those voting: they differ only in the amount of notice which must be given of them; ordinary resolutions may be passed by a simple majority of those voting

No. 7.1	Right to ask questions	
Austria	yes	
Belgium	yes	right to ask questions to the directors and the auditor(s) about the items that are in the agenda and about the reports made by the directors and the auditor(s).
Cyprus	yes	
Czech Republic	yes	any shareholder may ask questions at a GM if the answer is necessary for the purpose of assessment of matters related to the actual agenda of a GM
Denmark	yes	orally at the GM, in advance in writing or by use of electronic means if allowed by the articles of association or if stated in an agreement between a company and its individual shareholder. If the answer requires information which is not available at the GM, such information shall be made available to the shareholders at the company's office within two weeks thereafter and the information in question shall be sent to the shareholders who have so requisitioned. To questions in advance the answer may be given in writing, in which case the question together with the answer shall be made available to the shareholders at the beginning of the general meeting
Estonia	yes	
Finland	yes	
France	yes	in writing and only before a GM; directors will respond to them at the meeting
Germany	yes	management must respond to the questions as incomplete answers may lead to the invalidation of resolutions of the GM
Greece	yes	
Hungary	yes	all shareholders are entitled to participate, to request information and to make remarks GM
		the board of directors shall provide the necessary information to all shareholders in connection with the items placed on the agenda of the GM, in the case of a close company, upon the discussion of the item, whereas for a public company, upon the request of shareholders submitted at least 8 days in advance of the date of the GM; the board of directors may deny such information only if, in its opinion, provision of such would infringe upon the business secrets of the company; the information shall be provided even in this case if a resolution of the general meeting obliges the board of directors thereto
Iceland	yes	
Ireland	yes	
Italy	yes	at GM any shareholder has the right to ask and obtain all information needed to properly exert his voting right; shareholders holding at least 1/3 of

		the capital represented at the GM can ask the GM be postponed declaring they are not sufficiently informed about one or more issues on the agenda
Latvia	yes	
Lithuania	yes	
Luxembourg		
Malta	yes	but there are no specific rules
Netherlands	yes	
Norway	yes	a shareholder may demand that the board of directors and the general manager provide available information at the GM about matters which may affect the assessment of the annual accounts and directors' report, items which have been presented to the shareholders for decision and the company's financial position... If a reply can not be given at the GM, a written reply must be given within two weeks after the meeting, and must be sent to all shareholders with a known address
Poland	yes	
Portugal	yes	during a GM, any shareholder is entitled to request to be provided with complete and truthful information that enables him to form an opinion on any of the resolutions to be passed; the requested information shall be provided by the relevant corporate body and can only be refused on the grounds that providing it would produce a severe harm to the company or that it would imply the violation of a legal duty of secrecy; an unjustified refuse to provide the requested information may lead to the invalidation of the resolution in cause
Slovak Republic	yes	however, questions asked must affect the affaires of the company or persons running the company and relate to the agenda of GM Management Board must give complete and true answers, if not possible immediately – 30 days period for answers in writing
Slovenia	yes	management must respond to the shareholders questions at the GM, if the information is important for an assessment of the item on the agenda
Spain	yes	shareholders are allow to ask any questions at GM a listed company must have a web-site to facilitate the shareholder's right of information
Sweden	yes	however, those to whom the questions are addressed are not bound to reply
United Kingdom	yes	

No. 7.2	Right to place items on agenda and table resolutions	
Austria	5% capital	shareholders holding **at least 5% of the capital stock** may request additional matters to be put on the meeting's agenda
Belgium	20% capital	shareholders representing at least **1/5 of a company's share capital** may convene a GM or request that an item be put on the agenda
Cyprus	depends on the articles	Shareholders are entitled to place items on GM's agenda if they requisitioned the GM; other arrangements for setting the agenda for GM are a matter for the company´s articles. If the company articles do not provide for the contrary, a valid GM for placing resolutions may be held by any two or more members who together possess 1/10 of the issued capital. A GM may also be held if the Court so orders upon an application by any member who would have the right to vote at a GM
Czech Republic	3% or 5% of registered capital	shareholder/s possessing shares whose **aggregate nominal value** exceeds the limit stipulated by law (**3 or 5 per cent of registered capital**): - may request the board of directors to convene an extraordinary GM to take up the matters as proposed; such GM must take place not more than 40 days after the request was delivered and it is not allowed to change the agenda without the consent of shareholders making such request; - may request the board of directors to include a matter determined by the shareholders in a GM's agenda by amendment to notice to be published at least 10 days before the GM, otherwise subject to approval of all shareholders in the course of GM
Denmark	any shareholder	item placed on GMs agenda by written requisition to the board of directors so sufficiently prior to the GM that the business can be included in the agenda
Estonia	10% of share capital	shareholders whose shares represent at 1/10 of the share capital may demand the inclusion of a certain issue on the agenda; an issue initially not on the agenda of a GM may be included on it with the consent of at least 9/10 of the shareholders participating in the GM provided their shares represent at least 2/3 of the share capital; at an extraordinary GM called by the shareholders whose shares represent at least 1/10 of the share capital, the shareholders shall determine the agenda of the GM
Finland	any shareholder	item placed on the agenda, provided that requested in writing early enough for the matter to be included in the notice to convene the GM
France	0,5-5% capital (based on company size)	shareholders may place resolutions on the agenda only if they possess a specified percentage of the company's share capital (decreasing gradually from a maximum of 5%, if total capital is €750 000 or less, to a minimum of 0.5%, if capital exceeds €15 million) board of directors (or management board) required to respond, during a GM, to written questions submitted by shareholders; this right to submit written questions is accorded to all shareholders, irrespective of the proportion of the capital they represent; because there is no legal or regulatory provision governing the deadline for submitting questions, shareholders may do so until the meeting is called to order

Germany	any shareholder;	any shareholder can make proposals to the already existing items of the agenda;
	new items: 5% of shares or nominal amount of 500,000 Euro	completely new items can be brought to the agenda by a minority of shareholders holding 5% of share-capital or shares with a nominal value of 500.000 Euro provided the proposal are sent no later than 1 week after the publication of the notice
Greece	5% of shares and only for not scheduled extraordinary GM	Shareholders are not allowed to place items on published agenda but a shareholder or shareholders who own at least 5% of total shares can request the convention of an extraordinary GM, placing its agenda
Hungary	5% of 10% of votes or articles	shareholders representing **10% or more of the votes** may request in writing a certain issue to be placed on the agenda, provided that they indicate their reasons
		shareholders representing **less than 10% of the votes** allowed to request a certain issue to be placed on the agenda if it is stated in articles of association or by a special law ((i)in the case of companies with a so called very fragmented structure, if the Articles of Association of a public limited company limit the voting rights of individual shareholders under to a maximum 10%, and if in a public limited company no single shareholder is permitted voting rights in excess of 10% directly or indirectly, minority rights can be exercised by shareholders whose share represents at least 5% cent of the votes; (ii) when the company is governed with majority by another company or person (so called concern cases), shareholders holding 5% of votes can place items/table resolutions)
		shareholders may exercise these rights within a period of 8 days after the publication of the announcement on convening the GM
Iceland	any shareholder	item placed on GM agenda by written requisition to the board of directors so sufficiently prior to the GM that the business can be included in the agenda
Ireland	10% capital can call EGM	shareholders entitled to place items on GM's agenda only **if they have requisitioned the GM**; shareholders possessing **not less than 10% of the paid up capital** as carries voting rights at a GM can requisite holding of an extraordinary GM; cannot be modified by articles of association
Italy	10% capital (or lower in articles) can call EGM (only way)	shareholders are entitled to place items on GM's agenda only **if they have requisitioned the GM;** right to requisition GMs is given to shareholders representing **at least 10% of the share capital** (or the **lower percentage established by the bylaws**)
Latvia	1/20 of the equity capital	shareholders who represent at least 1/20 of the equity capital pf the company have the right, within seven days from the day of publication of the advertisement or within five days from the day when they receive notice, to request the institution convening the meeting of shareholders to include additional issues in the agenda of the meeting
Lithuania	more than 10% (or less if stated in the	shareholders holding shares with **not less than 1/10 of all votes** (or **less if stated in the Statutes)** attaching to them can submit a supplement to the agenda not later than 15 days before a GM; the proposal to supplement the agenda needs to be submitted together with draft decisions on the

	Statutes) of all votes	proposed issues at any time before the GM or during the GM new draft decisions on the items put on the agenda may be proposed, additional candidates to members of the company organs and audit firm may be proposed
Luxembourg	20% capital can call EGM	shareholders representing **at least 20%of the share capital** of a company may request in writing that a GM is convened; the written request must include the agenda of the GM
Malta	depends on the articles	shareholders holding **at least 10% of the paid up share capital** are entitled to place items on the GM's agenda if they have requisitioned the GM; other arrangements for setting the agenda for GMs are a matter for a company's articles of association
Netherlands	1% of capital or shares with 50m euro market value	in writing at least 60 days prior to a GM
Norway	any shareholder	a requirement that the shareholder presents the subject in writing for the Board of Directors in sufficient time before the general meeting; absolute deadline for presenting subjects is 2 weeks before the GM
Poland	10 % capital	shareholder/s holding **at least 10% stake in company's capital** (or a **lower percentage stated in articles of association**) can request (in writing and one month in advance) to place items on the nearest GM agenda
Portugal	5% capital	shareholders holding 5% of the share capital can request for a GM to be held and can place any matter on the agenda by presenting a written request before GM's Chairman within 5 days as of the last publication of a convocation to a GM
Slovak Republic	**5% of capital or less if stated in the articles of association** (right to place items on the agenda)	Shareholder/s possessing shares of a nominal value amounting to **at least 5%** (or **even less - if stated in the articles of association**) **of the company's capital**: - may, with a statement of justification, apply in writing for the calling of an exceptional GM for the discussion of proposed matters; such GM to be held at the latest 40 days from the day when a request for its calling is received; such request accommodated only when the shareholders show that they have been owners of shares for at least three months before the expiry of the 40-day time-limit for calling the exceptional GM; agenda of such exceptional meeting completed only with the consent of the shareholders who requested its calling; - may request that agenda of a GM is completed by matters proposed by such shareholders and the GM must deal with such matters; * issues that have not been included in the proposed agenda of a GM may be included only subject to approval of shareholders who applied for such GM * issues that have not been included in the proposed agenda of a GM may be decided only subject to attendance and approval of all the shareholders
	any shareholder (right to table	Under Slovak Commercial Code a shareholder is authorised to participate in a general meeting, vote in it, request information and explanations

	resolutions)	affecting the affaires of the company or of persons running the company connected to the subject under discussion of the general meeting, **and make proposals**. **Slovak Commercial Code does not set any special conditions for the execution of these rights.**
Slovenia	5% capital	minority shareholders may request additional matters to be put on meeting's agenda; this matter should be published 10 day after the notice for the GM. shareholders holding **at least 1/20 of the capital stock** can demand to convene a GM
Spain	5% capital can call EGM	shareholder/s possessing **at least 5 % of the company's share capital** may request an extraordinary GM to be called, stating in the request the matters to be dealt with at the GM; all the matters set out in the request must be included in the agenda of the GM; otherwise no legal mechanism allowing minority shareholders to file proposals after the GM has been convened
Sweden	any shareholder	**any shareholder** entitled to have an item placed on the agenda of an ordinary/extraordinary GM, provided a request to this effect is made not later than 1 week prior to the earliest date at which notice convening the GM may be made (in practice it means that such request should be submitted not later than 7 weeks prior to the date of the GM)
United Kingdom	5% votes or 100 shareholders with shares on which GBP 100 on average has been paid up	members may place items on a GM agenda **if they have requisitioned the GM** – i.e. if the GM is called by the directors at the request of more than one member holding 1/10 of the companies' voting shares; where the GM is not requisitioned by members, a resolution for a GM put forward by members must be circulated if proposed by members representing **at least 5% of the voting rights** or **by at least 100 shareholders with shares on which £100 on average has been paid up**.

No. 8.1	**Distance voting – Voting by post**	
Austria	no	
Belgium	yes (if in the articles) it	the articles may allow voting by post using the form that they prescribe
Cyprus	no	
Czech Republic	no	
Denmark	no	written proxy required
Estonia	no	
Finland	yes	
France	yes	

Germany	no	
Greece	no	
Hungary	no	
Iceland	no	
Ireland	no	
Italy	yes	provided it is stipulated in the articles of association
Latvia	no	
Lithuania	yes	shareholders may vote in writing by filling in the ballot papers; upon the written request of the shareholders having the right to vote the company prepares and at least 10 days before the GM sends the general ballot papers by registered mail or delivers them against acknowledgement of receipt to the shareholders who so requested. The shareholders who took a written vote in advance are considered as being present at the GM and their votes are included in the quorum of the GM and the results of voting. The general ballot papers of the GM, which have not taken place will be valid at repeat GM. A shareholder is not entitled to vote at the GM for the decision in respect of which he has expressed his will in advance in writing
Luxembourg	no	
Malta	no	no specific rules for distance voting
Netherlands	no	a new (draft) law will make electronic voting possible
Norway	no	
Poland	no	
Portugal	yes	law permits the vote by post on listed companies; the articles of association can forbid this way to vote except in what concerns resolutions relative to the amendment of the articles of association or the election of members
Slovak Republic	no	
Slovenia	no rules	no specific rules for electronic and distance voting; special forms of voting may be provided by the articles of association
Spain	yes	according to Ley Sociedades Anónimas, voting by post is accepted, when the identity of the voter is recognized
Sweden	no	
United Kingdom	yes (by proxy)	

No. 8.2	Distance voting – Electronic voting	
Austria	no	
Belgium	yes	written procedure available, unless the decision has to be authentified by a notary; unanimity is required
Cyprus	no	
Czech Republic	no	
Denmark	yes	possible in case of entirely electronic GM if allowed by the articles of association (two thirds majority combined with a blocking minority of 25 per cent) and in case of partially electronic GM if allowed by the by the supervisory board unless the articles of association states otherwise
Estonia	no	
Finland	yes	if stipulated by the board of directors or stated in the articles of association
France	yes	on the condition that the articles of association provide for that option and that the shareholder has agreed to it
Germany	no	but instructions may be given to the proxy voter electronically until the end of the GM
Greece	no	
Hungary	no	but a new draft law including electronic voting
Iceland	no (but envisaged)	
Ireland	no	
Italy	yes	company's articles of association may provide for electronic means of participation to GMs and voting by shareholders not physically present
Latvia	no	
Lithuania	no	there is a possibility of electronic voting in the laws, however the practical exercise will be in the future
Luxembourg	questionable	subject to discussion
Malta	no	no specific rules for electronic voting
Netherlands	no	a new (draft) law will make electronic voting possible

Norway	no	
Poland	no	
Portugal	yes	electronic voting is reckoned as one sub-category of voting by post; law permits the vote by post on listed companies; the articles of association can forbid this way to vote except in what concerns resolutions relative to the amendment of the articles of association or the election of members of boards
Slovak Republic	no	
Slovenia	no rules	no specific rules for electronic and distance voting; special forms of voting may be provided by the articles of association
Spain	yes	according to Ley Sociedades Anónimas , electronic voting is acceptable always when the identity of the voter is recognized
Sweden	no	shareholders may participate in a GM via a video link from one or more locations within or outside the country (already used be a number of listed companies)
United Kingdom	yes (by proxy)	where the appropriate arrangements are in place, a member can vote indirectly by electronic means in the sense that proxy forms can be lodged electronically

No. 9	Proxy voting	
Austria	yes	proxy in writing is necessary; articles may require the proxy-holder to be a shareholder himself (which is rarely the case); no specific rules on proxy solicitation or on directors acting as proxies
Belgium	yes	Shareholders may give a proxy to vote at the GM. The articles of association may require the proxy-holder to be a shareholder himself. Solicitations of proxies are allowed under the following conditions for listed companies: - proxy forms are null and void unless they include the following a) the agenda, indicating the subjects to be dealt with and proposed decisions; b) a request for instructions on how to vote on each of the items listed on the agenda; c) a statement of how shares will be voted if the shareholder gives no instructions. - any public solicitation of proxies must meet the following conditions a) proxies must be solicited for a single GM, but they are valid for successive GMs having the same agenda; b) proxies must be revocable; c) the proxy form must include at least the following information: - the agenda, indicating the items to be dealt with and proposed decisions; - a statement that company documents are available to shareholders upon request; - a statement of how shares will be voted; - a detailed description and justification of the objective of the party soliciting the proxy a nominee may depart from the instructions given by the shareholder due to circumstances not known at the time the proxy was given, or if execution of the original instructions might be detrimental to the interests of the person who gave them; the nominee must inform the shareholder; a copy of the proxy form shall be filed with the Banking, Finance and Insurance Commission 3 days before the solicitation is made public; if the Commission deems that the form does not provide shareholders with sufficient information, or that it is likely to mislead them, it so informs the party soliciting the proxy; if no action is taken in response to the Commission's comments, the Commission may make its opinions known to the public
Cyprus	yes	Pursuant to Company law, only registered shareholders may appoint a proxy. A person voting by proxy cannot vote by raising his hand except if he is a member acting in his personal capacity or if the Articles provide for

		accepting his vote. Listing rules require that a proxy must: (a) be in written form (b) be sent with the notice convening a meeting of shareholders of listed securities to each person entitled to vote at the meeting (c) state that a shareholder is entitled to appoint proxy of his own choice (d) include voting instructions for any of the subjects listed on the agenda at the GM (e) state that if it is returned without an indication as to how the proxy will exercise his discretion as to whether, and if so how, he votes (f) in case where the meeting concerns the election of the board of directors, provide a space to the proxy for expressing his volition on each one of the proposed for election directors
Czech Republic	yes	written power-of-attorney and an agreement between the shareholder and his representative that should include voting instructions; representation by the company's director or supervisory boards' member not allowed company's management cannot use company's funds to collect proxy votes and the company is not entitled to vote uninstructed proxies according to its wishes
Denmark	yes	written, dated instruments of proxy; authority to attend as a proxy not to be granted for more than 12 months - if proxy issued to the management it is only valid for the coming GM; proxy granted either to participate in decisions regarding all items on the agenda at the GM, or to participate only in certain matters; proxy granted either for making an independent decision as to how it is to be cast, or proxy may oblige the appointee to vote in the manner stipulated by the shareholder no limitation on appointment of proxy allowed by the articles of association. Possibility of an electronic proxy if allowed by the articles of association or if stated in an agreement between a company and its individual shareholder
Estonia	yes	a written proxy
Finland	yes	a dated proxy relating to one GM unless otherwise indicated thereon and not valid for more than 3 years after its issue; no mandatory rules on proxy voting; management may collect proxies, if provided by the articles of association, but that does not happen very often in practice

France	yes	Only an individual who is a shareholder of the company may be appointed as a proxy, for the period of one GM , or to his or her spouse; There is no legal limit on the number of proxies any one shareholder may have, subject to provisions to the contrary in the articles of association If a shareholder submits a blank proxy form, the corresponding votes are always cast in support of the proposals introduced or approved by the board; shareholders' attention must be drawn to this provision through a special statement on the proxy form, with penalties imposed for non-compliance if company officers take the initiative of sending proxy forms, at the firm's expense, to all known shareholders, the company must enclose a certain amount of minimal information with its proxy form and provide space for shareholders to request clarification if they deem it necessary; the company must also enclose a form for voting through the post, along with instructions for electronic voting if that is an option method of proxy voting: mail, electronic voting, video conference
Germany	yes	proxy can be granted to anybody, including banks or shareholders associations; usually in written (paper) form – but the statutes can allow email or any other form; if proxy granted to a bank or a shareholders association, no form at all is required by law (email, fax etc.) company may offer proxy voting by a proxy committee consisting of company officers; in this case company may only take instructed proxies
Greece	yes	Proxy must be submitted 5 days before the GM
Hungary	yes	if submitted to a joint-stock company, proxy must be in the form of a notarial document or private document representing conclusive evidence; proxy cannot be granted to members of the board of directors, the director general, the members of the supervisory board and the auditor; one and the same representative may represent several shareholders at a time, but one shareholder may be represented by only one representative; authorisations for representation may be valid for one GM or a definite period of time, but for a period of 12 months at the most; shareholders' rights may be exercised also by a nominee on the basis of a separate agreement; such an agreement may be concluded with an investment company exclusively if it is the particular shareholder's account holder or deposit custodian in respect of the particular security
Iceland	yes	written, dated instruments of proxy; authority to attend as a proxy not to be granted for more than 5 years; proxy granted either to participate in decisions regarding all items on the agenda at the GM, or to participate only in certain matters; proxy granted either for making an independent decision as to how it is to be cast, or proxy may oblige the appointee to vote in the manner stipulated by the shareholder

Ireland	yes	the proxy need not be a member of the company; in the case of public companies, proxies are invariably "two way" proxies, i.e. enable the member to include in the proxy form an instruction to vote for or against the particular proposal; in the absence of any such direction, the proxy may exercise his discretion which in deciding which way to exercise the vote; Listing rules of the Irish Stock Exchange Rules requires that a proxy form must: (a) be sent with the notice convening a meeting of shareholders of listed securities to each person entitled to vote at the meeting; (b) provide for two way voting on all resolutions intended to be proposed (except that it is not necessary to provide proxy forms with two way voting on procedural resolutions); (c) state that a shareholder is entitled to appoint a proxy of his own choice and provide a space for insertion of the name of such proxy; and (d) state that if it is returned without an indication as to how the proxy shall vote on any particular matter, the proxy will exercise his discretion as to whether, and if so how, he votes method of proxy voting: show of hands or poll
Italy	yes	1) not solicited voting proxies may not: (a) be granted once and for all, but only for each single GM; (b) be granted to directors, auditors, employees of the company or subsidiary companies limitation on the number of proxies a single person may hold is provided for depending on the size of the company 2) proxy solicitation is subject to specific legislative provisions and to implementing rules issued by Consob (the securities market autority), which is also encharged with supervising the whole proxy process; only shareholders representing at least 1% of the outstanding shares, and having held such stake at least for 6 months prior to the GM, may solicit proxies; moreover, shareholders soliciting proxies are obliged to avail themselves of an intermediary (either a bank, or an investment services company, or a mutual fund manager, or a proxy services company), charged with making contact with the shareholders and guaranteeing that the information provided by the solicitor in the proxy documents is complete; specific and less stringent rules govern proxy gathering by shareholders' association among their members
Latvia	yes	proxy in writing and attached to the minutes of the GM
Lithuania	yes	a written, dated proxy (if not terminated – valid for 1 year), notarised proxy (only if shareholder is a natural person)
Luxembourg	yes	drawn in accordance with the general provisions of the Luxembourg Civil Code applying to proxies; articles of association can require proxy holder to be a shareholder; proxy holder may be authorized to vote according to what he deems to be best; collection of proxy votes at the company's expenses not regulated by specific provisions

Malta	yes	a proxy form must be sent with the notice convening the GM to each person entitled to vote at the meeting
Netherlands	yes	proxy in writing collection of proxy votes at the company's expenses not regulated by specific provisions
Norway	yes	written, signed and dated proxy. The proxy applies only to the first GM, unless otherwise stated in the proxy.
Poland	yes	proxy in writing and attached to the minutes of the GM; one and the same representative may represent several shareholders at a time of the GM, but one shareholder may be represented by only one representative; articles of association may require who can be a proxy holder; proxy cannot be granted to the management board members or company's employees
Portugal	yes	proxies may be granted only to members of the board of directors, spouse, ancestors or descendants of the shareholder or to other shareholder; except in case of public solicitation of proxies, a shareholder cannot represent more than **5 shareholders**; proxies valid only for **1 GM meeting** proxies granted in the form of a letter duly signed by the shareholder addressed to GM's Chairman; public solicitation of proxies (i.e., solicitation of proxies to more than 5 shareholders) must meet the following requirements: 1 - Proxies must be solicited for a single GM, but they are valid for successive GMs having the same agenda; 2 - Proxies must be revocable; 3 - Proxy requests must provide at least the following information: - place, date, time and agenda; - a statement about company documents availability; - indication of the person or persons who are requesting the proxy; - a statement of how shares will be voted if the shareholder gives no instructions, specifying the basis on which the vote is to be exercised; - a statement of how statement of how shares will be voted in case unforeseen circumstances occur; - indication of voting rights which are attributed to the requesting person, according to Portuguese Securities Code; 4 - The proxy standard document must be sent to CMVM and to the relevant market operator at least 5 working days before being sent to shareholders with voting rights.

		5 - The requesting person must provide the shareholders with voting rights all relevant information, upon their request. 6 - Solicitation of proxies at a company's expense is prohibited
Slovak Republic	yes	written authorisation is needed (if a shareholder grants authorisation for the performance of voting rights connected with the same shares at one GM to more than one proxy, the company shall recognise voting rights to that proxy first written into the register of attendance). member of the company's Supervisory Board may not be chosen to act as a proxy proxy is not explicitly prohibited by law to pass vote according to his subjective opinion – depends on the content of the written authorisation between shareholder and his proxy
Slovenia	yes	proxy can be granted to anybody, must be in written form special rules in case of organised proxy collection
Spain	yes	proxy can be granted to another person in the terms established by the articles of association; proxy in writing and specifically to each GM; company's directors, the share custodian entities or the institutions responsible for recording account entries, may apply to represent the shareholders themselves or on behalf of third parties; in such circumstances, and in any other instance of a public application for the representation of shareholders, the agenda shall be annexed to the proxy document, together with a request for voting instructions from the shareholder and an indication of how the representative will vote, if no specific instructions are given; in the exceptional event of circumstances arising which were not known at the time when the instructions were sent and which run the risk of prejudicing the shareholders' interests, the representative may vote differently, and is obliged to inform the shareholder immediately more flexible rules apply for representation by family members
Sweden	yes	a written, dated proxy not valid for more than 1 year from the date of its issue; issued to authorize the appointee to participate either in decisions regarding all items on the agenda at the GM, or in decisions concerning certain matters only; appointee can be either authorized to make an independent decision as to how it is to be cast, or obliged to vote in the manner stipulated by the shareholder no limitation on appointment of proxy allowed in the articles of association solicitation of proxies at a company's expense prohibited
United Kingdom	yes	**all companies:** any member entitled to attend and vote at a meeting of a company is entitled to appoint another person (who need not be a member) to attend and (on a poll) vote instead of him; if a person is appointed as a proxy without instructions, he may vote as he wishes

listed companies: the Listing Rules oblige listed companies to send proxy forms to members with notice of a GM; provide for two-way voting on all non-procedural resolutions (i.e. there must be "for" and "against" boxes on the proxy form for the member to indicate how he wishes the proxy to vote on each resolution; state that a member is entitled to appoint a proxy of his own choice and provide a space for insertion of the name of such proxy on the proxy form; and state that if it is returned without an indication as to how the proxy shall vote on any particular matter, the proxy will exercise his discretion as to whether, and if so how, he votes.

No. 10.1	Shares held in custody – Intermediary holding shares of a listed company on behalf of its client obliged to designate identity of the client to the company	
Austria	no	due to bank secrecy
Belgium	no	in listed companies, most shares are bearer shares so that the identity of the shareholder is generally not known for registered shares, the shareholder must be registered in the shareholder's register so that his identity is known even if he has given a proxy
Cyprus	no	
Czech Republic	not applicable	the issuer (listed company) is entitled to request the statement from the registry, which contains primarily the identity of the shareholder (ultimate investor)
Denmark	no	
Estonia	no	
Finland	yes	if the custodian wishes to attend the GM on behalf of the shareholder (by proxy)
France	yes	Upon the request of the company.
Germany	no	
Greece	yes	
Hungary	yes	nominee required to reveal identity of the shareholders he represents and to produce evidence in support of his capacity as a nominee when demanded by any shareholder or the owner of secondary securities, by the limited liability company or the Authority
Iceland		no statutory provisions
Ireland	no	but a plc may serve notice on a person which it believes has been interested in its shares within the last 3 years asking it to confirm that fact and to give further information as to the holding
Italy		see reply to question n. 9
Latvia	no special provisions	in practice, it is regulated in agreement between intermediary/custodian and the client, or according t o terms of the Central Depository
Lithuania	no	there is no requirement in the laws for such duty

Luxembourg		
Malta	no specific rules	
Netherlands	no	
Norway	yes	if the company or the authorities so demand, the intermediary must identify the identity of the shareowner and the number of shares held
Poland	no	intermediary is not obliged to designate identity of the client to the company; the client is the only owner of shares and he has to prove his legitimacy to the company; in case of publicly traded companies it is being done by presenting to the company the depositary certificate of ownership issued by the entity handling shareholder's securities account; the shares which are indicated in the depositary certificate are blocked until the validation of the certificate expires
Portugal	yes to certain extent	yes if the custodian is a financial intermediary authorized to perform deposit and registration of securities services in Portugal; no in all other cases
Slovak Republic	no	
Slovenia	yes	financial organization exercising voting right on the basis of the authorization must present and deposit authorization document to the listed company
Spain	yes	
Sweden	yes	at company's request.
United Kingdom	yes	at company's request

No. 10.2	Shares held in custody – Intermediary holding shares of a listed company on behalf of its client obliged (at the clients request) to allow the client to exercise the voting rights in the clients own name	
Austria	yes	as the client (shareholder) is the owner of the shares, he can always exercise the voting right in person; the custodian is only entitled to exercise the voting right if the shareholder grants him a written authorization (see n. 8).
Belgium	no	intermediary/custodian is only entitled to vote at the GM if he has a proxy; irrevocable proxies (for a limited period of time) are allowed; nevertheless, proxies that have been solicited (through proxy solicitations) are always revocable (see n°7 above)
Cyprus	no	
Czech Republic	not applicable	iz. question no 8 (intermediary/custodian does not automatically exercise voting rights)
Denmark	yes	a custodian, usually a bank or a securities institution authorised to manage shares on behalf of the shareholder, may be entered in the share register instead of the shareholder as holder of the shares deposited with the custodian; if the owner of the shares registered in the custodian's name in the meantime wishes to attend a GM, he is entitled to be temporarily re-registered (no later than 5 days before the GM if the articles og association so decide) in the share register in his own name and to attend the GM
Estonia	yes	at the request of the client, the intermediary/custodian is required to grant authorisation in the required form to the client in order for the client to represent the custodian in the exercise of rights arising from securities.
Finland	yes	a custodian, usually a bank or a securities institution authorised to manage shares on behalf of a foreign shareholder, may be entered in the share register instead of the shareholder as holder of the shares deposited with the custodian; if the owner of the shares registered in the custodian's name in the meantime wishes to attend a GM, he is entitled to be temporarily re-registered (no later than 10 days before the GM) in the share register in his own name and to attend the GM
France	N/A	Custodian do not hold shares on behalf of their clients: either their clients are registered shareholders and their names appear on the issuer's share register, or they are bearer shareholders, and then, their custodian can 'channel' their votes to the issuer
Germany	yes	a custodian, usually a bank or a securities institution authorised to manage shares on behalf of the shareholder, may be entered in the share register instead of the shareholder as holder of the shares deposited with the custodian; if the owner of the shares registered in the custodian's name in the meantime wishes to attend a GM, he is entitled to be temporarily re-registered (at least 10 days before the GM) in the share register in his own name and to attend the GM
Greece		the intermediary can only act with the written consent of the shareholder; only the shareholder's name appears in the register of shares or anywhere else

Hungary	yes	if a shareholder intends to exercise his shareholder's rights in person, the securities intermediary shall issue an ownership certificate in respect of the dematerialized securities; the custodian shall place the share certificate placed in his custody at the shareholder's disposal when requested for the purpose of exercising ownership rights;(the ownership or the deposit certificate shall indicate the name of the issuer and the class of the share, the quantity of shares, the name of the securities intermediary or the custodian and their signatures, and the name (corporate name) and address (corporate domicile) of the shareholder in respect of registered shares and shalll remain valid until the date of the GM, including the second meeting if reconvened)
Iceland		no statutory provisions
Ireland	no	only legal owner entered in register of members and thus entitled to vote
Italy		see reply to question n. 9
Latvia	no special provisions	in practice, it is regulated in agreement between intermediary/custodian and the client
Lithuania	contract	no specific rules; depends on a contract between a custodian and its client
Luxembourg		
Malta	no specific rules	
Netherlands	yes	if a shareholder puts his shares in custody of a bank involved in the transfer of listed shares, the shareholder retains the right to vote; the bank should enable the shareholder to do so; however, in case of a chain of intermediaries, the ultimate investor is not able to vote; the intermediary who is registered with the bank as shareholder of the company, is able to vote; whether a client (an ultimate investor or another intermediary) of the intermediary-shareholder can vote (albeit by proxy) depends on the contract
Norway		The custodian may not vote. The voting rights may only be exercised by or on behalf of (by proxy) the shareowner
Poland	no	securities accounts must identify the owner of securities; there is no beneficiary ownership in Polish law
Portugal	no rules	no detailed rules regarding the custody of shares; relations between the custodian and the client, including the exercise of voting rights attached to the shares held, are governed by contracts; however, when the custodian of the listed shares is a financial intermediary member of the centralised system where the shares are integrated, the client is entitled to request him the issue of an ownership certificate, that is to say, the client has the means to exercise voting rights at will; securities admitted to trading on regulated markets are compulsorily integrated in the centralised system
Slovak Republic	no	A custodian, usually a bank or a securities institution authorised to manage shares on behalf of the shareholder, may be entered in the share register instead of the shareholder as holder of the shares deposited. Only the person registered in the list of shareholders kept by the company is authorised to exercise the rights pertaining to shares toward the company.

Slovenia	yes	a custodian, financial and other organizations may exercise the voting rights only by the written authorisation
Spain	yes	the cancellation is always possible the power of the proxy should be given in a written form, specifically for each general meeting
Sweden	yes	a custodian, usually a bank or a securities institution authorised to manage shares on behalf of the shareholder, may be entered in the share register instead of the shareholder as holder of the shares deposited with the custodian; if the owner of the shares registered in the custodian's name in the meantime wishes to attend a GM, he is entitled to be temporarily re-registered (at least 10 days before the GM) in the share register in his own name and to attend the GM
United Kingdom	no statutory or other general legal obligation	but nothing to stop such arrangements being put in place in the articles or by private contract

No. 10.3	Shares held in custody - Custodian allowed to vote for shares in custody without a special proxy	
Austria	yes	custodian (bank) needs an authorization in writing from the shareholder which is valid for a maximum period of 15 months
Belgium	no	only the shareholder or a proxy-holder can vote at the GM; shareholders may give a general proxy to custodians to vote at several GM's; nevertheless proxies may only be solicited for a single GM, even if they are valid for successive GMs having the same agenda; proxy solicitations must include a request for instructions on how to vote on each of the items listed on the agenda (see n°7 above).
Cyprus		Pursuant to company law, registered members of the company can hold shares as custodian or nominee for other persons. There is not any provision on the Company law or the Cyprus Stock Exchange law as to how custodians are allowed to vote at the GM of listed members. According to the Company law, shares held in custody are not entered in a company's register of shares, neither a relevant notice is given to the Register of companies.
Czech Republic	contract	unless the custodian is given power of attorney or such special rights are registered in the central registry (in the file of the shareholder), the shareholder is still deemed to be an ultimate investor exlusively allowed to exercise his/her rights
Denmark	no	
Estonia	yes	
Finland	no	
France	yes	Custodians, provided they are registered as "intermediaries" with the issuer, can vote on their clients' instructions. The only condition is that custodians are 'registered intermediaries'
Germany	yes	
Greece	no	only with a proxy
Hungary	no	a securities intermediary, a custodian, and a clearing house may act as an attorney in fact on behalf of a shareholder (hereinafter referred to as 'nominee') under written authorization signed by the shareholder (hereinafter referred to as 'authorization') in order to exercise the shareholder's rights in public limited companies in its own name but on behalf of the shareholder; a non-resident person may also act as a nominee if he is entitled to exercise membership rights in the company in question under the laws of the state of domicile in his own name and on behalf of the shareholder; this shall also apply if membership rights in the company are exercised on the basis of secondary securities on behalf of the owner (ultimate beneficiary) of the secondary security

Iceland	no	
Ireland	yes	if the custodian is the registered holder
Italy	no	proxy may be granted to an investment firm, bank or asset management company only for a GM already convened; it must be given at least 1 day before the GM and, within the same term, it may be repealed proxy must be conferred in writing using a form prepared by the intermediary: the intermediary must indicate any conflict of interest it may have in relation to the issues discussed in the GM and how he intends to vote; in any case the shareholder has the right to require the intermediary to vote in a given direction
Latvia	yes	
Lithuania	contract	depends on content of contract between a custodian and its client
Luxembourg		
Malta	yes	depends on content of contract or legal relationship between custodian and registered shareholder
Netherlands	no	proxy may be granted to custodian in writing; a new (draft) law will make the granting of proxy by electronic means possible.
Norway	no	only shareholder has voting rights; all other arrangements must be dealt with through a proxy
Poland	no	voting at GMs allowed only in person or through a written proxy
Portugal	yes (but previous written consent if the custodian qualifies as a financial intermediary)	custody of shares (here understood as someone, notably, a financial intermediary) holding shares for other person, is not specifically addressed by Portuguese Securities Law;as a consequence, according to Portuguese Law, custodians having securities registered in their name are deemed as owners of the securities in question and, accordingly, are able to exercise the attached rights, including the right to vote, without a special proxy; this freedom can, of course, be limited by contractual arrangements; in addition, if the custodian qualifies as a financial intermediary, he cannot exercise any attached rights without previous written consent of the shareholder; however, once such consent is given there is no need of a special proxy
Slovak Republic	yes	If a custodian shall exercise voting right for shares in his custody he is entitled to require a proxy in writing from the owner of these shares. If an owner of shares gives orders to custodian, the latter is obliged to vote pursuant such orders.
Slovenia	yes	a written proxy not valid for more than 15 months
Spain	no	Spanish law does not provide for custodians (nominees)
Sweden	no	
United	yes	if custodian is registered holder of the shares

Kingdom

No. 10.4	Shares held in custody – Explicit instructions from shareholders necessary in order for the intermediary to vote	
Austria	no	but a general authorization in writing from the shareholder is necessary, see n. 8
Belgium	no (except for proxy solicitations)	no explicit instructions required: general proxies are allowed; nevertheless, in case of proxy solicitation, the proxy form must include a request for instructions on how to vote on each item mentioned in the agenda; a nominee may depart from the instructions given by the shareholder due to circumstances not known at the time the proxy was given, or if execution of the original instructions might be detrimental to the interests of the shareholder (see n°7 above)
Cyprus	no	
Czech Republic	no	possible but not necessary
Denmark	no	possible but not necessary
Estonia	yes/ depends on an agreement	if voting instructions are given, custodian must follow the instructions
Finland	contract	custodian's right to decide how to vote depends on the contract between the shareholder and the custodian (proxy holder)
France		no requirement that voting instructions be itemised; the shareholder may opt to allow the proxy-holder to determine how best to vote in each case.
Germany	no	except in the case where the depositary is registered in the company's register instead of the shareholder; a bank must ask for instructions
Greece		in the context of the proxy
Hungary	yes	custodian can act as nominee of the shareholder only with a direct mandate from the shareholder; if there is a contract between custodian and shareholder and the custodian can act as nominee, the nominee must request the shareholder to provide instructions prior to a GM; nominee shall present his request to the shareholder to provide such instructions so as to provide ample time for the shareholder to draw up the instructions; the possibility that the custodian contracting with the shareholder have a general warranty for exercising of the shareholders' rights is excluded; if there are no instructions from the shareholder or if the shareholder's instructions are not unambiguous, the nominee generally cannot exercise the shareholder's voting rights; if there are no instructions from the shareholder the nominee may exercise his voting rights attaching to his shares only if a) the nominee has disclosed in the request for instructions specified his suggestions for voting, and the explanation of these suggestions, concerning the various items of the agenda, provided that b) the authorization granted to the nominee expressly confers general powers to the nominee that can be revoked by the shareholder at any given time, to the extent that in the event of the shareholder's failure to respond to the request for instructions, this shall be construed to be understood as

		his consent concerning the voting strategy suggested by the nominee
Iceland		proxy (power of attorney) needed
Ireland	no	entitled to attend and vote as a result of being endorsed in register of members or if a representative of the Custodian is appointed as proxy they may attend and vote as directed by the registered member
Italy		according to Italian Law, custodians are never directly entitled to vote with reference to the shares held in custody; voting rights remain to shareholders/client; shareholders may, however, give proxies to custodians
		irrespective of the different rules applying in relation to specific situations (see reply to questions n. 7 and 8): (a) shareholders/clients may always give to the proxy holder explicit voting instructions; (b) proxies may always be revoked; (c) the name of shareholder/client is always known to the company
Latvia	no	
Lithuania	contract	depends on an agreement between a custodian an its client
Luxembourg		
Malta	no	
Netherlands	no	depends on content of proxy from shareholder to custodian
Norway	not applicable	only shareholder has voting rights; all other arrangements must be dealt with through a proxy
Poland		
Portugal	no	otherwise depend on an agreement
		there are no legal requirements regarding voting instructions given to custodians
Slovak Republic	no	If the owner of shares gives explicit instructions to custodian, the latter is obliged to vote pursuant such instructions. Nevertheless, explicit instructions are not required by law in order to pursue voting rights by a custodian.
Slovenia	yes	
Spain	contract	depends on content of contract between custodian (eg. bank) and nominal holder
Sweden		
United Kingdom	yes	arrangements for the giving of such instructions are a matter of contract for individual « ultimate investors » and their intermediaries. (if the « ultimate investor » or holder of the economic rights attached to the share is not a registered member of the issuer, and the custodian or other

intermediary is a registered member.)

No. 11.1	Post-GM – Dissemination by issuer of minutes and voting results	
Austria	yes	minutes (including the results of voting) of a GM must be kept by a notary public and submitted to the Commercial Register (Firmenbuch)
Belgium	no	no dissemination required, but the shareholders are entitled to consult the minutes of the GM at the company's head office and to receive a copy of these minutes (with charge or for free) when decisions must be registered at the Court's office, anybody may consult them at that place and get a copy of them (with charge)
Cyprus	yes	
Czech Republic	yes (on request)	minutes are to be finalized within 30 days after a GM; any shareholder may request for producing minutes held in a company's archive
Denmark	yes	available at the head office of the company or made available electronically if allowed by the articles of association or if stated in an agreement between a company and its individual shareholder
Estonia	no rules	
Finland	yes	
France	no	
Germany	yes	company is obliged to publish minutes and results of voting in the Commercial Register (Handelsregister), where the public has access to; a draft proposal of the regulation of electronic Commercial Registers will give online access to the registers
Greece		there is no dissemination of post GM information; the minutes of the GM are notified only to those who took part in the GM otherwise with judicial contribution
Hungary	yes	information on decisions taken by GM shall be made available by the company according to the rules on extraordinary information, in the same way as the information on GM was published before; number of votes for various decisions taken by GM and the rate of the votes shall be also published
Iceland	no	access to minutes or a certified transcription thereof at the company's office at the latest 14 days after GM
Ireland	no	though required to record minutes and forward resolutions to registrar; book of minutes is open for inspection by members at no cost
Italy	yes	minutes containing the decisions taken by the GM are available for all shareholders at the companies' premises and transmitted to Consob; furthermore, listed companies are obliged to inform the public of the resolutions whereby the competent body approves the draft company annual accounts, the proposed dividend, the consolidated accounts, the half-yearly report, and the quarterly reports, by issuing a press release: a) to the

		market management company, which shall immediately make it available to the public: and b) to at least two news agencies
Latvia	yes	stockholders have the right to become acquainted with the minutes and the documents appended to it and to receive a copy or an extract from the minutes free of charge
Lithuania	no	at the shareholder's written request the company has within 7 days from the receipt of the request grant him access to information and/or submit to him copies of the minutes of the GMs and other documents whereby the decisions of the GM have been executed
Luxembourg		
Malta	no	However the minute book containing approved minutes must be kept at the registered office of the company, or at such other place as may be specified in the memorandum or articles, and shall, during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, be open to the inspection of any member of the company without charge. a company announcement should be made regarding all resolutions put to a GM which are not Ordinary Business and immediately after such meeting whether or not the resolutions were carried out
Netherlands	no	management board is responsible for minutes of AGM; minutes are available for shareholders at the seat of the company; shareholders may require a copy at cost price; best practice in the Dutch corporate governance code: report of the general meeting of shareholders shall be made available, on request, to shareholders no later than three months after the end of the meeting, after which the shareholders shall have the opportunity to react to the report in the following three months; the report shall then be adopted in the manner provided for in the articles of association
Norway		The protocol from the GM shall be available for the shareholders at the company
Poland	no	there are no obligations to disseminate such information to shareholders, but such information is being made public by companies which have to fulfil their information duties accordingly to the decree of the Council of Ministers on current and periodic information submitted by the issuers of securities
Portugal	no	however, shareholders holding 1% of the share capital have the right to examine at the company's head office the convocation announcements and the minutes (including list of presences) of all GMs held during the three previous years
Slovak Republic	yes (subject to shareholders request)	Shareholder may request the Management Board to issue a copy of the minutes or their part, together with annexes to the minutes. The Management Board is obliged, at the request of a shareholder, to send this copy without undue delay to an address supplied by him, or to provide it to him by other means according to agreement with the shareholders; otherwise it is obliged to make it available at the company headquarters. Unless the articles of association stipulate otherwise, the shareholder requesting the copy shall bear the costs of preparing and sending a copy of the records of the GM or their part, together with annexes to the records. Articles may also stipulate another means by which the company is obliged to provide shareholders with a copy of the minutes or their part, together with annexes Minutes from the GM include (apart from other things) for e.g. - description of the discussion concerning the single items on the agenda of the GM;

		- decisions taken by the GM and the votes cast;
Slovenia	yes	management board should send minutes in 24 hours after the end of GM to the court registry; information is accessible to the general public from the court registry; any important event must be published on the stock exchange web page or in daily newspaper published national wide
Spain	yes	it has to be put on the web-site of the company, but not the results of the voting, only the final result approved at the GM
Sweden	yes	Minutes must be made available to shareholders within two weeks after the GM.
United Kingdom	yes (minutes) / no (voting details)	records of GM minutes are to be open to inspection and copying by members ; the recent review of UK company law recommended that voting details should be published (and the UK Government has accepted this recommendation in the context of proposed new companies legislation).

No. 11.2	Post-GM – Proxy holder obliged to confirm to shareholder how proxy was executed	
Austria	no	although this could be governed by the terms op appointment of the proxy
Belgium	yes	proxy holders must inform the shareholder as to how the proxy was executed (general obligation from the Civil Code); in case of proxy solicitation, the nominee must expressly inform the shareholder if he has departed from the instructions given by the shareholder (specific obligation from the Company Code (see n°7 above)).
Cyprus	no	
Czech Republic	no	it depends on the agreement between a proxy and a shareholder
Denmark	no	
Estonia	no direct rules	
Finland	contract	depending on the contract between the shareholder and the proxy holder
France	no	
Germany	no	
Greece		in the context of the proxy
Hungary	yes to limited extent	a nominee (but not an agent) must convey to the shareholder all information that is available to him in connection with the limited liability company that may be of concern to the shareholder, and shall inform the shareholder concerning any documents he has obtained; the nominee shall provide the shareholder with copies of such documents when so requested
Iceland	no	no statutory provision
Ireland	no	although this could be governed by the terms of appointment of the proxy
Italy	yes	1) not solicited voting proxies (see question 7 sub 1): the proxy holder is obliged to inform the shareholders how the proxy was executed, under general rules of Civil Code 2) voting proxy solicitation (see question 7 sub 2): the intermediary entrusted with the proxy solicitation is obliged to announce with a press release: - how it voted, - the outcome of the vote - when voting in a different way than the one contained in the proxy proposal the reason of the vote (the proxy holder is allowed to change

		its vote only where significant events occur which cannot be communicated to the shareholder and which give grounds for reasonable belief that the shareholder would have assented had he known them) 3) voting proxies granted to an investment firm, bank or asset management company (see question 8): the proxy holder is obliged to inform the shareholder how it voted and the reasons of the vote only when voting in a different way than the one contained in the proxy form (it is allowed to do so only where significant events occur which cannot be communicated to the shareholder and which give grounds for reasonable belief that the shareholder would have cast a different vote had he known them)
Latvia	no special rules	proxy holder has general obligations under Civil law to provide an accounting to his or her authorising person regarding the performance of the assignment
Lithuania	yes	proxy holder is obliged to report to a shareholder about his action
Luxembourg		
Malta	no	
Netherlands	no	however, based on general principles of contract law, a proxy holder should confirm the execution of the proxy at the request of the shareholder
Norway	no	the law does not regulate this, it will be up to the shareholder and the proxy holder
Poland	no	
Portugal	yes in case of public solicitation of proxies	upon request of the shareholder, the person requesting the proxy is legally obliged to provide the shareholders with all relevant information regarding the exercise of voting rights; in what concerns other situations of proxy voting, depends on the terms according to which the proxy was granted
Slovak Republic	no	
Slovenia	yes	
Spain	yes	it is essential by its nature, the voting should be confirm to a shareholder only in the case when the proxy executed a vote against previously given instructions
Sweden	yes	In accordance with general contract law principles.
United Kingdom	yes	if the proxy is under a contractual or fiduciary duty

IMPACT ASSESSMENT OF SHAREHOLDERS RIGHTS

ANNEX 4: SYNTHESIS OF THE FIRST CONSULTATION

SYNTHESIS OF THE COMMENTS ON THE CONSULTATION DOCUMENT OF THE SERVICES OF THE INTERNAL MARKET DIRECTORATE-GENERAL

"FOSTERING AN APPROPRIATE REGIME FOR SHAREHOLDERS' RIGHTS"

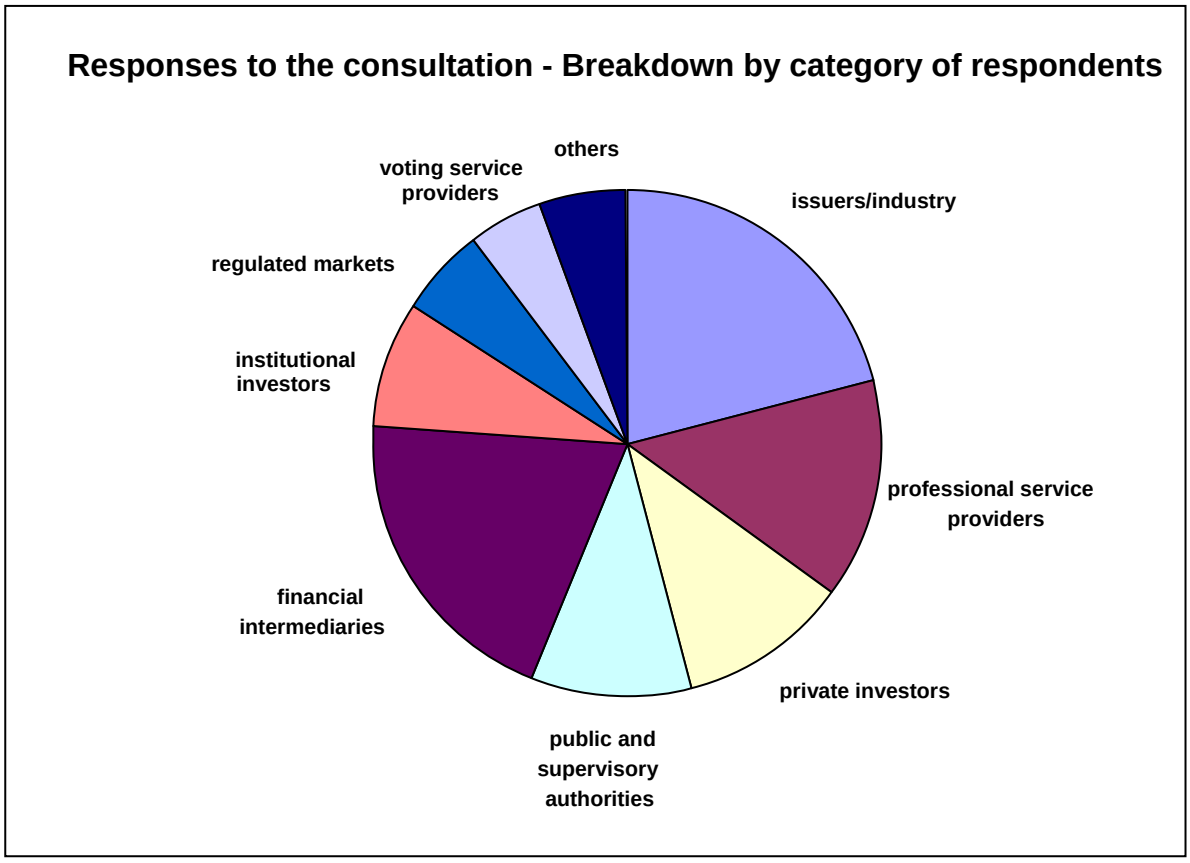
A WORKING DOCUMENT OF DG INTERNAL MARKET

APRIL 2005

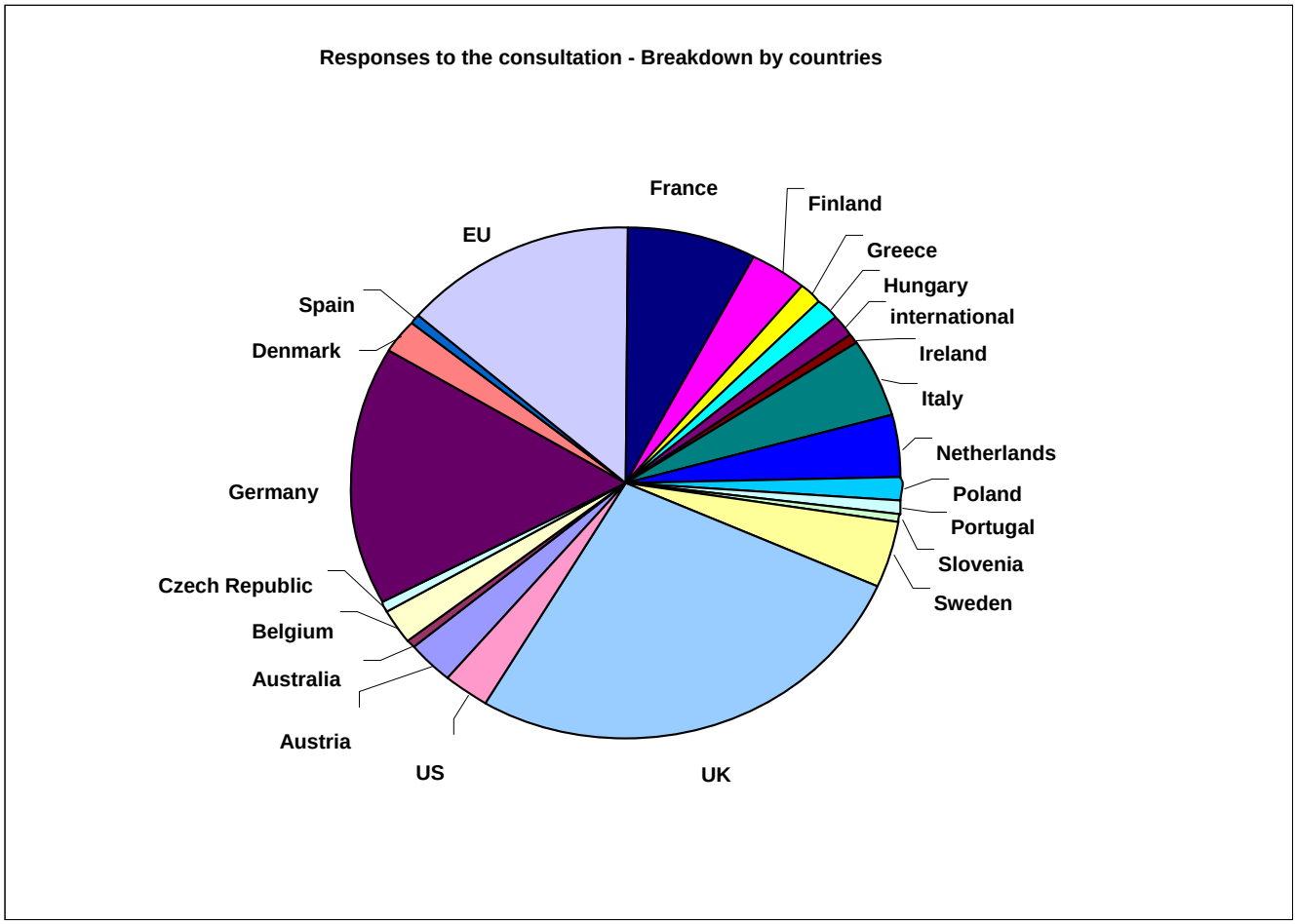
1. INTRODUCTION

On 16 September 2004, the Services of the Internal Market Directorate General (hereinafter DG MARKT) launched a public consultation entitled "Fostering an appropriate regime for shareholders' rights" (hereinafter referred to as the "Consultation Document"). The objective of this consultation was to collect the views of interested parties with regard to the feasibility, need and content of possible measures on shareholders' rights. The consultation document focused in particular on the exercise of shareholders' rights in a cross-border context.

A total of 146 contributions were received from a broad range of relevant organisations, parties and professions both interested, and taking part, in the process of the exercise of shareholders' rights in the European Union. Responses were received from issuers and industry representatives, private and institutional investors , regulated markets, financial intermediaries, voting service providers, professional service providers, and public and supervisory authorities.



There was a wide geographical coverage in terms of responses received, with respondents from 20 countries, including 18 EU Member States. A significant number of responses were received from representative organisations at EU and international level.



This report seeks to provide a survey of the comments received by the Commission services. It provides a synthesis of the recurrent themes and positions most frequently advanced by respondents with regard to the issues raised in the Consultation Document. It does not reflect any judgement on the part of the Commission services as regards the different comments made in response to the Consultation.

In drawing up this summary, the Commission services have been guided not only by the number of respondents expressing a particular point of view, but also by qualitative considerations such as the extent to which the respondents are representative and the arguments advanced by respondents in support of their views. For this reason, the report does not present a systematic statistical/quantitative analysis of the responses provided on each point. It endeavours to present a qualitative assessment of the responses received and of the main arguments underpinning these responses. What follows, therefore, should be regarded as a summary of statements volunteered by respondents in respect of their perceived priorities on the issues covered in, or relating to, the Consultation Document.

2. GENERAL OBSERVATIONS MADE BY RESPONDENTS

A clear majority of respondents expressed general support for the orientation of the Consultation Document.

General observations made by the respondents mostly focused on the legal form of future measures, if any, and the need to link them with other initiatives at EU and international level in the field of shareholders' rights.

A majority of respondents stated that, should the Commission envisage proposing a directive, any such text should concentrate on high-level principles only and impose minimum standards, rather than attempt to harmonise detailed aspects of Member States' laws. Member States should be given sufficient flexibility with regard to the implementation of such high-level principles and choose the best option for their systems.

While not rejecting legislative action at EU level, some respondents considered that the subjects covered in the Consultation Paper should be better dealt with - in whole or in part – within existing EU instruments, such as the Transparency Directive, the Market Abuse Directive, the Prospectus Directive or the 4th and 7th Company Law Directives, or as part of a possible Clearing and Settlement Framework Directive. These instruments, which already contain some provisions on shareholders' rights (in particular on general meetings and voting, dissemination of information and disclosure of major holdings), should be taken into account, so as to eliminate possible overlapping or excessive regulation, improve coherence and facilitate compliance with EU legislation. Moreover, some respondents considered that any follow-up measures should also take into account the results of the Legal Certainty Project[36] and current works on international projects, such as the Hague[37] and UNIDROIT[38] Conventions, which relate to the rights in respect of securities held with an intermediary.

A number of respondents objected to any prescriptive instrument at EU level and suggested that the subjects covered in the Consultation Document should be addressed in a non-binding EU Recommendation, or through listing rules or best practice codes at a national level.

3. SCOPE

(Q4) Do interested parties agree that the scope of the forthcoming proposal on shareholders' rights should be restricted to companies whose shares are admitted to trading ('listed companies'), and that Member States could be invited to extend these facilities to non-listed companies?

An overwhelming majority of responses to this question considered that follow-up measures, if any, should apply to all companies whose shares are admitted to trading ('listed companies')[39] because there is a public interest in the governance of companies whose shares are offered to the public. Within this category, a clear majority of respondents agreed that Member States could be invited to extend these facilities also to non-listed companies, where appropriate, in order to protect the interests of the shareholders of such companies.

However, some respondents argued that follow-up measures, if any, should have a broader scope than that suggested in the Consultation Document. Such measures, in their opinion, should apply to all companies with publicly raised capital, *i.e.*, not only those whose shares are admitted on a regulated market, on the ground that such companies also may have dispersed ownership structures.

A few other respondents suggested that the scope should be narrower than that indicated in the Consultation Document, and should be limited to listed companies above a minimum capital endowment threshold. According to these respondents, imposing new obligations would be too burdensome and

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36 COM(2004) 312 final

37 Convention on the laws applicable to certain rights in respect of securities held with an intermediary, 13 December 2002 (Hague Conference on Private International Law)

38 Preliminary draft convention on harmonised substantive rules regarding securities held with an intermediary, November 2004 (International Institute for the Unification of Private Law)

39 The words 'listed companies' used here cover the companies whose securities are admitted to trading on a regulated market in one or more Member States within the meaning of Council Directive 2004/39/EC

costly, especially for small and medium sized listed companies, and might even discourage such companies from going public.

4. ENTITLEMENT TO CONTROL THE VOTING RIGHT

– Definition of the 'person entitled to control the voting right'

(Q5.1.1) Do interested parties consider that the forthcoming proposal for a directive should set up a framework to identify the person entitled to control the voting right as the last natural or legal person holding a securities account in the "chain" of intermediaries and who is not a securities intermediary within the European securities holding systems, nor a custodian? Should it also provide for a securities intermediary who is not admitted as a participant in a European securities system but holds shares on behalf of clients to have the possibility to designate his clients in its place as controlling the voting rights? And should it be compelled to designate the identity of its clients at the request of the issuer?

Responses to the consultation show a general consensus among the respondents on the principle that the entitlement to control the voting right should rest with the person having the genuine economic interest in the shares (hereinafter the 'ultimate investor'). However, opinions were mixed with regard to the appropriateness and usefulness of the proposed definition of a person entitled to control the voting right as the 'last natural or legal person holding a securities account in the "chain" of intermediaries and who is not a securities intermediary within the European securities holding systems, nor a custodian'.

A large number of respondents were not favourable to the definition of a 'person entitled to control the voting right' contained in the Consultation Document either because they considered the proposed definition as unsatisfactory (and they then proposed some amendment to the proposed definition) or because they objected in principle to any such definition at EU level.

Within the category of respondents who proposed an alternative definition, several argued that the entitlement to control the voting right should be defined by reference to the entitlement to the share dividends and/or to the proceeds on the sale of shares, rather than by reference to the ranking at the end of the chain of intermediaries. Such respondents considered that the "person entitled to the share dividends and/or to the proceeds on the sale of shares" is more likely to be holding the genuine economic interest in the shares, than the "last natural or legal person holding a securities account in the 'chain' of intermediaries and who is not a securities intermediary within the European securities holding systems, nor a custodian".

The respondents who opposed any such definition at EU level argued that, given the complexity of the cross border voting process, neither the proposed definition, nor any other definition would succeed in identifying with sufficient reliability the person with whom the entitlement to control the voting right should rest, *i.e.*, the ultimate investor. Other respondents felt that the question of who should decide how votes are cast should be left to the contractual relationships between the ultimate investor and the intermediaries in the chain. Issuers should only recognise "shareholders" as entitled to control voting rights, *i.e.*, (in the case of registered shares) the person whose name appears on the share register, or (in the case of bearer shares) the person who identifies himself to the issuer as the holder of the shares. Where the person registered as a shareholder, in fact, is the intermediary closest to the issuer, the ultimate investor can ensure via contractual agreements with intermediaries in the chain that the votes are cast according to his wishes.

However, a narrow majority of respondents took the view that a definition of a 'person entitled to control the voting right' is required at EU level. According to these respondents, existing differences between

national laws may, in a cross-border context, result in some uncertainty as to who is entitled to vote or in depriving the person with the genuine economic interest in the shares of his/her/its right to vote.

Yet, some of these respondents suggested that the definition contained in the Consultation Document should be improved in one of the following ways:

- In order to ensure that the ultimate investor can actually vote, the definition should refer to a person entitled to 'exercise', rather than 'control', the voting rights.

- The definition should take into account Article 10 of the Transparency Directive, which already identifies some conditions under which the holder of the voting right is not the actual shareholder. Current works on the UNIDROIT and the Hague Conventions should also be taken into account.

- Where intermediaries hold shares on their own account, they should qualify as ultimate investors.

- Collective investment vehicles, investment and pension funds should be considered as ultimate investors and not as intermediaries.

- The definition contained in the Consultation Document uses several terms which have not yet been defined at EU level. In particular, the terms 'intermediary', 'custodian' and 'European securities holding systems' would require defining.

An overwhelming majority of respondents who expressed support for a definition at EU level of the "person entitled to control the voting right", also considered that an intermediary who is not admitted as a participant in a European securities system but holds shares on behalf of clients should have the possibility to designate his clients in its place as controlling the voting rights. However, among these respondents, opinions with regard to an obligation of such intermediary to designate the identity of its clients at the request of the issuer were evenly split.

4.1. Exercise of the voting right

(Q5.1.2) Do interested parties agree with such provisions to allow the ultimate investor to exercise the entitlement to control the voting rights? Do they also agree that the ultimate investor should in all cases be offered the possibility, either to provide the financial intermediary with voting instructions or to be given power of attorney by the same financial intermediary?

A majority of respondents considered that Member States should allow the ultimate investor[40] to exercise voting rights by offering him all options contained in paragraph 5.1.2. of the Consultation Document, i.e., (1) be registered or (2) acknowledged as a shareholder, (3) be given a power of attorney by the intermediary formally entitled to vote, and (4) give voting instructions to that same intermediary. According to these respondents, ultimate investors, ideally, should be offered a variety of possibilities to exercise voting rights, from which they can choose the option that best suits the actual holding structure through which they hold their shares.

However, a very high number of respondents took the view that the ultimate investor should, as a minimum, benefit from options 3 and 4, *i.e.*, be given a power of attorney by the financial intermediary

[40] defined in the Consultation Document as the "last natural or legal person holding a securities account in the "chain" of intermediaries and who is not a securities intermediary within the European securities holding systems, nor a custodian"

entitled to vote or provide that intermediary with voting instructions. Member States should leave the availability of options 1 and/or 2 to agreements between interested parties. Some of these respondents, however, urged that future measures, if any, should in no case introduce any obligation on intermediaries to offer proxy voting services. Other respondents requested additional rules on the allocation of the cost of the direct communication between the issuer and the ultimate investor.

Some of the respondents who were not in favour of any provision giving ultimate investors the right to exercise voting rights, pointed out that establishing a direct communication between the issuer and ultimate shareholders would duplicate already existing systems for voting through the chain of intermediaries. This might, as a result, generate legal uncertainty as to who is actually entitled to cast votes. Several respondents objected to option 3 (a power of attorney granted by the intermediary to the investor), since, according to them, voting rights should always emanate from the ultimate investor, who alone should be entitled to give such a power of attorney. This, according to these respondents, was particularly true in bearer share systems, where ultimate investors are acknowledged as shareholders. Some other respondents proposed that option 4 (intermediaries voting upon investors instructions) was ill-suited to their national systems and should be excluded from any future EU measures, if any. This was typically the case of some bearer share systems, which do not give financial intermediaries (which are not shareholders) the right to cast votes on behalf of their clients, as nominees.

4.2. Authentication of the ultimate investor

Q5.1.3(1) Do interested parties agree that securities intermediaries should be required to certify to the issuing company who the ultimate investor entitled to control the voting rights is and for how many shares? What do you think is the best option to allow for such an authentication and certification process? Should the forthcoming proposal address the issue of which parties would have to bear the costs in this authentication?

A clear majority of respondents were favourable to the idea that the issuer should be able to know the identity of ultimate investors and the number of shares in relation to which they control voting rights. This would enable issuers to ensure that only the right persons vote at general meetings and would help avoid double voting. However, some of these respondents argued against any further EU action in this field, on the ground that the obligation to disclose major holdings under Article 9 of the Transparency Directive is sufficient. Other respondents suggested that, should there be any rule requiring certification of who the ultimate investor is and for how many shares, the disclosure of the investor's identity should only take place either at the investor's request or subject to his express agreement, in order to protect his privacy.

The respondents who objected to the authentication process stressed that if the voting process at a general meeting should remain democratic, the possibility for the ultimate investor who holds bearer shares to stay anonymous should be preserved. Some other respondents remarked that if an efficient proxy voting system is put in place, there will be no danger of double voting and, therefore, no authentication process will be necessary.

As for the best option to allow for the proposed authentication process, the chain approach was supported by a larger number of respondents than the direct approach, though supporters of either option claimed it was less costly than the other. However, several respondents proposed that rather than prescribe the direct or the chain approach, future measures, if any, should only enable the issuer to rely on the information and voting instructions it obtains from the intermediary closest to it. This should be sufficient to avoid potential double voting.

A majority of the respondents considered that the issue of costs should be addressed in a future proposal, if any. However, there was no clear trend with regard to who actually should bear these costs. Some respondents observed that the cost of authentication should not be imposed on issuers since they have no influence on the chain through which the shares are held and, therefore, cannot influence the level of costs involved. Several respondents, however, proposed that the cost of authentication should be divided between the issuer and the investor since both of them have an interest in a seamless voting process.

4.3. Stock lending

(Q5.2(1)) Do interested parties consider that the practice of securities lending create problems for the exercise of voting rights, in particular in a cross-border context that should be tackled at EU level?) Should such provisions essentially aim at enhancing transparency and protecting the interests of long term investors?

According to a majority of respondents, practices of securities lending do not create problems with regard to cross-border voting. Therefore, the terms under which securities are lent should be left to contractual provisions between lenders and borrowers or to codes of best practice, and should not be tackled at EU level.

Responses favourable to some EU initiative in this field pointed out that shareholders often are not aware of the fact that their securities are being lent. Therefore, some of these respondents suggested, there should be minimum transparency requirements at EU level to ensure that shareholders are aware of the consequences of securities lending on voting rights. Other respondents, furthermore, suggested that speculative securities lending operations around the time of general meetings (especially in cases of take-overs) should be prohibited.

4.4. Depositary receipts

(Q5.3) Do interested parties consider that there are problems associated with the holding of depositary rights that should be addressed in the forthcoming proposal for a directive? If so, should it allow holders of depositary receipts to be recognised as holding the rights attached to the underlying shares and that any specific exclusion from voting right should be removed?

A majority took the view that there are problems associated with holding of depositary receipts, which potential new measures, if any, should address. In particular, holders of depositary receipts often do not have the right to vote on the underlying shares. Some respondents suggested that depositary receipts holders should be granted the same rights as the shareholders, or have the possibility either to vote directly or issue voting instructions.

Among the respondents who objected to any EU intervention in this field, a number of respondents pointed out that depositary receipts are traded mainly by professional investors who are aware of all consequences of holding depositary receipts. In their view, therefore, this matter should be left to market forces and contractual arrangements between depository receipts holders and their intermediaries.

5. PRE-ANNUAL GENERAL MEETING STAGE

5.1. Communication of information relevant to GMs

(Q6.1(1)) Do interested parties consider that the forthcoming proposal should contain provisions regarding the disclosure of GM notice and materials and some standards for the dissemination of such information? What should be these standards? Should it also require issuers to maintain a specific section on their website where they would have to publish all General Meeting- related information? Should issuers' websites or such GM dedicated sections of their websites contain also a description of shareholders' and investors' rights in relation to voting (voting by proxy or in absentia) and with regard to the GM (right to ask questions or table resolutions)? Do interested parties consider that the forthcoming proposal for a directive should deal with the way information is 'pushed' by the issuer to the ultimate investor? If so, which of the two approaches (chain or direct) is preferable? Should the possibility be given to the ultimate investor to opt out of such identification system?

An overwhelming majority of respondents expressed support for EU minimum standards for the disclosure and dissemination of the GM notice and GM-related materials prior to the GM. Within this category, a large majority of respondents suggested that EU minimum standards should relate both to the content, timing and dissemination methods of both GM notices and other GM-related materials.

Respondents who objected to EU minimum standards often considered that the topic is sufficiently covered by the Transparency Directive.

With regard to the content of a GM notice, a large number of respondents expressed the view that EU minimum standards should provide that any notice of a GM should contain a mention of the exact date, time, place and agenda of a GM. Some respondents considered that GM notices should also contain a description of all available means of voting or asking questions, the accession code for virtual GM participation, a full list of GM related documents and how and where to obtain these.

A large number of respondents considered that a minimum notice period should be established at EU level. Suggestions ranged between 15 days and 6 weeks before the GM, with a majority of replies supporting a notice period of more or less one month before the GM (e.g. '4 weeks', '20 clear working days', '30 days', etc).

A significant majority of respondents considered that issuers should be required to maintain a specific section on their website, which would contain all GM-related information. The main supporting argument is that the electronic availability of information is cheaper than traditional means of supplying information, and enables a faster access to information. Most of these respondents were also of the opinion that such website section should contain a description of shareholders' (and investors') rights in relation both to voting (voting by proxy or in absentia) and to the general meeting (rights to ask questions or table resolutions).

However, several respondents pointed to the additional costs of maintaining websites and suggested, therefore, that any such obligation should be imposed only on those issuers who already use the relevant electronic technology.

A majority of respondents considered that any new measures should deal with the way information is 'pushed' by the issuer to the ultimate investors. However, some other respondents suggested that no obligation should be imposed on issuers to 'push' information to ultimate investors, because this would expose them to excessive costs. Rather, ultimate investors should be 'pulling' the relevant information from issuers' websites.

A minority of respondents commented on whether information should pass through the chain or be accessible/supplied directly. These respondents generally remarked that this question is related to the issue of the identification of the ultimate shareholder and should be considered in close relation with it. A majority of them considered that investors should have the possibility to opt out of the identification system.

5.2. Share blocking

(Q6.2) Do interested parties consider that share blocking requirements represent a barrier to the exercise of voting rights, especially for cross-border investors? Do interested parties agree that the forthcoming proposal should require the abolition of share blocking requirements and propose an alternative system to determine which shareholders are entitled to participate and vote at the GM?

An overwhelming majority of respondents considered that share blocking requirements represent a barrier to the exercise of voting rights, especially for cross-border investors. In their view, therefore, share blocking requirements should be abolished and replaced by an alternative system. The majority of respondents favoured a record date system as an alternative to share blocking. Few other respondents preferred verification systems, under which holdings are verified during a few days before GMs, during which investors can trade freely until reconciliation between holdings and votes is carried out shortly before the GM. A number of respondents considered that harmonised clearing and settlement dates would be a decisive step, as there would be one single rule determining who and from which point in time one is a shareholder.

As regards the timing of a record date, the majority of respondents considered that record dates should be as close as possible to general meetings, to ensure that voters are still shareholders when the GM takes place. Suggestions with regard to timing ranged from 15 days to 24 hours before a general meeting, with a majority of responses pleading in favour of a record date 3 or 2 days before the general meeting.

6. SHAREHOLDERS' RIGHTS IN RELATION TO THE GM

– Participation in the GM via electronic means

(Q7.1) Do interested parties consider that Member States should be prevented from imposing requirements on companies regarding the venue of the GM that would act as a barrier to the development of electronic means of participation? Should additional criteria be defined at EU level to enable shareholders participation to the GM by electronic means?

A clear majority of respondents considered that requirements on companies regarding the venue of the GM that would act as a barrier to the development of electronic means of participation should be removed. However, an almost equal majority insisted that any provisions on electronic participation should strictly be of an enabling nature. Companies should have the possibility, but not the obligation, to offer electronic means of participation. 'Actual' general meetings should not be abolished and replaced by 'virtual' meetings. Some of the respondents suggested that future measures, if any, should also contain provisions covering the misuse of the electronic means, double voting, rules on the authentication of shareholders participating by electronic means and on the consequences of possible malfunction of the electronic system.

– **Right to ask questions**

(Q 7.2) Do interested parties consider that the forthcoming proposal for a directive should define minimum standards on the way shareholders' questions may be filed and dealt with at the GM? If so what should such minimum standards be?

A clear majority of respondents took the view that there is a need for defining minimum standards on the way shareholders' questions may be filed and dealt with at the GM.

With respect to the minimal standards, the majority of respondents considered that any shareholder should have the right to ask questions at the General Meeting, regardless of the number of shares held. However, the majority of these respondents also felt that the right to ask questions should be carefully monitored, in order to prevent GMs from being overwhelmed by excessive questioning, or abusive or unjustified questio

A number of suggestions were made with regard to minimum standards. The majority of respondents considered that shareholders should be given the possibility to ask questions both in advance (notably by electronic means) and during the meeting. However, a large number of respondents felt that any possibility given to shareholders to ask questions during the meeting via electronic means may lead to uncontrollable situations and, as a result, would disrupt meetings. According to the majority of respondents, questions asked before or at a GM should relate to the general meeting, though there were calls to allow questions on any topic, provided these are asked in advance. Some respondents argued that the Chairman of the meeting should retain some discretion to refuse or group questions.

With respect to the right to obtain a reply to a submitted question, a number of respondents considered that the right to ask questions only made sense if issuers were obliged to reply to questions. However, there should be a right not to reply when this would cause the issuer serious harm. Issuers, in particular, should be under no obligation to disclose business secrets and should have the right not to answer questions on price sensitive issues. Opinions were mixed as to the way in which replies should be formulated. Several respondents suggested that answers should be either given orally during the GM or published in writing on a dedicated section of the issuer's website or included in the minutes of the GM. According to some respondents, a question should not be admissible in the GM if it (or a similar question) was asked before the meeting and the response to it was published on the issuer's website sufficiently early before the GM.

– **Right to add proposals to the agenda and to table resolutions**

(Q 7.3) Do interested parties consider that the forthcoming proposal for a directive should define certain criteria concerning the maximum shareholding threshold for the tabling of resolutions and placing items on the GM agenda and the timing to file these ahead of the GM? If so, what should these minimum criteria be?

A clear majority of respondents supported minimum criteria at EU level concerning the maximum shareholding threshold for the tabling of resolutions and placing items on the GM agenda, and the timing to file these ahead of the GM.

A clear trend emerged in favour of subjecting the right to table resolutions and to place items on the agenda to the holding of a minimum shareholding expressed as a percentage of the share capital. Percentages ranged from 1% to 10% of the share capital, with a prevalent trend in favour of a 5% threshold. Some respondents also recommended to leave issuers free to lower such threshold, and commented that the threshold would correspond to a very different economic reality depending on the size of companies. Others felt that thresholds should be lowered in relation to the size of the issuer's share

capital. Only very few respondents took the view that, in order to promote shareholder democracy, no minimum shareholding threshold should be imposed.

A non-negligible minority of respondents felt that the minimum threshold should correspond to the limits set for squeeze-out rights, *e.g.*, those contained in the Takeover Bids Directive or those suggested by The High Level Group Report. However, some respondents opposed this approach, on the ground that squeeze-out rules vary from one Member State to another and that setting minimum thresholds at such a level would exceedingly reduce the rights of minority shareholders.

With respect to the timing for the filing of resolutions ahead of the GM, it was proposed that deadlines should be fixed sufficiently ahead of the GM in order to give the issuer enough time, as may be reasonable, for amending and circulating relevant GM materials.

– Voting in absentia

(Q7.4) Do interested parties consider that the forthcoming proposal should oblige Member States to introduce in their national company law the possibility for all companies to offer shareholders the option of voting in absentia (by post, electronic or other means)? Do interested parties consider that the forthcoming proposal should contain provisions to further facilitate the use of proxy voting across Member States and to lift obstructive local requirements? If so, what should be the minimum criteria that should be defined at EU level, taking into account the constraints of cross-border voting?

An overwhelming majority of respondents considered that Member States should be obliged to introduce in their national company laws the possibility for all companies to offer shareholders the option of voting in absentia. Within this category, a large number of respondents expressed their support for enabling electronic voting, voting by post, and rules facilitating proxy voting.

Several respondents suggested that voting by post should always be available; else, shareholders without access to electronic means of communication might be discouraged from voting or would be in a less favourable position than other shareholders. On the other hand, several other respondents who objected to voting by post argued that such means of voting do not allow shareholders to react to the latest developments at the general meeting and are too costly.

An overwhelming majority of respondents considered that the use of proxy voting should be further facilitated across Member States and existing obstructive local requirements should be lifted. The process for appointing proxies and the acceptance of proxies by issuers should be simple, and exempt from unnecessary administrative burdens. In particular, restrictions on the persons who may be appointed as proxies should be removed. Further, both the electronic appointment of proxies and electronic proxy voting (with electronic signature) should be made available. Any provisions that might be envisaged at EU level should also contain minimum criteria on the validity period for proxies. Some of the respondents added that minimum standards with regard to the verification of proxies and the identification of proxy holders would be welcome in order to ensure that only duly authorized proxies attend GMs and vote. These standards could be embodied in minimum requirements for the content of proxy forms.

7. POST-GM INFORMATION

7.1. Dissemination of GM results and minutes

(Q8.1) Do interested parties consider that companies should be obliged to disseminate the results of votes and minutes of the GM to all shareholders and/or to post these on their website within a certain period following the meeting?

A majority of respondents considered that issuers should be obliged to disseminate the results of votes and minutes of the GM to all shareholders and/or to post them on their website within a certain period following the GM. A substantial proportion of respondents suggested that such publication should take place in addition to the dissemination of the information to all shareholders. However, numerous respondents considered that, for cost reasons, hard copies should only be sent to those shareholders who specifically requested them. The suggestion was also made that results of votes and minutes of the GM should be published in company registries or on the websites of stock exchanges where issuers' shares are traded.

Opinions differed largely on the maximum period of time within which the issuer should make GM results available, ranging from immediately after the GM to 3 months after the GM.

As for the kind of post-GM related information published on the issuer's website, the respondents considered that both voting results and GM minutes should be published. There were some calls for excluding GM-related questions and their answers from the scope of such website publication for reasons of confidentiality.

7.2. Confirmation of vote execution

(Q8.2) Do interested parties consider that the non-confirmation of vote execution hinders significantly the exercise of their voting rights? If so, do they consider the forthcoming proposal should address the issue by defining obligations on issuers and securities intermediaries to provide and pass automatic confirmation of vote execution along the chain from the issuer to the ultimate investor?

Among the respondents who commented on this section, there was no clear trend as to whether the non-confirmation of vote execution significantly hinders the exercise of voting rights. Similarly, there was no strong support for defining obligations on issuers and securities intermediaries to provide and pass automatic confirmation of vote execution along the chain from the issuer to the ultimate investor. Several respondents, however, commented that, such a rule, if any, should apply only to the intermediaries in the chain and not to issuers, which are already overburdened with other obligations.

Those who objected to any EU action on this field mainly pointed out that the confirmation of vote execution is primarily a matter for the relationship between the shareholder and the proxy/intermediary and should be left to contractual arrangements between those parties. Moreover, the obligation to confirm vote execution would cause significant costs, which would not be offset by appropriate corresponding benefits.

Support for an obligation to confirm vote execution was mainly limited to automatic vote confirmation in cases of electronic voting, on the ground that this would not generate high costs, unlike paper-based confirmation. Cost considerations also led several other respondents to suggest that the confirmation of vote execution should be provided only upon the request of ultimate investors. Others suggested that confirmation of vote execution should be provided confirmation to institutional shareholders only.

8. ADDITIONAL ISSUES

A large number of respondents identified additional issues which, in their view, are important for enhancing shareholders' rights across the EU and, therefore, should be considered as part of any follow-up measures. The main recurrent themes can be summarized as follows:

In order to further facilitate access to information about GMs, GM-related information should also be published on a central database or in an official bulletin maintained either at national or EU level.

Pre-GM communications should be done in the issuer's local language and in English.

Shareholders should have the right to communicate among themselves. They should be free to exchange information and institutional shareholders, as long as they do not seek to obtain control, should be allowed to discuss voting items and vote together on any particular resolution.

Quorums, as prerequisites for holding valid GMs, should be reduced or abolished.

The "one share - one vote" principle should be addressed.

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IMPACT ASSESSMENT OF SHAREHOLDERS RIGHTS

ANNEX 5: SYNTHESIS OF THE SECOND CONSULTATION

SYNTHESIS OF THE COMMENTS ON THE SECOND CONSULTATION DOCUMENT OF

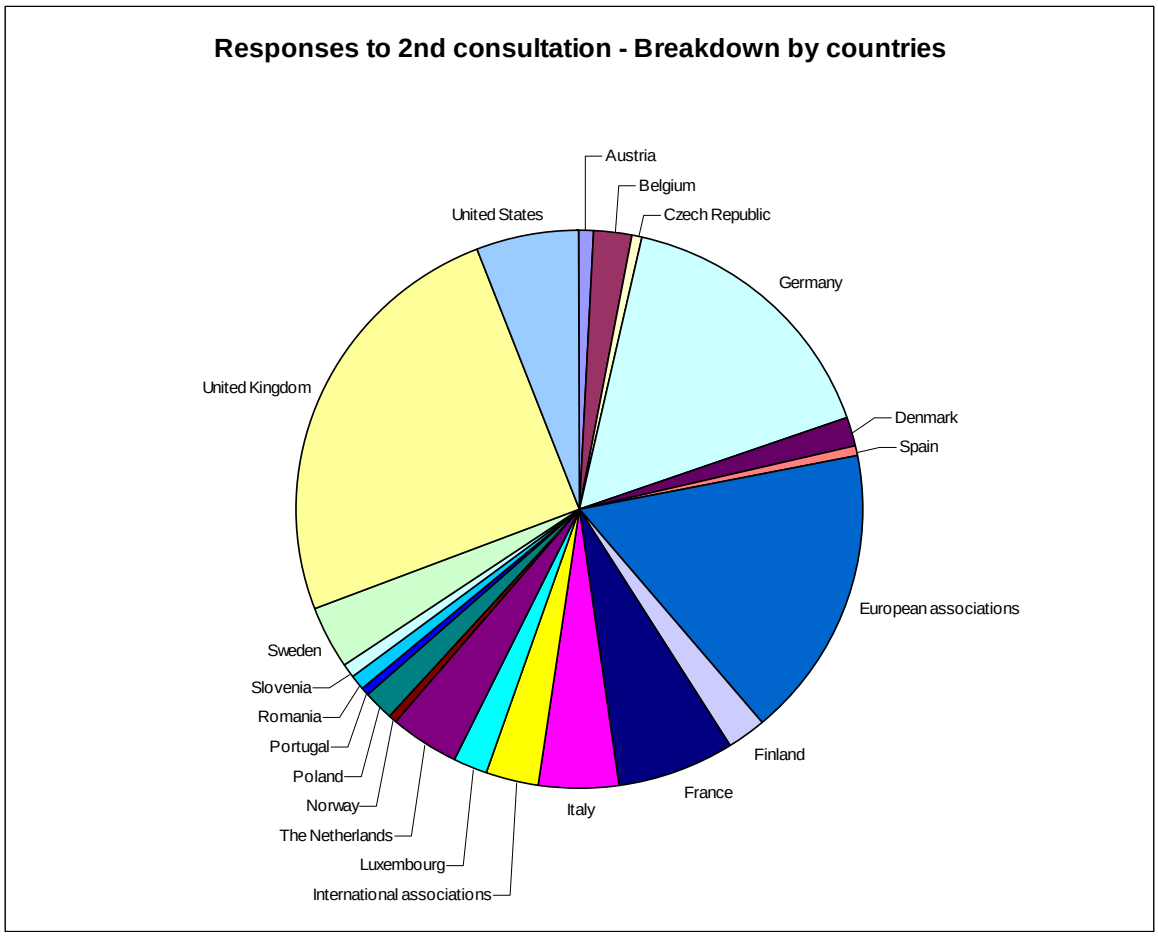
THE INTERNAL MARKET AND SERVICES DIRECTORATE-GENERAL

"FOSTERING AN APPROPRIATE REGIME FOR SHAREHOLDERS' RIGHTS"

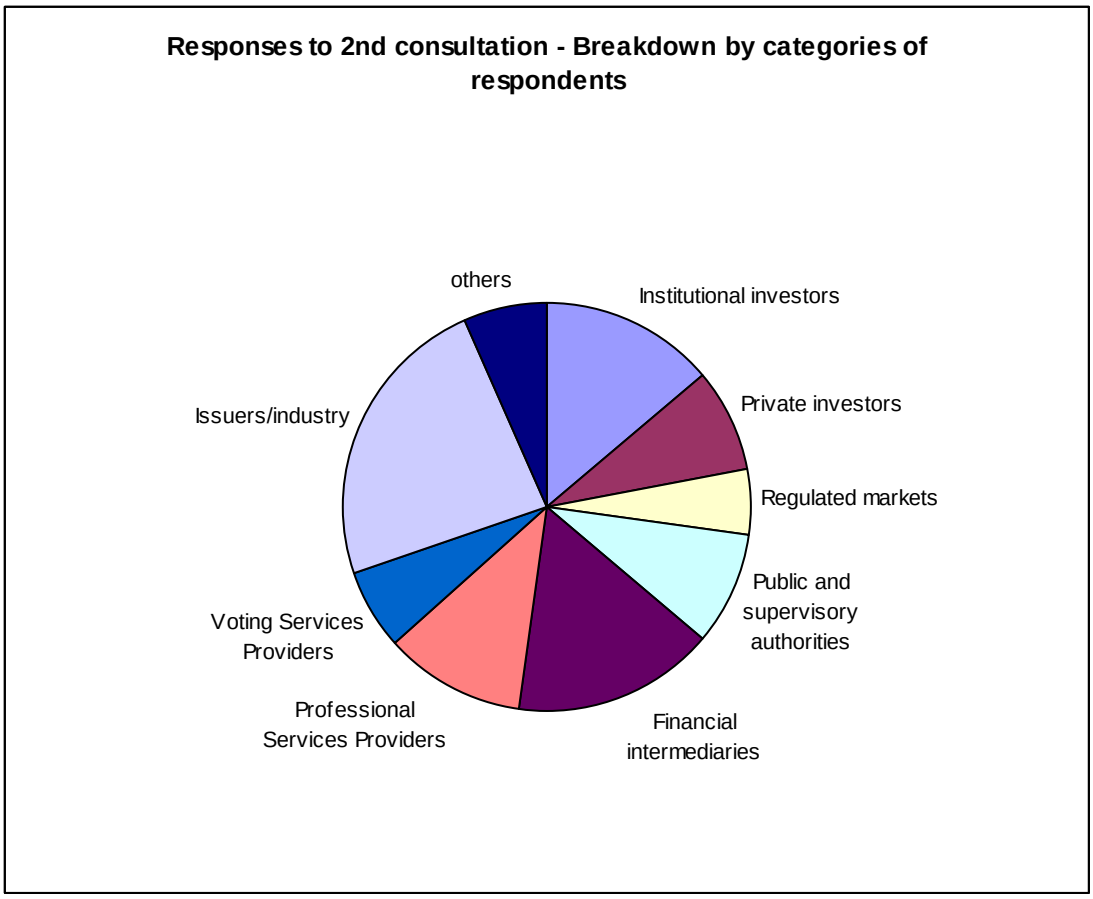
SEPTEMBER 2005

On 16 September 2004, the Internal Market and Services Directorate General (DG MARKT) published a public consultation document entitled "fostering an appropriate regime for shareholders' rights". This consultation paper called for comments on the need, if any, for EU minimum standards to facilitate the cross-border exercise of shareholders' rights in listed companies. A total of 146 responses were received. DG MARKT published a report on the outcome of this consultation in April 2005. The vast majority of respondents confirmed that non-resident shareholders face several difficulties when seeking to exercise their rights and that EU minimum standards would significantly facilitate both their access to the relevant information and the exercise of their rights in General Meetings.

On this basis, the Services of DG MARKT launched a second public consultation on 13 May 2005, inviting comments on possible EU minimum standards to facilitate the cross-border exercise of shareholders' rights. 138 responses were received. They are available on the website of DG MARKT, except for those for which confidential treatment was expressly requested.



Contributions were received from 19 countries including 16 Member States. A number of contributions were also submitted by European and international bodies and associations.



DG MARKT would like to thank the interested parties who responded to this second consultation for the detail and thoroughness of the contributions.

This report seeks to provide a survey of the main comments received by DG MARKT. It does not provide detailed statistical data, but rather seeks to present a qualitative assessment of the contributions received. In particular, DG MARKT not only takes into account the number of respondents expressing concurring views but also their degree of representativity.

I. GENERAL COMMENTS MADE BY RESPONDENTS.

In addition to responding to the specific questions in the consultation, a significant number of respondents (just under half) make general comments with regard to the principle of an EU action to facilitate the cross border exercise of shareholders' rights. Other comments, which address specific issues not covered in the consultation document, are dealt with in the last section of this report (Section II.9 – Other Suggestions).

In their general comments, most respondents strongly support the work undertaken by DG MARKT. They notably stress the crucial contribution of shareholders to sound corporate governance, in particular the central role of shareholders in holding boards of directors and management accountable. They consider that facilitating and promoting the exercise of shareholders' rights through the introduction of a set of EU minimum standards should contribute to strengthen internal corporate controls and in turn obviate

the need for future prescriptive, detailed, corporate governance regulation. These respondents consider that the main tool which shareholders have is their vote and that the very first step should be to ensure that they can actually use it.

A number of respondents also point to the fact that the minimum harmonisation of shareholders' rights in relation to the General Meeting is necessary to achieve a single EU capital market.

Some comments were made with regard to the type of EU instrument to be chosen to introduce such minimum standards. While most respondents do not express any opposition to a proposal for a directive, some expressly support it and insist that only a directive can guarantee that minimum standards will actually be applied; in their view, a recommendation would not offer the same guarantee.

Though globally very supportive of the initiative, many respondents point to the diversity of national company laws and insist that any initiative taken at EU level should confine to principles so as to give Member States enough flexibility to implement EU measures in a way that is consistent with their company laws. In any event, overregulation should be avoided, as should the risk of over burdening issuers with obligations which risk making introductions to listing less attractive and could induce issuers to de-list their shares. Also, care should be taken to avoid overlapping instruments and initiatives. In this context, express reference is made to potential overlaps with the Transparency Directive and on-going work on clearing and settlement.

Other respondents, who support (or do not oppose) a directive on principle, nonetheless consider that certain specific aspects of the consultation paper would be better addressed in a recommendation or left to market regulation or self regulation.

On the content of the consultation document itself, respondents generally consider that the consultation paper addresses most of the key obstacles to the cross-border exercise of shareholders' rights and that the minimum standards proposed, if put in place, would significantly facilitate cross-border voting.

II. REACTIONS TO THE SPECIFIC QUESTIONS OF THE CONSULTATION DOCUMENT

1. SCOPE

Do you agree with the proposed scope for any future measure at EU level, if any, establishing minimum standards for shareholders' rights? If not, please give your reasons.

Any potential measure at EU level establishing minimum standards for shareholders' rights should apply solely to companies formed under the laws of a Member State and whose securities are admitted to trading on a regulated market in one or more Member States within the meaning of Council Directive 2004/39/EC.

UCITS (of the corporate type) falling within the scope of Art. 1(2) of Directive 85/611/EEC, and equivalent funds, should be excluded from the scope of any such measure.

About 90% of the respondents globally support the proposal to limit the scope of any potential measure to listed EU companies and exclude UCITS, though this support is sometimes qualified.

The comment most frequently made is that reference should be made to issuers whose 'shares', rather than 'securities', are admitted to trading. The reference to shares would be consistent with the rest of the consultation document, which only refers to 'shareholders'. One respondent suggests that issuers whose shares have been listed without their consent should also be excluded from the scope of any potential measure.

While not opposing the proposed scope, some respondents consider that it could be extended to cover:

– European companies (Societas Europea) whose shares are admitted on a regulated market

– All companies whose shares are admitted on a regulated market in the EU, not only those listed companies 'which are formed under the laws of a Member State';

– Companies whose shares are traded on non regulated markets; and

– Unlisted companies with a dispersed ownership.

Lastly, the point has been made that where only part of an issuer's shares are listed, all its shareholders should nonetheless benefit from the proposed minimum standards.

2. THE "ULTIMATE INVESTOR" OR "ULTIMATE ACCOUNTHOLDER"

1. Do you consider, contrary to the views expressed above, that granting 'ultimate investors' at EU level a legal enforceable right to direct how votes attached to shares credited to their accounts are cast, is a pre-requisite to facilitating cross-border voting?

2. If so, do you agree with the following proposal, based on the works of UNIDROIT: *"the legal or natural person that holds a securities account for its own account shall have the right to determine how votes attached to shares credited to its securities account are to be cast"*? Please give your reasons.

Over 60% of the respondents consider that granting 'ultimate investors' at EU level a legal, enforceable, right to direct how votes attached to shares credited to their accounts are cast, is not a pre-requisite to facilitating cross-border voting.

Of these respondents, some oppose the concept of ultimate investor as such, at any rate at EU level. According to these respondents, defining the ultimate investor at EU-level is a near impossible task because of the diversity of share ownership in the EU. A 'one-size-fits-all' definition, in their view, would be impracticable, increase administrative costs and result in little more than additional red tape for issuers. Others consider that giving the ultimate investor a formal voting right would intrude unnecessarily in the contractual relationship between investors and intermediaries.

About a third of the respondents who do not regard the definition of the ultimate investor as a priority or a pre-requisite to facilitating cross-border voting, nonetheless consider that work towards such a definition should be pursued on the medium to long term, as part of the work currently under way on clearing and settlement issues.

About 30% of the respondents to the consultation consider that defining the ultimate investor is a pre-requisite to facilitating cross-border voting. In their view, granting the ultimate investor a legally enforceable right to vote is the only way to ensure that it actually is the risk bearer who votes. This, in their opinion, cannot just be left to contractual relationships. Further, such a definition would increase transparency and legal certainty, and avoid double voting and conflicting claims with regard to voting. Some respondents also regard the definition of the 'ultimate investor' as the cornerstone of modern company law, as the current 'shareholder' concept, in their opinion, no longer guarantees that the voter is the person actually holding the financial interest in the shares he/she votes on.

Slightly less than half of all respondents, including the respondents who did not regard the definition of the ultimate investor as a pre-requisite, commented on the draft UNIDROIT definition. A majority of these respondents supports this definition, though some respondents consider it merely as a 'good starting point'. Others find the definition too restrictive, on the ground that it ignores the fact that securities may still be held physically and not necessarily in an account or that it excludes registered shareholders. A number of respondents consider that the definition of the ultimate accountholder proposed by the Winter Group (and submitted in the first consultation document) is a better definition, even though it may have to be simplified.

3. STOCK LENDING AND DEPOSITARY RECEIPTS

3.1. Stock lending

Do you agree with the following minimum standard? If you do not agree or agree only partially, please give your reasons.

1. Agreements providing for the temporary transfer for consideration of shares shall contain provisions informing the relevant parties to the agreement of the effect of the agreement with regard to the voting rights attaching to the transferred shares.

2. Where an intermediary enters into such an agreement in relation to shares which the intermediary holds on behalf of another person, or which are held in a securities account in the name of another person, the intermediary shall, prior to entering into the agreement, duly inform that person or its representatives of its intention to enter into such an agreement and the effects of the agreement with regard to the voting rights attaching to the relevant shares.

Just over half of the respondents to the consultation paper agree with the proposed minimum standard, though a significant number of them add that the information duty should not relate to each stock lending agreement but should be considered as being

fulfilled if the effects of stock lending are described in the framework lending agreement. Others consider that the non respect of this minimum standard should not affect the validity of the stock lending agreement.

A number of respondents, who agree with the proposed minimum standard, nonetheless argue that transparency is needed not only towards the lenders of the stock, but also towards the issuer and the market. Thus, borrowers of stock should inform the issuer and the market that they have borrowed the stock on which they vote. A number of respondents argue that the names of borrowers of registered shares should be entered on the shareholders' register. Such transparency would contribute to prevent abuses, though - others argue - abuses would be further prevented if dividends were paid at some other time than around the time of the General Meeting, as this would *de facto* make stock lending around the time of the General Meeting less attractive.

Over a third of the respondents to the consultation paper disagree with the proposed minimum standard. Many of these respondents do not oppose the substance of the proposed minimum standard, but consider that stock lending is not a matter for regulation and should rather be left to contract and/or codes of conduct. This, in their view, would be sufficient because investors lending and/or borrowing stock often are professional investors who are fully aware of the effects of stock lending. A number of respondents, who do not believe that regulation in this field is appropriate, consider - like some of the respondents who support the minimum standard (see above) - that, any binding rule, if any, should provide that lenders of stock need not be informed in every agreement of the effects of stock lending but that a provision in the master agreement alone is sufficient.

3.2. Depositary receipts

Do you agree with the following minimum standard? If not, please give your reasons.

Holders of depositary receipts shall alone have the right to determine how the voting rights attached to underlying shares represented by depositary receipts are exercised.

Just under two thirds of the respondents to the consultation support the minimum standard, a quarter oppose it and others do not express any opinion. It should be noted, however, that respondents often qualify their opinion.

The majority in support of the minimum standard consider that the right to vote should lie with the 'ultimate investor'. In other words, the 'ultimate investor' should not be deprived of the voting right attaching to the underlying shares, especially when he/she/it is given no other choice but to hold depositary receipts ("DR"). On the contrary, the ultimate investor alone should have the right to determine how votes attaching to the underlying shares are cast. Consequently, these respondents argue, the depositary should not be able to vote on the shares without instructions or a proxy given by the DR holder, unless, some argue, the DR holder has given the depositary such discretion.

Many of the respondents, who support the standard on substance, nonetheless believe that the standard, as proposed, may prove difficult to implement. The main reasons given

are that shares and DRs do not always equal 1:1 and the DR holder often is a custodian and not the ultimate investor. Some respondents argue that the standard should be worded differently to take account of the fact that the depositaries are the formal shareholders and, therefore, legally hold the voting right. The standard should require Member States to prohibit depositary receipt agreements which (1) place the voting right at the sole discretion of the company, (2) preclude DR holders from exercising the voting rights attached to the underlying shares or (3) allow the company to exercise these rights when DR holders have not voted.

The majority of those respondents who oppose the suggested minimum standard argue that depositary receipts are, and should remain, a matter for contract. In their view, investors who acquire depositary receipts are aware that these are not shares and should carry out their own due diligence. Others argue that issuers should remain free to award voting rights to depositary receipts. Some respondents warn that the imposition of constraints on voting rights with regard to depositary receipts risks causing the depositary receipt activity to migrate outside the European Union and argue that this matter, therefore, should be left to industry codes of conduct.

4. PRE GENERAL MEETING COMMUNICATIONS

- **Notice periods for convening a General Meeting**

Do you agree with the following minimum standards? If not, please give your reasons

1. Annual General Meetings of listed companies shall be convened on a first call with no less than 21 business days' notice.

2. Other Shareholders' Meetings shall be convened on a first call with no less that 10 business days' notice.

An overwhelming majority of respondents welcome the suggestion to introduce one set of minimum notice periods throughout the EU (less than 10% of respondents object to any minimum standard in this respect).

However, respondents, by an almost similar majority, consider that the standard, which is suggested in the consultation paper, should be amended. Respondents, in general, make two comments:

(1) The standard should refer to calendar days, not business days, because the latter differ from one Member State to the other.

(2) There should be one and the same minimum notice period for all General Meetings, AGMs and other General Meetings alike (extraordinary, special, etc). In particular, many respondents express their opposition to any shorter notice period for Extraordinary General Meetings, arguing that the business submitted to EGMs often is of strategic importance, so that shareholders need more - not less - time to consider the information provided to them ahead of the meeting. Some

add that 10 business days' notice, in any event, is too short a period to make it possible for non resident shareholders to cast an informed vote.

As regards the length of the minimum notice period, respondents generally consider 4 weeks as an appropriate notice period, whether they describe this period as "a month", "28" or "30 calendar days", "20" or "21 business days."

A minority of respondents argue that this period should apply to the announcement of the General Meeting only, not to the notice, agenda and accompanying documents. It should be noted, however, that many Member States do not distinguish between the "GM announcement" and the "GM notice". Other respondents consider that the deadline should not be set by reference to the date of the General Meeting but by reference to the issuer's deadline for receiving distance votes and proxies. This only, in their opinion, can assure non-resident shareholders that they will have sufficient time to cast an informed vote.

- **Content of the notice**

Do you agree with the following minimum standards? If you do not agree or agree only partially, please give your reasons.

Any notice convening a General Meeting shall at least:

- indicate precisely the place, time and agenda of the meeting and give a clear and precise description of participation and voting procedures and requirements for voting at the General Meeting. Alternatively, it may indicate where such information may be obtained.

- indicate where the full, unabridged text of the resolutions and the documents intended to be submitted to the General Meeting may be obtained.

An overwhelming majority of respondents to the consultation supports the introduction at EU level of a minimum content for General Meeting notices, though many respondents comment on the proposed standard and suggest it be amended in some respect.

As regards the content of the notice itself, some respondents consider that the minimum standard is not sufficient. Suggestions are made to add to the minimum content of notices a mention of the record date, the last registration date, the kind of securities eligible to participate in the vote, the nominal value of the issuer's capital, and - some add - a short explanatory memorandum for each resolution. Other respondents argue that the issuers' explanation about participation and voting procedures should be limited to those aspects which are contained in the company's by-laws. Issuers, in their view, should not have to restate the applicable legal provisions, which are outside their control, but could indicate where these may be accessed.

As regards the resolutions and documents to be submitted to the GM, a number of respondents argue that the full text of the resolutions should be sent directly to shareholders. Mere availability, be it electronic, would not be sufficient. Others consider that documents should only have to be provided where national law requires it. It is also

argued that some documents can be very long, notably in the case of mergers, and should not have to be provided in full text.

As regards the suggested alternative that the notice may only indicate where the GM information may be found, the comment most commonly made was that such location must be a website, as any physical location would undermine the very purpose of the minimum standard, which is to ensure the easy availability of documents for non-residents.

- **Information relevant to the General Meeting**

> **Do you agree with the following minimum standard with regard to the time at which GM-related documents should be made available? If not, please give your reasons.**
>
> ***The full text of the resolutions and documents related to the agenda items and intended to be submitted to the General Meeting shall be made available at the latest 15 business days before any Annual General Meeting, and at latest 10 business days before any other General Meeting.***

About 80-85% of the total number of respondents to the consultation welcome or do not oppose EU minimum standards in relation to the availability of the information relevant to the General Meeting. Yet, an almost equal majority disagree with the suggested minimum standard as drafted in the consultation paper. About 5% of the respondents are opposed to an EU intervention, or at any rate, to a directive dealing with such aspects.

Most respondents reject the proposed deadlines. The comment most frequently made is that the documents relating to the General Meeting should be available on the day on which the notice of the General Meeting is issued. The resolutions made available on that day would only be those proposed by the company's management, while shareholders' motions could be subject to a tighter deadline. Respondents often add, in line with their responses on the minimum notice periods, that the deadline for making the General Meeting documents available should be the same for all General Meetings. Many respondents find the deadlines proposed in the minimum standard too short *per se*.

A number of those respondents who do not oppose the proposed deadlines suggest that, in light of the fact that these deadlines are rather short, web publication of the documents should be deemed sufficient.

Other comments relate to the content of the information to be made available. Some respondents state that minimum standards should also cover the minimum level of information to be provided. This should include, for the AGM, the annual report and the corporate governance statement[41] Others mention that the information should be in such a form that it can be easily understood by shareholders. In particular, the board should always provide an explanatory memorandum and a voting recommendation for each

[41] The proposed directive amending the 4th and 7th company law directives, currently before the European Parliament, imposes on EU issuers the obligation to publish a yearly corporate governance statement.

resolution. As regards resolutions on the remuneration and appointment of directors, the minimum standard should provide that full information is to be given to shareholders ahead of the GM to enable shareholders to cast informed votes.

- **Dissemination, and language, of the meeting notice and materials**

> **Do you agree with the following minimum standard? If not, please give your reasons.**
>
> ***Any notice convening a General Meeting and any document intended to be submitted to the General Meeting shall be made available in a language customary in the sphere of international finance, unless the General Meeting decides to the contrary.***

Responses in favour and against the suggested language regime are almost evenly split, and more than 15% of the respondents to the consultation do not express any opinion.

The majority of those respondents who oppose the suggested minimum standard on principle consider that the decision to translate General Meeting notices and any other document relevant to the General Meeting should be left to issuers. The main reason, respondents argue, is that any translation obligation would expose issuers to excessive costs. In their view, therefore, the minimum standard should be expressed as an "opt-in", rather than as an obligation of which issuers may "opt-out". Some respondents consider that shareholders holding a certain fraction of the issuer's share capital could be given the right to request a translation.

Other respondents, who do not support the suggested minimum standard but do not oppose the principle of a translation obligation, consider that such an obligation should only apply to the meeting notice and agenda, and should not extend to the other GM documents, for cost reasons. A few other respondents, though a minority, consider that the minimum standard should be stronger: in their opinion, the translation of GM notices, resolutions and documents should be compulsory for all issuers, without any opt-out.

Most of those respondents who welcome the suggested minimum standard do so provided it refers to a translation and does not seek to replace existing issuers' languages through a "language customary in the sphere of international finance". Others consider that multiple legally binding versions of the same documents should be avoided and, therefore, that only the documents in the issuer's language should be legally binding. Another remark that is made is that any obligation to translate should be limited to the documents emanating from the company and should not extend to documents put forward by shareholders.

5. ADMISSION TO THE GENERAL MEETING - SHARE BLOCKING

Do you agree with the following minimum standards? Please give your reasons.

1. Provisions making the right to vote in a General Meeting conditional, or allowing the right to vote to be made conditional, on the immobilisation of the corresponding shares for any period prior to the Meeting shall be abolished.

2. The right to vote at the General Meeting of a listed company shall be made conditional upon qualifying as a shareholder of that listed company on a given date prior to the relevant General Meeting.

The proposal to abolish share blocking in the EU is supported by an overwhelming majority of respondents (85%, with only 6% of respondents opposing the proposal). Almost all of these respondents also agree that share blocking should be replaced by a record date system. Many of the supporters of a record date system, however, stress that a record date is an appropriate solution only for bearer share systems. For registered shares, some respondents propose instead to address the issue of re-registration requirements which, in their view, make voting more costly and increase the risk that votes fail to reach the General Meeting in time. Some respondents, furthermore, suggest to clarify the fact that the qualification as a shareholder on the record date not only leads to recognising the right to vote in the General Meeting but also to exercise all other relevant rights (in particular also to appoint a proxy or to ask questions).

Roughly one third of the replies also take a position on the determination of the record date.

Almost half of these replies emphasise that the record date should be as close to the General Meeting as possible in order to reduce the risk that too many shareholders sell their shares between the record date and the day of the General Meeting and are not longer shareholders on the day of the General Meeting. The proposals for a record date rank from 2 to 5 business days before the General Meeting, with a majority expressing a preference for a record date 3 days before the meeting, referring to the usual short settlement cycle. In this context, several respondents stress that it would be necessary to take additional harmonisation measures in order to allow for a smooth functioning of an EU-wide record date system. Such measures would include the harmonisation of the transfer of property in shares and the qualifications needed to register as a shareholder.

Another group of respondents (about 20% of those who express an opinion on this issue) favour a considerably longer period between record date and General Meeting. They argue that sufficient time is required for intermediaries to channel the information in a cross-border context, for issuers to verify the voting entitlements, and for investors to ask for additions to the meeting's agenda and take their decisions. This group supports a record date set between 10 business days and 30 calendar days before the General Meeting.

A third group (again about 20% of those who express an opinion on this issue and roughly 10% of all respondents who express themselves in favour of a record date) takes the view that the record date should not be determined at EU-level, but by Member States or even be left to issuers. The directly opposite view, *i.e.*, that the record date not only be determined at EU-level but even in a possible directive itself, is expressed by another group. Finally, for some respondents, the appropriate compromise would consist in only fixing a maximum record date at EU-level (proposals ranking from 7 to 2 days before the General Meeting). The exact determination should then be left to the Member States and/or the issuers in order to take account of the differences between national systems (in particular the fact that in some Member States issuers are under the obligation to "push" information to investors – which is time consuming, whereas in others they are only obliged to make it possible for investors to "pull" the information themselves from their websites etc).

At a more general level, a number of respondents draw attention to the fact that the determination of the record date depends on the technical possibilities, in particular in a cross-border context not only within Europe but also taking into account third country investors. Sufficient flexibility is required in order to allow for an easy adaptation to new technical developments. Furthermore, several respondents point to the need to co-ordinate any proposal for a record date system with other works going on in the area of clearing and settlement.

The minority of respondents, who oppose the abolition of share blocking, argue that share blocking is the only method that guarantees that only shareholders are admitted to the General Meeting. Abolition of this requirement would make the organisation of a General Meeting much more difficult. These respondents, in general, see in the reconciliation system (requirement to deposit shares but possibility to sell them subject to a subsequent reconciliation of the voting rights) an appropriate means to overcome the current problems associated with share blocking.

6. SHAREHOLDERS' RIGHTS IN RELATION TO THE GENERAL MEETING

6.1. Electronic participation in General Meetings

Do you agree with the following minimum standard? If not, please give your reasons.

Member States shall remove existing requirements, and shall not impose new requirements, that act or would act as a barrier to the development of the participation of shareholders to the general meeting via electronic means.

More than 80% of the respondents to the consultation support the suggested minimum standard, some 7% oppose it, and others do not reply to the question.

Some of those respondents who support the suggested minimum standard nonetheless qualify their support. The comment made most often (almost half of all comments) is that Member States should remain free to impose such constraints as may be necessary to ensure shareholder identification and the security of electronic participation. Such

constraints should not be considered as 'barriers'. One respondent, however, warns that security, though important, should not be taken as a pretext to hinder electronic means.

Another frequent remark is that the standard should not refer to 'electronic participation' but to 'electronic voting'. Indeed, it is argued, there is a more pressing need for adequate means of voting in absentia and for the electronic appointment of proxies, than there is for electronic participation.

The third most frequent comment is that electronic means should remain an option for issuers. Some respondents also stress the importance of actual meetings (vs. virtual meetings). Lastly, a small number of respondents consider that the minimum standard should not refer to 'electronic means', which could prove exceedingly limited with time and the evolution of technology, but rather to 'attendance without physical presence'.

The very small minority who opposes the suggested minimum standard mainly argues that the standard is not sufficiently ambitious. Issuers, so these respondents, should be obliged to offer electronic facilities, especially electronic voting. Another comment is that the minimum standard is too strict, because it would not leave any room to Member States to impose necessary requirements, *e.g.*, to promote the use of a particular standard for electronic voting and/or participation.

6.2. Right to ask questions

Do you agree with the following minimum standard? If not, please give your reasons.

Shareholders shall have the right to ask questions at least in writing ahead of the General Meeting and obtain responses to their questions. Responses to shareholders' questions in General Meetings shall be made available to all shareholders.

The above principles are without prejudice to the measures which Member States may take, or allow issuers to take, to ensure the good order of General Meetings and the protection of confidentiality and strategic interests of issuers.

About two thirds of the respondents to the consultation support or do not object to a minimum standard on the right to ask questions, though most respondents consider that the suggested minimum standard should be modified in some respect. About a quarter of the respondents oppose the minimum standard in principle. Other respondents do not reply to this question.

The majority of respondents, who support or do not object in principle to a minimum standard granting a right to ask questions in writing, nonetheless warn of the risk of abuse. They stress, therefore, the need to monitor or limit such a right so as to mitigate the risk of legal disputes and avoid that General Meetings are swamped by shareholders' questions. The main suggested limitations to the right to ask questions are that questions should relate to the agenda of the relevant General Meeting, be asked several days in advance of the General Meeting and that the issuer or the Chairman of the Meeting

should have discretion not to answer certain questions (notably when these are vexatious or defamatory) and/or aggregate similar questions. Some respondents add that the right to ask questions should be given only to shareholders who hold a minimum percentage of voting rights. Some other respondents see the availability of responses to all shareholders as potentially costly and increasing the risk of legal challenges.

A few respondents consider that the suggested standard should not be restricted to 'written' questions but should refer to questions asked by all available means, in particular, by electronic means, though others consider that such means should only be open to shareholders who have identified themselves.

Respondents, who oppose the suggested minimum standard in principle, do so for essentially two reasons. Some consider that such aspects are not to be regulated at EU level. Others regard the principle of the oral debate in the General Meeting as essential. This principle, in their view, requires that questions are actually asked in the General Meeting. It, therefore, requires that non attending shareholders ask their questions via their proxies during the meeting. Any possibility to ask questions directly in writing in advance of the General Meeting, in the opinion of these respondents, would undermine the principle that the General Meeting actually has to take place.

6.3. Rights to add items to the agenda and table resolutions

Do you agree with the following minimum standard? If not, please give your reasons.

1. Shareholders, acting individually or collectively, shall have the right to add items on the agenda of General Meetings and table resolutions at General Meetings. Such rights may be subject to the condition precedent that the relevant shareholder or shareholders hold a minimum stake in the share capital of the issuer.

2. Such minimum stake shall not exceed 5% of the share capital of the issuer or a value of € 10 million, whichever is the lower.

3. Such rights must 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.

Three quarters of the respondents support the suggested minimum standard in principle, though most of them consider that some aspects – mainly the suggested thresholds – are not satisfactory. About 10% are opposed to any such standard and the other respondents (about 15%) do not reply to this question.

The respondents who express support usually agree with the principle expressed in paragraph 1 of the suggested minimum standard. However, views diverge with regard to the proposed thresholds.

Views are split with regard to the suggested 5% threshold. A significant number of respondents find such a threshold too high, especially for private investors and propose

alternatives, which usually are in the range of 1-2%. Other respondents, who do not necessarily oppose a 5% maximum threshold, nonetheless suggest that an additional threshold be introduced to enable small shareholders to collectively put agenda items forward. Such a threshold could be "100 shareholders with an average holding worth at least €100". A few respondents consider, on the contrary, that 5% is too low and suggest that the maximum threshold be raised to 10%. Aside from the debate on the appropriateness of the suggested 5% threshold, another remark made is that the threshold should refer to a holding of the voting share capital, not of the share capital.

Similar remarks are made with regard to the threshold expressed as a holding value (€10 million). Again, views diverge with regard to the level of such a threshold, some finding it too high and some too low. But the strongest trend in the responses is that such a value threshold is unworkable, or at least, that the standard needs re-drafting on this point. Many of these respondents indicate that, unless provided otherwise, the 'value' of listed shares is understood as 'market value', which constantly fluctuates. Should a threshold of this kind be maintained, it should be expressed as a nominal value of shares.

Another comment made by several respondents is that the minimum standard should provide for an actual deadline for submitting items, rather than only provide that these should be submitted 'sufficiently in advance'. According to some respondents, this deadline should be set by reference to the last date for the publication of the General Meeting notice (rather than the day of the General Meeting itself) and should be ideally some 7-10 days following that date. Another suggestion is that requests for amendments to existing agenda items and requests to add new items be treated differently.

Lastly, some respondents consider that a minimum standard should impose the obligation on the issuer to circulate shareholders' items to all shareholders.

Those respondents who oppose the minimum standard either oppose any EU standard on this point or consider that no threshold is needed at all, as is the case in some Member States (without any abuse by shareholders). A suggestion is also made that the standard should not contain maximum thresholds, but minimum thresholds, which, it is argued, alone can bring about any harmonisation in this field.

6.4. Voting

- **Voting by correspondence**

Do you agree with the following minimum standard? Please give your reasons.

1. Member States shall ensure that shareholders of listed companies have the possibility to vote by correspondence.

2. Member States shall remove existing requirements, and shall not impose new requirements, on companies which hinder or prohibit voting by electronic means at General Meetings.

The majority of respondents express support for the principle that shareholders should have means to vote in absentia, though the suggested minimum standard triggers a number of comments.

In particular, it is often indicated that 'correspondence' should not be limited to postal ballot but should include all means of voting in absentia, in particular by electronic means, as well as electronic proxy appointment and voting. This, in turn, requires adequate measures to protect the security and integrity of electronic voting. Such necessary protective measures should not be considered as 'barriers' to electronic means. It is often added, though, that such measures should be proportionate so as not to create any artificial obstacle to electronic voting.

A number of respondents, while agreeing with the suggested standard, nonetheless consider that issuers should not be under any obligation to offer electronic voting facilities, but should freely decide whether to do so. This point is also made by many of those respondents who object to the proposed minimum standard.

But the point most frequently made by opponents to the suggested standard is that there is no need to offer any facility to vote by correspondence, because proxy voting is a valid -cheaper - alternative. What should be done, according to these respondents, is to promote electronic proxy voting and appointment, not electronic voting which is incompatible with a principle strongly established in some Member States that votes can only be cast during the General Meeting, (*i.e.*, not in advance of the General Meeting). Other respondents oppose the minimum standard because they find it insufficiently ambitious. In their view, issuers should be compelled to offer electronic voting facilities.

- **Proxy voting**

Do you agree with any, each, all, or the following minimum standards? Please give your reasons <u>in each case</u>. In particular, where you believe that certain constraints should be maintained, please justify your opinion.

1. Every shareholder shall have the right to appoint any other natural or legal person as a proxy to attend any General Meeting on his behalf.

2. No constraint or limitations shall be imposed other than provisions relating to the legal capacity of the person. In particular, there shall be no limitations on the persons who can be appointed as proxies and on the number of proxies any such person may hold.

3. Shareholders shall not be prevented from appointing their representatives by electronic means.

4. Persons appointed as proxies shall enjoy the same rights to speak and ask question in General Meetings as those to which the shareholders they represent are entitled.

5. Issuers shall not themselves collect proxies in advance of General Meetings but shall entrust independent third parties with such collection.

6. All votes cast on each resolution submitted to a General Meeting shall be taken into account, irrespective of the means by which the votes are cast.

Do interested parties consider that it would be appropriate to set up an EU proxy form that would have to be accepted by all issuers in all Member States while not excluding the use of other formats allowed for under Member States' laws?

Responses to this question show an overwhelming support for minimum standards 1, 2 and 4 (more than 80%) and a strong support for minimum standards 3 and 6 (more than 65%). A majority of respondents (more than 50%) oppose minimum standard n°5, and there is no very clear support for an EU proxy form (only a relative majority). On average, about 15% of respondents do not reply to this question at all.

Minimum standard n°1 is widely accepted. Yet, a few respondents consider that the standard should be amended to provide that "every shareholder shall have the right to appoint any other natural person or representative of the company as a proxy to attend any General Meeting on his behalf". Another remark that is made is that the standard should be extended to allow for proxies to vote in absentia.

Minimum standard n°2, while widely accepted, attracts more comments, with several respondents considering that some limitations are necessary.

A first line of limitation relates to the number of proxies any one shareholder may appoint. A number of respondents consider that issuers should be able to limit the number of proxies which any one shareholder may appoint, notably to manage General Meeting attendance. Others consider that the rule should be that any one shareholder may only appoint one proxy only in respect of his entire shareholding. But any one proxy should be able to represent several shareholders and consequently, proxies should be able to cast split votes. Some note, however, that such split voting would be incompatible with the right of proxies to speak at General Meetings (as provided in minimum standard n°4).

Another line of limitations relates to the person acting as a proxy. Some respondents argue that certain persons, such as board members, should be excluded because of potential conflicts of interest. Other comments relate mainly to the proxy itself, the validity of proxy appointments, which some respondents consider should be for more than one General Meeting, and the fact that proxies should only act upon clear instructions.

Most of the few respondents, who are opposed to minimum standard n°2, consider that General Meetings are meetings of shareholders which, therefore, should be attended by shareholders only. Consequently, shareholders should only be able to appoint other shareholders as proxies.

Minimum standard n°3 is supported by a strong majority of the respondents (more than 65%). Two comments are usually made. The first comment is that the appointment by electronic means should be subject to adequate security and authentication provisions.

The second comment is that the reference to 'electronic means' is too vague (*e.g.*, does it include sms messaging?).

Most of the respondents who oppose the suggested minimum standard (a minority of all respondents) do not necessarily object to electronic proxy appointment *per se*, but consider that issuers should be free to decide whether they accept this mode of appointment. Respondents point to the additional costs which electronic appointment and verification of identity would impose on issuers. Since civil law usually provides that proxy appointment should be in writing, issuers, these respondents argue, should be left free to accept a less burdensome mode of appointment. Another remark made by several respondents is that the burden should not fall on issuers to prove that the proxy is valid. A few respondents also oppose the standard because, in their view, there are risks of malfunction and misuse of electronic means.

Minimum standard n°4 is supported by an overwhelming majority of respondents (more than 80%). About a quarter of these respondents comments on the minimum standard. Two comments are generally made. The first comment relates to the inconsistency between allowing any one proxy, on the one hand, to represent more than shareholder and to cast split votes, and on the other, to speak at General Meetings. Proxies, therefore, should be able to restrict their services to voting only, and shareholders should be able to appoint 'representatives' who would speak on their behalf in the General Meeting but would not vote. The second comment is that any proxy should only have the right to speak at General Meetings if expressly authorised by the shareholder to do so.

Minimum standard n°5 meets the opposition of more than 50% of respondents, who consider this standard as being unjustified, because, in their opinion, there is no real risk in practice that proxies are misused by issuers. At any rate, the cost and burden of outsourcing proxy collection outweighs the risk of undue pressure on the part of issuers. Still, issuers should be free to outsource this task, and shareholders holding a minimum shareholding should be able to request the scrutiny of a poll. A number of respondents argue that advance indication given to the issuer of the voting trend actually is beneficial as it helps avoid public confrontations in the General Meeting. It would actually enhance dialogue and democracy, not the contrary.

More than 30% of the respondents support the minimum standard. Among the few comments made, it is observed that some issuers already outsource this task either to registrars or to financial intermediaries. Others consider that the reference to 'independence' should be explicated.

Minimum standard n°6 is supported by more than 70% of respondents, who consider that all votes should be taken into account irrespective of the way in which they are cast, provided that, however, they are validly cast.

The respondents who oppose the suggested minimum standard usually make one of two arguments:

1- The suggested minimum standard is acceptable only in so far at is refers to votes cast by shareholders and proxies attending the General Meeting. Votes by correspondence should not be counted because they are not cast in the General Meeting.

2- Votes on a show of hands should not be abolished, because they are fast and cheap, and in many instances, the outcome of the vote is clear and does not require a poll.

The proposal for an optional EU proxy form triggers mixed comments. About 40% of respondents consider that it is worth exploring provided the use of the form remains optional. More than 30% consider that it is not a priority and, in any event, that it is not feasible in light of the diversity of requirements existing at national level.

7. POSITION OF INTERMEDIARIES IN THE CROSS-BORDER VOTING PROCESS

- **Definition of intermediary**

> **Do you agree with the following definition? Please give your reasons.**
>
> ***A legal or natural person who, as part of a regular activity, maintains securities accounts for the account of other legal or natural persons shall be considered as an intermediary. An intermediary may also maintain securities accounts for its own account.***

A majority of respondents agree with the proposed definition, at least on principle. Some respondents, however, suggest adding the criterion that the activity has to be pursued in the framework of a business, in order to exclude small share clubs, friends and relatives from the definition. Several respondents, furthermore, point to the importance of ensuring coherence with other legislative acts at EU level. Others consider it necessary to include into the definition, in addition, the requirement that intermediaries are authorised by a public authority, as is currently the case under certain national laws.

A number of those respondents who oppose the proposed definition take the view that the authorization by a public authority should be the main criterion for the qualification as intermediary. Others oppose the definition on the ground that it would not cover shareholder associations. The approach of taking up an element of the UNIDROIT draft is criticised on a more general level by another group of respondents. These respondents consider the recourse to this draft definition as premature as UNIDROIT works are not yet completed or argue that the need for, and the practical benefits of, such a definition are unclear. Several respondents propose that recourse should be made, instead, to terms already employed in existing EU legislation and in the context of ongoing work (CESAME Group).

- **Registration as nominee**

> **Do you agree with the following minimum standards? If not, please give your reasons.**

Whenever an intermediary is registered as a shareholder in respect of shares which he/she/it actually holds for the account of another legal or natural person, a mention should be added in the relevant companies' shareholders registers that such intermediary hold the shares for the account of another person.

About half of the respondents support the proposal. A considerable number of them think, however, that it should be clarified that the obligation to transmit the relevant information to the issuer and, thus, to ensure that such a mention be added, lies with the intermediary (and that issuers do not have to take active measures to obtain the relevant data from the intermediaries). Some respondents, furthermore, point to the need for a clear terminology as the term "nominee" has very specific connotations in some legal systems (in particular with regard to trusts).

However, approximately one third of the respondents oppose any mention of the nominee position in the company's register. For a significant share of these respondents, this view is based on their general opposition to the possibility of registering an intermediary as a shareholder. Some respondents, however, also are concerned about the costs of keeping such a register up-to-date and put the benefit of such a measure into question. Others take the view that companies' registers should be limited to reflecting the legal positions. Underlying material interests, should, if at all, be entered into a separate register which the company could provide for in its articles of association if it so wishes. Another group of respondents, finally, proposes to replace the proposed provision by a right of the issuer to request the intermediary to disclose the investor's name.

- **Being granted a power of attorney**

Do you agree with the following minimum standard? If not, please give your reasons.

Where an intermediary is a shareholder in relation to shares which the intermediary holds for the account of another legal or natural person, that other legal or natural person shall have the right to be given a power of attorney by the intermediary to attend the General Meeting and act at the General Meeting as if he/she/it were a shareholder.

The majority of respondents support the idea that an intermediary's client should have the right to be granted a power of attorney by the intermediary. Several respondents, however, take the view that this right should be left to contractual agreement between the intermediary and its client. Others consider that it would have to be limited to the ultimate accountholder. Some, furthermore, emphasise the need to address the formal requirements for such power of attorney. In their view, a simple letter of representation should suffice, and intermediaries should be able to powers of attorney to several clients, *i.e.*, several powers of attorney, in respect of the same General Meeting.

A relevant number of the respondents reacting positively to the proposal, however, stress at the same time that specific provisions in this respect would not be needed if a possible EU measure provides for enhanced proxy arrangements, as suggested in section VI of the consultation document. This same argument is also put forward by a number of those respondents who oppose the proposal. The majority of the other opponents oppose the

suggested minimum standard because they reject in general the idea of an intermediary being registered as the shareholder. Others, finally, take the view that, given the length of chains of intermediaries, the proposed mechanism would not be workable in practice.

- **Voting upon instructions**

> **Do you agree with the following minimum standards? If you do not agree or agree only partially, please give your reasons**
>
> ***1. Member States shall allow intermediaries to hold shares on behalf of their clients in collective or individual accounts.***
>
> ***2. Intermediaries shall have the right to cast votes upon their clients express instructions.***
>
> ***3. Where intermediaries hold on behalf of their clients shares in collective accounts, they shall be able to cast split votes.***

All three proposed minimum standards are supported by a broad majority of about two thirds, with only about 5% of respondents opposing these proposals.

Opponents to the first minimum standard argue that collective accounts are opaque and are no longer needed since technology would make it possible today for intermediaries to hold their clients' stock in designated accounts, at little extra cost. This view is shared by some supporters of the first minimum standard who emphasize that the use of collective accounts should not be encouraged, since the voting trail is easier to audit when designated accounts are used.

Many of the respondents who support the second proposed minimum standard stress, however, that the standard should be re-phrased to provide for a duty on the part of intermediaries to follow their clients' instructions. The question of the entitlement to cast votes would only be relevant vis-à-vis the issuer.

About a quarter of the respondents supporting the second standard also address the question whether intermediaries should only vote upon their clients express instructions. Here, opinions are split. Half of them consider that intermediaries should never have the right to cast votes unless they hold express voting instructions from their clients. The other half takes the view that intermediaries should have the right to vote on their clients' shares even without specific instructions, provided, however, they have obtained a general authorisation from their clients' and act in their clients' best interests. In this context, one respondent argues that such a general authorisation should not be construed as conferring voting rights on intermediaries for the purposes of disclosing major holdings.

8. COMMUNICATIONS FOLLOWING THE GENERAL MEETING

- **Dissemination of the voting results**

Do you agree with the following minimum standard? If not, please give your reasons

1. Within a reasonable period of time which shall not exceed one month following the General Meeting, the issuer shall make available to all shareholders information on the results of the votes on each resolution tabled at the General Meeting.

2. Such information, which shall include for each resolution, the number of voters, the number of voted shares, the percentages and numbers of votes in favour and against of each resolution and the percentages and numbers of abstentions, shall be posted on the issuer's website.

More than 70% of the respondents to the consultation express support for the suggested minimum standard, just over 5% oppose it. Other respondents do not reply to this question.

The standard gives rise to numerous comments, notably on the part of those respondents who support it. The main comments made are the following:

As regards the period for making voting results available, a significant number of respondents consider one month as being too long. Alternative suggestions range from 'immediately after the General Meeting' to '15 working days'.

As regards the kind of information to be provided, the remark is made that the number of voters is not directly relevant and abstentions often are not counted in the General Meeting itself. Many respondents consider, therefore, that these two pieces of information need not be communicated by the issuer. A few respondents, on the contrary, find the minimum standard insufficiently far reaching and argue that the information provided should extend to the minutes of the General Meeting, which should include the list of shareholders present or represented with their number of shares and voting rights, a mention of the voting rights for which a blank proxy has been given to the chairman and the list of Q&As. It is also suggested that some information should be given about the level of stock lending activity around the time of the General Meeting.

As regards the mode of publication, many respondents stress that issuers should not be under any obligation to send post General Meeting information to every shareholder, *i.e.*, web publication should be deemed sufficient. This is further qualified by some respondents who consider that the website need not be the issuer's website but could be any designated website. A few respondents actually consider that publication on an official website would be more appropriate.

Lastly, a few respondents consider that the minimum standard should indicate the period of time during which information on voting results is to remain available.

9. OTHER SUGGESTIONS

Additional proposals that are made by several respondents concern the establishment of an obligation for intermediaries to pass on information related to a General Meeting to

their clients and to channel back their votes to the issuer, in order to avoid that investors' votes get lost due to a bad functioning of the chain of intermediaries. Some respondents also suggest establishing a central EU database that would give access to information related to the General Meetings of all companies based in the EU in order to facilitate the access to information.

In order to increase participation rates in General Meetings, it is furthermore proposed to introduce an obligation for institutional investors to exercise their voting rights domestically and abroad. Some respondents take the view that it would be useful to state that Member States are free to provide for economic or non-economic incentives for the registration of investors as shareholders, the exercise of voting rights, or for long-term oriented shareholders. Finally, a number of respondents support the introduction of an obligation on custodians to confirm to their clients the execution of votes (an issue, which was addressed in the first consultation paper of DG MARKT).

Finally, there are also proposals from groups of respondents that go beyond the mere objective of facilitating the voting process. Several of them express the view that a proposal on shareholders' rights should also enshrine the "one share – vote principle", i.e. the idea that every share should carry (only) one vote. Another request is that any proposal should include provisions on shareholders' concerted actions, so as to avoid that shareholders agreeing on a voting policy are automatically considered as a result as 'acting in concert'. Such a provision, it is argued, would enhance shareholder activism.

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ANNEX 6: ANSWERS TO THE QUESTIONNAIRE ON COSTS OF VOTING IN THE EU

Q1: Domestic versus cross border 1a: Is cross-border voting more expensive in comparison to domestic voting? By how much (in percentage terms)? 1b: Does such relationship change according to countries? 1c: If this is the case, could you specify by EU country/geographical area?				
Name	**Country**	**Field**	**Answer**	**Comments**
Law office of the Republic, Registrar of Companies, Official Receiver of the Rep.	CY	Public authorities	1a: NO 1b: NA 1c: NA	1a: There are no such particulars kept by the Registrar of Companies and the Official Receiver of the Rep. 1b: They cannot provide any answer 1c: They cannot provide any answer
Ministry of Justice	SV	Public authorities	NA	They do not have any data that enables them to estimate the costs for cross-border voting in comparison to domestic voting
Finnish Central Securities Depository's (APK and FCSD)	FI	CSDs	1a:yes, it can be 1b: the temporary registration procedure does not change according to countries	1a: The holder of a share registered in the name of a nominee may be temporarily entered in the shareholder register for the purpose of participating in a general meeting of shareholders. (Companies Act, Chapter 3a, Section 11a) Finnish custodians act as nominees on behalf of foreign custodian banks. Foreign custodian bank shall furnish nominees with information on the foreign investors who will participate in a company's general meeting. The nominee, i.e. a Finnish custodian bank, shall submit this information to APK, Finnish CSD. The temporary entry has to be made ten days prior to the general meeting (record date). APK as a CSD does not charge either foreign or Finnish custodians for temporary entries in the shareholders' register. However, Finnish custodian banks may charge a fee for temporary entries from the foreign custodian or the issuing company. By law, domestic shareholders are registered in the shareholders' register in their own name.

DEXIA asset management	BE	investment managers	1a: YES 1b/1c: YES	1a: Cross-border voting is more expensive than domestic voting as long as the subcustodians cannot provide an audit trail of the voting. The expenses increase not only due to travel expenses, but also for the required documents/information inquiries in order to allow a proxy to attend the meeting. The cost of the effective registration by the local subcustodians depends on the agreements with the global custodian. In our case, our global custodian determines a fixed price for the markets it covers and does not make a difference between the different countries. For Dexia Asset Management, cross-border voting increases the cost by about 200% compared to domestic voting for most EU countries outside of Belgium (100% travel expenses & 100% administrative costs) 1b/1c : The relationships changes a lot compared to proxy practices that are applied in the different EU countries and the obligation to vote through a proxy of the corporation or be present physically: - Germany, The Netherlands, France: these countries allow voting through a post oriented proxy appointed by the issuer and the votes can be sent over through specific voting instruction forms/internet that allow the ultimate investor to vote in absentia and to limit his administrative and travel expenses. - UK, Ireland: the specific nominee account structure does not allow the ultimate investor if he does not have segregated accounts in his name, to register in his name to attend the meeting. Consequently, voting by proxy voting in absentia is excluded on these markets and physical presence is required. - Other EU Countries: in the other EU countries voting in absentia is not allowed or requires specific administrative procedures (certification of proxy by a notary (Portugal), segregated accounts (Denmark), …) that obliges the ultimate investor to be physically present in order to be able to vote the resolutions of the AGM and to be sure that his vote has been casted.

Bundesverband Investment und Asset Management (BVI)	DE	investment managers	1a: YES 1b: it depends 1c:→	1a: For BVI's member companies, cross-boarder voting is definitely more expensive than domestic voting. Whereas domestic voting is in general free of charge, companies willing to exercise their voting rights abroad have to call upon specialised service providers like ISS, Euroclear or similar bodies. These service providers charge either a flat fee for a "global portfolio" of voting rights or a separate fee for each voting procedure**.** 1b: For institutional investors, the answer to that question depends on the details of proxy voting agreements. Some companies pay to the service provider a fixed amount for the "global portfolio" of voting rights and are, therefore, not affected by divergences in national cost requirements. However, in relationships settled on the basis of single transactions, the differences in voting costs are immediately reflected in the service fees charged by the provider. 1c: In our experience, above-average expenses are attributed to the exercise of voting rights in Sweden and Poland. On the other hand, substandard costs occur on the occasion of proxy voting in the Netherlands and in Austria.
DSW(German shareholders association)	DE	private investors	1a: YES 1b/1c: →	1a: Yes, definitely it is more expensive, because of the interactions of intermediaries such as Clearstream. (Example: If a German shareholder asks to go to a General Meeting of a French company, he has to ask his local bank to send him the ballot. His local bank will regularly forward this demand to Clearstream, unless the foreign company has chosen a German central depositary for securities ("Hinterlegungsstelle") for its German shareholders. For Clearstream's interaction it will charge the bank a fee of € 75,00 irrespective of the number of shares ; the bank will then regularly send an invoice about external costs "Fremdspesen" €75,00 to the shareholder. Due to this deterrent fee structure only a few German shareholders are still interested to vote in person at Annual General Meetings in Europe.) 1b/1c: Clearstream covers the issuance of ballots for all shares of foreign companies including the U.S., unless the foreign company has chosen a German central depositary for securities.
Deutsches Aktieninstitut e.V.	DE	issuers	1a: →	1a: There is not much information available on this topic from an issuers' perspective. Generally, communication with foreign shareholders in relation to a forthcoming general meeting may involve higher costs than communication with domestic shareholders. Obviously, cross-border voting may involve translation costs and legal costs in relation to requirements applicable in different jurisdictions. Further, foreign shareholders who have to travel for attending to a general meeting would, generally, bear higher costs than domestic shareholders. Internet proxy voting would enable investors to vote with substantially lower

			1b/1c: →	costs and would result in higher participation. 1b/1c: We are not aware of any differences between certain countries which are significant from an issuers' perspective. However, cost of communication with foreign shareholders are likely to differ between various countries.
PROXINVEST	FR	proxy voting agencies	/	
NORDEA	NR	financial services providers	1a: YES→ 1b: YES	1a: Yes, if the shares are registered through a custodian, the custodian will charge for the re-registration of the shares from the nominee account to a segregated account as all shareholders must be disclosed to be able to vote. 1b: Yes, as they are more flexible outside EU and USA. We also do voting collection for companies registered in Bermuda and Hong Kong.
CITIGROUP	UK	financial services providers	FRANCE 1a: → 1b: YES Spain / Portugal 1a: NO→ Austria / Switzerland 1a→	FRANCE 1a: Unknown. 1b: YES - Global client go through the ADP system and - Domestic clients who vote through Citigroup. SPAIN / PORTUGAL 1a: No difference as to domestic residents. AUSTRIA / SWITZERLAND: 1a: No difference as to domestic residents.

Standard life investments (confidential response)	UK	investment managers	1a: YES → 1b/1c: /	General Remark: As a Fund Manager it is the custodian who carries the direct cost of vote execution in general and we are not charged separately for this. 1a: Yes. Again, it is the custodian who executes this following our instruction and bears the direct cost. From a Fund Manager perspective, cross border voting is more time consuming than domestic voting because of the additional complexity and, uncertainty caused by voting obstacles generally.
Deutsche Bank	DE	banks	1a: YES → 1b: YES → 1c: →	1a: Yes. For DWS domestic voting is in Germany free of charge. In Europe and across the world we get proxy voting information by IRRC and the proxy voting is executed by Euroclear or similar bodies for which we are billed with on average 75€ per AGM. 1b: YES 1c: More expensive are Sweden and Poland; less expensive the Netherlands and Austria.
Arbaitskreis Namensaktie	DE	issuers	1a: YES →	1a: Cross-border voting is more expensive in comparison to domestic voting but, in many cases, it is not even possible. Cross-border voting is only possible if and when a shareholder - is informed about the upcoming annual general meeting and the proposed resolutions and - is in a legal position to prove to the company that he is a shareholder. Both is impeded in practice in Europe. In brief (**): It is not so much a question of cross-border voting being more expensive but of cross-border voting being almost impossible due to the non-harmonisation of the communication channels across Europe. In order to achieve this harmonisation of communication channels all financial intermediaries should be under an obligation to pass on all communications from the company to its shareholders and from the shareholders to the company. The necessary cost of such transfer should be reimbursed by the company under a best practice and equal treatment rule. - In practice it is also more expensive to vote cross-border since the data-transfer from a foreign shareholder to the company will almost certainly incur bank expenses above the "national" level, i.e. for the data transfer within one member state. If banks are willing to pass on shareholder data they can be expected to charge the shareholders for this "extra service" (from their point of view). Also the exercise of voting rights cross border will be more expensive: Shareholders need a certificate or other proof evidencing to the company their shareholdings. The issuing of such certification or the issuing of an admittance certificate to the AGM may incur a bank charge, which is normally not the case for pure domestic authentications within one member state, esp. not for German banks and German companies. - It is not possible to

				quantify how much more expensive cross border voting is, but one can estimate at least twice the price compared to domestic voting. 1b: There are certainly changes according to countries but even in one country there are big differences between different banks. For example, big French commercial banks would sometimes pass on shareholder information of foreign companies to their bank account holders. The situation is similar vice versa, i.e. big German banks with customers who are shareholders of French companies. Most of the smaller German banks would not pass on information about French companies to their account holders in Germany. This may be due to the fact that no harmonization exists across Europe with regard to covering the costs of this communication. In some countries we even have no evidence at all of banks passing on shareholder communication. 1c: One of the best international communication channels are unfortunately not within the European Union but between Germany and Switzerland. Communication between Germany and France or Belgium or the Netherlands happens some times. We cannot say anything about the ten new member states. Between Germany and UK we have made the experience that large institutional shareholders will be informed about the AGM but only because they use different means of communication, for example they check the announcements from the websites of the blue chip companies.
Volkswagen AG	DE	issuer	1a: → 1b: YES → 1c: →	1a: For German companies applies: No, if the shareholder only wants to cast his vote. Yes, if the shareholder wants to be physically present and to have a personal view of the GM. In this case he must travel and if necessary stay overnight. 1b: Yes, as far as one has to travel and to stay overnight. 1c: United Kingdom has the highest overnight staying costs; other EU States are farther situated.
BASF AG	DE	issuer	1a/1b/1c: →	1a: Regrettably we have no information available on this topic. 1b/1c: See answer 1a.
Fortis/ Radobank	NL	banks	1a: YES→ 1b: YES → 1c: →	1a: Yes, cross-border voting is more expensive than domestic voting. 1b: Yes. 1c: The cost per instruction varies between € 15,00 (UK) and € 250,00.
ABN AMRO	NL	bank	1a:	1a: The proxy voting agent does as such not make a difference between domestic and cross border voting. The custodian charges additional cost for proxy voting in some member states. 1b: Yes, in some countries (sub) custodians charge additional costs. 1c: Scandinavian countries.

ROBECO	NL	asset managers	1a:	1a: Voting is more expensive in some countries than in others. This has to do with local taxes (like in Japan), the obligation to attend the meeting in person, tariffs set for attending the meeting (differs per custodian) and with the necessity to issue and annually renew a notarised power of attorney. As a consequence some of our clienst do not wish Robeco to vote on their behalf in the Scandinavian countries. 1b: There is a big difference in the costs that custodians charge us. Because we work with different custodians we have different tariff schedules. Tariffs are negotiable and bargaining power depends on other business done with the respective custodians. 1c: I have attached (see Excel file (§) a separate cost schedule per country for your comparison. The costs are a combination of those aimed at under this question an question 4. The custodians are made anonymous.
A sample of Dutch listed companies, a Dutch intermediary, a Dutch electronic voting bureau, the Dutch Shareholder Communication Channel	NL	issuers, financial intermediary, electronic voting bureau	1a: →	General Remarks: The Dutch listed companies noted that the questionnaire focuses on costs involved with cross border voting and practical restrictions for voting, such as blocking of shares, availability of information and national protection rules. In our view, these issues are not the main impediments for cross border voting. The primary reason why cross border voting is problematic, is that it is often unclear who is entitled to vote or should have the right to determine how the votes are executed. (∞) 1a: - The Dutch listed companies noted that in a cross border situation an authentication trail through the chain of intermediaries is required to establish the way the holder of the shares is able to (instruct to) vote. This process will take some time and effort and will therefore generally be more costly than domestic voting. - A Dutch intermediary noted that it is not possible to give an estimate because all European countries as well as the sub custodians have their own different rules and regulations and differ enormously. Additionally sub custodians and CSDs charge fees for cross border voting. - A Dutch electronic voting bureau noted that the costs will differ to a large extent based on the authentication trail mechanism. If authentication can only be accomplished by involving the whole chain, costs will increase because each intermediary is involved creating a cost of complexity. This will also serve as an impediment to actually making cross border voting work (the more entities that need to be involved the greater the chance that even if the legislation is passed, there is no system available to actually implement the legislation as the legislation has imposed requirements that are too complicated). Authentication must be complete and secure to eliminate any danger that the stock is voted twice, but there are more cost effective ways of ensuring this. 1b/1c: A Dutch intermediary noted that in Switzerland and the UK this is almost a fully automated process, no physical attendance is required and free of charges. In Spain, Italy, Finland (and also the Netherlands) physical attendance is required and this will make the voting process very expensive. - A Dutch electronic voting bureau noted that based on the nature of the process the answer is “no”. Based on how similar services are charged differently in each European country, the answer is yes. (for example: the cost of having a checking account is different

			1b/1c: →	in each European country). The key cost item that is different, is the cost that is made by a voting service to obtain the verification of the shareholder position either from the company (registered shares) or from the bank/custodian (bearer shares). If a shareholder is given the right to demand from his bank/custodian (bearer shares) or the company (registered shares) a proof of shareholder ownership together with the number of shares that are owned, than the responsibility to provide the information has been better defined, but the issue of who pays for the costs is still outstanding. The costs that are made to provide this proof of share ownership can be borne by the shareholder, the bank or the company. Given the belief that shareholders should exert more influence to improve the governance of companies, there should be a bias to let companies pay any costs for shareholders that wish to vote, in the same way that companies bear the costs for organising an AGM. By obliging banks to publish the fees that they charge to companies for this service if bearer shares are involved (if they charge companies and not their own clients), a retroactive control is realised so that regulatory authorities can correct for "obvious overcharging".
Dutch Corporate Governance Research Foundation for Pension Funds (SGCOP)	NL	research foundation		General Remarks: We have strongly supported the earlier aim of the EU to strengthen checks and balances of companies by inducing shareholders to become more involved. In this respect these shareholders - and institutional investors in particular - are encouraged to use their voting rights. Inevitably this means that all impediments to such use should be lifted. As institutional investors we see two main impediments: 1) the practice of share blocking, and 2) the inconsistency, intransparency and ineffectiveness of the various cross-border proxy voting facilities across the EU. We believe the goal of strengthening checks and balances cannot be achieved if these two problems are not at least solved in a practical manner. Such a solution is in our view a prerequisite for a stronger corporate governance in Europe. Due to the practice of share blocking investors may lose valuable returns if they vote all their shares. This problem is not to be underestimated. As long as shares are blocked, they can not be traded nor can they be lent to other market participants. The returns lost can go up to several basis points. Some investors try to work out some form of solution in order to maximize the number of shares voted with a minimum of costs. This can lead to approximately 50% of the shares voted in the relevant markets and the other 50% unvoted. Many investors however simply await better regulation and will not – or only in exceptional cases - vote their shares in "blocking markets". The lack of a clear and transparent cross-border voting system leads to often hopeless bureaucracy and substantial additional costs. These costs stem from the extra manpower and other resources required to "get a vote through". Even for large institutional investors which are very dedicated to their governance responsibilities it is difficult to justify these costs. It also places a burden on the effectiveness of their staff in other areas of governance: their time is disproportionately taken by the burdensome handling of cross-border proxy voting procedures. It is hard to pin

			1a: → 1b: → 1c: →	point the exact costs involved, but it is illustrative that for most of the smaller investors the expected benefits simply do not outweigh the costs. 1a: See General Remarks. 1b: The costs are higher in "blocking markets". See the General remarks above. 1c: See 1b. The costs related to share blocking are relevant in all countries that apply this requirement.
CalPERS	US	pension fund	1a: NO 1b: NO	1a: NO 1b: NO

(**)

a) Very rarely shareholders will be informed by their domestic banks with which they hold bank accounts about annual general meetings of companies which are domiciled in another country in the European Union. A difference can be seen between registered shares and bearer shares.

aa) A company with registered shares would inform its shareholders directly, if it has the necessary shareholder data on its register. Unfortunately in practice only domestic banks would submit the necessary shareholder data to the company so they can be included in the share register and be used for communication with shareholders. Non domestic banks would normally not and in practice almost never submit shareholder data to the company, partly because of technical reasons: To submit shareholder data it is necessary to use electronic interfaces which are streamlined according to domestic standards only. If for such technical reasons a foreign bank is not able to register its clients with a shareholders' register abroad, it should at least register itself as a nominee, which is much easier than to register a multiple of clients. Then the company will be able to deliver electronically AGM-announcements and proxy information to the nominee bank which can pass on this material electronically or in paper form to its clients. Furthermore such nominee can gather proxies from its clients and register these proxies with the company by electronic means. As the nominee itself is entered in the shareholders' register the authentication process goes without saying.

If the company does not know those shareholders it cannot inform those shareholders of the annual general meeting.

bb) For such "hidden" foreign shareholders and also for shareholders of companies with bearer shares communication must pass through the banks with those shareholders hold securities accounts. From a German company's perspective it seems rare that non German banks in the European Union would inform their clients about annual general meetings of German companies. Only big commercial banks would inform their clients. This is twice regrettable, since shareholders will not be informed about the AGM, and also banks would recover their expenses from the company under

German corporate law which provides for an expense reimbursement for the transfer of shareholder information from the company to its shareholders.

(§)

Worldwide: appr.12% of our votes are lost due to share blocking

	20%	Of all our (worldwide) votes we estimate 20% to be share blocking
Lost:	8%	In share blocking cases we estimate 40% will not be voted at all
Lost:	2%	In shareblocking cases we estimate 20% will be partially voted for 50%
Lost:	2%	In shareblocking cases we estimate 40% will be partially voted for 80%

Europe: appr. 30% of our votes are lost due to share blocking

	50%	Of all our European votes we estimate 50% to be share blocking
Lost:	20%	In share blocking cases we estimate 40% will not be voted at all
Lost:	5%	In shareblocking cases we estimate 20% will be partially voted for 50%
Lost:	4%	In shareblocking cases we estimate 40% will be partially voted for 80%

(∞)In cross-border situations an investor in European listed companies holds its shares via a bank account in another country than where the company is registered (e.g. a French investor holding securities in a Dutch company via a French bank account). Even if an investor votes on shares in a company that is based in the same country as where the investor is based, a cross-border voting situation may exist. This is for example the case if a Dutch investor for cost reasons holds securities in a Dutch company via an UK bank account. In practice, shares are typically held through chains of intermediaries. These cross-border chains cause particular problems in the determination of the entitlement of shareholders to exercise the voting rights on shares held through the chains, and actual voting by such shareholders. We like to stress that the rights and obligations of accountholders and securities intermediaries in the securities holding systems in Member States should be regulated at EU level to solve this problem.

In this respect we wonder whether the suggestion made by the European Commission in the consultation document on fostering an appropriate regime for shareholders' rights, to define the person entitled to control the voting right as the last natural or legal person holding a securities account, who is not a securities intermediary within the European holding systems, as the ultimate investor is the right terminology. This person will not always be the ultimate investor, but can for example also be a securities intermediary outside the European holding systems, holding shares for their clients, who could be the ultimate investors. These parties cannot be regulated by EU legislation. To avoid confusion (which we are afraid has already manifested itself in the reactions to the consultation document), the recommendation made by the Cross-Border Voting Group to define the person entitled to control the voting right as the "Ultimate Accountholder", as defined there, should be followed.

Q2: Share blocking

2a: How do you quantify the cost of share blocking provisions as a percentage of the total cost of voting? Does the presence of share blocking requirements prevent you from voting?

2b: Does this apply also for countries where share blocking is only optional?

2c: What would be the effect of the complete abolition of share-blocking requirements?

- By how much (percentage) would it reduce your cost of voting?

- By how much (percentage) would it increase your voting record?

Name	Country	Field	Answer	Comments
Law office of the Republic, Registrar of Companies, Official Receiver of the Rep.	CY	Public authorities	2a: NO 2b: NA 2c: NA	2a: No such record is kept. No share blocking requirements or provisions exist in the Company Law, Cap113, of the Republic. 2b: They cannot provide any answer. 2c: They cannot provide any answer.
Ministry of Justice	SV	Public authorities	/	Share blocking does not exist in Sweden
Finnish Central Securities Depository's (APK and FCSD)	FI	CSDs	/	Shareholders whose shares are registered in the shareholders' register ten days prior the general meeting may attend the meeting and use their voting rights. Record date procedure is recognised by law. Thus, share blocking is not used.
DEXIA asset management	BE	investment managers	2a: YES	2a: Share blocking provisions prevents us from voting for the complete position the fund is holding, in order to avoid a negative influence on the investment process. The blocking does not have an impact on the cost of voting, but limits the investment process and may cause opportunity costs. Therefore the cost is not quantifiable.
			2b: YES(?)	2b: Our specific way of voting and our audit trail requirement has obliged our funds to work through a specific proxy voting account that is not related to the settlement account. Consequently our positions are blocked even in not share blocking countries due to transfers from the settlement to the proxy voting account. DAM is awaiting specific developments of our proxy voting service providers and global custodians in order to allow us to profit from the non-share blocking requirements, but DAM will require an audit trail on the vote

			2c: →	casting.. Because of the use of a non segregated account at our global subcustodian, DAM will be obliged to transmit the ultimate investors and the relative quantities to the global custodian in order to register and to vote only for those ultimate investors that want to participate to the voting and not for the complete position held at the global subcustodian. 2c: The effect of non share blocking requirements would mean that the funds of DAM will be able to vote for the complete position they hold and that the importance of our vote on the general meeting would increase. This could have a positive impact on the corporate governance of the issuers, as DAM would like the issuers to implement it DAM is convinced that especially for institutional shareholders, share blocking is one of the most important reasons preventing participation to AGM's of issuers, because of the impact it can have on the investment process. DAM does believe that abolition of share blocking, an obligation towards the issuer and the local subcustodians to provide an audit trail of the voting, and a decrease in the cost of participation to the voting will increase the participation level. – The opportunity cost is not measurable, but is still quite substantial. – In number of shares voted for, it would increase the level from 35% of the position held to 100% of the position held. The number of meetings DAM will attend will depend as well on the previous indicated obstructive practices in voting process. So it will increase the proportion of votes casted and the number of companies where DAM will cast its votes
Bundesverband Investment und Asset Management (BVI)	DE	investment managers	2a: NO	2a: For our members, the costs of share blocking provisions are not significant and hardly ever deemed an obstacle to the execution of voting rights
DSW(German shareholders association)	DE	private investors	2a/b/c: →	2a/b/c: The question cannot be answered since share blocking is not known in the German system.
Deutsches Aktieninstitut e.V.	DE	issuers	2a/2b: →	2a/2b: Share blocking or, under the German system, the requirement to deposit bearer shares with respect to a general meeting, does not involve any particular costs for issuers. Under current German law, the requirement to deposit bearer shares ("Hinterlegung") can be established as a requirement in the articles of association for the purpose of attending the general meeting. This does, however, not prevent the shareholders to sell their shares between the date of deposit and the date of the general meeting. Nevertheless, many foreign investors still believe that they are prevented from selling share after the shares have been "blocked" by way of such deposit. The "blocking" of shares has therefore be named as an important reason not to vote. However, this concept will be replaced by a "record date" concept which is better known to the international financial community upon the coming

					into force of new legislation. We expect that more foreign shareholders will vote once the new law is in effect. German registered shares are not affected by any share blocking since the shareholder registered as at the closing of the application period is entitled to the voting rights. However, many institutional investors such as in particular international investment funds which hold shares in hundreds or thousands of different companies may not be interested in participating in general meetings whether or not any share blocking is abolished.
				2c: →	2c: - See comment on 2a. - It is expected that the voting record will increase as a result of the abolition of the deposit system in Germany. However, to the extent that companies have specified a certain percentage, the possible increase is likely to be relatively low (not in excess of 5%).
PROXINVEST	FR	proxy agencies	voting	2a: YES	2a: Yes many institutions tell us that they do not like to clock shares to vote and do not see the justification of it. 2b: If you consider the French situation (registered and blocked with banks-au porteur or registered with the company -nomitatif) as an option then clearly the effect is negative because in both cases unnecessary burden are imposed on shareholders . The very solution is to request registration with banks but without any freezing or blocking , i.e. in effect one night on a bank account only on the record date. 2c: The abolition of the share-blocking will have a 10% increase effect over the voting participation. - Very little marginally, almost nothing it is not a cost issue. - 10% but if would also facilitate life.
NORDEA	NR	financial providers	services	2a: →	2a: In Norway we do not block shares prior to AGM's, but see that if shares are blocked shareholders may be reluctant to vote.
CITIGROUP	UK	financial providers	services	FRANCE 2a: → 2b: → 2c: →	FRANCE 2a: Share blocking for France is not a big percentage of the cost of voting. The presence of share blocking does prevent some people, who wish to trade in their shares, from voting. Share blocking takes place from one day before the bank deadline and 1 day after the meeting and in some cases this may add up to a total of five days. This window prevents any trade on the shares and hence, prevents some people from trading. 2b: Not qualified to answer. 2c: - Negligible - Increase - percentage unknown

					SPAIN / PORTUGAL
				Spain / Portugal 2a: → 2b: → 2c: →	2a: Spain: Bearer shares only: ca. 60%; Portugal: ca 40%. 2b: Spain reg shs: no blocking for proxy voting required but we block as custodians on record date when clients need to declare their positions five days prior to the meeting – can be very time consuming as blocking plus cards are issued via ourselves. 2c: No control over who has voted and what position. Possible legal problems as we as custodians are not declaring correct information on the proxy card. Possible duplication of votes per registration level. - N/A - This would be the decision of the client, but increase expected
				Austria / Switzerland 2a: → 2b: → 2c: →	AUSTRIA / SWITZERLAND: 2a: Switzerland: Bearer shares only: ca. 40 % ; Austria: ca 40 %. 2b: Switzerland reg shs: no blocking for proxy voting, but registration must be requested prior to voting, this is very time consuming, ca 90%. 2c: - CH bearer + AT: ca 40%. – This would be the decision of the client, but increase expected.
Standard life investments		UK	investment managers	2a/2b/2c: →	2a/2b/2c: This year a substantial number of companies we intended to vote at were not voted because of voting obstacles, perhaps 80%, a substantial proportion of this was due to custodial obstruction/blocking.
Deutsche Bank		DE	banks	2a: → 2b: / 2c: /	2a: We are billed with an all-in-fee. We have no knowledge about costs of share blocking. The provisions on share blocking don't prevent us from voting.

Arbaitskreis Namensaktie	DE	issuers	2a: → 2b: → 2c: →	2a: Share blocking does not carry any cost of voting with it. The concept of share blocking is a concept to give evidence that the person claiming to be a shareholder is in fact a shareholder also at the time of the annual general meeting. There is no cost associated with this. Only large institutional shareholders do not want to have their shares blocked because they would like to trade at any time. But in reality this is always possible even in Germany with its share blocking provisions for bearer shares because someone can always sell their shares. The consequence will only be that those shares cannot be voted in the AGM. Public perception especially in Anglo-American countries about share blocking is different but far away from the truth. It should not serve as a guideline to follow for the European Commission. Share blocking requirements only prevent such people from voting who are not informed about the consequences of share-blocking. It is not a problem of European harmonization but a problem of institutional shareholders not understanding what the law says. Having said this, it has to be pointed out that German legislation is under way to abolish share blocking requirements. 2b: See the answer 2a. 2c: - There would be no reduction of cost of voting because share-blocking does not carry any cost of voting. - It may however increase voting records because people who currently believe share-blocking is detrimental to their interests would probably decide to attend and vote in the AGM.
Volkswagen AG	DE	issuer		2a: No, this doesn't cost anything in Germany. No, as far as German companies are concerned. Nevertheless some investment funds consider it to be an obstacle, as they imposed themselves internal rules according to which they never block their shares. But long term oriented funds don't come either, although they have no problem with selling barriers, because they are not really interested in their voting rights. 2b: Many funds already signalised, that they would not participate in the GM even if only a record date was required – as it is now intended in Germany. →2c: - 0% - We shall see this in the next year. We fear: 0 % .
BASF AG	DE	issuer	2a: →	2a: The depositary banks bear the cost of handling the share blocking and probably ask the shareholders for a cost reimbursement. Hence, this information should be available from the banks. Under current German law the blocking of shares ("Hinterlegung") can be established as a requirement in the articles of incorporation for the purpose of attending the annual meeting. The blocking of shares, however, does not prevent the shareholders to sell their shares between the date of blocking and the date of the annual meeting. Nevertheless

				many foreign investors still believe that they are prevented from selling share after the blocking. The blocking of shares has therefore be named as an important reason not to vote. However, the concept of share blocking will be replaced by a "record date" concept which is better known to the international financial community upon the coming into force of the UMAG law. We expect that more foreign shareholders will vote once the new law is in effect.
			2b: →	2b: See answer 2a.
			2c: →	2c: In case of bearer shares all shareholders who wish to attend the annual meeting should (instead of a "blocking of shares") pre-register with the company prior to the annual meeting. Particularly large companies would otherwise face organizational difficulties in preparing and holding the meeting. Nevertheless, in case of an abolition of share blocking more foreign investors might be prepared to vote even if they have to register their attendance at the meeting in advance. - See comment on 2a; - We expect a remote (not in excess of 5%) increase of our voting record due to the abolition of the share blocking requirement.
Fortis/ Radobank	DE	issuer	2a: →	2a: 50% of the total cost of voting. The presence of share blocking requirements prevent many shareholders from voting.
			2b: →	2b: We think not.
			2c: →	2c: 25-50% reduction in costs and 25% increase of voting record.
ABN AMRO	NL	bank	2a:	2a: The costs of share blocking are difficult to quantify. We do not know the exact costs the custodians charges as these costs are included in an overall custody fee. However, due to share blocking we are voting for less shares and on fewer meetings than we would if there would be no share blocking.
				2b: If share blocking is optional, we favour to vote at shareholders meetings of companies that have abolished share blocking.
				2c: If share blocking would be abolished we would cast more votes: an estimated increase of 30%. Costs are difficult to estimate. Please see also above 2a.
ROBECO	NL	asset managers		2a: Share blocking prevents us from voting. Share blocking impacts our possibility to trade out of stocks. In share blocking cases we will never vote more than 80% of our holdings, sometimes only 50% and we often choose not to vote. We estimate that over all voting power in Europe approximately 30% is lost due to share blocking (approximately 12% of our worldwide votes). See same Excel file for supporting figures. If share blocking was to

be abolished we would be able to and would intend to vote the votes that are now lost due to blocking practices.

2b: This applies also to countries where share blocking is optional. It is often seen as a bottleneck that the custodian does not want to incur cost to update their systems and stick to blocking practices.

2c: If you are looking to quantify the costs of share blocking you may do so by looking at share blocking as 'giving away' an option to sell the stock during the blocking period. It often occurs that during this period the company release quarterly results which will increase the volatility and hence the value of the option. The value of the option may be treated as the opportunity costs.

- More pragmatically, we can estimate that we have about 150 share blocking cases in which we do vote. When voting in share blocking markets we need to communicate with different people such as the portfolio managers, the traders, the securities lending department (of ourselves or of whichever party was appointed for that purpose by our client) and the voting agent in order to execute partial voting. All in all we estimate that we spend a rough 100 hours on this. Value an hour at any arbitrary cost of say 50 euro and you come up with 5,000 euros in cost.
These cost exclude any (far more substantial) cost of settlement failure in case a presumably blocked share is - by error - sold anyway. These costs may well run into 10,000's or even 100,000's of euros.
- Hence, the voting record would go up by approximately 30% in Europe, while our costs of communication and administration with different parties would go down by at least 5,000 euros while the risk to incur cost far more significant (possibly over 100,000's of euros) is prevented.

A sample of Dutch listed companies, a Dutch intermediary, a Dutch electronic voting bureau, the Dutch Shareholder Communication Channel	NL	issuers, financial intermediary, electronic voting bureau	2a: →

2a: - Dutch listed companies noted that blocking of shares and reconciliation of share ownership require a continued involvement of securities intermediaries in the process. The blocking of shares in general is considered burdensome and constraining for investors, especially if this means that they lose the possibility to sell their shares during the period the shares are blocked. Especially the continued involvement of the securities intermediaries could imply high costs. The alternative of a record date system, allowing for a record date to be set prior to the notification of the shareholders meeting, is a clear and cost-effective system that makes blocking unnecessary.
- According to the Dutch intermediary, the provision as a percentage of the total cost of voting is during the proxy season about 20%. If this blocking requirement prevents the client from voting it cannot answer question. However, regarding the amount of voting instructions this intermediary has to process during the proxy season, it would say no. A quantification as a percentage is difficult, according to the Dutch electronic voting bureau. This bureau would like to point out the following: From a Dutch domestic proxy voting perspective, the issue of share blocking provisions is related to the legacy environment of banks. Dutch banks are not capable to handle a request from a client/shareholder that he wants to vote for the number of shares that he owns on the record date, in spite of the fact that the company has instituted a record date with the purpose of making this possible. Instead a shareholder is forced by the bank to inform the bank about the number of shares that he wishes to vote on and the bank subsequently blocks these shares. This technological incapability exists already for many years and there is currently no commercial incentive to change this.
There is one exception in the Netherlands where shareholders can use the record date appropriately: Shareholders that vote through the Dutch Shareholder Communication Channel can vote for the number of shares held on the record date. This laudable initiative by a group of large companies has, however not brought the standardisation and participation of many companies and shareholders, which has been the reason that new entrants have entered the market of electronic (cross border) voting.
- The Dutch electronic voting bureau noted further that it is well known that institutional investors do not want to block their shares and that share blocking is an impediment to participation in the voting process. In cross border voting, institutional investors reduce the impact of the blocking of shares by registering their shares at the very last moment. This puts pressure on the system with the increased risk of errors. One major improvement would be to allow banks to report to the company (or the deponeerbank) 24 hours after the record date the position of their clients. This measure is simple to implement and does not increase the costs for the market. It is one example of how a redesign of the logistical

			2b: →	process can create better market conditions for all market players. 2b: - The Dutch intermediary is not aware of countries where share blocking is optional. The rule is either to block or not. - The Dutch electronic voting bureau states that the issue with share blocking (at least in the Netherlands, but probably also in other countries) is not so much the legislative environment but the prioritisation within the banking system to accommodate the usage of the record date.
			2c: →	2c: - The Dutch intermediary refers to the answer to question 2a. The Dutch electronic voting bureau noted that the abolition of share blocking requirements (and as a consequence the correct usage of a record date) will reduce complexity in the whole chain of intermediaries in the determination who is shareholder and for how many shares a shareholder wishes to vote. Making the abolition mandatory will put the required pressure on banks to prioritise an area where action is urgently required. - The Dutch listed companies noted that in the event of complete abolition of share blocking requirements, you will need an alternative mechanism -such as a record date system- to enable the company to verify the shareholding of the person who claims to be entitled to vote on the shares. Also if a record date system will be used, costs will be involved to establish a mechanism to identify the shareholders of a company on the record date. The Dutch intermediary answered that this depends on the clients of this intermeidary. As an estimate, this intermediary thinks that it would easily increase their voting records by at least 10-15 %. The Dutch electronic voting bureau noted that there should be a boost in participation if institutional investors will no longer need to block their shares.
Dutch Corporate Governance Research Foundation for Pension Funds (SGCOP)	NL	research foundation		2a: See the General remarks above. 2b: It applies in as far share blocking is actually required. 2c: - See the General remarks above. - For institutional investors that refrain from voting due to the costs of shareblocking, a rough estimate is that it would lead to an increase of voting in blocking markets between 50% and 100%, depending on whether the investor already tries to vote as many shares possible with some form of solution (see the General remarks above) or not.
CalPERS	US	pension fund	2a: YES→ 2b: NO 2c: →	2a: Yes, in some cases we do not vote because of a pending trade. 2b: NO 2c: The complete abolition of share blocking would eliminate the administrative task of trying to vote as many proxies as possible and still being mindful of pending trades.

- none;
- 5%.

Q3: Availability of proxy/voting information 3a: Is your (cross-border) voting activity impaired by the availibity of proxy/voting information? If this is the case, how do you quantify such costs as a percentage of the total voting costs? 3b: In case of removal of obstacles in Member States' laws to voting through a proxy (in particular abolition of restriction as to the person of the proxy through a proxy (in particular abolition of restrictions as to the person of the proxy, the form in which a proxy may be granted and the powers linked to the proxy): - By how much (percentage) would it reduce your cost of voting? - By how much (percentage) would it increase your voting record? 3c. In case of introduction of minimum requirements concerning the length of the notice period for a general meeting, the content of the invitation and the documentation to be provided with it: - By how much (percentage) would it reduce your cost of voting? - By how much (percentage) would it increase your voting record?				
Name	**Country**	**Field**	**Answer**	**Comments**
Law office of the Republic, Registrar of Companies, Official Receiver of the Rep.	CY	Public authorities	3a: NO 3b: NA 3c: NA	3a: They do not consider that the Proxy/voting information required by the Company Law may impair our cross-border voting activity. 3b: They cannot asses it in percentage terms. 3c: Same as answer to Question 3b above.
Ministry of Justice	SV	Public authorities	/	They do not find it possible to quantify the effects of possible future EU standards in the field of voting at GMs, period of notice etc.
Finnish Central Securities Depository's (APK and FCSD)	FI	CSDs	/	3a: Finnish custodian banks furnish foreign investors with information on proxy voting through foreign custodian banks. Foreign investors may grant a proxy to a representative of a Finnish custodian bank who will use the voting right in the general meeting. 3b: There are no obstacles in the Companies Act to voting through a proxy. 3c: Minimum requirements concerning the length of notice period for a general meeting, the content of invitation and the documentation to be provided with it are stipulated in Companies act.
DEXIA asset management	BE	investment managers	3a: YES	3a:In order to get the information about cross-border AGM, DAM is using 2 proxy voting service providers. The proxy voting service providers are used for 2 objectives:

			3b: →	- In order to allow DAM to be informed in time of the availability of the agenda's in order to register in time in order to participate to the meeting. Due to the lack of an organized system on the financial markets to retrieve or to be advised about the availability of the agendas and the dates of the AGM's, the use of these service providers is necessary. DAM does believe that an initiative of the EU would be necessary in order to allow the ultimate shareholders to be advised in an organized manner of the upcoming meetings by a "push" and a "pull" strategy to be provided with the adequate information. - In the current stage of our voting process, DAM uses the service providers as well in order to know their point of view on the different resolutions, although the decision is made based on our own proxy voting policy. The cost for both services is about 10% of the yearly budget of DAM for proxy voting. 3b: - It is DAM opinion that voting through a proxy is not sufficient in order to allow a massive reduction in the cost price of proxy voting: voting in absentia by granting a proxy to a person appointed by the issuer and audit trail of the vote has a much larger impact. The funds of DAM, which are legal entities, always have to grant a proxy to a natural legal person in order to represent the fund at the AGM. DAM does agree that an uniformisation of the rules to grant a proxy/register in the different EU member states would improve the actual situation: granting a proxy/to register is different in each member state in order to comply with the legal framework of each member state/issuer. Voting in absentia by granting a proxy to a person appointed by the issuer, audit trail of the vote and a uniform registration process would at least reduce our cost especially in a cross-border situation, to 30 to 40%. - As indicated, simplifying the rules for appointing a proxy is not sufficient. Our joined remarks of a uniform registration process and voting in absentia through a post oriented proxy of the issuer, and audit trail would allow us to increase our voting record with +/- 75% in the current phase, and probably more in the future.
			3c: →	3c: - The length of notice period does not have a specific impact on the costs of proxy voting, except if the announcement limits the possibilities offered by the issuer to vote and the only option to vote is through physical presence. The announcement date is therefore not a specific cost factor, but should allow the ultimate investor sufficient time to make his registration, to analyse the different resolutions and should allow the ultimate investor(s) to add a resolution on the agenda within a reasonable time period.

				- DAM did not encounter any problems yet for EU member states for not being able to vote due to late announcements of an AGM/EGM.
Bundesverband Investment und Asset Management (BVI)	DE	investment managers	3a: YES	3a: The insufficient availability of proxy voting information appears to constitute the biggest hurdle to efficient cross-border execution of voting rights. In respect to the quantification of costs, one company gave us the number of approximately 25%, depending on the composition of international portfolio. In general, however, we are not able to provide a founded analysis in relation to the costs of cross-border voting.
DSW(German shareholders association)	DE	private investors	3a: YES 3b: → 3c: →	3a: Yes, if DSW as a shareholder association does not receive the necessary information such as the date, venue and the agenda of the meeting *in time i.e. at least 3 weeks before*, it will be impossible to exercise the votes in a foreign country**.** Since untimely information completely prevents and not only impairs cross border voting activities the question of costs does not occur. 3b**:** - It would be an important step forward in cross border proxy voting. They would estimate the advantage for the shareholders with at least 20 percent. - They would also estimate an increase by 20 %. 3c: - As already stated above this point is of major importance for the shareholders. They would therefore estimate the potential for cost reduction by at least 30 %. - Again they would assume an increase in our voting record in the same dimension by 30 %.
Deutsches Aktieninstitut e.V.	DE	issuers	3a: NO, in principle→	3a: Apparently, this question primarily addresses issues to be asked to (institutional) investors. They believe that the voting activity should, in principle, not be materially impaired by a lack of information available in relation to German listed issuers. Most of the German companies provide the relevant information in German and English language via their website. However, in a number of cases the voting activity of foreign shareholders might be impaired due to the late arrival of voting information/invitation to the general meeting or because some custodians do not forward the invitation and agenda relating to the general meeting to the beneficial owners. These costs cannot be specified by German issuers. We do not know the amount of costs (if any) which an investor might incur due to information not being available in time. In any event, the relevant information is generally also available via the website of the issuer. Obtaining this information should therefore not involve substantial costs for investors. 3b: Under German law there exist no obstacles as to the person of the proxy or the form in which a proxy may be granted. For example it may be laid down in the articles of association that a proxy may be granted by email, facsimile or otherwise.

				- Such abolition of obstacles may reduce the cost of voting for certain investors. However, it is difficult to specify (in particular by issuers (see above)) any amount of such costs and reduced costs may not necessarily result in a significant increase of voting rights being exercised. Correspondingly, such removal would not reduce the costs of German issuers significantly. - The removal of any obstacle in any jurisdiction should, to some extent, increase the voting record. However, we cannot give any specific figures of the possible amount of such increase of the voting record. Generally, it is doubtful whether the exercise of voting rights is primarily a cost issue (except possibly the costs which an institutional investor such as an investment fund would incur with respect to employees the main task of which is to follow general meetings and their agendas rather than managing the funds). 3c: - This would be depending on the specific requirements. German law already provides for certain minimum requirements for the length of notice period, content of the invitation, and documentation. In case of a reduction or abolishment of the requirements (e.g. the requirement to submit the invitation and the agenda to the banks and shareholders organizations within twelve days after the publication of the agenda in the electronic Federal German Gazette [Bundesanzeiger]) costs of major German listed companies could, depending of course on the individual circumstances and size of the company, be reduced by approx. 100.000 €. - Please see paragraph 3b above (also with respect to the relevance of cost of the exercise of voting rights for investors).
PROXINVEST	FR	proxy voting agencies		3a: / 3b: - Unclear - another 10% here again is not a cost issue but a legal confort issue. 3c: - Unclear. - Maybe 5%.
NORDEA	NR	financial services providers	3a: → 3b: → 3c: →	3a: The companies are invoiced for the registration of proxy/voting and there are no cost for the shareholder. The cost for the shareholder is only if the hold shares on Nominee accounts and must re-register the shares to a segregated account. 3b: / 3c: - N.A. - N.A.
CITIGROUP	UK	financial services	FRANCE	FRANCE

		providers	3a: 3b: 3c: Spain /Portugal 3a: → 3b: → 3c: → Austria / Switzerland 3a: → 3b: → 3c: →	3a: Yes - percentage unknown 3b: - Significant – percentage unknown; - Significant – percentage unknown. 3c: - Not significant – percentage unknown; - Not significant. SPAIN / PORTUGAL 3a: N/A 3b: - Don't known; - This would be the decision of the client but increase expected. 3c: - Difficult to quantify but reduction expected; - As before. AUSTRIA / SWITZERLAND: 3a: CH: information must be obtained from vendor, ca 50%; AT: information available for most securities from public source (internet), ca 30%. 3b: - CH: N/A, AT: abolition of requirement of physical representation would reduce costs by ca 50-60% - This would be the decision of the client, but increase expected. 3c: - Difficult to quantify but reduction is expected; - As before.
Standard life investments	UK	investment managers	3a: YES → 3b: → 3c: →	3a: Yes. To enable us to vote documents, need to be on (i) websites or otherwise available and (ii) in English. This issue is more one of vote prevention and time wasted than of cost. 3b: Removal of such obstacles would (i) reduce direct and indirect costs of voting and (ii) improve our voting record in situations where such obstacles exist. Company meetings in countries without proxy voting are not normally votable in anything other than very exceptional circumstances as appearance in person and the associated time and travel costs are required. 3c: From a Fund Manager's perspective this will make voting easier and more likely but may not impact the direct cost. In general we would not normally seek to vote without all of the relevant information to hand as this would not be professional.
Deutsche Bank	DE	banks	3a: YES 3b: → 3c: →	3a: YES but we have no cost analysis regarding cross-border voting. 3b: Most important for DWS is disclosed voting; we have no cost analysis regarding cross-border voting. 3c: We have no cost analysis regarding cross-border voting.

Arbaitskreis Namensaktie	DE	issuers	3a: YES→ 3b: →	3a: Cross-border voting activity is not only “impaired” but it is virtually impossible for small shareholders and non-institutional shareholders because of the current non availability of proxy and voting information. Who are not informed about an annual general meeting cannot be expected to express their views as the owners of the resp. company. Whom are not given any means of voting in the AGM cannot raise his voice in the AGM. So the essence of good corporate governance and of utmost importance for cross-border voting is the principle that the information from the company to the shareholders and also the information from the shareholders to the company as well as giving power of attorney together with voting instructions will be passed on both ways between the shareholders and the companies by and via the financial intermediaries. The costs of the existing impediments to such good communication as a percentage of total voting costs are certainly above 50 % if this is not harmonized and if there is no uniform obligation for all financial intermediaries to communicate both ways between the company and the shareholders. Such cost should be subject to uniform rules and standardized expense reimbursement. Companies with registered shares are able to offer a cheap and effective alternative to the information flow via financial intermediaries: Bigger German companies with registered have started registering email-addresses of their shareholders in order to inform them about AGMs electronically and to collect orders for admission cards or instructions for the company’s proxies in return by electronic communication, too. Companies like DaimlerChrysler AG or Allianz AG, both with about 40.000 shareholders registered for electronic information, made the experience that electronically informed shareholders tend to react up to 80 % after having received the electronic information either by ordering admission cards or by giving power of attorney and instructions to the companies’ proxies. This reaction ratio is several times higher than the reaction ratio on paper information. 3b: - The cost of voting will be significantly reduced by using a proxy, especially if a special person provided for by the company who offers to accept proxies, the so called “Stimmrechtsvertreter der Gesellschaft” (company proxy - a representative not subject to any directions of the company, who is strictly bound to instructions given by the shareholder(s) and whose services are free of charge for the shareholders). It is also reduced if proxy is given to a shareholders association, but in Germany such associations tend to ask for a contribution. It can be more expensive to appoint a bank to represent shareholders (some banks ask for a charge, some do not but calculate such service as part of the annual account charge). In all cases the cost of voting is reduced significantly, in the first case we estimate this above 80 % reduction up to almost 100% by using electronic communication as explained under question 3a last paragraph, in the second above 50 % and in the last case probably at least above 25%. - Considering the fact that most of the bigger German companies have between 40% and

			3c: →	more than 50 % non-German shareholders and that most of those shareholders do not attend the AGM presently, we expect an increase of our voting record of at least 10% up to 30 %, if cross-border voting is facilitated. 3c: The introduction of minimum requirements concerning the length of the notice period for general meeting, the content of the invitation and the documentation to be provided with it would not reduce our cost of voting since the goal of all this is to thoroughly and fairly inform the owners of a company about the status of the company. The current rules in Germany provide for an expense reimbursement to the banks for passing on this information. The current reimbursement flat rates are set high enough to cover the costs. They are not affected by the length of the information of the minimum notice period. The voting percentage may be increased if this information reaches the shareholders and shareholders have enough time to make up their minds on how to decide on the proposed resolutions and then either attend the AGM themselves or appoint a representative. This can only be achieved if the notice period is at least 4 weeks.
Volkswagen AG	DE	issuer	3a: NO →	3a: No, all information on German companies is available on the website, also in English. 3b: - 0 % , as far as German companies are concerned; - We shall see this next year, after the implementation of the record date system. We fear: 0 % . 3c: - Concerning German companies: already today foreign funds say, when we call them, that it is too early for them to deal with the agenda; when we call them then later, it turns often out, that they don't have any interest in exercising their voting right. Therefore: the length of the notice period doesn't play any role for the readiness to vote. We were neither ever told by foreigners or residents, that the readiness to vote in the GM of a German company was a problem of costs. - For the mentioned reasons: 0 %.
BASF AG	DE	issuer	3a: → 3b: → 3c: →	3a: We believe that in many cases the voting activity of foreign shareholders is impaired due to the late arrival of voting information/invitation to the annual meeting. 3b: Under German law there exist no obstacles as to the person of the proxy or the form in which a proxy may be granted. For example it may be laid down in the articles of association that a proxy may be granted by email, facsimile or otherwise. 3c: German law provides for certain minimum requirements for the length of notice period, content of the invitation, and documentation. In case of a reduction or abolishment of the requirements (e.g. the requirement to submit the invitation and the agenda to the banks and shareholders organizations within twelve days after the publication of the agenda in the electronic Federal German Gazette) our cost could be reduced by approx. 100.000 €. We

				cannot estimate if such measure would increase the voting record.
Fortis/ Radobank	DE	issuer	3a:	3a: Yes, 50 % of the total voting costs. 3b: We only expect reduction of our cost of voting if not only Member States' laws are removed, but at the same time procedures are harmonised at an EU-level. We expect an increase of 50% of voting records. 3c: If 'minimum requirements' is equal to a full harmonisation in the EU, we expect a 25% reduction of costs and a 50% increase of voting records.
ABN AMRO	NL	bank	3a:	3a: As we make use of a voting agent, voting information like agendas, annual accounts and shareholders circulars are available to us through the voting agent's website or a html link to the company's website. Unfortunately the information from the company website is not always available in English. Furthermore, the information is sometime provided quite late 3b: We cannot give an estimation yet on how the effect will be on costs and increasing of voting record in case of removal of obstacles in Member States' laws to voting through proxy. 3c: Notifications for general meetings will come through via our proxy voting agent (including the content of the invitation and the documentation). However, the introduction of minimum requirements concerning the length of notice period is very welcome, particularly to cross-border voting. Creating sufficient time between the notification of the meeting and the meeting it self is essential for casting (cross-border) votes. In case the period is too short to prepare our voting instruction we are not able to cast our votes. We can not indicate a percentage yet on how the introduction of minimum requirements will reduce our cost of voting or will effect our voting record.
ROBECO	NL	asset managers	3a:	3a/3b/3c: We often come across cases where it is very timely to execute our vote, sometimes even as timely as 24 hours. Or we even come across cases in which we already passed the deadline before the information on the agenda, our ballots etc. first reach us. Although we execute our vote as soon as possible in these occasions it is only processed by the long string of administrative parties on a best effort basis. Making more time available for analysis increases the quality of votes cast and reduces cases in which votes are ignored because deadlines are passed. It is hard to quantify this in terms of costs or percentage of votes being reduced. It is very hard to get confirmation whether or not your vote was actually executed. Also it is hard to find out what the voting results in general were.
A sample of Dutch	NL	issuers, financial	3a: →	3a: -The Dutch listed companies and the Dutch intermediary do not have the impression that

listed companies, a Dutch intermediary, a Dutch electronic voting bureau, the Dutch Shareholder Communication Channel		intermediary, electronic voting bureau	3b:→ 3c: →	this is the case. The Dutch electronic voting bureau noted that there is a cost in assembling the required information regarding an AGM. To foster the use of proxy voting on a European scale, this voting bureau is in favour of a central database. 3b: - According by the Dutch intermediary by 15 – 20%. The Dutch electronic voting bureau noted that the cost of physically attending a meeting for a shareholder is prohibitive for many shareholders. Shareholders costs should be reduced tremendously if all obstacles to use of proxies are removed. - The Dutch listed companies noted that in The Netherlands no obstacles exist. They would appreciate removal of obstacles in other Member States' laws to voting through a proxy. However, this does not take away the necessity for clarity about the person who is entitled to vote on the shares. As said, this is currently very problematic. The Dutch intermediary noted that the clients are not involved in the above-mentioned processes and therefore thinks that it would increase its voting record. 3c: - According to the Dutch intermediary by 5 – 10%, The Dutch electronic voting bureau noted that this question is based on the use of outdated technology insofar as it relates to the notice period in relation to **electronic** proxy processes and **electronic** direct voting processes. For the processes that are paper based with long lead times these questions may be important. For future policy the focus should however be put on the electronic channel. There is a danger that the European Commission receives information on certain issues by market players that have been active in proxy voting for a long period and often use legacy technology and legacy logistical processes for their electronic processes as they were originally designed for a paper based process. It would be counterproductive to base future policy on this input. - According to the Dutch intermediary by 0%. If clients would receive less information this will not increase the voting record.
Dutch Corporate Governance Research Foundation for Pension Funds (SGCOP)	NL	research foundation	3a: → 3b: → 3c: →	3a: See the General remarks above. 3b: - It is difficult to give estimates. See however the General remarks above. - See the General remarks above. Although this is difficult to estimate, it will probably be between 10% to 40%. 3c: - See the General remarks above. Furthermore, as noted under the General remarks above, the lending of shares creates a dilemma for institutional investors. They cannot lend shares and vote them at the same time. It is hard for them to justify to their own beneficiaries why they leave returns/money on the table by not lending and voting in stead (apart from "clear cut cases" where the benefit of voting is self explanatory). Whereas the general meeting of shareholders is usually a date

				for much lending activity, it would lead to a substantial increase of voting (up to 50%) if a record date system would be used. The institutional investors can then vote the shares at the meeting which they at that time still own in an economic sense, but which they for the time being do not own legally. A record date would also help in suppressing the practice of lending shares in order to influence the outcome of voting at AGM´s. Currently it is impossible for institutional investors to "track the motives" of the ultimate user of a stock lending facility. A record date allows investors to review large stock lending demands just before that date with suspicion, or even to develop a policy not to a adhere to any such demand in that period. - See above.
CalPERS	US	pension fund	3a:→ 3b:→ 3c:→	3a: The information CalPERS receives for the international stocks we own is limited. We rely on proxy advisory services, such as Institutional Shareholder Services and Glass & Lewis to provide voting advice and recommendations. We would estimate these costs to be around 30% of CalPERS' total voting costs. 3b: - None; - 5% to 10%. 3c: - 5% to 10%; - 5% to 10%.

Q4: Remote voting
4a. Do you presently make recourse to voting in absentia and electronic voting? Please specify for domestic voting and cross-border voting.
4b. By how much (in percentage terms) would the removal of obstacles in Member States' laws to participation and voting in general meetings by way of electronic means:
– (i) increase your voting ratio;
– and (ii) lower the cost of voting? Please specify whether there is a difference with regard to cross-border voting.

Name	Country	Field	Answer	Comments
Law office of the Republic, Registrar of Companies, Official Receiver of the Rep.	CY	Public authorities	4a: voting in absentia:YES; electronic voting: NO. 4b: YES	4a: Voting in absentia is available for domestic voting and possibly for cross-border voting. There is no electronic voting available for either domestic or cross-border voting. 4b: (i): It will increase the voting ratio but they cannot asses it in percentage terms. (ii): It will lower the cost of voting but they cannot assess it in percentage terms.
Ministry of Justice	SV	Public authorities	4a: YES	4a: Voting by proxy is permitted both for domestic and foreign shareholders. There are no rules on electronic voting in Swedish legislation but it is considered that such voting may be used subject to the chairman's general obligation to control that voting is conducted in a reliable and secure manner. We do not find it possible to quantify the effects of possible future EU standards in this field.
Finnish Central Securities Depository's (APK and FCSD)	FI	CSDs	4a: YES	The board of directors of a company may decide that a participation in the general meeting may take place through a technical medium. This applies to domestic and cross-border voting.
DEXIA asset management	BE	investment managers	4a: YES 4b:→	4a:In countries where allowed (cfr. Question 1.B) DAM makes recourse as much as possible to voting in absentia or electronic voting as long as an audit trail is provided. DAM does not make any difference in these types of voting for domestic or cross-border voting. 4b: (i): The removal of obstacles on electronic voting could increase our voting ratio of 75%, but in DAM's experience should not only the impediments for electronic voting be abolished, but as well the impediments to register for electronic voting should be removed. DAM has encounters the following concrete examples within the EU: - All rules needed for reregistration in the name of the ultimate investor through

Bundesverband Investment und Asset Management (BVI)	DE	investment managers	4a: →
			4b: →
DSW(German shareholders association)	DE	private investors	4a: →
			4b: →

temporarily accounts (p.e. Germany)
- Impediments in order to be able to vote through the internet if you have a segregated account (p.e. voting through "Communicatiekanaal" in the Netherlands that is limited for Dutch shareholders)
- The nominee account structure (Ireland, UK)
- Other

(ii): Our cost will decrease as specified already above in point 3b to about 0 to 40%, but it should include all conditions mentioned before and would also provide substantial efficiency for the proxy voting process.

4a: At domestic general meetings, German management companies usually exercise their voting right by themselves or by means of proxies. Electronic voting is not yet accepted under German law.
For the purpose of cross-border voting, the practice is to deliver instructions to the service provider via electronic means. According to our knowledge, a considerable proportion of voting decisions is in the same way forwarded to the general meeting.

4b: (i) In the long term, the removal of legal obstacles to participation and voting by way of electronic means will presumably lead to a considerable increase in the cross-border voting activities of management companies. However, some companies have also expressed concerns that the existing voting technologies do not entirely meet compliance requirements applicable to the exercise of voting rights;
(ii): In general, institutional investors would be able to conduct the voting procedure by themselves, without being forced to call upon the services of third parties physically attending the general meetings or forwarding their instructions in return for payment.

4a: As the leading shareholder association in Germany DSW is personally represented by its speakers at each German Annual Meeting, which sum up to 850 p.a.. And we also try to be represented at the GMs of the Euro Stoxx companies in Europe. Nevertheless electronic voting will be an important choice for all private shareholders in the future.

4b: (i) Our own voting record would probably not increase, since our objective is not only to vote for our members, but also to exercise the rights as a shareholder such as the important right to ask for information at the General Meeting. (ii) It would probably lower the costs of voting for all shareholders regardless of the fact whether it concerns a German or a Foreign company.

Deutsches Aktieninstitut e.V.	DE	issuers	4a: →	4a: According to the feedback Deutsches Aktieninstitut received, shareholders of major German listed companies can exercise the voting rights through a proxy of their choice. Furthermore, German listed companies often offer the possibility to exercise the voting right (in writing or electronically via the Internet) through a proxy appointed by the company. These voting tools are generally available to domestic shareholders as well as to foreign shareholders. However, it seems that most of the foreign shareholders instruct their local custodian to vote on their behalf. In Germany the major listed companies offer internet proxy voting opportunities for national and international investors.
			4b:→	4b: (i) This cannot be specified, but this should, in the long run, increase the voting ratio to some extent. However, German companies which introduced the internet voting did, so far, not experience any significant increase in the exercise of voting rights as a result of such flexibility. (ii): This cannot be specified; we presume that the cost of voting should be slightly lower for investors. However, from a company's perspective, the total cost of voting increased due to the introduction of internet voting as the other opportunities to vote (e.g. attending the meeting in personal or voting - in writing - through a proxy) have not been abolished.
PROXINVEST	FR	proxy voting agencies	4a: / 4b: (i): 20 % (ii): 20% per cross-border and domestic meeting	/
NORDEA	NR	financial services providers	4a: → 4b: →	4a: We do register proxy voting, in advance of the AGM. Voting in absentia during the AGM should be possible in the future through web as attending is already possible by web. 4b:(i) Do not now; (ii): I do not see that this will reduce the cost for the company, but perhaps for the shareholders as the custodian could not charge. If all depends on the re-registration over to a segregated account or to a voting register. This re-register routine should be made simple and easy.
CITIGROUP	UK	financial services providers	FRANCE 4a: → 4b: →	FRANCE 4a: Not applicable for the French market. 4b: (i) By a significant amount; (ii) Significant lowering in cost – cross-border voting costs more for the shareholder (French market)

					SPAIN / PORTUGAL
				Spain /Portugal 4a: → 4b: →	4a: We provide our own proxy cards and issue them and send them to the company in question via post. 4b: (i) as before (ii): AT: decrease of ca 50 % expected, significant difference between domestic and cross-border.
					AUSTRIA / SWITZERLAND:
				Austria / Switzerland 4a: → 4b: →	4a: CH: we have subscribed to the Central Depository's service for proxy voting. They provide us with one central point for instruction (via their system or by fax) and forward the vote to the company. Physical representation is not required. Electronic voting by the companies directly is not offered. AT: N/A, physical representation required. 4b: (i) As before (ii): AT: decrease of ca 50 % expected, significant difference between domestic and cross-border.
Standard investments	life	UK	investment managers	4a: 4b:	4a: Domestic – UK Voting – We vote by proxy in all but exceptional situations. We make our instructions electronically where possible. Cross Border - We vote by proxy in all but exceptional situations. We make our instructions electronically where possible. 4b: (i) Substantially where obstacles, such as, wet signatures exist. (ii): The time spent on administration can be reduced.
Deutsche Bank		DE	banks	4a: NO→ 4b: →	4a: No, neither domestic, nor cross-border. 4b: DWS is in particular concerned with compliance issues in regard to electronic voting. (i), (ii): We have no cost analysis regarding cross-border voting.

Arbeitskreis Namensaktie	DE	issuers	4a:	4a: Yes, we do use voting in absentia and electronic voting, for both means using a special representative (company proxy) who is present in the annual general meeting. These means are well settled in German corporate practice and are used for cross-border voting as well. A shareholder can attend an AGM in person or give a power of attorney to a) company proxy who is strictly bound to the shareholders' instructions b) a shareholder association c) his bank or d) a personal representative who is appointed by the shareholder for a specific AGM.
			4b:	4b: (i) We believe our voting ratio would be increase by the removal of obstacles significantly. Currently for large German companies attendance figures for AGM's range from under 30 % and 45 % . We believe this could increase at least to 55% – 60 %, if non-German shareholders can better exercise their voting rights and obstacles are removed. (ii): The cost of voting, as explained above, should be harmonized. If the cost of informing the shareholder and also the cost for the shareholder for (a) giving his power of attorney or b) applying for an admission card to the AGM are harmonized across Europe this could also significantly increase the attendance figures. The best way to achieve this is to extend the domestic reimbursement rules to international communications. This is also economically fair because it cannot make a difference where a bank is situated because the cost of informing shareholders is not increased by the fact that the company is not domiciled in the company where the banks are domiciled as long as the cost of communication from the company to the banks is born by the company. Furthermore the costs of electronic communication is dramatically cheaper than information via paper mail and cost differences between domestic electronic communication and such communication abroad are nearly non-existent.
Volkswagen AG	DE	issuer	/	/
BASF AG	DE	issuer	4a:	4a: Yes, shareholders can exercise the voting rights through a proxy of their choice. Furthermore, we offer the possibility to exercise the voting right (in writing or electronically via the Internet) through a proxy appointed by our company. These voting tools are available to domestic shareholders as well as to foreign shareholders. Although according to our experience most of the foreign shareholders instruct their local custodian to vote on their behalf.
			4b:	4b: (i) Our voting ratio did not significantly increase through the introduction of Internet-Voting. (ii): The total cost of voting increased due to the introduction of Internet Voting as the

				other opportunities to vote (e.g. attending the meeting in personal or voting -in writing - through a proxy) have not been abolished.
Fortis/ Radobank	DE	banks	4a: → 4b: →	4a: Yes, only for the domestic market for several (15) local listed companies. 4b: We think that voting in general meetings by way of electronic means will increase the voting ratio by 25% and at the same time will lower the cost of voting by 25-50%.
ABN AMRO	NL	bank	4a:	4a: As indicated above, ABN AMRO Asset Management makes use of a proxy voting agent. This proxy voting agent allows us to submit our vote to the proxy voting agent electronically. However, the proxy voting agent will cast our votes in accordance with the local requirements (if voting in absentia and electronic voting is possible the voting agent might use these options). We do not distinguish domestic voting and cross-border voting when casting our votes through our voting agent. 4b: (i) We estimate that the removal of obstacles on Member State's laws would increase our voting record by 20%. (ii) The removal of obstacles on Member State's laws to participate and voting in general meetings by way of electronic means would lower the costs of voting indirectly as we make use of a proxy voting agent. We suppose that removing obstacles on member states law further will have an effect on the costs charged by the custodians, particularly in share blocking countries.
ROBECO	NL	Asset managers	4a/4b:	4a/4b: See the combined costs under question 1. Removal will increase our voting ratio only where costs are the reason not to vote (e.g. our client who does not want to vote in Scandinavian markets).
A sample of Dutch listed companies, a Dutch intermediary, a Dutch electronic voting bureau, the Dutch Shareholder	NL	issuers, financial intermediary, electronic voting bureau	4a:→	4a: - In The Netherlands listed companies generally offer their shareholders the possibility to vote in absentia by proxy. The companies that participate in the Dutch Shareholders Communication Channel offer the shareholders that participate in that system the possibility to give proxy by electronic means. In practice, it appears not to be possible to vote via this system if shares are hold cross-border, because of the problems resulting from the chain of securities intermediaries and the lack of clarity on who is entitled to control the voting right, as described above.

Communication Channel				- The Dutch intermediary noted that for domestic voting it has to attend the meeting and vote accordingly (this is mandatory in the Netherlands). For cross-border voting the Dutch intermediary either uses the sub custodian to attend the meeting, fill in a proxy card, or send the voting instructions to the appropriate institute that will inform the Issuing Company.
			4b: →	4b: (i) According to the Dutch intermediary, the voting ratio can easily be increased by at least 25%. (ii): The Dutch intermediary noted that it will lower the cost of voting. However, the product will be less profitable because clients will vote themselves via electronic means.
Foundation for Pension Funds (SGCOP)	NL	research foundation	/	/
CalPERS	US	pension fund	4a: →	4a: CalPERS currently votes all of its proxies via electronic means using the ADP Platform.
			4b: →	4b: (i) 5 % to 10 %; (ii): For CalPERS, the cost of voting is the same for domestic and international proxies.

Q5: National-oriented protection rules
Several EU jurisdictions retain "national-oriented protection" rules relating to the physical location of activities such as:
• requirements to open or maintain a local office in order to be entitled to act as withholding agent, act as general clearing member, or to act as a recognised CSD or otherwise provide settlement and custody services to local residents;
• requirements to locate register (for registered securities) or accounts physically in the country of the issuer;
• requirements that restrict local membership in CSD to local intermediaries only.
By how much in relative (percentage) terms do you think these rules contribute to raise cross-border voting costs vis-à-vis domestic voting?

Name	Country	Field	Answer
Law office of the Republic, Registrar of Companies, Official Receiver of the Rep.	CY	public authorities	The national-oriented protection rules may raise cross-border voting costs but they cannot assess it in percentage terms.
Ministry of Justice	SV	public authorities	In the Swedish securities legislation there are few barriers for foreign undertakings in this area.(**)
Finnish Central Securities Depository's (APK and FCSD)	FI	CSDs	There are no requirements to maintain a local office to be entitled to act as CSD member or to provide custody services to local residents. By law, APK act as the sole registrar in Finland.

DEXIA asset management	BE	investment managers	The first question is by how much these rules contribute to raise the costs, but rather do these rules prevent the ultimate investor: - To be able to register for an AGM, because the impediments have such a large impact on the operational process in order to settle his investments locally (p.e. Denmark). If this is the case, what is the additional cost on his operational processes. - To be able to participate to the meeting in all the different ways offered by the issuer and guaranteeing an audit trail to the ultimate investor (UK, Ireland, Portugal, The Netherlands) These requirements do not raise the costs in a direct way, but raise the costs due to the limited options to participate to a meeting (often physical presence) and consequently the travel cost will raise. The 200% cost increase for cross-border voting compared to domestic voting is caused by the impediments of cross-border voting.
Bundesverband Investment und Asset Management (BVI)	DE	investment managers	They are not able to provide a founded analysis of costs related to cross-border voting.
DSW(German shareholders association)	DE	private investors	As said under 1a, local ”Hinterlegungsstellen”, which are paid by the foreign company can be of great help for those shareholders who want to go in person to the General Meeting, since their issuance of the ballots is free of charge for the shareholders, otherwise the minimum fee of € 75 would be charged by Clearstream
Deutsches Aktieninstitut e.V.	DE	issuers	They do not have any information available on this topic.
PROXINVEST	FR	proxy voting agencies	The two last rules are very important for the integrity of the voting process and limit the artificial creation of non existing voting securities. In other words a list of shares created, cleared at a local CSD clearing group of banks is putting the issuer and the investors under a third party scrutiny.
NORDEA	NR	financial services providers	<< Sorry I do not understand the question>>
CITIGROUP	UK	financial services providers	FRANCE: By a significant amount – for the French market. SPAIN / PORTUGAL: N/A

			AUSTRIA / SWITZERLAND: N/A.
Standard life investments	UK	investment managers	N/A as this appears to relate to custodians.
Deutsche Bank	DE	banks	/
Arbaitskreis Namensaktie	DE	issuers	*We are not aware of such requirements at least with regard to Germany. But if such requirements exist, they should be abolished. *Especially the requirements to locate a register in the country of the issuer is a question of the relationship between the company and its register service provider only and has no effect on cross-border voting. *We are not aware of such requirements at least with regard to Germany. But if such requirements exist, they should be abolished. - Since we are not aware of such requirements it is hard to express an opinion to this question. Especially with regard to requirements to locate a register physically in the country of the issuer we do not believe that such a requirement contributes to increase cross-border-voting cost vis-à-vis domestic voting.
Volkswagen AG	DE	issuer	/
BASF AG	DE	issuer	No information available on this topic.
Fortis/ Radobank	DE	banks	National rules contribute to raise cross-border voting costs by 50%. It is therefore important to harmonise voting procedures in the EU.
ABN AMRO	NL	bank	As we just recently started exercising our voting rights through our voting agent we have not directly experienced any national-oriented protection rules. Nevertheless, we encourage any initiative to abolish/minimize national-oriented protection rules and encourage strengthening the possibilities to exercise shareholders rights.
ROBECO	NL	Asset managers	See the combined costs under question 1. Removal will increase our voting ratio only where costs are the reason not to vote (e.g. our client who does not want to vote in Scandinavian markets).
A sample of Dutch	NL	issuers, financial	The Dutch listed companies do not have the feeling that rules in the Netherlands protect Dutch

listed companies, a Dutch intermediary, a Dutch electronic voting bureau, the Dutch Shareholder Communication Channel		intermediary, electronic voting bureau	intermediaries or form a burden for cross border voting. Although more than 300 intermediaries, including foreign ones, are members of the Dutch CSD, chains of intermediaries will always exist as it not feasible for all intermediaries to become a member of all CSDs. As mentioned before, cross-border chains cause problems in the determination of the entitlement of shareholders to exercise the voting rights on shares held through the chains, and actual voting by such shareholders. This is the main impediment for cross border voting. The Dutch electronic voting bureau noted that if these regulations were lifted it would make it easier to create a common platform for electronic voting across Europe, not perhaps so much in terms to lowering costs, but more in terms of actually making it happen.
Foundation for Pension Funds (SGCOP)	NL	research foundation	/
CalPERS	US	pension fund	As stated above (4 - (ii)), there is no difference in costs for CalPERS.

(**)Even a foreign undertaking may be granted authorisation as a central securities depository in Sweden. The undertaking has to fulfil certain provisions in the Financial Instruments Accounts Act (the Act) .

According to the Act both Swedish and foreign institutions could be clearing members – account operator – in a Swedish CSD.

Furthermore a Swedish CSD could grant a foreign undertaking the right to be registered as nominees in respect of financial instruments (see Chapter 3 Section 7 – 9) .

Shares dematerialised according to the provisions of the Financial Instruments Accounts Act must be registered in a Swedish CSD but through nominee registration a foreign undertaking could handle Swedish dematerialised securities.

To sum up, there are no other specific requirements on foreign companies in this respect than that they establish a for local office.

Q6: Obstacles to cross-border voting: ranking
Which is the ranking of obstacles to cross-border voting (you may want to distinguish by EU country/geographical area)?
- Receiving proxy/voting information too late;
- Share blocking;
- Insufficient or unclear proxy/voting information;
- National-oriented protection rules;
- other (please specify).

Name	Country	Field	Ranking
Law office of the Republic, Registrar of Companies, Official Receiver of the Rep.	CY	public authorities	(1) National-oriented protection rules; (2) Insufficient or unclear proxy/voting information; (3) Receiving proxy/voting information too late; (4) Share blocking.
Ministry of Justice	SV	public authorities	(1) They believe that the difficulties in general of getting institutional investors(without regard to nationality) to vote is the primary obstacle to cross-border voting; (2)Receiving proxy/voting information too late and unsufficient or unclear proxy/voting information may also have negative affects on the possibilities to exercise cross-border voting; (3) National-oriented protection rules and share blocking do not constitute major barriers to cross-border voting.
Finnish Central Securities Depository's (APK and FCSD)	FI	CSDs	(1) National-oriented protection rules; (2) Share-blocking; (3) Insufficient or unclear proxy/voting information; (4) Receiving proxy/voting information too late.
DEXIA asset management	BE		(See the table below)(*)
Bundesverband	DE	investment	(1) Receiving proxy/voting information too late.

Investment und Asset Management (BVI)		managers	In general, insufficient, unclear or too late received proxy/voting information is regarded as the major impediment in relation to cross-border voting.
DSW(German shareholders association)	DE	private investors	(1) Receiving proxy/voting information too late; (2) Share blocking; (3) National-oriented protection rules; (4) Insufficient or unclear proxy/voting information.
Deutsches Aktieninstitut e.V.	DE	issuers	Receiving proxy/voting information too late – This has been specified by major German listed companies as first or second priority. Insufficient or unclear proxy/voting information; – This has been specified as first or third priority. Share blocking**;** – This has been specified as second or third priority. National-oriented protection rules; – This has been specified as fourth priority. other (please specify). – A number of responses we received stressed that investors worldwide (including in particular investment funds) are not interested in the "normal" agendas of general meetings (and do therefore not exercise their voting rights or, in other words, "vote" every day by selling, or not selling, the shares) and that additional proxy voting facilities would therefore not necessarily result in such globally investing shareholders voting "at the push of a button" in relation to hundreds or thousands of companies being part of their portfolio.
PROXINVEST	FR	proxy voting agencies	(1) National-oriented protection rules (such as the French NRE identification process with a special proxy process subject to the clearance of the CEO of the company....) (2) Share blocking (such as the French blocking process) - Invalid permanent proxy process (one proxy per each meeting is requested in France as in many other European countries and it must be signed by the managing director of the shareholding entity); - The regrettable idea that the vote over the internet must be taken after confirmation of the identity of the holder. On the contrary, it would be by far easier and cheaper to take first the vote instruction of the voter and then check if this vote affects shares properly held in account and then confirmed by the chain of intermediaries...The votes finally caste would be confirmed to the holder. Who cared for fake

			voter pretending to vote shares they do not have. Let them do, these votes will not be counted any how...
NORDEA	NR	financial services providers	(1) Receiving proxy/voting information too late; (2) Insufficient or unclear proxy/voting information; (3) Re-registration of shares to a segregated account or voting register.
CITIGROUP	UK	financial services providers	FRANCE: (1) National-oriented protection rules (2) Receiving proxy/voting information too late; (3) Insufficient or unclear proxy/voting information; (4) Share blocking SPAIN / PORTUGAL: (1) Insufficient or unclear proxy/voting information; (2) Share blocking; (3) Receiving proxy/voting information too late; N/A → National-oriented protection rules. AUSTRIA / SWITZERLAND: (1) Receiving proxy/voting information too late; (2) Other: CH: Registration requirements (especially where shs have to be registered in the name of the beneficial owner, i.e. no nominee voting); (3) Share blocking; (4) Insufficient or unclear proxy/voting information; N/A → National-oriented protection rules.
Standard life investments	UK	investment managers	(1) Share blocking; a) by custodian; b) by company; (2) Insufficient or unclear proxy/voting information;

			(3) Receiving proxy/voting information too late.
Deutsche Bank	DE	banks	(1) Insufficient or unclear proxy/voting information; (2) Receiving proxy/voting information too late; (3) other: Disclosed proxy voting; (4) National-oriented protection rules; (5) Share blocking.
Arbaitskreis Namensaktie	DE	issuers	(1) Receiving proxy/voting information too late; (2) Unwillingness or refusal of financial intermediaries to pass on power of attorneys and other information from shareholders to the companies; (3) Insufficient or unclear proxy/voting information; (4) Share blocking; (5) National-oriented protection rules.
Volkswagen AG	DE	issuer	/
BASF AG	DE	issuer	(1) Receiving proxy/voting information too late; (2) Share blocking; (3) Insufficient or unclear proxy/voting information; (4) National-oriented protection rules.
Fortis/ Radobank	DE	banks	(1) EU harmonisation and standardisation (ISO) of proxy/voting information; (2) Receiving proxy/voting information too late; (3) Insufficient or unclear proxy/voting information; (4) Share blocking; (5) National-oriented protection rules.
ABN AMRO	NL	bank	(1) Share blocking;

			(2) Receiving proxy/voting information too late; (3) Insufficient or unclear proxy/voting information; (4) National –oriented protection rules.
ROBECO	NL	Asset managers	(1) Share blocking; (2) Receiving proxy/voting information too late; (3) National –oriented protection rules; (4) Insufficient or unclear proxy/voting information.
A sample of Dutch listed companies, a Dutch intermediary, a Dutch electronic voting bureau, the Dutch Shareholder Communication Channel	NL	issuers, financial intermediary, electronic voting bureau	(1) Share blocking: The Dutch intermediary noted that for cross border voting this is a huge obstacle due to the fact that it is not clear to all parties what the rules regarding share blocking are in that particular country. And although certain law has abandoned share blocking the custodian must sign an agreement in certain countries and declare that the shares are in that particular account. The Dutch intermediary further noted that in the Netherlands shares will either be blocked until and including the registration deadline or until and including the AGM date. In case of a registration deadline we have to confirm that the shareholder has the shares in his portfolio on that date and therefore the intermediary blocks the shares due to an enormous amount of settlements (buys and sales) which might result in an different amount of shares as were the clients would like to vote upon. (2) Receiving proxy/voting information too late: The Dutch intermediary noted that for cross border voting it uses a proxy provider and this proxy provider is responsible to receive the proxy voting information in time. In the Netherlands, the intermediary traces the information and contacts Issuing Companies to get the information in time. However this can be time consuming. (2) Insufficient or unclear proxy/voting information; The Dutch intermediary noted that for cross border voting it uses a proxy provider and this proxy provider is responsible to make sure that the information is sufficient and clear. For the Netherlands the Dutch intermediary once again will contact the Issuing Company whenever there is insufficient or unclear proxy voting information. However this can be time consuming. (3) National –oriented protection rules: The Dutch intermediary noted that there were no problems faced so far. - other: - As the Dutch listed companies mentioned before, cross-border chains cause particular problems for

			cross border voting. The determination of the entitlement of shareholders to exercise the voting rights on shares held through these chains is problematic and therefore actual voting by such shareholders is as well. The chains can be long and complicated because investors tend to hold their securities at the cheapest intermediary. The longer and more complicate the chain, the more difficult (and costly) the exercise of voting rights will be. As investors and banks cause the chains to be long and complicate, costs related to the determination of the entitlement of shareholders to exercise the voting rights on shares held through the chains should be born by the investors and the intermediaries. - The Dutch electronic voting bureau noted that cross border voting is complex. The consultation of the European Commission focuses primarily on the legal complexity of cross border voting. It is our experience in the Dutch market that the practical introduction of electronic voting requires a holistic approach that combines legal, technical, sociological issues. The primary issue is not legal and not technical, but sociological. There is a natural and logical resistance to change in some companies and banks (not all companies, and not all banks) that shareholders regain as owners some of the influence that they lost in the past decades and that banks facilitate the administrative processes to make this happen. A change in the corporate governance that is currently being sought will lead to more checks and balances in the relationship between shareholders and management. The quick and successful implementation of cross border voting promotes this change through an increase in the level of shareholder participation. This effect is not always welcomed by the management of companies, in spite of the fact that they may in public defend a different position. A sole focus on legal issues actually increases the risk that the implementation of electronic cross border voting can take a longer period of time than would be the case if the problem was addressed ab initio from a more comprehensive perspective.
Foundation for Pension Funds (SGCOP)	NL	research foundation	/
CALPERS	US	pension fund	(1) Receiving proxy/voting information too late; (2) Insufficient or unclear proxy/voting information; (3) Share blocking; (4) National-oriented protection rules.

(*)

Country	Receiving proxy/voting information too late	Share blocking	Insufficient or unclear proxy/voting information	national-oriented protection rules	Audit Trail
AUSTRIA	5	2	4	1	3
BELGIUM	5	2	4	1	3
DENMARK	5	2	4	1	3
FINLAND	5	2	4	1	3
FRANCE	5	2	4	1	3
GERMANY	5	2	4	1	3
IRELAND	5	3	4	1	2
ITALY	5	3	4	1	2
NETHERLANDS	5	2	4	1	3
PORTUGAL	5	2	4	1	3
SPAIN	5	2	4	1	3
SWEDEN	5	2	4	1	3
UK	5	3	4	1	2

1. Most important
2. 2nd most important
3. 3rd most important
4. Less important
5. Least important

***

Answer to the questionnaire provided by Hermes

QUESTIONNAIRE

1. DOMESTIC VERSUS CROSS-BORDER VOTING

1a. Is cross-border voting more expensive in comparison to domestic voting? By how much (in percentage terms)?

1b. Does such relationship change according to countries?

1c. If this is the case, could you specify by EU country/geographical area?

In our experience voting in some European countries is more costly than in others. Table 1 in the appendix provides an estimate of the minimum and maximum range of annual costs we incur in connection to voting activities. Costs are split into two categories: fixed costs for setting up a global voting system, and *ad hoc* costs for voting in European countries. Such *ad hoc* costs constitute a significant part of the total, about 81-90% of total costs incurred (see table 2 and 3 in the appendix).

According to our findings, the most significant components of the ad hoc costs to be incurred to vote in European countries include:

– Share-blocking costs

– Costs due to lack of timely/exhaustive information on agenda items

– Re-registration costs

– Powers of attorney costs

– Costs due to the lack of a common framework for shareholders rights.

A description of such costs factors is provided in the appendix.

On the basis of such findings we conclude that the costs for voting are higher in the countries applying the above requirements, i.e.:

– Re-registration: Denmark, Finland and Sweden

– Powers of attorney: Denmark, Finland, Sweden, Belgium (to a lesser extent) and Poland

– Share-blocking: Austria, Belgium, Czech Republic, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Poland, Portugal, Slovakia. This list includes countries where blocking is *de facto* applied even if national laws have recently abolished blocking requirements, or have left this matter to statutory regulation. At this regard see also the answer to question 2.

2. SHARE BLOCKING

2a. How do you quantify the cost of share blocking provisions as a percentage of the total cost of voting? Does the presence of share blocking requirements prevent you from voting?

2b. Does this apply also for countries where share-blocking is only optional?

2c. What would be the effect of the complete abolition of share-blocking requirements?

- By how much (percentage) would it reduce your cost of voting?

- By how much (percentage) would it increase your voting record?

Many investors renounce to voting in countries where share blocking applies.

This applies also to cases where share-blocking is only optional and provisions vary on a company by company basis. This is due to the fact that custodians and proxy agencies tend to interpret legal provisions in a conservative and risk-adverse way, and normally apply a *worst case scenario* approach to these matters. Hence, an investor might see its shares blocked in, say, a French company, even if that particular company does not apply share-blocking anymore. In our view such evidence demonstrates that voting is an area where **flexibility is detrimental**, as the existence of a multitude of differing statutory provisions *de facto* creates confusion and induces custodians to implement a minimum common denominator.

The existence of quorum requirements – which *per se* cannot be considered to be a problem – might *de facto* extend the blocking period considerably. Indeed, in some countries shares shall be blocked 5 days ahead of the date fixed for the first call of the general meting ("GM") and remain blocked till the day after the GM, which might be held on second or even third call, with a total blocking period that can reach 30 days. Given that it cannot be foreseen with certainty whether the GM will go on second or third call, the uncertainty over the length of the whole blocking period acts as a further discouragement to investors.

On the basis of a survey conducted by IIRF (International Investor Relations Federation) in partnership with DF King in 2004[42] over 125 Issuers and Investors from more than 20 countries, the key reasons why investors do not vote in foreign meetings are:

– Receiving proxy/voting information too late

– Share blocking

– Insufficient or unclear proxy/voting information

Hermes considers that share-blocking has a significant cost, and as system it is *inferior* to the record date system. **The complete abolition of share-blocking requirements all over Europe could induce a significant number of investors[43] to vote in Continental Europe**. This could also be a bust to the improvement of the efficiency of global custodians in this area. Greater demand for proxy voting services could create greater business opportunities for custodians, and the formalisation of fees and contractual responsibilities. In the long run this could ultimately bring in competition and improve efficiency. The breaking up of monopolies and the education of investors and intermediaries should be regarded also as part of a process aimed at enhancing shareholders rights in Europe.[44]

According to our estimates:

– The costs associated to share blocking can represent 65% of our total voting costs

– Share-blocking prevents 25% of our main clients from voting. It also has an impact in the marketing our services, as it make the number of potentially responsible/active owners shrink considerably. Indeed, - as detailed below - we calculate that the abolition of share-blocking throughout the European Union could improve attendance rate of institutional investors by 20%-49%.

– The effect of complete abolition of share-blocking throughout the whole European Union could be estimated to EUR 3bn per annum. This estimate is based on the following two elements:

– Value of shareholders participation

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42 Electronic copies are available on request.

43 E.g. Merril Lynch, UBS, Fidelity, Standard Life, Railpen, F&C, USS, etc.

44 Up to our knowledge, in markets such as Belgium, Luxembourg, Denmark and Sweden local custodians operate in monopoly situations, often via outsourcing agreements with global custodians.

In 2003 and 2004 the following Spanish companies paid an *attendance bonus* to the investors that voted at their GMs either in person or by proxy:

Company	Date of the GM	Attendance rate	Total bonus paid	Market cap	% of bonus on market cap
Telepizza	29/06/2004	54.71%	€ 244,660	€ 353,283,892	0.07%
Vidrala	22/06/2004	82.46%	€ 448,088	€ 240,350,000	0.19%
Repsol	31/03/2004	67.53%	€ 16,488,982	€ 20,583,757,986	0.08%
Iberdrola	10/05/2003	48.01%	€ 4,328,436	€ 13,126,855,851	0.03%
Average			**€ 5,377,542**		**0.09%**
Source: Gerogeson Shareholder					

In what follows we will use this evidence to estimate the value of shareholder's participation from the companies' point of view. In other words – on the basis of the payment that the above companies have been ready to make to encourage the participation of institutional investors to their GMs - we will assume that an average European company could have a benefit from shareholders' participation equal to 0.09% of its market cap.

A. Real attendance rates of minority shareholders

As shown by the evidence collected by Deminor over the companies included in the FTSE Eurotop 300 index and by Manifest on the FTSE All-Share companies (see table below), the actual participation of the free float at companies' GMs is affected by market practice rules applied by custodians in relation to GM attendance (e.g. custodians' internal requirements as to share-blocking). Indeed, regardless of what legal rule is in place, custodian's practices drive GM participation.

Countries	Attendance rate of the free float	Market practice rules (driven by custodians' internal rules)	Legal rule
Belgium*	20.00%	- Deadline to send proxy voting instructions to custodians: 7 days prior to GM - Blocking: 6 days ca	Share-blocking: Generally 3-6 days before meeting
France*	17.45%	- Deadline to send proxy voting instructions to custodians: 8 days prior to GM - Blocking: 5 days ca. Actually, blocked shares can be traded up to 3 ay prior to GM. Trading would imply cancellation of votes cast	Prior to the reform[45] the blocking date used to be 5 days before the meeting. Nowadays, unless the shareholder's name is recorded in the company shareholders list (if any) prior to the meeting, the "Freezing" of the shares to be voted (*immobilisation or certificat d'indisponibilité des actions*) is still requested by French law. However the NRE decree allows for a defreezing prior to the GM in case of the sale of the shares.
Germany*	10.05%	- Deadline to send proxy voting instructions to custodians: 7 days prior to GM - Blocking: 6 days ca. Actually, blocked shares can be traded up to 3 any prior to GM. Trading would imply cancellation of votes cast	Blocking has been abolished in 2005. It used to be about 5 days before GM
Italy*	4.40	- Deadline to send proxy voting instructions to custodians: 7 days	Used to require a 5 days blocking period. Current rules vary from company to

[45] egulation has been amended by Decree dated May 3, 2002 (art. 38 modifying art. 136 of the Decree dated March 23, 1967).

		prior to GM - Blocking: 6 days ca.	company (with a maximum blocking period of 2 days before GM).[46] However most of the custodians still apply a blocking system.
Netherlands*	12.95%	- Deadline to send proxy voting instructions to custodians: 5 days prior to GM - Blocking: 5 days ca	Blocking has been abolished by the Law 15 December 1999, art. 2:119, which establish record date procedure (max 7 days ahead of GM). Prior to the reform the blocking date used to be 5-6 days before the meeting.
Sweden	45%**	Record date	Re-registration 10 days prior to GM
UK	40.20%-53.20%	Record date	Record date: 48 hours before the GM
*) 2003 data **) Data based on a small sample			
Source: Deminor country ratings 2003-2004, Manifest Voting Review 2004, JP Morgan internal rules manual 2004-5, Hermes calculation			

This evidence clearly suggests that:

– The "free float" votes primarily in countries where *de facto* share-blocking is not applied (e.g. Sweden and UK)

– Abolition of share-blocking throughout the European Union could improve attendance rate of institutional investors by 20%-49% (e.g. from Italian attendance rates to UK ones)

– Education and communication programmes could be beneficial in improving the understanding of market rules and to improve market practices – the European Commission could play a key role in this.

If we combine this evidence with the data of presented under point A as to the value of the shareholders participation, we can reasonable state that an increase of institutional investors' attendance by 20%-49% could have an economic benefit. In the absence of more accurate data at this regard, we estimate that an increase of investors' participation at AGMs could have a theoretical value of more than EUR 3bn. Our estimates are

[46] As per Vietti reform and companies articles of association amended after 1/1/2004.

set out in table 4 in the appendix for example sake considering three different scenarios (i.e. increase attendance rates by 20%, by 35% and by 49%).[47]

[47] For the purpose of this estimate, we have considered the effects of an increase of investors' participation only on the key Belgian, French, German, Dutch and Italian companies.

3. AVAILABILITY OF PROXY/VOTING INFORMATION

3a. Is your (cross-border) voting activity impaired by the availability of proxy/voting information? If this is the case, how do you quantify such costs as a percentage of the total voting costs?

3b. In case of removal of obstacles in Member States' laws to voting through a proxy (in particular abolition of restrictions as to the person of the proxy, the form in which a proxy may be granted and the powers linked to the proxy):

- By how much (percentage) would it reduce your cost of voting?

- By how much (percentage) would it increase your voting record?

3c. In case of introduction of minimum requirements concerning the length of the notice period for a general meeting, the content of the invitation and the documentation to be provided with it:

- By how much (percentage) would it reduce your cost of voting?

- By how much (percentage) would it increase your voting record?

In our view it is imperative to introduce reforms to address both the timing of the release of the documents, and the minimum disclosure on agenda items (including on nominees), in order to substantiate shareholders' rights in Europe. As indicate above such issues have been identified as the main obstacles for voting in Europe, and we do not think that art 17 of the Transparency Directive is sufficient to reform the system. In the absence of a more radical reform on these matters the whole objective of improving shareholders' rights would be missed, as voting at GMs and electing board members is at the basis of corporate governance.

Below we mention some practices that *de facto* impede the exercise of basic shareholders rights:

– In Denmark the notice of a GM can be published as late as 8 days before the GM[48]. This leaves shareholders and intermediaries in an extremely difficult situation to process the proxy votes.

– In some European markets (e.g. Italy, Greece, etc) there is no requirement to circulate the profile of candidates for the board prior to the GM called to appoint them. This deprives minority shareholders of the right of effectively appointing the directors of the companies in which they invest. In our view candidates' profiles need to be considered as integral part of the GM materials and should therefore be circulated in a timely fashion. **If shareholders are not in a position to know the profile of the candidates they won't be in a position to assess the nominees. This event would quash the EC's objective of strengthening the role of (independent) NEDs in Europe.**

We estimate that the lack of adequate and timely information on agenda items implies a cost equal to 7-40% ca. of our annual costs, in terms of time we spend contacting companies for clarifications/additional information (see Table 1 in the Appendix). We currently invest these resources to cover our clients and ourselves from the risk of damaging our reputation and credibility vis-à-vis issuers and avoid basing our voting decisions on incomplete information. We consider that this cost would be reduced considerably in presence of rules requiring the release of satisfactory information on all agenda items at least 20 days ahead of the GM.

Furthermore, we believe that the weakness in the quality and timelines of the information relating to the candidates to board positions and/or incentive systems has a serious cost, i.e. the cost of approving the election of the wrong board or the wrong incentives, which may be a cause for underperformances or even fraud cases. The monetary value of such consequences is unpredictable, but significant.

As far as proxy voting is concerned, we estimate that the lack of adequate proxy voting facilities result in 1% of our total annual costs[49]. See Table 1 and the Description of our costs in the Appendix for more information.

Furthermore, we consider also that a reform of proxy voting rules could have a very significant impact on our voting records in Sweden. Indeed, we understand that at present Swedish rules are such that proxies are not obliged to cast the voting instructions received unless they consider that these would be determinant for deciding the approval or the rejection of a resolution at the GM. At present we are not able to have confirmation

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48 For an updated review of the rules in place see: Deutsche Bank, *Beyond the numbers – Corporate governance in Europe*, page 63, 4 March 2005.

49 This is the case for instance of Italian co-operative banks (e.g. so called people's banks/ *popolari* banks) which impose extremely restrictive rules to proxy voting, and *de facto* makes it impossible for an institutional investor to appoint a proxy to vote at AGM. According to the current rules a proxy can be given only to another shareholder, who shall be a *member* of the co-operative, approved by the board of directors of the company. A *member* can appointed as proxy of only one other member. This obviously impedes appointing a lawyer or an employee of the custodian bank as proxy.

of the votes cast in Swedish GMs on our clients' behalf by our appointed proxies. We are told that it is possible that none of our votes is cast. A reform that addresses (also) this issue could *de facto* increase our voting records in Sweden by 100%.

4. REMOTE VOTING

4a. Do you presently make recourse to voting in absentia and electronic voting? Please specify for domestic voting and cross-border voting.

4b. By how much (in percentage terms) would the removal of obstacles in Member States' laws to participation and voting in general meetings by way of electronic means:

- *(i) increase your voting ratio;*
- *(ii) lower the cost of voting? Please specify whether there is a difference with regard to cross-border voting.*

We currently send our voting instructions to our custodians who then appoint a proxy on our clients' behalf, or transfer - in those markets where this is allowed - the reconciliation of all voting instructions received to issuers. This applies both to domestic and to cross-border voting.

We do not have an estimate of the impact that e.voting (directly from investors to issuers) might have overall, but we consider that this might be significant not only in terms of savings on the process (along the chain), but also in terms of reduction of mistakes, and improvement of verification systems. The only estimate that we can gauge relates to the cases where we presently do not vote because our custodian does not offer a proxy voting facility at present:

- All Belgian companies except those included in the BEL20 index
- All Luxembourg companies
- Voting in *remote* areas - We are currently charged extra for GMs that take place in "remote" areas (e.g. everywhere in Poland except Warsaw). This cost may represent 1% ca. of our voting costs.

5. NATIONAL-ORIENTED PROTECTION RULES

Several EU jurisdictions retain "national-oriented protection" rules relating to the physical location of activities such as:

- *requirements to open or maintain a local office in order to be entitled to act as withholding agent, act as general clearing member, or to act as a recognised CSD or otherwise provide settlement and custody services to local residents;*
- *requirements to locate register (for registered securities) or accounts physically in the country of the issuer;*
- *requirements that restrict local membership in CSD to local intermediaries only.*

By how much in relative (percentage) terms do you think these rules contribute to raise cross-border voting costs vis-à-vis domestic voting?

We are not familiar with the impact that such restrictions imply. Presumably such costs are born by our custodian and the expense is then passed on to the underlying clients' accounts.

The only matter that we are aware of relates to the regulation in place in countries such as Sweden, Denmark, and Finland, which requires custodians to register their clients' shares into local accounts several days prior to the GM date. After the GMs the shares will be registered again in their original accounts.

Such Scandinavian requirement offers no evident advantage, but, on the other hand, it implies clear costs for global custodians and their underlying clients. This represents 4-10% of our annual voting cost.

6. OBSTACLES TO CROSS-BORDER VOTING: RANKING

a) Which is the ranking of obstacles to cross-border voting (you may want to distinguish by EU country/geographical area)?

1. Share blocking

2. Receiving proxy/voting information too late

3. Insufficient or unclear proxy/voting information

4. Re-registration of shares – we assume these are included in the "national-oriented protection rules" mentioned above

5. Stock-lending: The payment of dividends around the AGM period implies that many shares are borrowed during that period in order to get fiscal efficiencies from the tax treatment of the dividend in some markets. Separating the dividend payment date from the AGM date might facilitate the voting of the shares by long-term owners. We attach the ICGN paper on stock lending for a deeper analysis of such theme.

6. Powers of attorney requirements

7. Active ownership costs (see below)

8. (American/Dutch/else) Depository receipts – Voting rights are difficult to cast for these securities

9. Lack of confirmation on voting instructions cast/delivered – Accidents in the intermediaries chain often induce to be distrustful of the efficiency of the voting system, and hence play as a disincentive from committing to invest resources into active ownership.

b) With respect to "Active ownership costs" we believe that - given the existence of strong evidence demonstrating that active ownership improves performance[50] - the European Directive on shareholders rights should aim at facilitating active ownership, and reduce the costs associated to that. Such costs relates primarily to the following factors (see Table 5 in the Appendix):

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[50] See Hermes Pensions Management Ltd, "Corporate Governance and Performance", December 2004 - http://www.hermes.co.uk/corporate_governance/corporate_governance_and_performance_feature.htm

(a)

– Lack of clarity on concert party rules: The regulation of some Members State currently does not differentiate control-seeking actions from the co-operation of institutional investors aiming at developing a shared message to companies. According to our estimate the lack of clarity implies costs representing 3-27% of the total costs we estimate for Active ownership activities.

– Proxy solicitation: Disclosure formalities/requirements varies widely throughout the European Union and in some cases may imply costs representing 34-69% of the total costs we estimate for Active ownership activities.

(b)

(c)

(d)

(e)

(f) **ATTACHMENT**

– - ICGN paper on stock lending: "Share lending vis-à-vis voting: A report commissioned by the International Corporate Governance Network" (28 May, 2004)

ANNEX 7: ATTENDANCE RATE AT GMS OF FOREIGN SHAREHOLDERS

Impact assessment on shareholders' rights

Attendance rate at GMs of foreign shareholders

THYSSEN KRUPP (German issuer)

	Foreign shareholders	**Domestic shareholders**
As % of total share capital	20%	80%
Present at GM (as % of total share capital)	0,4% (2%*)	53,6% (67%**)

* As a percentage of total shares owned by foreign shareholders

** As a percentage of total shares owned by domestic shareholders

DEUTSCHES AKTIENSTITUT (Association of German exchange-listed stock corporations and other companies and institutions which are engaged in the capital market development)

German stock companies which have issued **bearer** shares cannot verify whether foreign investors are represented by German banks. Therefore, the information contained in this second questionnaire should be read in light of this uncertainty.

MAN AG (German issuer)

	Foreign shareholders	**Domestic shareholders**
As % of total share capital	37 %	63 %
Present at GM (as % of total share capital)	0,1 % (0,27 %*)	45,4 % (72,06 %**)

VOLKSWAGEN AG (German issuer)

	Foreign shareholders	**Domestic shareholders**
As % of total share capital	50 %	50 %
Present at GM (as % of total share capital)	5 % (10%*)	35% (70%**)

* As a percentage of total shares owned by foreign shareholders

** As a percentage of total shares owned by domestic shareholders

*** These numbers don't allow us to say, how easy it is to vote from a certain country, as most of the listed companies have one or a few resident controlling shareholders. These controlling shareholders represent often a very important voting presence in general meetings.

ARBEITSKREIS NAMENSAKTIE (The working group of bigger German companies with registered shares)

Figures of German DAX-companies with registered shares (Epcos is a TecDAX constituent)

		Foreign shareholders	Domestic shareholders
Allianz AG	**As % of total share capital**	50	50,0
2004	**Present at GM (as % of total share capital)**	6,3 (12,6)*	30,8 (61,6)**
DaimlerChrysler AG	**As % of total share capital**	43,0	57,0
2005	**Present at GM (as % of total share capital)**	15,3 (35,6)*	22,6 (39,6)**
Deutsche Bank AG	**As % of total share capital**	45,9%	54,1%
2004	**Present at GM (as % of total share capital)**	11,8 (25,7)*	20,2 (37,3)**
Deutsche Börse AG	**As % of total share capital**	57,7	42,3
2003	**Present at GM (as % of total share capital)**	12,1 (21,0)**	32,5 (76,8)*
Dt. Lufthansa AG	**As % of total share capital**	24,3	75,7
2004	**Present at GM (as % of total share capital)**	7,7 (31,7)*	33,4 (44,1)**
Deutsche Post AG	**As % of total share capital**	17,9%	82,1%
2004	**Present at GM (as % of total share capital)**	3,4% (19,0%)*	69,5% (84,7%)**
Dt. Telekom AG	**As % of total share capital**	32,1	67,9

2003	**Present at GM (as % of total share capital)**	2,7 (8,4)**	56,8 (83,6)**
Epcos AG	**As % of total share capital**	45,0	55,0
2005	**Present at GM (as % of total share capital)**	22,5 (50,0)*	23,9 (43,5)**
Infineon Techn. AG	**As % of total share capital**	47,6	52,4
2005	**Present at GM (as % of total share capital)**	17,0 (35,7)*	31,0 (59,2)**
Münchener Rück AG	**As % of total share capital**	45,2	54,8
2005	**Present at GM (as % of total share capital)**	9,1 (20,1)*	33,7 (61,0)**
Siemens AG	**As % of total share capital**	56,2	43,8
2005	**Present at GM (as % of total share capital)**	12 (21,4)*	21,6 (49,3)**

* As a percentage of total shares owned by foreign shareholders

** As a percentage of total shares owned by domestic shareholders

FCSD – Finnish Central Securities Depository Ltd

	Foreign shareholders	**Domestic shareholders**
As % of total share capital	31.71%	68.29%
Present at GM (as % of total share capital)	8.46% (18.46%*)	38.76% (54.12%**)

* As a percentage of total shares owned by foreign shareholders

** As a percentage of total shares owned by domestic shareholders

(According to FCSD the attendance rate at GMs of foreign shareholders varies from 0% to 70-90% in different companies applying the same arrangements based on our Companies Act. The wide variety in attendance rate with basically similar rules (Companies Act ja by-laws) applied in all companies proves that the present company law framework works well enough and that the attendance at GMs depends mostly on other factors than the company law provisions dealing with shareholders´ right to attend GM.)

ANNEX 8: COSTS, BENEFITS AND RISKS OF THE DIFFERENT OPTIONS

	Costs	Benefits	Risks
Choice of the legal instrument			
A: Status quo, self-regulation	• Current situation: high cross-border voting costs for institutional investors; prohibitive cross-border voting costs for small individual investors. • Opportunity costs of not removing existing barriers. • Slow advance and uncertain results.	• Flexibility at national level.	• the rising percentage of share ownership by foreign institutional investors is already threatening EU listed companies to be owned by a passive shareholder base; • EU listed companies are facing the risk to have a structural corporate governance disadvantage vis-à-vis their US and Asian competitors.
B: Recommendation	• no guarantee of minimum uniform standards in those few key domains which are the origin of cross-border voting costs	• Flexibility at national level.	• At least in some MS relevant cross-border voting obstacles would persist.
C: Regulation.	• Increased costs. • Inadequate market intervention. • Low flexibility to take into account specificities of EU company law systems.	• Ensuring a tight common framework.	• Overregulation.
D: Directive	• Some (generally low) cost increases due to new requirements in some MS.	• A mix of regulation and deregulation to remove existing legal barriers minimising the costs. • Full consideration of specificities of EU company law systems. • Measures requested by issuers and intermediaries. • Preventing possible future more interventionist measures.	• Less flexibility vis-à-vis options A and B.
D1: New Directive	• A New separate legislative instrument.	• The Transparency Directive also applies to non-EU issuers, while the proposal is directed at EU companies only.	• Legislative fragmentation.
D2: Amending Transparency Directive	• The same instrument would contain provisions aimed at two different sets of	• Not introducing new legislative instruments.	• Creating conflicts of law issues.

companies.

	COSTS	BENEFITS	RISKS
Proxy voting and voting upon instructions			
A: Status quo, self-regulation	• Restrictions to proxy rights in some MS; • Obstacles to voting upon instructions (split voting not possible in some MS)		• Shareholders who cannot attend GMs would be unable to vote.
B: Minimum standards • remove restrictions to proxy rights. • Allow split voting.		• Allow shareholders who cannot attend GMs to vote though proxies or voting upon instructions. • Flexibility for MS to prevent the appointment of certain persons as proxies	
C: Harmonisation • Introduce a uniform method to appoint proxies, and a uniform set of persons who may be appointed as proxy.	• No flexibility at MS level to define the categories of persons that can be appointed as proxies.	• lower information costs for cross-border shareholders	• No flexibility to answer to national specificities: possible conflicts with MS legal structure.
Share blocking			
A: Current situation	• Share blocking (mandatory in some MS, and enabled in others) prevents shareholders to negotiate shares up to weeks in advance to the GM.	• Where share blocking mandatory, guarantee that only shareholders may vote. • Where enabled, flexibility at company level to choose between share blocking and record date	• Shareholders find it very costly to block shares and are discouraged to vote.
B: Minimum standards (i) • Prohibition of mandatory share blocking.	• In countries where share blocking is enabled, shareholders face high transaction costs to find which companies adopt share blocking and tend not to vote in any case.	• Flexibility at company level to choose between share blocking and record date.	• Shareholders would still be discouraged to vote in several MS.
C: Minimum standards (ii) • Prohibition of share blocking, either	• Some MS have chosen reconciliation, which has proved as misleading as enabling share blocking.	• Where record date adopted, shareholders would be allowed to negotiate shares and to vote at the	• Shareholders would still be discouraged to vote in some MS.

mandatory and enabling. *D: Harmonise conditions (i)* • Prohibition of share blocking, either mandatory and enabling and introducing mandatory record date, without fixing the date.	• Minor transaction costs for shareholders to identify the relevant record date.	same time. • Shareholders would be allowed to negotiate shares and to vote at the same time. • Flexibility at MS level to fix the record date	• Minor extra costs to vote.
E: Harmonise conditions (ii) • Prohibition of share blocking, either mandatory and enabling and introducing mandatory record date, *and* fixing the date.	• No flexibility at MS level to fix the record date.	• shareholders would be allowed to negotiate shares and to vote at the same time.	• No flexibility to answer to national specificities.

	COSTS	BENEFITS	RISKS
Information related to GMs			
Notice periods for convening a general meeting A: Status quo, self-regulation <u>B: Minimum Standards</u> • Introducing a minimum notice period.	• Very close notices for GMs allowed in several MS. • Less flexibility for issuers.	• High flexibility for the issuer. • Allow cross-border shareholders to receive GM information in time to vote. • Flexibility for issuers to introduce longer minimum terms.	• Cross-border shareholders unable to vote due to short notice. • .
Content of the notice A: Status quo, self-regulation	• In several MS no obligation for issuers to specify either where GM-related documents can be obtained and voting procedures.	• Low communication costs for issuers.	• Higher voting costs for cross-border shareholders.
<u>B: Minimum Standards</u> • location from which GM-related information can be obtained or downloaded, and a clear description of the voting procedures.	• Minor extra communication costs for issuers.	• Lower information costs for cross-border shareholders.	
Electronic availability of notice material A: Status quo, self-regulation	• In several MS it is not allowed to post GM-related documents on the company website.	• Low communication costs for issuers.	• Higher voting costs for cross-border shareholders.
B: Enabling minimum standards • Allow issuers to post GM-related documents on the company website.	• Extra communication costs for the very few issuers who still do not have a website.	• Lower information costs for domestic and cross-border shareholders in case their company posts GM-related information on its website.	• Not all shareholders of EU listed companies would have easy and cheap access to GM-related information.

C: Mandatory minimum standards • Require issuers to post GM-related documents on the company website.	• Extra communication costs for the very few issuers who still do not have a website.	• Lower information costs for domestic and cross-border shareholders for all EU listed companies.	
Language, of the meeting notice and materials A: Status quo, self-regulation GM-related documents are rarely posted in other languages in addition to the national language	• Higher information costs for cross-border shareholders	• Low communication costs for issuers.	• Passive shareholder base
B: Mandatory minimum standards • Require issuers to post GM-related documents in an internationally spoken language	• Higher communication costs for issuers.	• Lower information costs for cross-border shareholders.	• Higher communications costs borne also by issuers who do not have an international shareholder base.

	COSTS	BENEFITS	RISKS
Identifying the ultimate accountholder			
A: Status quo, self-regulation B: Harmonise conditions (i) • Mandatory notification of beneficial investors by intermediaries. C: Harmonise conditions (ii) • Mandatory notification of beneficial investors by intermediaries and uniform fees. <u>D: Market-based approach</u> • Remove the sources of voting costs so as to motivate intermediaries to offer voting services spontaneously.	• • Communication costs for intermediaries, including transaction costs to identify who is supposed to be notified by whom. • Communication costs for intermediaries, including transaction costs to identify who is supposed to be notified by whom. • Price rigidities for intermediaries and/or issuers. • Intermediaries and issuers would not have any extra costs.	• • Those beneficial investors who are presently not notified would be notified. • Those beneficial investors who are presently not notified would be notified and able to vote. • No price rigidities for issuers and intermediaries. • No communication and transaction costs for intermediaries to identify who is supposed to be notified by whom.	• The measure could turn out to be irrelevant: due to voting costs beneficial investors would not vote anyway. • Market interventionist measure.

	COSTS	BENEFITS	RISKS
Electronic voting in absentia			
A: Status quo, self-regulation	• In several MS it is not allowed to introduce electronic voting in absentia. • Extra IT costs for issuers who want to introduce electronic voting in absentia.	• Less IT costs for issuers • Lower voting costs for cross-border shareholders.	• Higher voting costs for cross-border shareholders.
B: Enabling minimum standards • Allow issuers to introduce electronic voting in absentia.	• Extra IT costs for issuers	• Lower voting costs for cross-border shareholders.	• Higher IT costs for issuers who do not have a cross-border shareholder base.
C: Mandatory minimum standards • Require issuers to introduce electronic voting in absentia.			
Registration as nominees			
A: Status quo, self regulation • In several EU States intermediaries are not required to disclose whether they vote on behalf of their clients.	• It is not clear to the issuer whether the intermediary votes on behalf of a client or as an investor.	• Low communication costs for intermediaries. • Clients' privacy respected.	• Issuers have extra costs in identifying their shareholder base.
B: Minimum standards (i) • Intermediaries would register as nominees with regard to the shares which they hold for the account of third parties.	• Extra costs for intermediaries.	• It would be clear to the issuer whether the intermediary votes on behalf of a client or as an investor.	• Costs for intermediaries could outstrip benfits.
C: Minimum standards (ii) • Intermediaries would register as nominees with regard to the shares which they hold for the account of third parties *and* would be required to disclose their clients' identity.	• Extra costs for intermediaries and loss of confidence on the part of their clients.	• Issuer would have a complete view of their shareholders' identity.	• Higher probability that costs for intermediaries could outstrip benfits.
Being granted a power of attorney			

A: Status quo, self regulation • In several EU States beneficial investors are not allowed to receive (full) power of attorney. <u>B: Minimum standards</u> • Beneficial investors allowed to receive full power of attorney.	• Where he is not the legal shareholder, the beneficial investor cannot (fully) take part to GMs • Costs would be borne by beneficial investors wishing to take part in GMs.	• • Active shareholder base.	• Passive shareholder base. •

	COSTS	BENEFITS	RISKS
Rights to ask questions, add items to the agenda and table resolutions A: Status quo, self regulation • In most, but not all EU MS shareholders are allowed to ask questions, add items and place resolutions. Minimum thresholds vary widely.	• Information barriers for shareholders.	• Low administrative costs for issuers.	• Passive shareholder base
<u>B: Minimum standards (i)</u> • shareholders allowed to ask questions, add items and place resolutions from a minimum threshold.	• Higher administrative costs for issuers.	• Most shareholders would have the possibility to add items and place resolutions..	•
C: Minimum standards (ii) • shareholders allowed to ask questions, add items and place resolutions.without limitations.	• Very high administrative costs for issuers. • Very long and complex GMs a cost for shareholders as well.	• All shareholders would have the possibility to add items and place resolutions..	• Costs could outstrip benefits.

	COSTS	BENEFITS	RISKS
Stock lending			
A: Status quo, self regulation			
• In most MS stock lending is subject exclusively to contract.	• Lenders and borrowers not aware of voting consequences of stock lending.	• low administrative costs.	• Passive shareholder base.
B: Minimum standards			
• Minimum transparency requirements to ensure that shareholders are aware of the consequences of securities lending on voting rights.	• Administrative costs.	• More aware shareholder base	• Stock lenders and borrowers being normally professional investors, they are already aware of the voting consequences of stock lending.
Depositary receipts			
A: Status quo, self regulation			
• Holders of depositary receipts often do not have the right to vote on the underlying shares..	• parties not aware of voting aspects of depositary receipts.	• low administrative costs.	• Passive shareholder base.
B: Minimum standards			
• Depositary receipts holders should be granted the same rights as the shareholders, or have the possibility either to vote directly or issue voting instructions.	• Administrative costs.	• More aware shareholder base.	• Depository receipts being traded normally by professional investors, they are already aware of the voting consequences of their transactions.

IMPACT ASSESSMENT OF SHAREHOLDERS RIGHTS

ANNEX 9: DISTRIBUTION OF IMPACTS

OPTIONS	ISSUERS (LISTED COMPANIES)	INSTITUTIONAL INVESTORS	SMALL INDIVIDUAL INVESTORS	VOTING SERVICES PROVIDERS	ISSUERS' EMPLOYEES	MEMBER STATES/ NAT. REGULATORS
General impact of the proposal	+	+	=/+	+/-	+	+
Net increase in general welfare	higher shareholder participation to GMs and in company life in general → better monitoring on management and on controlling shareholders	Important savings in cross-border voting costs	For the smallest individual shareholders limited benefits in the short term; in the medium term easier access to remote cross-border voting.	Lower obstacles to cross-border services could make some of their services redundant; stimulus for existing providers and new entrants to provide cost-effective products. Possible increase in the industry turnover as lower voting costs could induce more shareholders to vote more often.	A more efficient corporate Europe should have a positive effect on employment.	The proposal should allow national regulators to do without market-unfriendly corporate governance measures.
I. Main features of the proposal						
Proxy voting and	+	+	=/+	+/-	+	+

voting upon instructions						
Expand proxies' rights at GMs; remove obstacles to voting upon instructions.	higher shareholder participation to GMs	Important savings in cross-border voting costs	Reduction in voting costs, although probably not enough to encourage the smallest individual voters in the short terms. Immediate positive effects for larger individual voters.		Higher efficiency in the voting process is one of the conditions for more efficient corporate management	Higher efficiency in the voting process prevents the necessity for more interventionist measures
Share blocking	+	+	=/+	+	+	+
Prohibition of share blocking requirements either at company and at MS level	higher shareholder participation to GMs	Important savings in cross-border voting costs	Reduction in voting costs, although probably not enough to encourage the smallest individual voters in the short terms. Immediate positive effects for larger individual voters	Voting service providers would be able to enlarge their offer of voting services.	Higher efficiency in the voting process is one of the conditions for more efficient corporate management	Higher efficiency in the voting process prevents the necessity for more interventionist measure
Information related to GMs	+	+	+	+/-	+	+

minimum standards on the different aspects of shareholders' participation to the GM	The costs of better disclosure should be largely outstripped by the benefits of higher shareholder participation at GMs and in company life	Uniform minimum standards should reduce information costs.	Uniform minimum standards should reduce information costs.	More voting service providers would be able to enlarge their offer of voting services. Some incumbent ones who have already access to such information would possibly resent the competition of new competitors.	Higher efficiency in the voting process is one of the conditions for more efficient corporate management.	Higher efficiency in the voting process prevents the necessity for more interventionist measure.
Identifying the ultimate accountholder	+/-	=/-	+/=	-	+/=	-
Introduce a legal entitlement for 'ultimate investors' or 'accountholders' to directly control the voting rights attached to the shares they have invested into. This would also necessitate introducing a definition of intermediary to clarify who is supposed to notify whom.	Depends on whether issuers are going to pay or not to channel GM-related information to investors.	They are not the object of this specific measure; however, as shareholders they would bear some of the costs in case the issuer is going to contribute to expenses.	They are supposed to be the beneficiaries of this measure. However, since it appears that they presently are not proposed to be forwarded GM-related information because it is too costly for them to vote, until voting costs are going to be sufficiently low to induce	Higher administrative costs, since they would be obliged to inform their clients anyway. There would also be costs related to the difficulty to establish who is supposed to notify whom. Such costs would be further increased should the proposal impose them a pricing cap for voting services.	They would benefit from this measure as long as it would be able to increase shareholders' voting ratio.	National regulators would be obliged to establish permanent negotiation mechanisms at national level to identify and update price caps for voting services.

			them to vote, they would probably not make recourse to this service anyway.			
II.						
Subordiinated options						
Electronic voting in absentia	+	+	+	+/-	+	+
Companies should be enabled to introduce electronic voting in absentia	Being an enabling measure, issuers would adopt it only when it is cost-efficient for them.	The proposal would lower cross-border voting costs.	The proposal would lower cross-border voting costs	Some providers would have the possibility to vote in absentia on behalf of their clients; some incumbent providers may resent the competition of such cheaper services.	Higher efficiency in the voting process is one of the conditions for more efficient corporate management.	Higher efficiency in the voting process prevents the necessity for more interventionist measure.
Registration as nominees	+	-	=	-	+	+
Intermediaries should register as nominees with regard to the shares which they hold for the account of third parties. This would make it clear to the issuer that the intermediary does not	This measure would allow issuers to have a clearer idea of their shareholder base.	This measure would represent an extra cost for institutional investors.	No expected effect for small individual shareholders.	This measure would represent an extra cost for voting services providers.	This measure would have a positive effect for employees as long as it ensures better company management.	Better company management should prevent the necessity for more interventionist measures.

act as an investor in relations to those shares.						
Being granted a power of attorney	+	=	+	=	+	+
When it is the intermediary, and not the actual investor in the shares, who is registered as the shareholder, the investor should be able to receive a power of attorney from the intermediary.	This measure would allow issuers to have a more active shareholder base.	This measure should not have a significant impact on institutional investors, since they would ask a fee to give their clients power of attorney.	The proposal would lower cross-border voting costs.	This measure should not have a significant impact on voting service providers.	Higher efficiency in the voting process is one of the conditions for more efficient corporate management	Higher efficiency in the voting process prevents the necessity for more interventionist measures.
Right to ask questions	+	+	+	=	+	+
Shareholders should be able to question management at GMs	The measure should bring more efficient company management, provided adequate thresholds are set lest GMs become encumbered with too many questions from non-representative shareholders.	This measure should allow institutional investors to have a more active role in GMs.	This measure should allow small individual investors to have a more active role in GMs.	This measure should not have a significant impact on voting service providers.	Active shareholder participation at GMs is one of the conditions for more efficient corporate management	Active shareholder participation at GMs prevents the necessity for more interventionist measures.

Rights to add items to the agenda and table resolutions	+	+	+	=	+	+
Shareholders should be able to add items to the agenda at GMs and table resolutions	The measure should bring more efficient company management, provided adequate thresholds are set lest GMs become excessively encumbered.	This measure should allow institutional investors to have a more active role in GMs.	This measure should allow small individual investors to have a more active role in GMs	This measure should not have a significant impact on voting service providers.	Active shareholder participation at GMs is one of the conditions for more efficient corporate management	Active shareholder participation at GMs prevents the necessity for more interventionist measures.
Stock lending	+	+	+	=	+	+
Minimum transparency requirements could be introduced at EU level to ensure that shareholders are aware of the consequences of securities lending on voting rights.	This measure should bring a more aware shareholder base.	This measure should allow institutional investors to be more aware of the consequences of securities lending on voting rights	This measure should allow small individual investors to be more aware of the consequences of securities lending on voting rights.	This measure should not have a significant impact on voting service providers.	Higher efficiency in the voting process is one of the conditions for more efficient corporate management	Higher efficiency in the voting process prevents the necessity for more interventionist measure
Depositary receipts	+/-	+/-	=	=	+/-	+/-
Depositary receipts holders should be granted the same rights	This usefulness of this measure is related to the	This usefulness of this measure is related to the	This measure should not have a relevance for	This measure should not have a significant impact	This usefulness of this measure is related to the	This usefulness of this measure is related to the

as the shareholders, or have the possibility either to vote directly or issue voting instructions.	usefulness of the present contractual arrangements between depositary receipts holders and their intermediaries.	usefulness of the present contractual arrangements between depositary receipts holders and their intermediaries.	small individual investors who normally do not buy depositary receipts.	on voting service providers	usefulness of the present contractual arrangements between depositary receipts holders and their intermediaries.	usefulness of the present contractual arrangements between depositary receipts holders and their intermediaries.

+ : Gain **- : Loss** **= : No effect**

IMPACT ASSESSMENT OF SHAREHOLDERS RIGHTS

ANNEX 10: ESTIMATING THE PRICE DIFFERENCE BETWEEN MULTIPLE PRICED SHARES

Shareholder Rights

Estimating the Price Difference between Multiple Priced Shares[51]

1. SUMMARY

For foreign shareholders it is, for a number of reasons, often impossible to attend general meetings of companies. Still, shareholders who know from the start that they will not exercise their voting right will still have to pay the same price for a common share as shareholders who can actually attend and participate in general meetings. The situation compares to knowingly buying a non-voting share for the price of a voting share.

The extent of this economic distortion can be approximated by analyzing the price difference of shares of companies which issue different types of shares at the same time, namely shares with different voting rights.

In an analysis of stock exchange data, we estimate that the price for voting shares is approximately 20% higher than the price for non-voting shares. Thus, the right to vote is appreciated by shareholders by a considerable markup to the price of a non-voting share.

2. DESCRIPTION OF THE DATA SET

For the current analysis, we analyzed historical data provided by the Bloomberg data base referring to the year 2004. The compiled data set consists of stock exchange data for companies that issue multiple shares with differences in voting rights. For each of the shares, we have daily observations providing us with information on the daily average of mid-prices for the shares, where the mid-price defines the average of bid and ask price. Furthermore, we have information on the volume sold on each of the days under consideration

Focusing on Stock Exchanges in Europe (EU and EEA), we could identify 136 pairs of shares from 13 different countries. The extent to which companies make use of the possibility to issue shares with differences in voting rights varies considerably across countries. The fact that a first search of databases resulted in only 136 pairs of shares points to the fact that in general companies only issue one type, be it shares with voting rights or non voting shares.

As **Table 1** shows, shares of the same company with differences in voting rights can mostly be found in Germany, Italy, Sweden or Greece. But even in those countries the absolute number of companies issuing multiple shares is with 16 to 39 identified pairs quite low.

Table 1: Distribution Multiple Priced Shares

[51] The present evaluation was provided by Unit B2, HORIZONTAL POLICY DEVELOPMENT, Impact Assessment and Evaluation.

Country	Pairs of Shares	Percentage
Austria	3	2.21
Germany	5	3.68
Finland	6	4.41
France	1	0.74
UK	8	5.88
Germany	39	28.68
Greece	16	11.76
Italy	28	20.59
Luxembourg	2	1.47
Norway	3	2.21
Portugal	2	1.47
Sweden	20	14.71
Switzerland	3	2.21
Total	136	100.00

Source: Bloomberg Database, calculations DG MARKT

In most of the identified cases, we observe pairs of shares, of which one share is a purely non-voting share (voting right of 0 per share), while the other share of the same company has a voting right of 1 per share. 27 companies issue multiple types of shares where the first type of share has 5, 10 or even 20 times the voting power of the other type of share.

Table 2: Distribution of Voting Rights

		Voting Right per Share for Share with more Voting Right				Total
		1	5	10	20	
Voting Right per Share for Share with less Voting Right	0	109	0	0	0	109
	1	0	1	24	2	27
Total		109	1	24	2	136

Source: Bloomberg Database, calculations DG MARKT

3. ESTIMATE OF THE PRICE DIFFERENCE

It is obvious that in general prices for shares without any voting right attached can be expected to be lower than the price for shares of the same company offering the possibility to influence corporate policy by exercising voting rights. For the same reason we can also expect a price difference if a company issues two types of shares where one type has a multiple of voting rights compared to the other type of share. For the regression, we define the price ratio as the price of the share with more voting rights divided by the price of the share with less voting rights.

3.1. Control Variables

In a very simple ad-hoc model, we assume that the following factors could have an impact on the price difference:

- *Relative Voting Right:* We assume that the more similar the two types of shares are with respect to their voting rights, the lesser the expected price differences between the shares. That means, if one type of share has "just" 5 times the voting power of the other type of share, then these shares are more similar compared to a share with 20 times of the voting power of its counterpart. The price difference should be the biggest for those cases with non-voting shares. The relative voting right is defined as the voting right per share of the type with less voting rights, divided by the voting right per share of the type of share with more voting rights.
  The absolute value of the coefficient for this control variable is not straight forward to interpret, but with the given definition we should expect a negative sign.

- *Relative Volatility:* Closely linked to different volumes are also differences in the volatility of prices. For each share and each day of observation individually, we determined the volatility of the respective last 10 days. A lower volatility of a share of the same company might make that type of share more attractive than the other type of share with higher volatility, which might impact the price. Similarly to other control variables, the variable is defined as the volatility of the share with less voting rights, divided by the volatility of the share with more rights attached.

- *Relative Volume Traded:* Price differences might be explained by the fact that the two types of shares are traded in different volumes. The variable is defined as the volumes sold for the share with less voting rights, divided by the volumes sold for the share with more voting rights attached.

- *Preferred Share:* This variable indicates whether the non-voting share actually is a preferred share (0/1 dummy variable), compared to common shares otherwise. Differences between common and preferred shares (e.g. differences in dividend rights) might have an impact, it is therefore necessary to take this into account when estimating the price difference.

- *Month:* To take into account possible changes of the price difference over time, we control for the time aspect by including a variable indicating the month to which the observations refer to. The inclusion of a squared term of month (Month2) allows for a possible non-linear relationship.

3.2. Results

To approximate the price difference, we first calculate for each day on which both types of shares were traded the price ratio between shares with more voting rates, divided by shares with less voting rights. The following regression estimates the average ratio of the two prices, while controlling at the same time for a number of factors that might have impact on the price difference. By

including a variable capturing the relative difference of voting rights, we in fact estimate the average price difference of a voting share compared to the price of a non voting share.

Table 3: Estimated Price Ratio

	Coefficient	Stand. Error	t-Value	P>|t|	95% Confidence Interval	
Estimated Price Ratio	**119.129**	**0.578**	**206.17**	**0.00**	**117.996**	**120.261**
Control Variables:						
Relative Voting Rights	-1.361	0.037	-36.57	0.00	-1.434	-1.288
Relative Volatility	2.098	0.213	9.85	0.00	1.681	2.516
Relative Volume	-0.137	0.077	-1.77	0.08	-0.288	0.014
Preferred Share	1.109	0.315	3.52	0.00	0.492	1.726
Month	-0.969	0.177	-5.48	0.00	-1.315	-0.622
Month2	0.034	0.013	2.53	0.01	0.008	0.060

Source: Bloomberg Data base, calculations DG MARKT

The results concerning the price difference are quite robust and vary only marginal when using other regression approaches or other control variables. **Table 3** above shows that voting shares are on average around 20% more expensive than non voting shares. This confirms our initial expectation that shareholders are only willing to accept shares without voting rights, if this goes hand in hand with a considerable markdown of the price. Or: Shareholders value the right to vote at around 20% of the price of a non-voting share.

The inclusion of control variables is justified by the statistical significance of their coefficients. The variable capturing the relation of voting rights shows the expected negative sign. The more similar the shares are with respect to their voting rights, the smaller the price difference. The relative volatility of the shares also shows a significant effect on the price difference. Apparently, the smaller the volatility of the non-voting share compared to the volatility of the voting share, the more attractive the non-voting share becomes, thus reducing the price difference. Preferred Shares show a slightly larger price difference, they are usually priced 1 % point more expensive.

ANNEX 11: DESCRIPTION OF PROBLEMS RAISED BY THE PRESENT SITUATION

ISSUE	PROBLEM	DESCRIPTION
Proxy voting	Methods to appoint proxies (formal requirements)	In some MS (e.g. Belgium, Denmark, Finland, Poland, Portugal, Sweden) a notarised power of attorney is required to empower a sub-custodian as a proxy.
		In other MS (e.g. Denmark) at least a written, dated and signed proxy is needed.
	Person who can be appointed as a proxy	Limitations in several MS: a proxy can only be held by another shareholder or members of his family (e.g. France) or cannot be held by the company's directors or supervisory board's members (e.g. Hungary), a member of the Company (Ireland) or a company's employee (Poland).
	Number of shareholders that may be represented by the same person	In some MS (e.g. Italy) limitations on the number of proxies a single person may hold according to the size of the company.
		In other MS (e.g. Hungary and Poland) one and the same representative may represent several shareholders at a time, but one shareholder may be represented by only one representative
	Power of proxies at GM	In some MS, proxies do not have the same powers at the GM as actual shareholders (e.g., there may be the exclusion of these persons from the right to speak or their votes may be disregarded in votes on show of hands).
	Re-registration requirements	In some MS, costs related to GM voting are increased by the need to register the securities at the CSD temporarily out of a nominee name and into the beneficial owner's name. Custodians are required to register their clients' shares into local accounts several days prior to the GM date; after the GMs, the shares will be re-registered in their original accounts.
	Proxy solicitation	Rules and formality for proxy solicitation differ across Europe. In MS (e.g. Italy) where the request for

		proxy solicitation is not included in the company's proxy documents (its production and distribution thus being at the expenses of the activist group) solicitations are considerably more expensive.
Share blocking	Obligation to block shares (*hard block*)	In some MS the immobilisation of shares for a certain period is still imposed as a pre-requisite to vote. Financial risk related to such an immobilisation overcomes benefits stemming from voting.
	Obligation to deposit shares (*soft block*)	In other MS shareholders are allowed to sell their shares during the blocking period, provided that intermediaries inform issuers of disposals. Voting rights attached to disposed shares are disregarded. Institutional investors encounter relevant transaction costs even in this case.
Access to GM-related information	Notice period	Significant differences across MS in the time limits for the issuance of a formal GM notice, varying from 8 days (e.g. Denmark and Luxembourg) to two months (e.g. Finland). Too short time limits make it very costly for cross-border shareholders to be informed sufficiently in advance.
	Availability of GM-relevant information	Investors are often not provided sufficiently in advance with GM-relevant information. Dissemination by electronic means is allowed only in some MS.
Electronic voting	Electronic voting	Electronic voting for shareholders not physically present at the GM is not allowed in several MS.

Definitions

Here follows a short list of definitions provided in order to facilitate the comprehension of the Annex. It should be noticed that there is no common agreement on many of the following definitions: some of them are currently under discussion both at a European and at the international level. In particular, issues related to definitions are currently addressed by the

Legal Certainty Group[52] with a view to reach a common understanding on technical terminology. Hence, the following definitions shall not be deemed as binding the Commission or any experts' Group in any of their future decisions.

Proxy voting:

the exercise of voting right(s) by means of another person or legal entity properly appointed by the shareholder.

Proxy solicitation:

the gathering of proxies from shareholders – who otherwise would not cast their votes because of rational apathy – in order to win a corporate vote.

Custodian:

An entity, often a bank, that safekeeps securities for its customers and may provide various other services, including clearing and settlement, cash management, foreign exchange and securities lending[53].

In modern economies most securities (e.g. shares) are either dematerialised (i.e. no longer represented by physical certificates) or immobilised in a depository, e.g. in a central securities depository ("CSD", see below).

Where shares are dematerialised or immobilised, all rights attached to them stem, *at least in some MSs*, from a registration in an account held by an intermediary (custodian).

In these cases, the custodian has the legal responsibility for this book-entry function: whenever a transfer of securities has to take place, the correspondent amount of shares is debited/credited on the account. Votes can be cast only if a certification or a communication by the custodian is provided in order to verify the existence and the extent of voting rights.

CSD:

An institution for holding securities that enables securities transactions to be processed by means of book entries. Physical securities may be immobilised by the depository or securities may be dematerialised (so that they exist only as electronic records)[54]

When issuing new shares, *at least in some MSs*, issuers have to deposit a global certificate or communicate the number of issued shares to an institution which is generally called central securities depository ("CSD").Both in case of dematerialisation and immobilisation, the CSD will credit the appropriate amount of shares in the accounts of its participants, acting either as custodians or as sub-custodians (see below). Following transactions involving the CSD participants, the CSD will credit and debit the appropriate amount of shares in their accounts.

Thus, a CSD is an institution that operates a depository system and enables book-entry transfers of securities.

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52 See the Mandate for the Legal Certainty Group, http://www.europa.eu.int/comm/internal_market/financial-markets/docs/certainty/mandate_en.pdf.

53 See CPSS-IOSCO, Recommendation for Securities Settlement Systems, 2001, annex 5.

54 See CPSS-IOSCO, quoted at note 2.

Sub-custodian:

An entity, often a bank, that safekeeps securities for custodians.

Whenever a custodian is not a participant of a CSD, it needs to have a relation with another institution that is indeed a participant of that CSD. The latter institution is called sub-custodian.

GM:

shareholders' general meeting.