

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive 2005/0265(COD)	Procedure completed
Exercise of certain rights of shareholders in listed companies Amended by 2012/0150(COD) Amended by 2014/0121(COD) Amended by 2016/0362(COD)	
Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 3.45.01 Company law	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs		30/01/2006
		PPE-DE LEHNE Klaus-Heiner	
	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs (Associated committee)		14/02/2006
		ALDE KLINZ Wolf	
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2807	12/06/2007
	Competitiveness (Internal Market, Industry, Research and Space)	2784	19/02/2007
European Commission	Commission DG Financial Stability, Financial Services and Capital Markets Union	Commissioner MCCREEVY Charlie	

Key events			
05/01/2006	Legislative proposal published	COM(2005)0685	Summary
17/01/2006	Committee referral announced in Parliament, 1st reading		
16/03/2006	Referral to associated committees announced in Parliament		
30/01/2007	Vote in committee, 1st reading		
05/02/2007	Committee report tabled for plenary, 1st reading	A6-0024/2007	
15/02/2007	Results of vote in Parliament		

15/02/2007	Debate in Parliament		
15/02/2007	Decision by Parliament, 1st reading	T6-0042/2007	Summary
12/06/2007	Act adopted by Council after Parliament's 1st reading		
11/07/2007	Final act signed		
11/07/2007	End of procedure in Parliament		
14/07/2007	Final act published in Official Journal		

Technical information

Procedure reference	2005/0265(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by 2012/0150(COD) Amended by 2014/0121(COD) Amended by 2016/0362(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/32953

Documentation gateway

Legislative proposal		COM(2005)0685	05/01/2006	EC	Summary
Document attached to the procedure		SEC(2006)0181	17/02/2006	EC	
Committee draft report		PE374.442	27/06/2006	EP	
Economic and Social Committee: opinion, report		CES1148/2006	13/09/2006	ESC	
Amendments tabled in committee		PE378.495	19/09/2006	EP	
Committee opinion	ECON	PE371.848	27/11/2006	EP	
Amendments tabled in committee		PE382.348	05/12/2006	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0024/2007	05/02/2007	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0042/2007	15/02/2007	EP	Summary
Commission response to text adopted in plenary		SP(2007)1040	21/03/2007	EC	
Draft final act		03608/2007/LEX	11/07/2007	CSL	

Additional information

European Commission	EUR-Lex
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Exercise of certain rights of shareholders in listed companies

PURPOSE : to establish requirements in relation to the exercise of voting rights in general meetings of issuers that have their registered office in a Member State and whose shares are admitted to trading on a regulated market and to amend Directive 2004/109/EC (the Transparency Directive?).

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTENT : this proposal aims to facilitate the cross-border exercise of shareholders' rights. Shareholder participation is an essential precondition for effective corporate governance. However, EU-citizens holding shares in a listed company situated in another Member State often face severe problems when they wish to exercise the voting rights attaching to these shares and sometimes even encounter obstacles that make voting practically impossible. Nowadays, investors typically hold their shares

through accounts opened with securities intermediaries, who, in turn, hold accounts with other securities intermediaries and central securities depositories in other jurisdictions. The legal constructs from which shareholders' rights emanate in the Member States are not always fully adapted to this modern form of intermediated holdings. The cross-border chains of intermediaries, therefore, make not only the communication process between issuers and shareholders, but also the voting process, more difficult.

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

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

It appears that the main obstacles to cross-border voting for investors are the following, in order of importance:

- the requirement to block shares before a general meeting (even where it does not affect the trading of the shares during this period). Share blocking deters investors from voting because it prevents them from selling their shares for several days before any general meeting. The financial risk associated with such a blocking period is very high, due to possible market fluctuations during the blocking period;
- difficult and late access to information that is relevant to the general meeting, and
- the complexity of cross-border voting, in particular proxy voting. Share blocking and the complexity of proxy voting also have a considerable impact on the costs of cross-border voting.

Abolishing existing constraints which hamper the voting process requires amendments to the relevant national legislations.

The proposal therefore pursues the following objectives:

- to ensure that all general meetings are convened sufficiently in advance and that all documents to be submitted to the general meeting are available in time to allow all shareholders, no matter where they reside, to take a reasoned decision and to cast their votes in time;
- to abolish all forms of share blocking. These should be replaced by a record date system to determine the entitlement of a shareholder to participate and vote in a general meeting. The proposal leaves it to national law to determine any such date, within a maximum period of 30 calendar days preceding the general meeting, and also to lay down the details of the procedure. However, in order to avoid certain shareholders being prevented in practice from participating and voting, it is made clear that no excessive formal requirements for the proof of ownership may be imposed in national law or in the articles of association.
- to remove all legal obstacles to electronic participation in general meetings. Where the issuer decides to make electronic means available to its shareholders, these make it much easier for the active shareholders to participate actively in the meeting. However, technology is not advanced enough to permit active electronic participation in all cases with a sufficient guarantee of security, and such facilities are costly to introduce. Therefore, there should not be an obligation for issuers to offer such a possibility to their shareholders;
- to offer non-resident shareholders simple means of voting without attending the meeting (voting by proxy, in absentia and by giving instructions).

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

Finally, provision is made for an adaptation of Article 17 of the Transparency Directive in order to avoid the duplication of provisions with the same subject.

Exercise of certain rights of shareholders in listed companies

The European Parliament adopted by a show of hands the resolution drafted by Klaus-Heiner Lehne (EPP-ED, Germany) on shareholders' voting rights, and made some amendments to the Commission's proposal. Following negotiations, an oral agreement was reached with the Council and the Commission, which was reflected in the compromise amendments.

The amendments deal mainly with eight points.

- cooperatives have been explicitly removed from the directive's scope because of their special membership structure;
- on the notice for convocation (Article 5 of the Commission proposal) a distinction is made between annual general meetings (AGMs) and extraordinary general meetings (EGMs). Notices for AGMs should be 20 calendar days; notices for EGMs should depend on the way that Member States have transposed Articles 9 and 11 of the takeover directive (i.e. at least two weeks?);
- there should also be a distinction between registered and bearer shares. This distinction takes effect in two places. First, when asking to whom the notice convening a general meeting should be sent. With registered shares this is as a rule the registered shareholder (Article 5 of the Commission proposal). Second, with registered shares it is easier to prove share ownership, which under Article 7 of the Commission proposal entitles the shareholder to vote at the general meeting. This means that the specified date required in Article 7 of the Commission proposal for registered shares can be brought nearer to the date of the general meeting than with bearer shares;
- again, the officially appointed mechanism for convening the general meeting, as laid down in Article 21(2) of the transparency directive, may be used when the notice convening the meeting can also be published by means of this mechanism (see amendment to Article 5 of the Commission proposal);
- on the Commission's proposed right to ask questions (Article 9) it is suggested that companies must answer, no later than at the general meeting, questions that are asked before that meeting. Questions put by a shareholder or shareholders with 1 % of the share capital must be answered within a reasonable time irrespective of the general meeting (the qualified right to ask questions); companies have a responsibility to answer these qualified questions. Moreover any right of challenge that shareholders may have need not be extended to include questions asked before the general meeting;
- the holding of proxy rights (Article 10) needs to be enabled, or made easier, as the case may be. Proxy holders may be required only to establish their legitimacy; to implement proxy rights, Member States should be permitted only to create or maintain such rules as are designed to prevent conflicts of interest between shareholders and proxy holders. Any such rules must be necessary and proportionate. A fault in the internal relationship between the shareholder and proxy should expressly not affect their external relationship with the company;
- as with the exercise of shareholders' rights by proxy holders, the exercise of such rights by intermediaries should also be made easier. To satisfy the need for transparency, Member States should be allowed to lay down rules by means of which the identity of the person on behalf of whom the voting rights are exercised (the client?) is disclosed;

Lastly, the report provides for the fact that amendment of Article 17 of the transparency directive does not go as far as Article 17 of the Commission proposal. The information under Article 17(1)(a) of the transparency directive (including details of the place, time and agenda of the general meeting) should continue to be governed by the transparency directive. The requirements of the present directive and the transparency directive should complement one another; they should not exclude one another. Article 17 of the transparency directive exists not least in order to ensure that locally resident shareholders have access to all the relevant information.

Exercise of certain rights of shareholders in listed companies

PURPOSE: to establish requirements in relation to the exercise of voting rights in general meetings of issuers that have their registered office in a Member State and whose shares are admitted to trading on a regulated market and to amend Directive 2004/109/EC (the Transparency Directive?).

LEGISLATIVE ACT: Directive 2007/36/EC of the European Parliament and of the Council

on the exercise of certain rights of shareholders in listed companies

CONTENT: following an agreement with the European Parliament, the Council adopted in first reading a Directive 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. The new Directive amends Directive 2004/109/EC. It introduces specific requirements with respect to selected rights of shareholders in relation to general meetings.

The Directive introduces minimum standards to ensure that shareholders of companies whose shares are traded on a regulated market have a timely access to the relevant information ahead of the general meeting (GM) and simple means to vote at a distance. It specifies that companies must ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting. It also abolishes share blocking and introduces minimum standards for the rights to ask questions, put items on the GM agenda and table resolutions. The Directive allows Member States to take additional measures to facilitate further the exercise of the rights referred to in the Directive.

The Directive features the following key provisions:

- minimum notice period of 21 days for most GMs, which can be reduced to 14 days where shareholders can vote by electronic means and the general meeting agrees to the shortened convocation period;
 - Internet publication of the convocation and of the documents to be submitted to the GM at least 21 days before the GM;
 - abolition of share blocking and introduction of a record date in all Member States which may not be more than 30 days before the GM;
 - abolition of obstacles on electronic participation to the GM, including electronic voting;
- Right to ask questions and obligation on the part of the company to answer questions;

- abolition of existing constraints on the eligibility of people to act as proxy holder and of excessive formal requirements for the appointment of the proxy holder;

- disclosure of the voting results on the issuer's internet site.

ENTRY INTO FORCE: 3 August 2007.

TRANSPOSITION: 3 August 2009. Member States which on 1 July 2006 had in force national measures restricting or prohibiting the appointment of a proxy holder in the case of Article 10(3), second subparagraph, point (ii) shall transpose Article 10(3) as concerns such restriction or prohibition by 3 August 2012.