



# **Proposal for a Directive of the European Commission on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market**

**September 2023**

The European Commission (EC) published on December 7, 2022 a set of proposals to make the capital markets of the European Union (EU) more attractive, grouped into three themes: i) measures on clearing, to make clearing services in the EU are more attractive and resilient in order to sustain strategic autonomy and preserve financial stability; ii) measures on company insolvency, to harmonize certain aspects and help promote cross-border investment; and iii) measures on admission to trading of companies (known as listing act), to simplify the rules for listing on the markets, lightening the administrative burden for companies of different sizes, in particular SMEs (small and medium-sized enterprises), and facilitating access to financing from investors through their admission to trading on trading venues.

The set of measures on admission to trading are three proposals: a regulation that modifies the Prospectus, Market Abuse and MiFIR Regulations, and two Directives, the first one that modifies MiFID and repeals Directive 2001/34/EC on admission to trading and, second, a new Directive on multiple vote share structures in companies that seek the admission to trading of their shares in an SME growth market.

The new Directive on multiple-vote share structures in companies that seek the admission to trading of their shares in an SME growth market is part of the Listing Act package, which also includes a proposal for a Regulation amending the Prospectus, Market Abuse and Markets in Financial Instruments Regulations (MiFIR), and a proposal for a Directive amending the Markets in Financial Instruments Directive (MiFID II), while also repealing the Directive on listing.

The compromise text agreed by Member States in the Council of the European Union (EU) was published on its website on 14 June along with the mandate to start interinstitutional negotiations with the European Parliament (EP) in order to agree on a final version of the Directive. However, negotiations have not started as the EP has not agreed its final position yet. On 14 June, the EP's Economic and Monetary Affairs Committee published the draft report by rapporteur Alfred Sant (Socialist & Democrats Group) on this proposal and the deadline to submit amendments concluded on 7 July, therefore, when the final version of the report is published, said interinstitutional negotiations can begin.

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One of the main obstacles deterring family businesses from being listed is the fear of losing control of their

company once it is listed. Multiple-vote share structures are an effective mechanism to allow company owners to maintain decision-making power in the company while raising funds on public markets, as it allows a shareholder (or group of shareholders) to hold a controlling stake in a company without having to make the proportionate economic investment required for the size of the stake. Such structures typically include at least two different and separate types of shares: multiple voting shares which have attached more than one vote per share and shares with a single vote per each whose holders have less decision-making power.

The objective of the proposal is to achieve **minimum harmonisation** of national laws on multiple-vote share structures of companies listed on SME growth markets, while leaving sufficient flexibility to granting Member States for its implementation.

In particular, the proposal allows companies with multiple-vote share structures, provided they do not have shares admitted to any other trading venue, to apply for admission to trading of shares on SME growth markets, thereby retaining sufficient control over their company while protecting the rights of other non-multiple voting shareholders. The implementation of the multiple voting share structure can take place before applying for admission to trading on an SME growth market.

Member States may: a) **subject the execution of additional voting rights** linked to shares with multiple voting rights **to the admission of said shares to trading on an SME growth market in one or more Member States** and b) **introduce or maintain in force national provisions** allowing companies to adopt share structures with multiple voting rights **in situations not covered by the Directive**, i.e. as explained in recital 8 of the proposal for purposes other than the first admission to trading on an SME growth market, including the following: i) allowing companies to adopt shares with multiple voting rights when, already admitted to trading, they seek admission on a MTF (Multilateral Trading Facility) that is not registered as SME growth market or a regulated market; ii) transferring a company admitted to trading on an SME growth market to a regulated market while retaining shares with multiple voting rights; or iii) ensuring that companies without free transferability of equity securities can adopt shares with multiple voting rights, regardless of whether they intend to apply for admission to trading of their shares.

The proposal foresees the following **safeguards for the adequate protection of shareholders who do not hold multiple voting shares** and of the interests of the company:

a) the **General Shareholders' Meeting** shall implement and approve **by a qualified majority** (as per national law) the decision to adopt a share structure with multiple voting rights and any subsequent changes. Such decisions shall require a separate vote of each class of affected shares.

b) **the voting weight of shares with multiple voting rights at general meetings shall be limited** in General Meetings as follows: a maximum weighted voting ratio and a requirement on the maximum percentage of the outstanding share capital that the total amount of shares with multiple voting rights can represent; or a restriction on the exercise of the additional voting rights attached to shares with multiple voting rights on matters to be decided at the General Shareholders' Meeting requiring approval by a qualified majority.

Member States may foresee **additional safeguards** which may include, in particular, the following: a) provisions to prevent additional voting rights linked to shares with multiple voting rights from being transferred to third parties or continuing to exist after the death, incapacity or retirement of the original holder of such shares (**transfer-based sunset clause**) or continuing to exist after a specified period of time (**sunset clause**) or following a specific event (**event-based sunset clause**) and; b) a requirement to ensure that additional voting rights cannot be used to block decision-making aimed at preventing, reducing or eliminating adverse effects on human rights and the environment related to the company's operations.

Moreover, the proposal foresees a **specific transparency regime** that allows investors to acquire accurate, complete and timely information on multiple voting share structures and to make informed investment

decisions. Therefore, Member States shall ensure that companies with multiple-vote share structures whose shares are traded or are to be traded on an SME growth market make the following information publicly available: a) the structure of their capital (including securities which are not traded on an SME growth market), indicating the different classes of shares and for each class, the associated rights and obligations and the percentage of the total share capital and of the total voting rights represented by the corresponding class; b) any restrictions on the transfer of securities particular, known shareholder agreements); c) the identity of holders of any securities with special control rights, with a description of such rights; d) any restrictions on voting rights (in particular, known agreements between shareholders); and e) the identity of the shareholders with multiple voting rights and of the natural or legal person entitled to exercise voting rights on behalf of such shareholders, where applicable. Information shall be included in the EU Growth prospectus or the appropriate document for admission to trading and in the issuer's annual financial report.

Lastly, the proposal foresees that the EC submits to the EP and the Council, within five years of entry into force, a **review report** with information (provided by Member States to the EC no later than four years after entry into force) on the Directive's implementation and, in particular, on the following: a) number of companies admitted to trading with shares with multiple voting rights, b) sector and capitalisation at the time of issuance and c) investor protection safeguards. Member States shall bring into force, no more than two years after the date of entry into force, the local provisions necessary to comply with the Directive.

### **Council proposal of 14 April 2023**

The **compromise text** agreed in the Council modifies some aspects of the EC proposal in order to represent Member States' concerns while keeping the right balance between flexibility and the need to facilitate access of SMEs to capital markets. The main elements of the compromise are set out below:

.- The **article on minimum harmonisation is removed**. The Council states that, contrary to the EC proposal, the possibility for Member States to include or maintain in force local provisions applicable in situations not covered by the Directive is not a provision of minimum harmonisation, but the consequence of the EU legislative process as, if a situation does not fall within the scope of the European standard, Member States are free to regulate such situation.

.- The **implementation of multiple voting share structures is in line with the provisions of the EC proposal** (agreed in the General Meeting and in the case of different classes of shares, in addition to separate voting for each class of shares with voting rights affected by shareholders' meetings).

.- **Safeguards**, to limit the weight of shares with additional voting rights at general meetings, provide that at least one of the following measures must be taken: a) a **maximum ratio (undetermined amount)** of the number of votes attached to shares with multiple voting rights and the number of votes of shares with the least voting rights or b) a requirement that **decisions to be taken by qualified majority** as specified in national law, excluding appointment and dismissal of directors **as well as operational decisions** subject to approval at a general meeting, are to be adopted by a qualified majority both of the votes and either or the share capital represented at the meeting or the number of shares represented, or a qualified majority of the votes cast and subject to a separate vote in each class of shares the right of which are affected. Lastly, the Council proposes Member States to be able to establish additional safeguards to ensure adequate protection of interests of shareholders without multiple voting rights, but without specifying what these may be (unlike the EC proposal).

.- The **transparency regime limits the disclosure of information on certain aspects that may affect personal data** in application of the General Data Protection Regulation. Specifically, information on the identity of holders of any securities that include special control rights is removed, as well as information on the identity of holders of shares with multiple voting rights will only have to be provided if they represent more than 5% of the voting rights of all the company's shares.

.- Lastly, the deadline for the EC to submit the **review report** to the EP and the Council is extended from 5 to 7 years and the deadline for Member States to provide the EC with information to draft said report is extended from 4 to 6 years. The deadline for the Directive's transposition is the same as the EC's proposal.

### **Draft report dated 14 June 2023 by the EP Economic and Monetary Affairs Committee on the Commission's proposal (deadline of amendments 7 July 2023)**

The rapporteur satisfactorily acknowledges the Commission's proposal and its perspective that companies should be able to choose the governance structures that best suit the development phases, while proposing the following adjustments:

.- In order to increase the appeal of listing in the Union, the option of multiple voting structures should not be limited to SME growth markets, but should **include all regulated markets**.

.- **In order to achieve greater harmonisation, Member States may maintain in force national provisions (without including new ones)** that allow companies to adopt share structures with multiple voting rights in situations not covered by the Directive.

.- With regards to **safeguards** that allow maintaining a high level of assurance in the market, the proposed amendments are as follows: firstly, a mandatory provision is introduced to prevent additional voting rights attached to shares with multiple voting rights from continuing to exist after a period of ten years (**mandatory sunset clause**); secondly, to limit the voting impact of shares with multiple voting rights, the following is introduced: a) a **maximum ratio** between the voting rights attached to shares with multiple voting rights and the voting rights attached to shares with the least voting rights, **which may only range from a ratio of one to two to a ratio of one to five**; b) the requirement, as in the Council's proposal, for **decisions of general meetings subject to qualified majority** voting, excluding the appointment and dismissal of directors, as well as **operational decisions** to be taken by directors and submitted to the general shareholders' meeting for approval, that are to be adopted either by a qualified majority (according to national law) of both the cast votes and the share of capital represented at the meeting or of the number of shares represented at the meeting or by a qualified majority (according to national law) of cast votes subject to a separate vote, in turn subjecting to a separate vote each class of shares whose rights are affected and c) introducing as **mandatory** (unlike the EC text that is an additional safeguard that Member States may adopt) **the requirement that additional voting rights may not be used to block decisions** aimed at preventing, reducing or eliminating adverse effects **on human rights or the environment** related to the activities of the corresponding company.

.- Member States may foresee **additional safeguards** in order to ensure adequate protection of the interest of shareholders that do not hold shares with multiple voting rights. The difference with the EC text is that the EP version does not provide examples of what such safeguards could be, in addition to the mandatory (as stated herein) sunset clause after ten years.

.- With regards to the **transparency regime**, recital 13 states that **public information must be updated periodically** and whenever there is a relevant change to the ownership or control of shares with special voting rights. Additionally, an obligation is introduced stating that companies with multiple voting rights whose shares are or will be traded on a regulated market or an SME growth market must have a **stock exchange name ending with the "WVR" (Weighted Voting Rights) marker** to clearly notify the public that their shareholding structure is different from traditional shares. NCAs and SME growth markets shall promote understanding and awareness among investors of the WVR marker and the impact on voting rights associated with the investment in companies with share structures.

.- **Deadlines for the submission of the review report by the EC and the transposition of the Directive into national law are reduced**. The review report shall be submitted within three years of the entry into force of the Directive with the information provided by Member States no more than two years after the entry into

force. The deadline for transposition into national law is shortened from two to one year.

**Links of interest:**

[Proposal for a directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market](#)

[Council of the European Union Brussels, 14 April 2023](#)

[DRAFT REPORT on the proposal for a directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market](#)