Confédération Européenne des Associations d'Administrateurs
European Confederation of Directors' Associations

May 2006,

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

The European Confederation of Directors' Associations (ecoDa) is representing the views of its six members, the UK's *Institute of Directors* (IoD), the *Institut Français des Administrateurs* (IFA), the *Association Belge des Administrateurs* (AB), the *Institut Luxembourgeois des Administrateurs* (ILA), the Finnish institute *(hallitusammattilaiset)* and the Spanish institute (*Instituto de consejeros – Administradores*) on corporate governance and company law issues.

EcoDa would like to express its comments concerning the draft directive on the exercise of voting rights by shareholders. EcoDa endeavoured to promote the development of a sound corporate governance framework at the level of the European Union. All its members support the "comply or explain" principle rather than new law to the maximum extend possible. EcoDa is trying to promote best practices between its members. However ecoDa is pleased that the European Commission sets out some practical measures facilitating cross border voting for shareholders through its draft directive. EcoDa strongly supports the objective followed by the Commission to strengthen and make effective shareholders' rights, such as Post-General meeting information.

Some other details are set out below:

I- On article 2 (Definitions)

The draft directive defines the issuers as shareholders which is contrary to the general legal concepts. EcoDa does not consider that the proposed definition of "shareholder" is appropriate. We do not consider that this definition would have the effect of ensuring that voting rights are vested in the appropriate person. There has been much debate around this matter, but each iteration only serves to demonstrate that a regulatory approach is inappropriate where there are many different and often complex ownership structures involved, each derived from specific national legal systems. Attempts to produce a single definition could create more difficulties than it solves.

II- On article 5 (General meeting notice)

There is no real issue with 21 days for annual meetings, but we consider that these provisions would be better included in a recommendation than a directive. This is in part again linked to the very varied practice among member states in relation to matters such as first and subsequent calls. The reference to first call should either be delete from the directive or at least qualified by reference to "where applicable", since as drafted there is an implication that they will always be more than one call. Another issue that impacts on the necessary length of notice is the availability or otherwise of electronic communication and voting.

EcoDa's remarks concern also the content of the notice. Flexibility must be remained by letting national laws or codes (such as stock exchange rules) or even companies themselves organize it. Concerning a specific section of the issuer's website dedicated to the GM, the majority of ecoDa's members consider that no specific requirements should be made in a directive, but there may be a case for a recommendation about information levels that would encourage developments in national practice.

Amendments Article 5 point 1

Without prejudice to Article 9(4) of Directive 2004/25/EC of the European Parliament and of the Council1, 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.	Without prejudice to Article 9(4) of Directive 2004/25/EC of the European Parliament and of the Council2, any notice convening a general meeting on a first call ***where applicable*** shall be sent out by the issuer not less than 30 calendar days before the meeting, ***Member States might require a shorter length of notice.***

III- On article 6 (Right to add items to the agenda of general meetings and to table draft resolutions:

Given that not all shares have a par or nominal value, there should be no reference to a € capital amount. The requirements should be limited to a percentage of capital and/or number of shareholders.

The time limit for shareholders to submit resolutions to the company has to be sufficient for the company to include them in the notice of meeting otherwise the cost implications are unacceptable. Draft resolutions have to be well-argued and clear.

Amendments Article 6 points 2 and 3

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	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

1 OJ L 142, 30.4.2004, p. 12
2 OJ L 142, 30.4.2004, p. 12

EUR 10 million, whichever is the lower.	share capital of the issuer ***(delete).***
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. The rights referred to in paragraph 1 shall be exercised sufficiently in advance of the date of the general meeting, ***to enable the company to include the resolutions in the notice of meeting and to enable also*** other shareholders to receive or have access to the revised agenda or the proposed resolutions ahead of the general meeting.

IV- 7 (Admission to the general meeting))

Concerning the record date, ecoDa is in favour of 3 calendar days.

Amendments Article 7 point 3

3- The date referred to in the first subparagraph of paragraph 2 shall be fixed Member State for the general meetings of issuers having their registered office Member State. However, this date shall not be earlier than 30 calendar days before the meeting. Each Member State shall communicate the date so fixed to the Commission shall publish these dates in the Official Journal of the European Union.	**3-** The date referred to in the first subparagraph of paragraph 2 shall be fixed Member State for the general meetings of issuers having their registered office Member State. However, this date shall not be earlier than ***3 calendar days*** before the meeting. Each Member State shall communicate the date so fixed to the Commission shall publish these dates in the Official Journal of the European Union.

V- On article 9 (Right to ask questions)

EcoDa agrees that questions linked to the agenda can improve the functioning of General Meeting. However, a statutory requirement might in some instances be burdensome for companies and not achieve the desired results. This is particularly true for companies that are already subject to pressure group disruption of their affairs. Companies could face the obligation to answer many thousands of questions. At a minimum the right to ask questions should be framed in order to avoid abuses and the requirement for directors to respond to the questions put to them by shareholders should be limited to the matters included in the agenda of the meeting and there should be limitations on the number of questions any shareholder could ask. EcoDa would recommend that this matter be deleted from the directive and possibly made the subject of a recommendation, with an overriding discretion being placed on the chairman of the meeting.

The right to ask questions should be framed in order to avoid abuses. The questions should be addressed early enough ahead of the general meeting. Similar questions and answers could be compiled.

Amendments Article 9 point 2

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.	1- Shareholders shall have the right to ask questions at the general meeting in written or electronic form ***early enough*** 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".	2. Issuers shall respond to the questions, ***on the matters included in the agenda of the meeting***, 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". ***Similar questions and answers could be compiled.***

VI- on article 10 (Article 10 Proxy voting)

It should be indicated that proxy should follow the shareholder's voting instructions. It should be made clear that although a proxy may hold proxies for more than one shareholder, there cannot be more than one proxy for each share and the issuer will only be obliged to act in respect of one proxy for each share.

Amendments Article 10 point 2

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 holder holds a proxy from several shareholders, he may cast concurrent votes 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. Unless regulated by the apllicazble laws, a ***proxy should follow the shareholder's voting instructions in respect of one proxy for each share. No more than one proxy for each share can be accepted.*** Where a holder holds a proxy from several shareholders, he may cast concurrent votes against any resolution and/or abstain from voting on such resolution in accordance with the voting instructions of the shareholders the proxy holder represents.

VII- On article 12 (Voting in absentia)

EcoDa would prefer this article to apply generally to all means of casting votes in absentia – post, electronic or the appointment of proxies.

VIII- On article 14 (Counting of votes)

The word “properly” should be inserted before “cast” in the first line. The issuer should not have to count votes that do not comply with formalities.

Amendments Article 14 point 3

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.	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 ***properly*** cast votes attaching to some of the shares differently from votes attaching to the other shares.

We hope that ecoDa’s comments will be taken as constructive input.

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