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A9-0300/ 001-001

**AMENDMENTS 001-001**

by the Committee on Economic and Monetary Affairs

**Report**

**Alfred Sant**

**A9-0300/2023**

Multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market

Proposal for a directive (COM(2022)0761 – C9-0416/2022 – 2022/0406(COD))

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**Amendment 1**

AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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2022/0406 (COD)

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**

(Text with EEA relevance)

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) and Article 50(2), point (g) and Article 114 thereof,  
Having regard to the proposal from the European Commission,  
After transmission of the draft legislative act to the national Parliaments,  
Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

- (1) To reinforce the attractiveness of *the capital markets union* and to reduce inequalities for companies seeking admission to trading in the single market, it is necessary to address obstacles to the access to such markets that stem from regulatory barriers. Companies should be able, *subject to safeguards established under Union and national law*, to choose governance structures that suit best their development stage, including by enabling controlling shareholders of those companies to retain control of the business after accessing *regulated markets*, SME growth markets, *or any other multilateral trading facilities (MTF)*, while enjoying the benefits associated to trading on those markets, as long as the rights of minority shareholders *are continuously* safeguarded.
- (2) Fear of losing control over a company constitutes *a deterrent* for controlling shareholders to *trade on public* markets. Admission to trading usually entails dilution of ownership for controlling shareholders, thus reducing their influence over important investment, *strategic* and operating decisions in the company. Maintaining control of the company may in particular be important for start-ups and companies with long-term projects that require significant upfront costs, because they may wish to pursue their vision without becoming too exposed to market fluctuations. *Shareholders in SMEs and in family-owned companies might not seek listing due to the fear of losing control over the company.*
- (3) Multiple-vote share structures are an effective mechanism to enable controlling shareholders to retain decision-making power in a company, while raising funds from the public. Multiple-vote share structures are a form of a control enhancement mechanism involving at least two distinct classes of shares with a different number of

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<sup>1</sup> OJ C [...], [...], p. [...]

voting rights. Under such structures, at least one of the classes of shares has a lower ***number of votes attached per share*** than another class (or classes) of shares with voting rights. The share carrying the superior amount of votes is a multiple-vote share.

- (4) There are other control enhancing mechanisms that allow leveraging voting power, apart from multiple-vote share structures. Such mechanisms may include non-voting shares, non-voting preference shares and voting right ceilings. However, those alternative control enhancing mechanisms, being more rigid in their set-up, are liable to constrain the amount of capital that a company can raise at the point of admission to trading
- (5) Loyalty shares, like multiple-vote shares, confer superior voting rights to a shareholder. A shareholder may obtain additional voting rights attached to loyalty shares, holding the share for the designated time and complying with certain conditions. Loyalty shares are control-enhancing mechanisms that are designed to foster a more stable, long-term oriented ownership among shareholders rather than to increase the attractiveness of raising funds from the public. It is therefore not appropriate to include loyalty shares in the scope of this Directive.
- (6) There are substantial differences between national provisions on multiple-vote shares across Member States. Some Member States allow multiple-vote share structures, while others ban them. In some Member States, the ban on multiple-vote shares is limited to public companies, while in others it applies to all companies. The differences in national regimes create barriers to the free movement of capital within the internal market. Moreover, the regulatory fragmentation creates an uneven playing field for companies in different Member States. Companies in a Member State that bans multiple-vote share structures have to move to another Member State or even outside the Union if they seek admission to trading with multiple-vote shares, and hence face higher costs. In some cases, because of those higher costs, companies may decide against raising funds from the public, which may limit their funding opportunities. Such considerations are particularly relevant for SMEs and start-ups that lack financial resources to cover those costs.
- (7) Member States should provide companies with the possibility to adopt multiple-vote share structures to allow them to seek admission to trading on a ***regulated market, an SME growth market, or any other MTF***, without their controlling shareholders having to relinquish control. While admission to trading on regulated markets is, ***overall***, more

suitable for larger and more mature companies, SME growth markets are generally more appropriate for SMEs. SME growth markets were originally designed as SME dedicated trading venues with a regulatory treatment that takes the particularities of SMEs into account. Not all companies with securities listed on SME growth markets are, however, SMEs. Directive 2014/65/EU of the European Parliament and of the Council<sup>1</sup> requires that SMEs constitute at least 50 % of the issuers of financial instruments admitted to trading on SME growth markets. Companies other than SMEs generally have more liquid securities and hence their admission to SME growth markets enables those markets to generate higher trading fees to maintain profitability of their business model. Nevertheless, to ensure clarity for investors, all issuers on SME growth markets, irrespective of their size, are currently subject to the same rules. ■

- (8) Member States should be able to introduce, or maintain in force, national provisions that allow companies to adopt these structures for purposes other than the first time admission to trading of shares on a *regulated market, an SME growth market or any other MTF*. This may also include cases whereby companies transfer from an SME growth market to a regulated market, while retaining multiple-vote shares.
- (9) ■ Member States should not prevent companies from adopting multiple-vote share structures at a point prior to the moment of the admission of shares to trading. Member States should, however, be allowed to lay down that the exercise of the enhanced voting rights, which represent additional voting rights attached to multiple-vote shares compared to voting rights of shares of other classes, is conditional upon the admission to trading of shares on *a regulated market, an SME growth market, or any other MTF*, in one or more Member States. In that case and until the admission to trading, multiple-vote shares should have the same voting rights as other classes of shares in the company. That would ensure that multiple vote shares specifically promote a first-time admission to trading on *a regulated market, an SME growth market or any other MTF*.
- (10) Due to a diminished voting power of non-controlling shareholders in the company relative to their investments, multiple-vote share structures may provide controlling shareholders of that company with perpetual control and thereby lead to controlling

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<sup>1</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

shareholder entrenchment. That may increase the risk that controlling shareholders extract private benefits from control. To address those risks, the adoption of multiple-vote share structures should be subject to safeguards to protect minority shareholders.

- (11) Member States that allow multiple-vote shares provide for safeguards to protect minority shareholders and the interests of the company. However, the existing safeguards vary between Member States due to national specificities and diverging company law systems. Having regard to the objectives of the internal market as set out in particular in Article 50(2), point (g) of the Treaty on the functioning of the European Union, Member States should ensure a coordinated approach in their national laws on multiple-vote share structures with respect to the protection of the interests of minority shareholders and of the company. This includes protection against decisions creating risks for or resulting in adverse human rights, climate change, and environmental consequences. Under that coordinated approach, all Member States should ensure that any decision to adopt a multiple-vote share structure, or to modify that structure where there is an impact on voting rights, is taken by a qualified majority at the general shareholders' meeting. ***In companies where there are several classes of shares, that qualified majority should be calculated on the basis of the total number of votes cast and on the basis of the number of votes within each class of shares affected by the decision.*** Furthermore, Member States should limit the voting weight of multiple-vote shares by introducing restrictions on the design of the multiple-vote share structure ***and*** on the exercise of voting rights attached to multiple-vote shares for the adoption of certain decisions. The restriction on the exercise of voting rights may be implemented by requiring that an approval by qualified majority necessitates both a qualified majority of the votes cast at the general meeting of shareholders and of the share capital represented at the general meeting of shareholders.

- (11a) Multiple-vote shares may protect a company from focussing too much on short-term interests, by giving a stronger voice to founders and long-term shareholders. With a view to stimulating long-term sustainable growth, companies issuing multiple-vote shares could publish a report detailing how their share structure will help to promote the interests of all stakeholders.***

- (12) Member States should be given discretion to introduce additional safeguards, where needed, to ensure adequate protection of minority shareholders' interests and the interest

of the company. Member States should assess the appropriateness of additional safeguards in light of their effectiveness in protecting the interests of minority shareholders and of the company, while ensuring that such safeguards do not defeat the purpose of multiple-vote share structures, i.e. the possibility for a company's controlling shareholders to influence important decisions, including the appointment of directors.

- (13) The disclosure of accurate, comprehensive and timely information about issuers strengthens investor confidence and allows for informed investment decision-making. Such informed investment decision-making enhances both investor protection and market efficiency. ***Member States should therefore require companies with multiple-vote share structures to have a stock name that ends with the marker 'WVR' (weighted voting rights) in order to clearly indicate to the public that their shareholder structure and liquidity profile is different from that of traditional companies.*** Member States should ***also*** require companies with multiple-vote share structures to publish detailed information on their share structure and corporate governance system at the moment of the admission to trading, as well as periodically in the annual financial report. Such information should mention whether there are any limitations on the holding of securities, including whether any transfer of securities requires the approval either of the company, or of other holders of securities. It should also mention whether there are any restrictions on voting rights, including limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby the financial rights attached to securities are separated from the holding of securities. ***Such information should be updated periodically and whenever a significant change occurs in the ownership or control of shares with special voting rights.*** Furthermore, those companies should ***in accordance with existing transparency law,*** disclose the identity of holders of multiple-vote shares as well as of the natural persons entitled to exercise voting rights on their behalf and of persons exercising special control rights to provide investors, as members of general public, with transparency on ultimate ownership and de facto influence on the company. This would allow investors to make informed decisions and thereby strengthen their confidence in well-functioning capital markets.
- (14) Since the objectives of this Directive, namely to increase funding options for businesses ***as well as to*** make SME growth markets more attractive, cannot be sufficiently and

timely achieved by Member States but can rather, by reason of the scale and effects of the measures, be more effectively and expeditiously achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (15) ***To assess the implementation and impact of this Directive, in particular any negative impact on stakeholders, and to*** take account of market developments and developments in other areas of Union law or Member States' experiences with the implementation of this Directive, the Commission should review this Directive ***three*** years following the date of transposition ***and every three years thereafter***.
- (16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>1</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (17) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>2</sup> and delivered an opinion on [XX XX 2022/2023]<sup>3</sup>,

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

#### **Subject Matter**

This Directive lays down common rules on multiple-vote share structures in companies that

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<sup>1</sup> OJ C 369, 17.12.2011, p. 14.

<sup>2</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance.), (OJ L 295, 21.11.2018, p. 39–98).

<sup>3</sup> [OP: Footnote once available].

seek the admission to trading of their shares on *a regulated market*, an SME growth market, *or any other multilateral trading facility*, in one or more Member States and that do not have shares already admitted to trading on any trading venue.

## Article 2

### Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) ‘company’ means a legal entity incorporated as one of the types of companies listed in Annex *II* to Directive (EU) 2017/1132;
- (b) ‘multiple-vote shares’ means shares belonging to a distinct and separate class and that carry *a higher number of votes per share* than another class of shares with voting rights on matters to be decided at the general meeting of shareholders;
- (c) ‘multiple-vote share structure’ means the share structure of a company that contains at least one class of multiple-vote shares;
- (d) ‘trading venue’ means a trading venue as defined in Article 4(1), point 24, of Directive 2014/65/EU;
- (e) ‘SME growth market’ means an SME growth market as defined in Article 4(1), point (12) of Directive 2014/65/EU;
- (f) *‘regulated market’ means a regulated market as defined in Article 4(1), point (21), of Directive 2014/65/EU;*
- (fa) ‘multilateral trading facility’ or ‘MTF’ means a multilateral trading facility as defined in Article 4(1), point (22), of Directive 2014/65/EU.*

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## Article 4

### Adoption of multiple-vote share structures

1. Member States shall ensure that companies that do not have shares that are admitted to trading on a trading venue have the right to adopt multiple-vote share structures for



the admission to trading of shares on ***a regulated market***, an SME growth market, ***or any other MTF***, in one or more Member States. Member States shall not prevent the admission to trading of shares of a company on ***a regulated market***, an SME growth market, ***or any other MTF***, on the ground that the company has adopted a multiple-vote share structure.

2. The right referred to in paragraph 1 encompasses the right to adopt multiple-vote share structures in time prior to seeking the admission to trading of shares on ***a regulated market***, an SME growth market ***or any other MTF***.
3. Member States may make the exercise of the enhanced voting rights attached to the multiple-vote shares conditional upon the admission to trading of shares ***on a regulated market***, an SME growth market, ***or any other MTF***, in one or more Member States.
- 3a. ***Member States shall ensure that a company's decision to adopt or modify a multiple-vote share structure is taken by the general meeting of shareholders by at least a qualified majority of the votes cast, as specified in national law. Member States shall not make the adoption of such a structure conditional upon the provision of enhanced economic rights for shares without enhanced voting rights.***

***Where there are several classes of shares, the decision to adopt a multiple-vote share structure shall in addition be subject to a separate vote within each class of shares the rights of which are affected.***

#### Article 5

##### ***Safeguards in companies that have adopted a multiple-vote share structure***

1. Member States shall ensure ***that companies that have adopted a multiple-vote share structure in accordance with this Directive have appropriate safeguards in place to provide for the*** adequate protection of the interests of **■** shareholders who do not hold multiple-vote shares **■** . To that effect, Member States shall **■** :
  - (a) ***introduce a maximum voting ratio ranging from one-to-two to one-to-twelve and a limit on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent;***

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- (b) limit the *impact* of multiple-vote shares on the *decision-making process* at general meetings *of shareholders* by introducing *a requirement that decisions by general meetings of shareholders that are 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 meeting of shareholders for approval, are to be adopted either by:*
- (i) *a qualified majority, as specified in national law, of the votes cast and a qualified majority of either the share capital represented at the meeting or of the number of shares represented at the meeting; or*
  - (ii) *a qualified majority, as specified in national law, of the votes cast, and by separate vote within each class of shares the rights of which are affected;*
- (ba) *exclude the use of enhanced voting rights attached to multiple-vote shares at general meetings of shareholders during the votes on resolutions tabled by shareholders in accordance with Article 6(1) of Directive 2007/36/EC of the European Parliament and of the Council<sup>1</sup>, in particular on matters related to the impact of the company's operations on human rights and the environment.*
2. Member States may provide for further safeguards to ensure adequate protection of *the interests of shareholders who do not hold multiple-vote shares* and of the interests of the company. *Those safeguards shall be communicated to the Commission and ESMA.* Those safeguards may include in particular:
- (a) a provision to avoid that the enhanced voting rights attached to multiple-vote shares are transferred to third parties or continue to exist upon the death, incapacitation or retirement of the original holder of multiple-vote shares (transfer-based sunset clause);

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<sup>1</sup> *Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184 14.7.2007, p. 17).*

- (b) a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist after a designated period of time (time-based sunset clause);
- (c) a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist upon the occurrence of a specified event (event-based sunset clause);
- (d) ***a requirement that enhanced voting rights attached to multiple-vote shares do not apply in matters relating to executive remuneration and dividend policy or to the approval of related party transactions.***

#### *Article 6*

#### **Transparency**

1. Member States shall ensure that companies with multiple-vote share structures whose shares are traded or are to be traded on ***a regulated market***, an SME growth market, ***or any other MTF*** make publicly available, in the ***prospectus referred to in Article 6 of Regulation (EU) 2017/1129 of the European Parliament and of the Council<sup>1</sup> or in the*** [EU Growth ***Prospectus*** referred to in Article 15a] of ***that*** Regulation<sup>1</sup> or in the admission document referred to in Article 33(3), point (c), of Directive (EU) 2014/65/EU and in the company's annual financial report referred to in Article 78(2), point (g), of Commission Delegated Regulation (EU) 2017/565<sup>2</sup>, detailed information on all of the following:
  - (a) the structure of their capital, including securities which are not admitted to trading on ***the relevant*** market in a Member State, with an indication of the different classes of shares and, for each class of shares, the rights and obligations

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<sup>1</sup> ***Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168 30.6.2017, p. 12).***

<sup>2</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

attached to that class and the percentage of total share capital and total voting rights that such class represents;

- (b) any restrictions on the transfer of securities, including any agreements between shareholders which are known to the company that could result in restrictions on the transfer of securities;
- (c) the identity of holders of any securities with special control rights and a description of those rights;
- (d) any restrictions on voting rights, including any agreements between shareholders which are known to the company that could result in restrictions on voting rights;
- (e) the identity of the shareholders holding multiple-vote shares and of the natural *persons* or legal *entities* entitled to exercise voting rights on behalf of such shareholders, where applicable.

2. Where the holders of multiple-vote shares or the persons entitled to exercise voting rights on their behalf or the holders of securities with special control rights are natural persons, the disclosure of their identity shall require only the disclosure of their names.

**2a. *Companies with multiple-vote share structures, the shares of which are traded or are to be traded on a regulated market, an SME growth market, or any other MTF, shall have a stock name that ends with the marker 'WVR' (weighted voting rights) in order to clearly indicate to the public that their shareholder structure is different from that of traditional companies.***

**2b. *National competent authorities, regulated markets, SME growth markets and MTFs, shall promote investor understanding and awareness concerning the WVR marker and the impact on voting rights associated with investing in companies with multiple-vote share structures.***

#### *Article 7*

#### **Review**

By [**three** years after the entry into force *of this Directive*] **and every three years thereafter**, the Commission shall submit a report to the European Parliament and the Council on the implementation and effects of this Directive. To that effect by [**two** years after the entry into

force *of this Directive*] *and every year thereafter*, Member States shall provide the Commission with *all relevant* information in particular on the following:

- (a) the number of companies admitted to trading with multiple-vote shares;
- (b) the sector in which the companies referred to in point (a) are active and the respective capitalisation at the moment of issuance;
- (c) the investor protection safeguard applied by the companies referred to in point (a) with respect to multiple-vote share structures.

#### *Article 8*

##### **Transposition**

1. Member States shall bring into force the law, regulations and administrative provisions necessary to comply with this Directive by... *[12 months* after the date of entry into force of this Directive]. They shall immediately inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 9*

##### **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

#### *Article 10*

##### **Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

[...]

*For the Council*

*The President*

[...]