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

"FOSTERING AN APPROPRIATE REGIME FOR SHAREHOLDERS' RIGHTS"

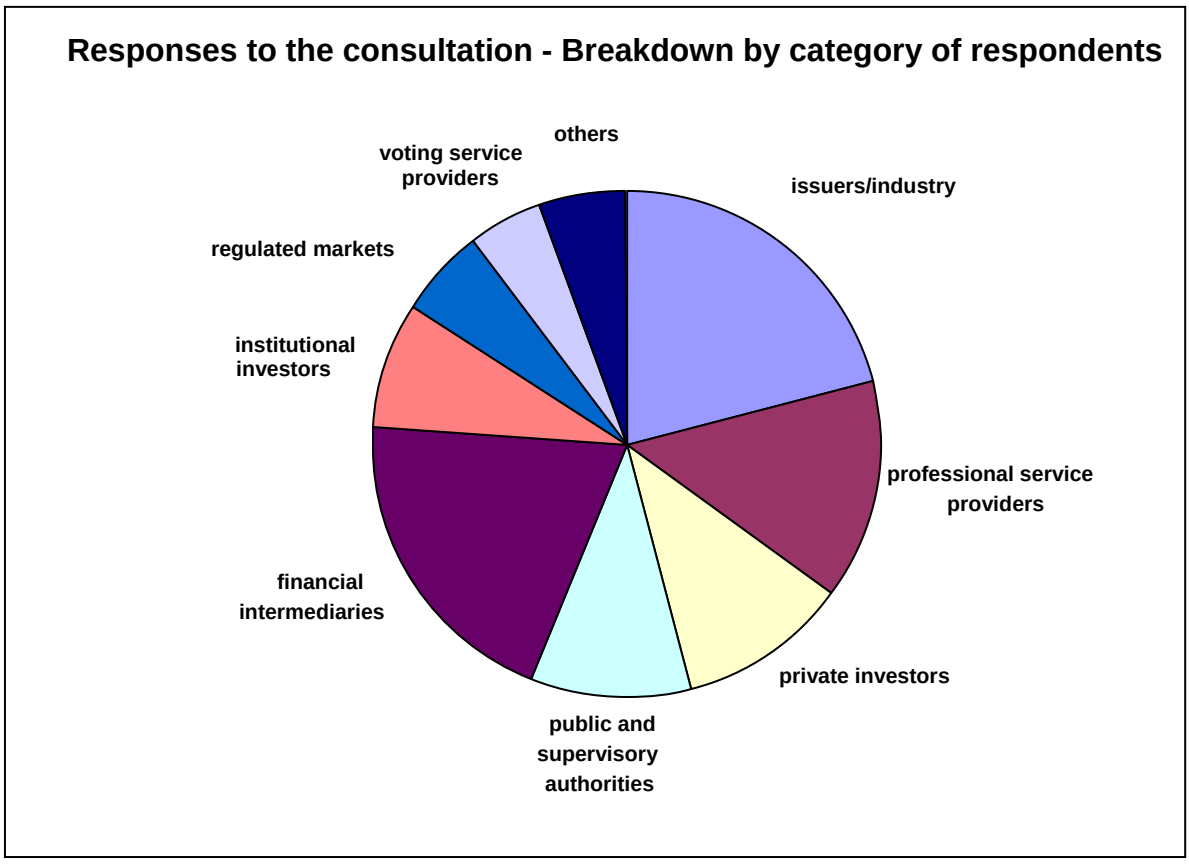
A WORKING DOCUMENT OF DG INTERNAL MARKET

APRIL 2005

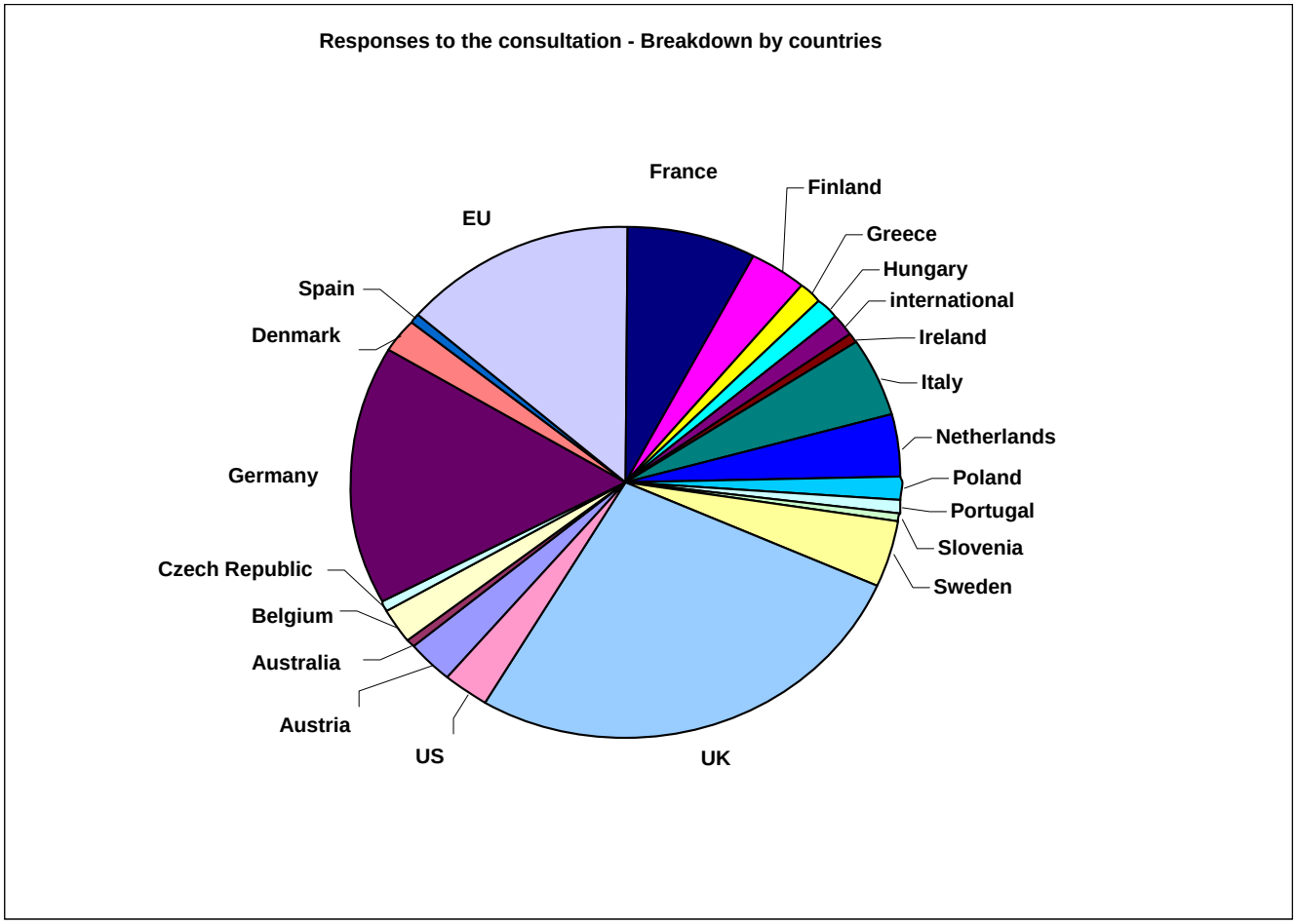
1. Introduction

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[1] and current works on international projects, such as the Hague[2] and UNIDROIT[3] 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')[4] 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.

[1] COM(2004) 312 final

[2] 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)

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

[4] 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

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 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

4.1 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.

4.2 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[5] 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.

[5] 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"

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 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.

4.3 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.

4.4 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.

4.5 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

6.1 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.

6.2 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 questions.

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.

6.3 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.

6.4 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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