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Committee on Legal Affairs

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PE 382.348v01-00

COMPROMISE AMENDMENTS 1-23

Draft report

(PE 374.442v01-00)

Klaus-Heiner Lehne

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

Proposal for a directive (COM(2005)0685 – C6-0000/2006 – 2005/0265(COD))

Text proposed by the Commission

Amendments by Parliament

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 1
(Compromise amendment replacing Amendment ECON 3)
Recital 4

(4) The **currently** existing community legislation is not sufficient to achieve this objective. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC imposes on issuers to make available certain information and documents relevant to general meetings, but such information and documents are to be made available in the

(4) The existing community legislation is not sufficient to achieve this objective. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC imposes on issuers **an obligation** to make available certain information and documents relevant to general meetings, but such information and documents are to be made available in the

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issuer's home Member State. Moreover, Directive 2001/34/EC focuses on the information *which* issuers have to disclose to the market and accordingly does not deal with the shareholder voting process itself.

issuer's home Member State. Moreover, Directive 2001/34/EC focuses on the information issuers have to disclose to the market and accordingly does not deal with the shareholder voting process itself.

Therefore, certain minimum standards should be introduced with a view to protecting investors and promoting the smooth and effective exercise of shareholder rights attaching to voting shares. As regards rights other than the right to vote, Member States are free to extend the application of these minimum standards also to non-voting shares, to the extent that these shares do not enjoy such standards already.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 2

(Compromise amendment replacing Amendments 49 and ECON 5)

Recital 6

(6) Shareholders should be able to cast informed votes at, or in advance of, the *shareholders* meeting, no matter where they reside. All shareholders should have sufficient time to consider the documents intended to be submitted to the general meeting and determine how they will vote their shares. To this end, *sufficient* notice of the general meeting *should be given* and shareholders should be provided *timely* with the complete information intended to be submitted to the general meeting *for approval. Shareholders should, in principle, also have the possibility to add items to the meeting agenda, to table resolutions and to ask questions related to items on the agenda.* The possibilities which modern technologies offer to make information instantly *available and* accessible should be exploited, *also with a view to making information on the results of the vote available after the general*

(6) Shareholders should be able to cast informed votes at, or in advance of, the *general meeting*, no matter where they reside. All shareholders should have sufficient time to consider the documents intended to be submitted to the general meeting and determine how they will vote their shares. To this end, *timely* notice *should be given* of the general meeting, and shareholders should be provided with the complete information intended to be submitted to the general meeting. The possibilities which modern technologies offer to make information instantly accessible should be exploited. ***This Directive presupposes that all listed companies already have an Internet site.***

meeting.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 3
(New Amendment)
Recital 6 a (new)

(6a) Shareholders should, in principle, have the possibility to put items on the agenda of the general meeting and to table draft resolutions for items on the agenda. Without prejudice to different time-frames and modalities which are currently in use across the Community, the exercise of these rights should be made subject to two basic rules, viz. that any threshold required for the exercise of these rights should not be higher than 5% of the company's share capital and that all shareholders should in every case receive the final version of the agenda in time so as to prepare for the discussion and voting on each item on the agenda.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 4
(New Amendment)
Recital 6 b (new)

(6b) Every shareholder should, in principle, have the possibility to ask questions related to items on the agenda of the general meeting and to have them answered, while the rules on how and when questions are asked and answered should be left to be determined by Member States.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 5
(Compromise amendment replacing Amendments 51, 52 et ECON10)
Recital 7

(7) Shareholders should have a choice of simple means to cast their votes without attending the shareholders meeting. Voting without attending the general meeting in person should not be subject to constraints other than those necessary for the verification of identity and the security of communications. ***Existing limitations and administrative constraints which make distance voting or proxy voting cumbersome and costly should be removed.***

(7) Companies should face no legal obstacles in offering to their shareholders any means of electronic participation in the general meeting. Voting without attending the general meeting in person, ***whether by correspondence or by electronic means,*** should not be subject to constraints other than those necessary for the verification of identity and the security of communications. ***However, this should not prevent Member States from adopting rules aimed at ensuring that the results of the voting reflect the intentions of the shareholders in all circumstances, including rules aimed at addressing situations where new circumstances occur or are revealed after a shareholder has cast his/her vote by correspondence or by electronic means.***

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 6
(New Amendment)
Recital 7 a (new)

(7a) Where financial intermediaries are involved, the effectiveness of voting upon instructions relies, to a great extent, on the efficiency of the chain of intermediaries, given that investors are frequently unable to exercise the voting rights attached to their shares without the co-operation of every intermediary in the chain, who may not have an economic stake in the shares. In order to enable the investor to exercise his voting rights in cross-border situations, it is therefore important that intermediaries facilitate the exercise of voting rights.

Further consideration to this issue should be given by the Commission in the context of a Recommendation, with a view to ensuring that investors have access to effective voting services and that voting rights are exercised in accordance with the instructions given by these investors. In the context of intermediaries and of voting instructions, the Commission should also examine the special situation of management companies, the regular business of which is the management of collective investment schemes. The Commission should further examine the understanding of the notions 'investor', 'shareholder' and 'client', the problems of the identification of shareholders, the transparency of ownership, the remaining impediments to the exercise of shareholders rights, the costs of establishing efficient communication channels, means to monitor the fulfilment of the intermediaries' duties.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 7
(Compromise amendment replacing Amendment ECON 12)
Recital 7 b (new)

(7b) Voting results should be established through methods that reflect the voting intentions expressed by shareholders, and they should be made transparent after the general meeting at least through the company's Internet site.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 8
(New Amendment)
Recital 9

(9) In order to avoid duplication of provisions with the same subject-matter, Directive 2004/109EC should be amended,

deleted

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 9
(New Amendment)
Recital 9 a (new)

(9a) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making¹, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

¹ ABl. C 321, 31.12.2003, p. 1.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 10
(Compromise amendment replacing Amendments 2, 3, 4, 5, 58, 59, ECON 13, ECON 14, ECON 15) (~~corresponds to ams 13, 14 and 15 of AD ECON FdR 631566, but with adding of forgotten bold/italic marks in left column text of paragraph 2)~~)

Article 1

1. This Directive establishes 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.

1. This Directive establishes requirements in relation to the exercise of ***certain shareholders'*** rights ***attaching to voting shares in relation to*** general meetings of ***companies which*** have their registered office in a Member State and whose shares

are admitted to trading on a regulated market ***situated or operating within a Member State***

1a. The Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has its registered office, and references to the ‘applicable law’ are references to the law of that Member State.

2. Member States may exempt from this Directive ***issuers which are***

(i) collective investment undertakings ***of the corporate type*** within the meaning of Article 1 (2) of Directive 85/611/EEC ***and***

(ii) undertakings, the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of their underlying investments, provided that these collective investment undertakings are authorised and subject to the supervision of competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC.

2. Member States may exempt from this Directive ***the following types of companies:***

(i) collective investment undertakings within the meaning of Article 1(2) of Directive 85/611/EEC;

(ii) undertakings, the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of their underlying investments, provided that these collective investment undertakings are authorised and subject to the supervision of competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC; ***and***

(iia) cooperative societies.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 11

(Compromise amendment replacing Amendments 10, 64, 65, 66, ECON 23)

Article 3

More stringent national requirements

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

Further national measures

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.

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 12
(Compromise amendment replacing Amendments 11, ECON 24)
Article 4

The *issuer* shall ensure equal treatment for all shareholders who are in the same position with regard to participation and voting in *its* general *meetings*.

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

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 13
(Compromise amendment replacing Amendments 12, 13, 14, 15, 16, 17, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, ECON 25, ECON 26, ECON 27, ECON 28)
Article 5

General meeting notice

1. Without prejudice to *Article 9(4)* of Directive 2004/25/EC of the European Parliament and of the Council, *any notice convening a* general meeting on *a first call shall be sent out by the issuer not less than 30 calendar days* before the meeting.

Information prior to the general meeting

1. Without prejudice to *Articles 9(4) and 11(4)* of Directive 2004/25/EC of the European Parliament and of the Council, *Member States shall ensure that the company issues the convocation of the general meeting in one of the manners specified in paragraph 1a not later than on the twenty-first day* before the *day of the* meeting.

Member States may provide that where the company offers the facility for shareholders to vote by electronic means accessible to all shareholders the general meeting of shareholders may decide that it shall issue the convocation of a general meeting which is not an annual general meeting in one of the manners specified in paragraph 1a not later than on the fourteenth day before the day of the meeting. This decision is to be taken at least by a majority of not less than

two-thirds of the votes attaching to the securities or the subscribed capital represented and for a duration not later than the next annual general meeting.

Member States need not apply the aforementioned minimum period for the second or subsequent convocation of a general meeting issued for want of a quorum required upon the first convocation, provided that this Article has been complied with for the first convocation and no new item is put on the agenda, and that at least 10 days elapse between the final convocation and the date of the general meeting.

1a. Without prejudice to further requirements for notification or publication laid down by the competent Member State defined in Article 1(1a), the company shall be required to issue the convocation referred to in paragraph 1 in a manner ensuring fast access to it on a non-discriminatory basis. The Member State shall require the company to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The Member State may not impose an obligation to use only media whose operators are established on its territory.

The Member State need not apply subparagraph 1 to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders, provided that the company is under an obligation to send the convocation to each of its registered shareholders.

In either case the company may not charge any specific cost for issuing the convocation in the prescribed manner.

2. *The notice* referred to in paragraph 1 shall at least *contain the following*:

2. *The convocation* referred to in paragraph 1 shall at least:

(a) *a precise indication of the place, time and draft agenda of the meeting;*

(b) a clear and precise description of the procedures that shareholders must comply with in order to be able to participate and to cast their vote in the general meeting, *including the applicable record date;*

(c) *a clear and precise description of the available means by which shareholders can participate in the general meeting and cast their vote. Alternatively, it may indicate where such information may be obtained;*

(d) *an indication* where and how the full, unabridged text of the *resolutions and the documents intended to be submitted to the general meeting for approval* may be obtained;

(e) *an indication of* the address of the Internet site on which the information referred to in paragraph 3 will be *posted*.

3. *Within the deadline provided for in paragraph 1, issuers shall post on their Internet sites at least the following*

(a) *indicate precisely when and where the general meeting is to take place, and the proposed agenda for the general meeting;*

(b) *contain* a clear and precise description of the procedures that shareholders must comply with in order to be able to participate and to cast their vote in the general meeting. *This includes information about:*
(i) *the rights available to shareholders under Article 6, to the extent that these rights can be exercised after the issuing of the convocation, and under Article 9 and the dates until which these rights may be exercised; the convocation may confine itself to stating only the dates until which these rights may be exercised, provided it contains a reference to more detailed information about these rights being made available on the Internet site of the company;*
(ii) *the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of proxy appointments; and,*
(iii) *where applicable, the procedures for casting votes by correspondence or by electronic means.*

(c) *where applicable, state the record date referred to in Article 7(2) and explain that only those who are shareholders on that date shall have the rights to participate and vote in the general meeting;*

(d) *indicate* where and how the full, unabridged text of the documents *and draft resolutions referred to in points (c) and (ca) of paragraph 3* may be obtained;

(e) *indicate* the address of the Internet site on which the information referred to in paragraph 3 will be *made available*.

3. *Member States shall ensure that for a continuous period beginning not later than on the twenty-first day before the day of the*

information:

(a) *the meeting notice* referred to in paragraph 1;

(b) the total number of shares and voting rights;

(c) *the texts of the resolutions and the documents referred to in point (d) of paragraph 2;*

(d) the forms to be used to vote by correspondence *and by proxy. Alternatively to the forms provided for in point (d) it shall be indicated on the site where and how the forms can be obtained.*

general meeting and including the day of the meeting the company shall make available to its shareholders on its Internet site at least the following information:

(a) *the convocation* referred to in paragraph 1a;

(b) the total number of shares and voting rights *at the date of the convocation (including separate totals for each class of shares where the company's capital is divided into two or more classes of shares);*
(c) *the documents to be submitted to the general meeting;*

(ca) a draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, to be designated by the applicable law, for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added as soon as practicable after the company has received them;

(d) *where applicable*, the forms to be used to vote by *proxy and to vote by* correspondence, *unless these forms are sent directly to each shareholder.*

Where the forms referred to in point (d) cannot be made available on the Internet for technical reasons, the company shall indicate on its site how the forms can be obtained on paper. In this case the company shall be required to send the forms by post and free of charge to every shareholder who so requests.

Where, by virtue of Articles 9(4) or 11(4) of Directive 2004/25/EC of the European Parliament and of the Council, or by virtue of the second subparagraph of paragraph 1 of this Article, the convocation of the general meeting is issued later than on the twenty-first day before the meeting, the period specified in this paragraph shall be shortened accordingly.

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 14

(Compromise amendment replacing Amendments 18, 19, 20, 21, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, ECON 29, ECON 30, ECON 31, ECON 32)

Article 6

Right to **add** items **to** the agenda of the general meeting and to table draft resolutions

1. **Shareholders**, acting individually or collectively, **shall** have the right to **add** items on the agenda of general **meetings** and table draft resolutions **at** general **meetings**.

2. Where the **right to add items on the agenda of general meetings and table draft resolutions at general meetings** is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the share capital **of the issuer**, such minimum stake shall not exceed 5% of the share capital **of the issuer or a nominal value of**

Right to **put** items **on** the agenda of the general meeting and to table draft resolutions

1. **Member States shall ensure that shareholders**, acting individually or collectively,

(a) have the right to **put** items on the agenda of **the general meeting, provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting;** and

(b) **have the right to** table draft resolutions **for items included or to be included on the agenda of a general meeting.**

Member States may provide that the right in point (a) may only be exercised in relation to the annual general meeting, provided that shareholders, acting individually or collectively, have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by these shareholders.

Member States may provide that these rights shall be exercised in writing (submitted by post or electronic means).

2. Where **any of the rights specified in paragraph 1** is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the **company**, such minimum stake shall not exceed 5% of the share capital.

EUR 10 million, whichever is the lower.

3. The rights referred to in paragraph 1 shall 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.

3. Each Member State shall set a single date, with reference to a specified number of days prior to the general meeting or the convocation, until which shareholders may exercise the right in paragraph 1 point (a). In the same manner each Member State may set a date for the exercise of the right in paragraph 1 point (b).

3a. Member States shall ensure that where the exercise of the right in paragraph 1 point (a) entails a modification of the agenda for the general meeting already communicated to shareholders, the company shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date or, if no record date applies, sufficiently in advance of the date of the general meeting so as to enable other shareholders to appoint a proxy or, where applicable, vote by correspondence.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 15

(Compromise amendment replacing Amendments 22, 23, 24, 96, 97, 98, 99, 100, 101, 102, 103, 104, ECON 33, ECON 34, ECON 35)

Article 7

Admission to the general meeting

1. The right to participate and to vote in a general meeting shall not be subject to any condition requiring the shareholder to block the relevant shares by deposit or other means with a credit institution or another entity ahead of the general meeting, even if the blocking has no effect on the possibility of trading the shares.

Requirements for participation and voting in the general meeting

1. Member States shall ensure

(a) that the rights of a shareholder to participate in a general meeting and to vote in respect of any of his shares are not subject to any requirement that his shares be deposited with, or transferred to, or registered in the name of, another natural or legal person before the general meeting; and

(b) that the rights of a shareholder to sell or otherwise transfer his shares during the

2. The right to participate and vote in a general meeting of any issuer may be made subject to the condition that a natural person or legal entity qualifies as shareholder of the relevant issuer on a certain date prior to the relevant general meeting.

The proof of the qualification as shareholder may be made subject only to such requirements as are necessary to ensure the identification of shareholders and to the extent that they are proportionate to ensure the identification.

3. The date referred to in the first subparagraph of paragraph 2 shall be fixed by each Member State for the general meetings of issuers having their registered office in that Member State.

However, this date shall not be earlier than 30 calendar days before the general meeting.

Each Member State shall communicate the date so fixed to the Commission which shall publish these dates in the Official Journal of the European Union.

period between the record date and the general meeting to which it applies are not subject to any restriction to which they are not subject at other times.

2. Member States shall provide that the rights of a shareholder to participate in a general meeting and to vote in respect of his shares shall be determined with respect to the shares held by that shareholder on a specified date prior to the general meeting (the "record date").

Member States need not apply the subparagraph 1 to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders on the day of the general meeting.

3. Each Member State shall ensure that a single record date applies to all companies; however, a Member State may set one record date for companies which have issued bearer shares and another record date for companies which have issued registered shares, provided that a single record date applies to each company which has issued both types of shares.

The record date shall not lie more than 30 days before the date of the general meeting to which it applies. In implementing this provision and Article 5(1), each Member State shall ensure that at least six days elapse between the latest permissible date for the convocation of the general meeting and the record date, and in calculating that number of days these two dates shall not be included.

3a. The proof of the qualification as shareholder may be made subject only to such requirements as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieve this objective.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 16

(Compromise amendment replacing Amendments 25, 105, ECON 36, ECON 37, ECON 38)
Article 8

Member States shall ***not prohibit the participation of*** shareholders in the general meeting by electronic means.

Requirements and constraints that act or would act as a barrier to the participation of shareholders in the general meeting by electronic means shall be prohibited, except in so far as they are necessary to ensure the identification of shareholders and the security of the electronic communication and are proportionate to ensure the identification.

1. Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation:

(a) a real-time transmission of the general meeting;

(b) a real-time two-way communication for shareholders to address the general meeting from a remote location;

(c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.

2. The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security of the electronic communication and only to the extent that they are proportionate to achieve these objectives.

This is without prejudice to any legal rules that Member States have adopted or may adopt concerning the decision-making process within the company for the introduction or implementation of any form of participation by electronic means.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 17

(Compromise amendment replacing Amendments 26, 27, 28, 29, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, ECON 39, ECON 40, ECON 41)
Article 9

1. **Shareholders** shall have the right to ask questions **orally at the general meeting and/or in written or electronic form ahead** of the general meeting.

2. **Issuers shall respond to the questions put to them by shareholders**, subject to the measures which Member States may take, or allow **issuers** to take, to ensure the good order of general meetings and their preparation and the protection of confidentiality and business interests of **issuers**. **A response shall be deemed to be given if the relevant information is available on the Internet site of the issuer in the form of “frequently asked questions”**.

1. **Every shareholder** shall have the right to ask questions **related to items on the agenda** of the general meeting. **The company** shall respond to the questions put to **it** by shareholders.

2. **The right to ask questions and the obligation to answer are** subject to the measures which Member States may take, or allow **companies** to take, to ensure the **identification of shareholders, the** good order of general meetings and their preparation and the protection of confidentiality and business interests of **companies**. **Member States may allow companies to provide one overall answer to questions of the same content**.

Member States may provide that a response is deemed to be given, if the relevant information is available on the company’s Internet site in a question and answer format.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 18

(Compromise amendment replacing Amendments 30, 31, 32, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, ECON 42, ECON 43, ECON 44, ECON 45, ECON 46, ECON 47)

Article 10

1. Every shareholder shall have the right to appoint any other natural **person** or legal **entity** as a proxy holder to attend and vote at a general meeting **on his behalf**. **There shall be no restrictions as to the person who can be granted a proxy other than the requirement that the person possesses legal capacity**.

However, Member States **may restrict the right of proxy holders to exercise the voting rights at their discretion in cases where:**

(a) they have a business, family or other

1. Every shareholder shall have the right to appoint any other natural or legal **person** as a proxy holder to attend and vote at a general meeting in his **name**. **The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to which the shareholder thus represented would be entitled**.

Apart from the requirement that the proxy holder possesses legal capacity, Member States **shall abolish any rule of law which restricts, or allows companies to restrict, the eligibility of persons to be appointed as**

relationship with the issuer,

(b) they are a controlling shareholder of the issuer,

(c) they belong to the management of the issuer or of one of its controlling shareholders.

A shareholder may only appoint one person to act for him as a proxy holder in relation to any one general meeting.

proxy holders.

1a. Member States may limit the appointment of a proxy holder to a single meeting, or such meetings as may be held during a specified period.

Without prejudice to Article 13(5), Member States may limit the number of persons whom a shareholder may appoint as proxy holders in relation to any one general meeting.

However, if a shareholder has shares of a company held in more than one securities account, such limitation shall not prevent the shareholder from appointing a separate proxy holder as regards shares held in each securities account in relation to any one general meeting.

1b. Apart from the limitations expressly permitted in the paragraphs 1 and 1a, Member States may not restrict or allow companies to restrict the exercise of shareholder rights through proxy holders for any other purpose than to address potential conflicts of interest between the proxy holder and the shareholder, in whose interest the proxy holder is bound to act, and in doing so Member States may not impose any other requirements than the following:

(a) Member States may prescribe that the proxy holder discloses certain specified facts which may be relevant for the shareholders in assessing any risk that the proxy holder might pursue any interest other than the interest of the shareholder.

(b) Member States may restrict or exclude the exercise of shareholder rights through proxy holders without specific voting instructions for each resolution in respect of which the proxy holder is to vote on

behalf of the shareholder.

(c) Member States may restrict or exclude the transfer of the proxy to another person, but this shall not prevent a proxy holder who is a legal person to exercise the powers conferred upon him through any member of his administrative or management body or any of his employees.

A conflict of interest within the meaning of this paragraph can in particular arise where the proxy holder:

(i) is a controlling shareholder of the company, or is another entity controlled by such shareholder;

(ii) is a member of the administrative, management or supervisory body or an employee or an auditor of the company, or of a controlling shareholder or controlled entity referred to in (i);

(iii) has a family relationship with a natural person referred to in (ii).

Member States that already have provisions which restrict or exclude the appointment of a proxy holder in the case of (i), (ii) or (iii) may maintain these provisions.

1c. The proxy holder shall cast votes in accordance with the instructions issued by the appointing shareholder.

Member States may require proxy holders to keep a record of the voting instructions for a defined minimum period and to confirm on request that the voting instructions have been carried out.

2. A person acting as a proxy holder may hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented.

Where a proxy holder holds *a* proxy from several shareholders, *he may* 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.*

2. A person acting as a proxy holder may hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented.

Where a proxy holder holds proxies from several shareholders, *the applicable law shall enable him to* cast votes for *a certain shareholder differently from votes cast for another shareholder.*

3. A proxy holder shall enjoy the same rights to speak and ask questions in general meetings as those to which the shareholder it represents would be entitled, unless instructed otherwise by the shareholder.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 19
(Compromise amendment replacing Amendments 38, 39, 137, 138, ECON 49)
Article 12

Voting *in absentia*

1. Any ***shareholder of a listed company shall have*** the possibility to vote by ***post*** in advance of the general meeting, subject to such requirements as ***may be*** necessary to ensure the identification of shareholders and are proportionate to this objective.

2. Member States shall prohibit requirements and constraints which hinder the exercise of voting rights attached to shares by electronic means by shareholders who are not physically present at the general meeting, except in so far as such requirements may be necessary to ensure the identification of shareholders and the security of electronic communications and are proportionate to this objective.

Voting *by correspondence*

1. ***Member States shall permit companies to offer their shareholders*** the possibility to vote by ***correspondence*** in advance of the general meeting. ***Voting by correspondence may be made*** subject ***only*** to such requirements ***and constraints*** as ***are*** necessary to ensure the identification of shareholders and ***only to the extent that they*** are proportionate to ***achieve*** this objective.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 20
(Compromise amendment replacing Amendments 40, 139, 140, 141, 142, 143, 144, 145,
ECON 50)
Article 13

Voting upon instructions

- 1. Member States shall ensure that any natural person or legal entity that under their laws is allowed to hold securities in the course of a business for the account of another natural person or legal entity may hold such securities in either individual or omnibus accounts.**
- 2. Where the shares are held in omnibus accounts, it shall not be permitted to require that they be temporarily registered in individual accounts, in order to be able to exercise voting rights attaching to these shares at a general meeting.**
- 3. Persons referred to in paragraph 1 shall not be prevented from casting votes attaching to the shares which they hold for the account of another natural person or legal entity, provided they have been instructed to do so by such other person or entity. The person or entity referred to in paragraph 1 shall keep a record of the instructions for a minimum period of one year.**
- 4. Where a person or entity referred to in paragraph 1 holds shares of the same issuer in an omnibus account, it shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares.**
- 5. By derogation from Article 10(1), third subparagraph, a person or entity referred to in paragraph 1 that holds securities in an omnibus account shall have the right to issue a proxy to every person on whose behalf it holds shares in such account or to any third party designated by that person.**

Removal of certain impediments to the effective exercise of voting rights

- 1. This Article applies where a natural or legal person who is recognised as shareholder by the applicable law acts in the course of a business on behalf of another natural or legal person (the "client").**
- 2. Where the applicable law imposes disclosure requirements as a prerequisite for the exercise of voting rights by a shareholder referred to in paragraph 1, such requirements shall not go beyond a list disclosing to the company the identity of each client and the number of shares voted on his behalf.**
- 3. Where the applicable law imposes formal requirements on the authorisation of a shareholder referred to in paragraph 1 to exercise voting rights, or on voting instructions, such formal requirements shall not go beyond what is necessary for the identification of the client, or for the possibility to verify the content of voting instructions, respectively, and is proportionate to achieve these objectives.**
- 4. A shareholder referred to in paragraph 1 shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares.**
- 5. Where the applicable law limits the number of persons whom a shareholder may appoint as proxy holders in accordance with Article 10(1a), such limitation must not prevent a shareholder referred to in paragraph 1 from granting a proxy to every one of his clients or to any third party designated by a client.**

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 21
(Compromise amendment replacing Amendments 41, 149 and ECON 56)
Article 14

Counting of votes

For the purpose of counting votes, all votes cast in relation to any resolution submitted to the approval of a general meeting shall be taken into account.

Voting results

1. The company shall establish for each resolution at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by these votes, the total number of votes validly cast as well as the number of votes in favour of and against each resolution and, where applicable, the number of abstentions.

However, Member States may provide or allow companies to provide that if no shareholder requests full account of the voting, it is sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution.

2. Within a period of time to be determined by national law, which shall not exceed 15 days after the general meeting, the company shall publish on its Internet site the voting results established in accordance with paragraph 1.

3. This Article is without prejudice to any legal rules that Member States have adopted or may adopt concerning the formalities required for a resolution to become valid or the possibility of a subsequent legal challenge to the voting result.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 22
(Compromise amendment replacing Amendments 42, 43, 150, 151, 152, ECON 57)
Article 15

Article 15

Post-General meeting information

deleted

1. Within a period of time which shall not exceed 15 calendar days following the general meeting, the issuer shall publish on its Internet site the results of the votes on each resolution tabled at the general meeting.

2. The results of the voting shall include for each resolution at least the number of shares in respect of which voting has taken place and the percentages of votes in favour of and against each resolution.

Or. en

Compromise amendment by Klaus-Heiner Lehne

Compromise amendment 23

(Compromise amendment replacing Amendments 44 and ECON 58)

Article 16 (~~corresponds to part of am 58 of AD ECON FdR 631566~~)

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **[31 December 2007]** at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **[...]**¹ at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Member States shall forthwith communicate to the Commission the time-limits they set in accordance with Articles 5(1), 6(3) and 7(3), and any subsequent changes thereof to the Commission, which shall publish this information in the Official Journal of the European Union.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

field covered by this Directive.

¹ Within 24 months after the date of entry into force of this Directive.

Or. en