

Exercise of certain rights of shareholders in listed companies

2005/0265(COD) - 05/01/2006 - Legislative proposal

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 crossborder 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.