

**dti**

**EUROPEAN COMPANY LAW AND  
CORPORATE GOVERNANCE**

**Proposal for a Directive on  
the exercise of voting rights  
by shareholders**

**GOVERNMENT RESPONSE TO  
CONSULTATION**

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# **Proposal for a Directive on the exercise of voting rights by shareholders**

## **Response to Consultation**

<b>Contents</b>	<b>Pages</b>
Introduction	3
Background	3
About the Proposal	4
Summary of Responses to Questions	5 - 10
The Government Response	10
What happens next	10
Annex A List of respondents	11 -12

# **Proposal for a Directive on the exercise of voting rights by shareholders**

## **Response to Consultation**

### **Introduction**

1. In October 2006 the DTI published a consultation seeking views on proposals for an EU Directive on the exercise of voting rights by shareholders. The publication was available on the DTI website and available in hard copy on request. The DTI also held a public meeting on 14 November 2006 to discuss the proposed Directive. As well as formal consultations the DTI maintained regular contact with stakeholders to gain informal feedback on the practical impact of the proposals. Those views were reflected in the consultation document, have been fed into the negotiations and are reflected in the text adopted by the European Parliament.

2. A summary of the responses received to the consultation and the government's response is set out below.

3. The DTI is grateful to everyone who responded both formally and informally. The views expressed have been carefully analysed and have helped to inform UK negotiating priorities.

### **Background**

4. On 10 January 2006, the European Commission published its proposal for a Directive on 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 Council Directive 2004/109/EC. The proposal for the Directive on which we consulted is available from:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0685:EN:NOT>

5. The Commission's impact assessment was published on 17 February 2006 and is available at:

[http://ec.europa.eu/internal\\_market/company/docs/shareholders/comm\\_native\\_sec\\_2\\_006\\_0181\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/shareholders/comm_native_sec_2_006_0181_en.pdf)

6. The proposed Directive is intended to approximate the requirements of Member States laws in respect of a number of points relating to company general meetings.

**About the proposal**

7. The proposal was the last of those put forward in the communication from the Commission to the Council and the European Parliament (1004/103) of 21 May 2003 entitled *Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to move Forward* ( the Company Law Action Plan), to receive attention.

8. The overall aim of the proposal is to improve corporate governance in EU companies trading on regulated markets by enhancing the rights shareholders are able to exercise. In particular it seeks to achieve this by ensuring that shareholders owning shares in companies registered and listed in another Member state may vote without difficulty at company meetings. Shareholders, no matter where in the EU they reside, will benefit from timely access to complete information and simple means to exercise voting rights at a distance.

9. The four main areas addressed by the proposal include:

- the Abolition of share-blocking
- sufficient advance notice for meetings
- removal of legal obstacles to electronic participation
- the ability to vote without attending the meeting

A summary of the responses received to these and other aspects of the proposed directive are set out below.

**Summary of responses received**

10. The DTI received a total of 30 substantive responses from a variety of interested parties including professional bodies, business, investors, regulators, and accounting bodies. A full list of those responding is attached at annex A.

**Table 1: Summary of those responding to the consultation**

Category of respondent	Number
Trade Association	8
Investor	9
Professional Body	4
Regulator	2
Business	7

## Summary of Responses to Questions

### Article 1 – Subject matter and scope

**Q1 Do you agree with the scope of the directive?**

**Q2 Do you consider that we should exercise the exemption of UCITS in Article 1, paragraph 2?**

### Article 2 - Definitions

**Q3 Do you agree with the definitions of “shareholder” and “proxy”? If not, how should they be modified? Do you agree with the alternative approach suggested in relation to the definition of “shareholder”?**

11. There was general agreement amongst respondents that the approach taken to the scope of the proposed Directive, and the exemption for undertakings for collective investment in transferable securities (UCITS) as set out in the proposal was appropriate. Respondents agreed with the definition of “proxy” - however further clarity was required concerning the definition of “shareholder” in an EU context. Respondents indicated that the definition of a shareholder should be aligned with the definition used in the Transparency Directive or the person defined in the laws of the relevant Member States.

12. An outcome of negotiations is that this issue has now been addressed in the adopted text and enables Member States to define “shareholder” in line with the laws in place in the relevant Member State e.g.

Article 2

*b) "shareholder" means the natural or legal person that is recognised as a shareholder under the applicable law;*

13. There was a suggestion that unregulated markets such as AIM should be included in the scope however the provisions in the original and proposed directive apply to regulated markets only.

### Article 3 – More stringent national requirements

**Q4 What do you think about the suggested wording? Do you have any other comments on Article 3?**

14. The Directive is a minimum harmonisation directive intended to introduce minimum standards to ensure that shareholders have timely access to complete information in relation to general meetings and can vote without attending. Article 3 recognises that Member States may wish to implement further measures to facilitate

these activities. Most respondents expressed some concern that the wording in the proposal:

“Member States may make issuers which have their registered office on their territory subject to requirements more stringent than laid down in this Directive.”

would permit Member States to introduce more stringent measures which would act as barriers, rather than facilitative measures.

15. As a result of negotiations the adopted text now reflects the facilitative approach intended:

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

#### **Article 4 – Equal treatment of shareholders**

**Q5 Do you think that it is useful to include a statement of principle such as Article 4 and, if so, are you content with the current wording?**

16. Most respondents agreed that a general statement of principle covering the equal treatment of shareholders would be useful but also felt that further clarity was required. In particular they did not find the phrase “shareholders in the same position” helpful and felt could be made clearer e.g. by specifying that all those holding the same class of share should be treated equally. However respondents also agreed that they would not want the approach to be too prescriptive at EU level

17. Changes have been made to the adopted text by applying equal rights to those shareholders in the same position with regard to participation and voting at general meetings:

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

#### **Article 5 – General meeting notice**

**Q6 Is a 30 day notice period for all meetings appropriate? If not, what would you consider to be the minimum notice period appropriate to the cross-border context? Should there be a minimum single notice period for all general meetings, or should it be possible to call some kinds of meetings on shorter notice – and, if so, which kinds of meetings on what period of notice?**

**Q7 Is the scope of the information and method of its delivery to shareholders adequately defined?**

18. Most respondents felt that a 30 day period of notice for an annual general meeting (AGM) was too long, and that the proposal was silent on the notice of period for extraordinary general meetings (EGMs). In the UK companies are required to give 21 days notice of an AGM and 14 days for an EGM.

19. The adopted text has been amended and addresses these concerns in line with UK requirements:

“5.1 Member States shall ensure that the company issues the convocation of the general meeting in one of the manners specified in paragraph 2 not later than on the twenty-first day before the day of the meeting:

5.2 a general meeting which is not an annual general meeting in one of the manners specified in paragraph 2 not later than on the fourteenth day before the day of the meeting.”

### **Article 6 – Right to add items to the agenda of general meetings and to table draft resolutions**

**Q8 Do you agree that rights for shareholders to add items to the agenda of general meetings and table draft resolutions at EGMs should be restricted?**

**Q9 Are the proposed thresholds for exercising the rights specified in this Article set at an appropriate level? Is it necessary to have a threshold expressed in terms of nominal value, as well as proportion, of shares?**

20. There was general agreement amongst respondents that shareholders should be able to add items to the agenda for AGMs in advance of the meeting, but not during the meeting as to do so would be disruptive. In the case of EGMs it was felt that agenda items should be restricted to the subject for which the meeting has been called. The adopted text now reflects such arrangements.

21. Most respondents were content with the thresholds set out in the proposal, although some commented that they would prefer the threshold to be expressed in percentage rather than monetary terms. For many companies within the FTSE 100, €10 million may not be a sufficient representation of the shareholder base to justify tabling a resolution and monetary values quickly become outdated.

22. The adopted text provides shareholders with rights to include items on agenda if accompanied by justification or a draft resolution and for rights to be exercised in writing by post or electronically. The monetary value in respect of thresholds has been dropped.

### **Article 7 – Admission to the general meeting**

**Q10 Do you agree with the maximum 30 day record date period? Should the directive prescribe any other parameter for the setting of record dates (for example, that the record date must be at least a certain number of days after the date on which the notice of a meeting is issued)?**

23. Respondents supported the idea of a record date system to avoid the risks associated with share blocking. However most respondents thought that a maximum 30 day record date period was too long and detrimental to shareholder democracy. It was also noted that as a maximum this provision would not impact on current UK arrangements – but could possibly expose UK investors investing overseas to the risk of market manipulation. Most were content with the 48 hour arrangement in operation in the UK but recognised the need to accommodate practice in other Member States. The 30 day maximum record date period has been retained in the adopted text.

### **Article 8 – Participation in the general meeting by electronic means**

#### **Article 9 – Right to ask questions**

#### **Q11 Is it necessary or appropriate to regulate the asking and answering of questions in the context of company meetings in this way?**

24. Most respondents supported participation by electronic means as a cost effective and timely means of communication.

25. Respondents generally agreed that the asking and answering of questions is an important part of the process of communication between the shareholders and the company however they did not believe it necessary to regulate in this area. To do so may lead to a process which becomes unresponsive and bureaucratic.

26. Although the right to ask questions and the obligation to answer, have been retained in the adopted text — they will be subjected to the measures which **Member States** may take to ensure the good order of general meetings, identification of shareholders, and the protection of confidentiality business interests of companies.

#### **Article 10 – Proxy voting**

#### **Q12 Is the system of proxy voting set out in Article 10 sufficiently liberal, or are some of the restrictions provided for in it inappropriate?**

27. Respondents were split as to whether they thought that the system of proxy voting set out in the proposal was sufficiently liberal. Those that felt the provisions in the article too restrictive felt that shareholders should have the right to appoint more than one proxy and that a proxy may represent more than one shareholder. They was also felt that it was not appropriate for the Directive to prescribe who may or may not act as proxy and that such a decision should be left to the shareholders. However whilst they believed that that such restrictions were not necessary in the UK respondents acknowledged that they may be appropriate in EU states where the market was not so well developed.

29. The adopted text of the directive now allows for a proxy holder to hold proxies from several shareholders and for shareholders to appoint more than one proxy holder. The adopted text also clarifies and retains the limitations set out in the proposal, however they are optional in that it is left to member states to determine how they should be applied and what restrictions should placed on proxy holders.

### **Article 11 – Appointment of proxy holder**

#### **Q13 Does Article 11 strike the right balance between ease of appointment and investor security?**

30. Overall respondents confirmed that that they felt the right balance had been struck between ease of appointment and investor security.

### **Article 12 – Voting in absentia**

#### **Q14 Is the ability to vote by post necessary and should it be made mandatory either for Member States to permit it or for companies to offer it to their shareholders?**

31. Most respondents felt alternatives means of voting to be desirable and that investors should be able to vote by post but it that it should not be necessary to make such facilities mandatory.

### **Article 13 – Voting upon instructions**

#### **Q15 Article 13 aims to ensure that the rights conferred by the directive can be effectively exercised in cases where shares are held through intermediaries acting on behalf of a number of different clients. Do you think that it covers the right ground to achieve this aim? Would you support further measures that deal with the passing of instructions between intermediaries in the voting chain, as recommended by the European Corporate Governance Forum?**

32. There was general support for measures to ensure that instructions are passed up the investment chain as this would enable those who hold shares through intermediaries to exercise their votes more effectively. There was also agreement that provisions should be enabling rather than prescriptive. Issuer should only be concerned with matters passed from share holder and the matters between shareholders and their intermediaries is not a matter for the company.

### **Article 14 – Counting of votes**

### **Article 15 – Information after the general meeting**

#### **Q16 Should companies be required to count and publish voting results on their websites in the level of detail required by Articles 14 and 15?**

33. Whilst respondents expressed support for the current practice to allow the meeting to vote on a show of hands, because of the immediacy and cost effectiveness of the approach they also indicated support for rights to vote by alternative means including electronically where a show of hands is not appropriate. The adopted text of the Directive still contains a requirement for companies to count and publish voting results – however it also provides Member States with the option to limit to that information only to the extent needed to ensure that the required majority is reached for each resolution - if no shareholder requests a full account.

## **Article 17 - Amendments**

### **Q17 Do you agree with the approach set out in Articles 16 and 17?**

34. Most respondents agree with the approach set out in articles 16 and 17 no issues of significance were raised during the consultation or made in the adopted text.

## **The Government Response**

35. The government agrees that shareholder participation is an essential precondition for effective corporate governance and support the proposals for a directive covering the voting process to which is particularly complex when shares are held across EU national boundaries. Our objective for the directive was to agree an approach which improves standards across the EU to the benefit for both companies and shareholders without imposing unnecessary costs of bureaucratic restrictions and taking full advantage of modern technology.

36. In the government's view the changes made to the adopted text address most of the issues raised during the consultation. The directive should not add significantly to burdens on UK business, and should create a climate that facilitates cross border activity.

37. The government will continue to assess the acceptability of the text in the light of the amendments proposed by the European Parliament. Responses received from consultees to this consultation exercise has been invaluable in informing negotiations and in considering issues related to implementation of the Directive following its adoption at EU level.

## **What happens next?**

38. The adopted text of the directive, approved by the Council was published on 15 February 2007 and is available from:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0042+0+DOC+XML+V0//EN&language=EN#BKMD-2>

39. Once the final Directive has been published – which will happen when the translation in to EU languages has been officially cleared - Member states will be expected to implement the provisions in the directive. The responses received in respect of this consultation will also help to inform our approach to implementation.

40. The original consultation document is available from:

<http://www.dti.gov.uk/consultations/page34861.html>

41. Copies of original responses are available for public inspection on request. Please contact Julie Ford on 020 7215 2162 or via email at [Julie.Ford@dti.gsi.gov.uk](mailto:Julie.Ford@dti.gsi.gov.uk) should you wish to see individual responses.

**List of all Respondents**

1. Association of British Insurers
2. Association of Chartered Certified Accountants (ACCA)
3. Association of Corporate Treasurers
4. Association of Private Clients Investment Managers and Stockbrokers (APCIMS)
5. British Bankers Association
6. Capita Registrars
7. Computershare Investor Services
8. Confederation of British Industry (CBI)
9. Contingency Analysis
10. Financial Reporting Council (FRC)
11. Friends Provident
12. Halifax Share Dealing Ltd
13. Hermes Equity Ownership Services Ltd
14. ICB Consultancy Services
15. Institute of Chartered Secretaries and Administrators (ICSA) Registrars Group
16. Institute of Chartered Secretaries and Administrators (ICSA) International
17. International Securities Lending Association
18. Investment Management Association (IMA)
19. Law Society
20. Lloyds TSB Registrars
21. London Stock Exchange (LSE)
22. Prudential plc

23. Quoted Companies Alliance (QCA)
24. Rio Tinto plc
25. Royal Bank of Scotland
26. SAB Miller
27. Tesco plc

URN 07/966