EUROPEAN
COMMISSION

Brussels, 7.12.2022
COM(2022) 761 final

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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal is part of the Listing Act package, a set of measures to make public capital markets more attractive for EU companies and facilitate access to capital for small and medium-sized companies (SMEs). It is in line with the Capital Markets Union (CMU) core aim to improve access to market-based sources of financing for EU companies at each stage of their development, including for smaller companies. Listed companies often outpace privately owned companies in terms of annual revenue growth and job creation. By listing on public markets, companies can diversify their investor base, reduce their dependency on bank financing, gain easier access to additional equity capital and debt finance (through secondary offers), raise their public profile and increase brand recognition.

Since the publication of the first CMU action plan in 2015, progress has been made to make it easier and cheaper for companies, in particular SMEs, to access public markets. In January 2018, the Markets in Financial Instruments Directive II (MiFID II)[1] introduced a new category of multilateral trading facilities (MTFs), the SME growth markets, to incentivise SMEs to access capital markets[2]. In 2019, new EU rules were put forward to cut red tape and reduce regulatory burden for companies listing on SME growth markets while preserving a high level of investor protection and market integrity[3]. Nevertheless, despite the changes introduced, stakeholders continue to argue that further regulatory action is needed to streamline the listing process and make it more flexible for issuers. The new CMU action plan, adopted in September 2020, announced that 'in order to promote and diversify small and innovative companies' access to funding, the Commission will seek to simplify the listing rules for public markets'. Following up on this and building on Regulation (EU) 2019/2115, the Commission set up a Technical Expert Stakeholder Group (TESG) on SMEs that confirmed stakeholders' concerns that further legislative action is needed to support listing of companies, especially of SMEs. In its final report of May 2021, the TESG made 12 recommendations to amend the listing framework both on regulated markets and SME growth markets[4].

On 15 September 2021, President von der Leyen announced in her letter of intent[5] addressed to the Parliament and the Presidency of the Council a legislative proposal to facilitate SMEs' access to capital, which has been included in the 2022 Commission work programme[6].

---

1 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 (recast) (OJ L 173 12.6.2014, p. 349)

2 For an MTF to qualify as an SME growth market, at least 50% of the issuers whose financial instruments are traded on the MTF need to be SMEs, defined under MiFID II as companies with an average market capitalisation of less than EUR 200 million (See Recital 132 of MiFID II). In order to ensure the appropriate level of investor protection, the listing rules on SME growth markets must also satisfy certain quality standards, including the need to draw up an appropriate admission document (when a prospectus is not required) and to comply with periodic financial reporting. The SME growth market framework was developed to further acknowledge the special needs of SMEs entering the equity and bond markets for the first time.

3 Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1–10).

4 Final report of the Technical Expert Stakeholder Group (TESG) on SMEs - Empowering EU capital markets - Making listing cool again (europa.eu).

5 See p. 4: state_of_the_union_2021_letter_of_intent_en.pdf (europa.eu).

A company's decision to list is a complex one and is influenced by a multitude of factors, many of which are outside the reach of regulators and therefore cannot be addressed directly by a legislative intervention. For instance, the features of the ecosystem that determine the cost of listing services, geopolitical instability, Brexit, COVID-19, central bank policy and inflation – have all had (and will continue to have) an impact on whether to list, when and where to list, and whether to remain listed in the EU. Regulatory requirements and the associated costs and burden, however, are also important factors in a company's decision to list and remain listed. The Listing Act package presents a targeted set of measures aiming to: (i) reduce the regulatory burden where it is considered to be excessive (i.e. where regulation could contribute to investor protection/market integrity in a more cost-efficient manner for stakeholders); and (ii) increase the flexibility given under company law to companies' founders/controlling shareholders to choose how to distribute voting rights after the admission to trading of shares.

The regulatory framework applying to the listing process is multifaceted. Companies must comply with regulatory requirements before, during and after the initial public offering (IPO). This proposal focuses on the regulatory barriers that emerge at the pre-IPO phase and concerns the unequal opportunities of companies across the EU to choose the appropriate governance structures when listing. The proposed Directive is accompanied by two other legislative proposals: (i) a proposal for a Regulation amending the Prospectus Regulation[7], the Market Abuse Regulation (MAR)[8], (ii) the Markets in Financial Instruments Regulation (MiFIR)[9] and (iii) a proposal for a Directive repealing the Listing Directive[10] and amending MiFID II. Both proposals aim to streamline and clarify disclosure requirements applying to primary and secondary markets while maintaining an appropriate level of investor protection and market integrity. The proposed Directive repealing the Listing Directive and amending MiFID II also seeks to increase the low level of investment research on SMEs.

One of the main issues that deters founders and families from deciding to go public (at the pre-IPO stage) is the fear of losing control over their company once it is listed. Listing entails diluting ownership, thus reducing founders and families' control over important investments in and operating decisions of the company. Companies, in particular SMEs, may be more likely to list on public markets if controlling shareholders can retain decision-making power in the company after listing. This lets them continue to shape the business according to their strategic vision while enjoying the advantages linked to being a publicly listed company and raising enough funds that justify having gone through the listing process. This is particularly the case for smaller family-owned companies, start-ups, and businesses with long-term projects that require significant upfront costs. All these companies can run the risk of being overly exposed to fluctuations of public markets or the threat of a hostile takeover. These companies would also benefit the most from listing on an SME growth market – a category of

---

6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Commission work programme 2022 Making Europe stronger together COM (2021) 645 final cwp2022_en.pdf (europa.eu).

7 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.

8 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 12.6.2014, p. 1).

9 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

10 Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p.1)

MTFs designed specifically for SMEs and where they can benefit from less stringent regulatory requirements. Smaller companies may be in greater need of diversified funding than larger companies due to their typically riskier profile, reduced visibility vis-à-vis potential investors, inability to afford to list abroad as well as, in some cases, a greater need to scale up. Therefore, given that the access to public markets is particularly important for smaller and fast-growing companies, the focus of this proposal is on companies listing on SME growth markets.

Multiple-vote share structures are an effective mechanism to allow companies' owners to retain decision-making powers in a company while raising funds on public markets. These share structures permit a shareholder (or a group of shareholders) to hold a controlling stake in a company without having to make the proportionate economical investment required for the size of the stake, should all shares have the same voting power. Multiple-vote share structures typically include at least two distinct and separate classes of shares with a different number of voting rights attached to the shares belonging to each class.

Multiple-vote share structures are only one among the existing control enhancing mechanisms, i.e. mechanisms generating a discrepancy in the relation between financial ownership and voting power with the result that a shareholder can increase its control without holding a proportional stake of equity. The study on the proportionality between ownership and control in Member States[11], published in 2007, showed that the available mechanisms to enhance/lock in control by leveraging voting power may also include, among others loyalty shares[12], non-voting shares[13], non-voting preference shares[14], and voting right ceilings[15].

Nevertheless, being more rigid in their set-up, most of these alternative share structures constrain the amount of funds that can be raised at the IPO stage and through follow-on issuances. Furthermore, loyalty shares are an enhanced control mechanism that is designed specifically to foster long-term shareholding among investors and lead to a more stable, long-term oriented ownership rather than to increase the attractiveness of raising funds from the public. Since loyalty shares are typically associated with less additional voting rights than multiple-vote right shares for controlling shareholders and since they usually require a holding period before activating the enhanced voting rights, they are considered less attractive by founders and family-owned companies. This is supported by empirical evidence that has demonstrated that the introduction of loyalty shares in certain Member States has not increased the amount of companies that access public markets. By contrast, multiple-vote shares would allow founders to retain control, while selling a larger portion of their investment in the company thanks to the greater disassociation between economic interest and voting rights.

The introduction of multiple-vote share structures in a company results in other shareholders (investors) having less decision-making power relative to their economic investments. This

---

11 https://ecgi.global/sites/default/files/study_report_en.pdf.

12 Loyalty shares are shares that give enhanced voting power to shareholders that have held them for a specified time period. Typically, loyalty-shareholders get two votes per share, instead of one vote, if they have held their shares for two years or more.

13 Non-voting shares are shares with no voting rights and which carry no special cash-flow rights (such as a preferential dividend) to compensate for the absence of voting rights.

14 Non-voting preference shares are non-voting shares issued with special cash-flow right to compensate for the absence of voting rights (such as a preferential (higher or guaranteed) dividend).

15 A voting right ceiling is a restriction prohibiting shareholders from voting above a certain threshold, irrespective of the number of voting shares they hold. Voting right ceilings can be expressed as a percentage of all outstanding voting rights (for example, when no shareholder may vote for more than three percent of the company's registered share capital) or as a percentage of all votes cast at a general meeting (common across Member States).

diminished voting power could lead to specific problems if not properly mitigated. Such problems could include, for example, shareholder entrenchment[16], the funnelling of company's assets and, in general, the extraction of private benefits by the controlling shareholder, through for example related party transactions. Moreover, the diluting effect of multiple-vote shares may result in controlling shareholders blocking certain resolutions, including those aimed at sustainability goals, thus fostering the interests of the controlling shareholder rather than the long-term sustainable development of the company. However, these potential problems can be addressed by putting in place safeguards aimed at protecting minority shareholders and the interests of the company, such as a maximum voting ratio, sunset clauses and limitation to the use of the multiple-vote shares in certain cases, for example when it comes to sustainability matters.

There is currently fragmentation in the EU as regards multiple-vote share structures, which leads to unequal opportunities for EU companies when deciding to list. Some Member States, such as Sweden or Denmark, have allowed multiple-vote shares since almost the beginning of their capital markets. In Sweden, the percentage of listed companies with these share structures has always remained above 40%, and in Finland and Denmark they represent the majority of publicly listed companies in terms of market capitalisation. In contrast, other Member States have banned multiple-vote shares. In some cases, the ban is limited to public companies, for instance in Germany and Belgium, while in others it applies to all companies, for instance in Austria and Croatia.

The existing differences in national regimes on multiple-vote share structures create an uneven playing field for companies in different Member States. Entrepreneurs and companies from Member States, that prohibit multiple-vote share structures, are at a comparative disadvantage with companies from Member States that permit multiple-vote share structures. Entrepreneurs and companies looking to introduce multiple-vote share structures and benefit from the flexibility are faced with a choice of remaining private or moving to another Member State (or a non-EU country), thus restricting their choice of funding and increasing their cost of capital. This affects, in particular, SMEs and early-stage start-ups that lack resources to cover the additional costs associated with listing in another Member State or in a non-EU country.

This proposal seeks to achieve a minimum harmonisation of national laws on multiple-vote share structures of companies listing on SME growth markets, while leaving sufficient flexibility to Member States for its implementation. While regulated markets are generally more suitable for larger and more mature companies, SME growth markets were largely designed for listing of smaller companies, whereby the regulatory treatment of SME growth markets takes the particularities of SMEs into account. Nevertheless, not all companies with securities listed on SME growth markets are SMEs. Companies other than SMEs generally have more liquid securities and hence their inclusion allows SME growth 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. In line with this approach, this proposal introduces the possibility to adopt multiple-vote share structures for all companies seeking admission to trading of their shares on an SME growth market for the first time.

This proposal provides for safeguards to ensure protection of minority shareholders and the interests of the company. Those safeguards require all Member States to ensure that any

[16] A shareholder entrenchment is a situation where the controlling shareholders have perpetual control and can therefore take decisions for their own benefit without considering the interests of the company and of other shareholders and where other shareholders cannot effectively challenge these decisions.

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. The safeguards set out in this proposal also introduce a limitation on the voting weight of multiple-vote shares by introducing restrictions either on the design of the multiple-vote share structure or on the exercise of voting rights attached to multiple vote shares for the adoption of certain decisions. These safeguards are designed to protect the interest of minority shareholders and the interests of the company, while at the same time allowing sufficient flexibility to controlling shareholders so as to not disincentivise the use of multiple-vote share structures. Furthermore, these safeguards are largely in line with those already in existence in the legal systems of the Member States with well-functioning multiple-vote share structure regimes. Thus, those Member States would require minimum adjustments to their current legal systems.

- **Consistency with existing policy provisions in the policy area**

Multiple-vote share structures are currently exclusively regulated at national level.

The proposed Directive is consistent with the objectives of existing EU legislation laying down requirements for public companies and coordinating national provisions in company law. This includes the Company Law Directive[17] that aims to ensure minimum equivalent protection for both shareholders and creditors. It harmonises national provisions on certain aspects of company law, such as setting up public limited liability companies, share capital requirements and distributions to shareholders. The scope of the proposed Directive does not overlap with the scope of the Company Law Directive, which does not regulate the share structures of companies (including multiple-vote share structures). Instead, this matter is addressed in this proposal.

Furthermore, by requiring Member States to put in place provisions to safeguard the interests of the company and of minority shareholders, the proposal is consistent with the policy objective pursued in Directive (EU) 2017/828[18], including fostering the long-term sustainable development of companies and protecting the interests of the company and its minority shareholders in the case of related party transactions, despite the difference in scope of the two acts (the Directive concerns shareholder rights in companies admitted to trading on regulated markets, whereas this proposal concerns shareholder rights in companies admitted to trading on SME growth markets).

Similarly, the proposed Directive does not overlap with the scope of the Takeover Bid Directive that lays down rules applicable to public companies, when such companies are the subject of takeover bids, in order to safeguard the interests of shareholders. Importantly, the Takeover Bid Directive[19] only applies to companies admitted to trading on a regulated market and not to companies admitted to trading on an SME growth market, which are in the scope of this proposal. Nevertheless, transparency provisions in this proposal pursue similar objectives to those in the Takeover Bid Directive, focusing on a company's share capital structure, shareholding structure as well as rights and obligations attached to the company's securities.

Lastly, the proposed Directive is in line with the provisions of MiFID II regulating SME growth markets.

---

17 Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (OJ L 169 30.6.2017, p. 46).

18 Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/ec as regards the encouragement of long-term shareholder engagement (OJ l 132, 20.5.2017, p. 1–25).

19 Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142 30.4.2004, p. 12).

- **Consistency with other Union policies**

The proposal is fully in line with the CMU core aim to make financing more accessible to EU companies and in particular to SMEs. It is consistent with a number of legislative and non-legislative actions taken by the Commission in the framework of the 2015 CMU Action Plan[20], 2017 Mid-term Review of the CMU Action Plan[21] and 2020 CMU Action Plan.

In order to support jobs and growth in the EU, facilitating access to finance for companies, especially SMEs, has been a key goal of the CMU from the outset. Since the publication of the CMU Action Plan in 2015, some targeted actions were taken to develop adequate sources of funding for SMEs through all their stages of development. In its Mid-term Review of the CMU Action Plan published in June 2017, the Commission chose to raise its level of ambition and strengthened its focus on the SMEs' access to public markets. In May 2018, the Commission published a proposal to promote the use of SME growth markets[22] aiming to reduce the administrative burden and the high compliance costs faced by SME growth market issuers while ensuring a high level of market integrity and investor protection; foster the liquidity of publicly listed SME shares to make these markets more attractive for investors, issuers and intermediaries; and facilitate the registration of MTFs as SME growth markets. The proposal to promote the use of SME growth markets was adopted in November 2019.

Furthermore, following the COVID-19 crisis, the Commission published the Capital Markets Recovery Package, which comprised targeted amendments to capital markets and bank regulation, with the overarching aim to make it easier for capital markets to support EU businesses to recover from the COVID-19 crisis. The suggested changes to the capital market rules aimed in particular to alleviate regulatory burden and complexity for investment firms and issuers.

This proposal follows up on the 2020 CMU Action Plan and its objective to make financing more accessible to EU companies (Action 2 'supporting access to public markets'). The proposal focuses on alleviating the regulatory requirements that can deter a company from deciding to list or to remain listed. Other factors that may deter issuers from listing, such as a narrow investor base and a more favourable tax treatment of debt over equity, are addressed by other ongoing and upcoming CMU initiatives that complement the amendments put forward in this proposal and should be analysed in conjunction with this initiative. These initiatives relate, for example, to (i) the creation of an EU Single Access Point (ESAP)[23] that will tackle the lack of accessible and comparable data for investors, making companies more visible to investors, (ii) the centralisation of EU trading information in a consolidated tape[24] for a more efficient public market trading landscape and price discovery, (ii) the introduction

---

20 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on Building a Capital Markets Union (COM(2015) 468 final).

21 Communication from the Commission on the mid-term review of the capital markets union action plan (SWD(2017) 224 final and SWD(2017) 225 final – 8 June 2017) https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017_en.pdf

22 Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (COM(2018) 331 final).

23 Proposal for a Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (COM/2021/723 final).

24 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders (COM/2021/727 final).

of a debt-equity bias reduction allowance (DEBRA)[25] to make equity financing more attractive (and less costly) for companies.

Furthermore, a series of the Commission initiatives will further strengthen the investor base for listed equity. The EU SME IPO Fund will play the role of an anchor investor to attract more private investment in SMEs' public equity by partnering with institutional investors and investing in funds focused on SME issuers. The CRR and Solvency II reviews will increase the investor base for issuers by facilitating investments from banks and insurance companies in public (long-term) equity.

This proposal is also in line with the New European Innovation Agenda[26] published in 2022, since it would make capital markets more attractive to company founders, without the need of having to relinquish control when listing in public markets.

The proposal takes into account the evidence behind the opinion of the Fit for Future Platform on facilitating SMEs' access to capital and in particular on simplification of the procedures for the admission to trading of securities of SMEs and other listing obligations.

As this proposal will allow more SMEs to access more and more diversified funding through listing on SME growth markets, based on the most suitable corporate governance structure, it will also be in line with the objective of the SME relief package announced by President von der Leyen in the State of the Union speech in September 2022.

Finally, the provisions of the proposal on safeguards also cater for the protection of the interests of the company against decisions creating risks for or resulting in adverse human rights, climate change and environmental consequences. The proposal is therefore in line with the Commission's corporate governance policy objective of fostering sustainable and responsible corporate behaviour, and hence in line with the Commission proposal for the Directive on Corporate Sustainability Due Diligence[27], which aims at anchoring human rights and environmental considerations in companies' corporate governance systems.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 114 and Article 50 of the Treaty on the Functioning of the European Union (TFEU).

Article 114 provides for adopting measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. Recourse to Article 114 is possible where disparities between national rules are such as to obstruct the fundamental freedoms or create distortions of competition and thus have a direct effect on the functioning of the internal market. The objective of the proposed Directive is to remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment. These obstacles result from differences between national company laws across the EU, insofar as some Member States prevent their companies from accessing public markets through

[25] Proposal for a Council Directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (COM/2022/216 final).

[26] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A New European Innovation Agenda (COM/2022/332 final).

[27] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final).

multiple-vote share structures. This restricts their access to capital and creates an obstacle to establishing a single market for capital in the EU.

Article 50(1) TFEU and, in particular, Article 50(2)(g) provide for the EU's power to act to attain freedom of establishment for a particular activity, in particular 'by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or forms within the meaning of the second paragraph of Article 54 with a view to making such safeguards equivalent throughout the Union'. The proposed Directive seeks to put in place coordination measures concerning the protection of interests of companies' shareholders and other stakeholders to lower disparities between national rules and lower obstacles to the freedom of establishment.

- **Subsidiarity (for non-exclusive competence)**

Under Article 4 TFEU, EU action for completing the internal market has to be appraised in light of the subsidiarity principle set out in Article 5(3) of the Treaty on European Union (TEU). According to the principle of subsidiarity, action at EU level should be taken only when the objectives of the proposed action cannot be achieved sufficiently by Member States alone and thus require action at EU level. On multiple-vote shares, unless action is taken at the EU level, it is unlikely that Member States, which currently do not allow these share structures, would unilaterally and with no external incentive amend their rules in the near future. This is largely due to historical reasons, opposition from stakeholders in those countries and the fact that changing company law, which was developed over centuries, is often difficult. Any delays in introducing these structures throughout the EU would risk continuing to deprive smaller companies of funding opportunities in those Member States that ban multiple-vote shares. Finally, even if Member States decided to take action, the approaches could differ significantly, potentially leading to further fragmentation.

- **Proportionality**

The objective of the proposed Directive is to contribute to the proper functioning of the single market and remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and the freedom of establishment. These obstacles are caused by differences between national company law regimes on share structures and, in particular, the ability of a company to adopt a multiple-vote share structure. To achieve this objective, the proposal only sets out minimum harmonisation requirements and only in relation to the main principle of law on allowing for multiple-vote share structures, supplementing it with minimum safeguards necessary to protect minority shareholder interests and the interest of the company. Its scope is also limited to SME growth markets, in particular to cover SMEs that would benefit the most from such a measure.

The proposed Directive leaves Member States sufficient flexibility to frame the provisions of the proposal within the national legal regime. It does so by supplementing the rules with additional measures, including safeguards for shareholders and the interests of the company, provided that they are in line with the objectives of this Directive, or allowing for multiple-vote share structures in situations outside the scope of this proposal. Therefore, in line with the principle of subsidiarity, as set out in Article 5 of the TEU, the proposed Directive does not go beyond what is necessary in order to achieve its objectives.

- **Choice of the instrument**

The integration of the EU single market in the area of company law, particularly share structures, can be best achieved by approximating laws through harmonisation through a directive. Using a directive respects Member States' different legal cultures and company law

systems and provides for sufficient flexibility in the transposition process to implement common minimum standards in a compatible way with those different systems.

A recommendation would not be able to achieve the desired approximation objective in this policy area where wide differences in Member States' binding legislation were identified. Furthermore, approximation through a regulation would not give enough flexibility to Member States to adapt to local conditions and keep the EU rules consistent with broader national company law.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

Not applicable.

• Stakeholder consultations

In recent years, the Commission's continuous evaluations have focused on companies', especially SMEs', access to public markets. Issues relating to the regulatory burden on companies when accessing public markets were raised in the context of the CMU HLF, the TESG and the 2020 CMU action plan. The Commission also took into account extensive research on the topic carried out in the Oxera study[28]. To obtain further evidence on these issues, a call for evidence as well as a public and a targeted consultation on the Listing Act were launched in November 2021. The consultations were open for 14 weeks (between 19 November 2021 and 25 February 2022).

The Commission also organised two technical meetings/workshops with industry stakeholders in April 2022 to further refine the policy options under consideration.

Furthermore, the Commission presented the proposal's objectives to the European Securities Committee Expert Group on 15 October 2021, 17 May 2022 and 30 May 2022.

A meeting was also organised with the coordinators of the Economic and Monetary Affairs Committee (ECON) of the European Parliament to present the proposal's objectives on 17 May 2022.

Finally, a meeting with the Company Law Expert Group was organised on 12 September 2022.

Public and targeted consultations

In the public and targeted consultations, respondents stressed that one of the key reasons for the wave of hi-tech, high growth issuers choosing to list in non-EU countries (such as the US or the UK) is the flexibility that these jurisdictions grant to issuers on multiple-vote shares[29]. Similarly, some respondents[30] highlighted that a number of EU companies have recently transferred their statutory seats from countries with limited possibilities for issuing multiple-vote shares (e.g. Italy, Germany and Spain) to the Netherlands, a country that adopted a permissible and flexible approach to multiple-vote share structures[31]. Lastly, 64 %

---

28 Oxera Consulting LPP, Primary and secondary equity markets in EU, Final report, November 2020, Oxera-study-Primary-and-Secondary-Markets-in-the-EU-Final-Report-EN-1.pdf

29 Stakeholders supporting this view include investment banks, securities market associations, finance ministries' representatives and private equity associations.

30 This was mentioned by two stakeholders from the Netherlands.

31 So far there are a few companies which moved to the Netherlands to list there because of the attractiveness of the multiple-vote share system. However, there is no available data to corroborate this.

of respondents saw merit in stipulating in EU law that issuers across the EU may list on an EU trading venue based on the multiple-vote share structure.

The majority of respondents to the consultation (83 %)[32] considered that, where it is permitted, the use of multiple-vote shares has effectively encouraged more firms to seek listing on public markets. When asked about the impact that multiple-vote shares has on the attractiveness of a company for investors, most respondents to this question (predominantly issuers and exchanges) considered that the impact is either positive or neutral[33]. These respondents noted that multiple-vote shares do not decrease investors' appetite, provided that certain safeguards are in place, and highlighted that transparency is key to making sure investors can make fully informed investment decisions.

Those respondents who viewed the attractiveness negatively (including two NCAs and some investor associations) expressed concerns about the disappearance of the 'one share – one vote' principle. One respondent noted, in particular, that multiple-vote share structures may undermine existing accountability mechanisms in corporate governance law, such as shareholders' ability to elect directors, and lead to management entrenchment. However, even amongst respondents viewing the impact slightly negatively or negatively, some noted that multiple-vote shares are beneficial in certain situations (particularly for high-growth, innovative, founder-led companies looking to list). They noted that any changes put forward should strike an appropriate balance. This balance should cater for adequate governance protection, such as limiting the decisions that can be taken with additional voting rights, allow founder-led companies to raise funds on public market, and maintain the founder's long-term vision for the company.

The respondents thus highlighted that any flexibility on multiple-vote share structures should be approached in a way that safeguards governance standards (possibly through sunset clauses, non-transferability provisions, automatic cancellation/conversion on exit, etc.).

Expert group recommendations

The CMU HLF recommended that companies should have a choice to opt for a multiple-vote share structure when going public. The expert group noted that such structures would help companies avoid being taken over by larger companies, incentivise owners to maintain growth, and help foster a long-term outlook for the company while keeping listing an attractive funding option. However, they emphasised that this needs to be balanced against the fact that it prevents other shareholders from exercising their stewardship and governance responsibilities.

The TESG fully supported this recommendation, arguing that it should be the prerogative of the issuers to decide whether or not to include a sunset clause or a maximum weighted voting ratio.

Stakeholder meetings

The two technical stakeholder workshops that the Commission organised did not generate significant input on the topic of multiple-vote shares. Some stakeholders (exchanges) clearly supported EU harmonisation as it would make listing more attractive. In contrast, other stakeholders (investors) believed that there is no need for such harmonisation, while noting that, if such an approach is considered, appropriate safeguards would be important.

---

32 i.e. 34 out of 41 respondents.

33 22 % (equivalent to 9 respondents) opted for positive or slightly positive, 29 % (equivalent to 12 respondents) opted for neutral while 36 % of respondents (equivalent to 15 respondents, mostly investors and NCAs) opted for negative or slightly negative.

Meetings with the European Securities Committee Expert Group The Commission presented the possible way forwards on the Listing Act as part of the CMU project. Delegations participating in the discussion broadly supported the Commission's objective of improving the attractiveness of EU public markets, while ensuring investor protection and market integrity. More specifically, 13 Member States that took the floor showed openness to considering a minimum harmonisation of multiple-vote share provisions in EU law.

Meeting with the ECON coordinators in the European Parliament

The MEP Coordinators that participated in the discussion welcomed the Commission's proposed way forward on the Listing Act, acknowledging the problem with EU public markets. They stressed that the Commission needs to find a right balance to ensure that all companies, especially SMEs, can access public markets for funding, while at the same time ensuring adequate investor protection.

Meeting with the Company Law Expert Group

A Company Law Expert Group meeting took place to exchange views on the existing national multiple-vote share structures in some Member States. Several Member States took the floor to further substantiate their responses to the Commission survey (July-August 2022).

- **Collection and use of expertise**

The Commission collected a significant amount of data directly from securities exchanges, issuers and SME associations. Moreover, the TESG (in force between October 2020 and May 2021) provided some evidence as well as the input from the market. Furthermore, the Commission contracted out a *Study on Primary and Secondary Equity Markets in the EU* from Oxera in November 2020, which provided a very detailed overview of the market[34], also supported by data.

Previously, the Commission contracted out a study on the proportionality between ownership and control in EU-listed companies, which concluded with the *Report on the Proportionality Principle in the EU* (published in 2007)[35]. The conclusions of that report were recently confirmed in another study on minority shareholders protection, requested by the Commission and published in 2018.

An impact assessment was conducted based on extensive qualitative and quantitative evidence from the public and targeted consultations on the Listing Act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs.

Other sources used included extensive academic literature and research, particularly by examining jurisdictions that already have multiple-vote shares in place or that have recently adopted legislation allowing them. There was also extensive additional input from various industry associations.

---

34 The Study on Primary and Secondary Equity Markets in the EU recommended for regulators to ease restrictions on control-enhancing mechanisms (such as multiple-vote shares) to encourage companies to list without owners having to relinquish control of their companies.

35 The study on the proportionality between ownership and control in Member States concluded that no EU jurisdiction within the analysed sample opted for an all "one share one vote" principle. Even those Member States that had, to some extent, formally adopted the "one share one vote" principle authorised various control-enhancing mechanisms, such as voting right ceilings or non-voting preference shares. These conclusions were then confirmed in a 2018 study on minority shareholders protection. This study contains a section on the application of the "one share, one vote" principle in Member States, where it is concluded that the national legal frameworks of the Member States do not see this principle as a fundamental one.

- **Impact assessment**

This proposal is accompanied by an impact assessment that was submitted on 10 June 2022 to the Regulatory Scrutiny Board. It was approved by the Board – with reservations – on 8 July 2022.

The Board requested to amend the draft impact assessment to clarify: (i) the articulation and consistency of the Listing Act initiative with other linked capital markets initiatives; (ii) the risks and limitations of the analysis and acknowledge unintended consequences; and (iii) the different views expressed by different categories of stakeholders on the problem definition, the options and their impact. The comments formulated by the Board were addressed and integrated in the final version of the impact assessment.

The impact assessment analyses several policy options to make listings on EU capital markets more attractive through streamlined, clear and more flexible regulatory obligations in order to reduce the costs associated with raising capital on public markets for companies of all sizes.

The impact assessment describes three drivers that explain the problems relating to the three stages of the listing cycle: the pre-IPO stage, the IPO process itself and the post-IPO stage. The driver that was identified as relevant to this proposed Directive relates to unequal opportunities for EU companies regarding governance structure when listing, due to different national rules on multiple-vote shares.

The regulatory amendments set out in the options could not single-handedly address all the challenges faced by the EU public markets. However, together with other measures considered as part of a wider plan to improve companies' access to public capital markets, the amendments aim to help reverse the current negative trend in the EU public markets. Without these regulatory improvements, EU public markets would continue to rely on the suboptimal regulatory framework for listing, which in turn would reduce the attractiveness of public markets. This would result in an economic cost for EU issuers, investors and the EU economy as a whole. The baseline scenario therefore includes no amendments to the legislative framework governing the rules for companies seeking to list or already listed.

The preferred policy option for the pre-IPO stage envisages a minimum harmonisation of national laws governing multiple-vote share structures, while leaving discretion to Member States on how to frame it. Under this option, Member States currently banning multiple-vote share structures would have to amend their laws to allow for such governance structures. The option would not impose any additional far-reaching constraints on those Member States that currently have a flexible and well-functioning regime in place.

This option would be effective in providing companies (established in Member States that currently ban multiple-vote share structures) with an incentive to list. By ensuring that companies can be admitted to trading in all Member States with multiple-vote share structures, the preferred option would allow founders and company owners to mitigate the loss of control, which is typically associated with listing. This, in turn, would open up new funding opportunities for those companies that would not otherwise consider listing. It would also generate substantial cost savings for those companies who currently need to list abroad to benefit from flexibility. Furthermore, multiple-vote shares would help founders (once listed) avoid short-term market pressures and focus on their long-term vision for the company.

Under the preferred option, Member States would enjoy flexibility in setting safeguards and conditions around multiple-vote shares. However, they would need to ensure compliance with a few high-level principles and minimum safeguards set out at EU level. These include the need to ensure an adequate balance between the interests of founders and minority investor protection, as well as the protection of the interests of the company. As Member States would

be required to take into account investors' interests and the interests of the company when introducing these share structures in their national systems, this option would ensure investor protection. In addition, safeguards and conditions would be tailored to the particular characteristics of local markets, and the markets that already have multiple-vote share structures in place would retain their flexibility.

Another option (not the preferred option) provides for a maximum harmonisation of multiple-vote shares by introducing a detailed set of rules, including on safeguards for minority investors and for the company, such as voting power limitation clauses, sunset clauses, clauses setting out limitation on the number of votes attached to a single share, all of which would seek to protect minority investors and the company from undue impact of these share structures. Furthermore, under this option, EU law could also prescribe who may hold multiple-vote shares, in which decisions the additional voting rights are taken into account and on which conditions (and whether) they can be transferred to a third party. This option would be quite prescriptive as all Member States would be obliged to implement the same rigid framework, including the same safeguards which would not allow flexibility to Member States that already have a well-functioning system in place.

Therefore, the preferred option, while being effective, would also be more cost-efficient for stakeholders, specifically issuers: Member States that already have regimes on multiple-vote shares in place would not have to amend their rules and companies in those Member States would not have to adapt to a new regime and incur additional costs. A much more prescriptive alternative option (not the preferred option) is likely to lead to much higher (adjustment) costs for both Member States and issuers across the EU. While overall investors' interests and the interests of the company may be better safeguarded at the EU level under the alternative option, it may be unfit for some Member States, where investors do not appear to be negatively affected under the current (flexible) multiple-vote share arrangements.

The proposal is expected to have a direct economic impact in terms of increasing access to alternative sources of funding for EU companies. It is likely to lead to more incentives for issuers to list on public markets across Member States, where these structures are not allowed. Combined with other enhancing measures, it may hence lead to overall more public issuances in the EU, hence contributing in general to the growth of EU capital markets.

As regards the environmental impacts, including do no significant harm and climate consistency check, this proposal is expected to have an indirect positive environmental impact as companies receiving funding from public markets may engage in the development and innovation of new environment-friendly technologies. Furthermore, the introduction of the specific safeguards should minimise an impact on the company arising from decisions that may result in adverse human rights, climate and environmental consequences. This proposal would also be conducive to the development of more open and more competitive capital markets, benefiting in particular faster-growing companies in innovative and research-intense sectors that tend to have higher capital needs. A better access to finance will allow these companies to grow at a more rapid pace and allocate more financial resources to R&D programmes that can contribute to the European Green Deal objectives.

The proposal may lead to an indirect positive social impact, provided that the preferred option achieves the objective of contributing to easing companies' access to public markets whereby they would now be able to benefit from a more diversified and larger pool of funding sources, allowing to engage in social innovation and employ more people. As the initiative targets in particular SMEs (with some measures directly addressed at them), the (indirect) impact on employment is likely to be particularly relevant. Today, SMEs in the EU provide for employment of around 100 million people, account for more than half of the EU GDP and

play a key role in adding value in every sector of the economy[36]. Importantly, they make up 99.8 % of EU companies[37]. Provided with a better-tailored and wider access to financing, these companies will now be able to grow at a faster pace, with positive implications for employment across the EU. As such, it is expected that the measures, as part of a wider package to facilitate SMEs' access to capital market finance, will positively impact the EU labour market and increase economic cohesion.

This proposal is likely to have an indirect positive impact on digitalisation, by providing wider and more diversified sources of funding for capital-intense projects and companies, including those focusing on digitalisation and innovation.

The impact assessment concludes that the proposed 'package' of measures will contribute to the overarching CMU goal of facilitating access to capital markets for companies. This package of measures will support companies listed on EU trading venues, by reducing their administrative burden and by enabling improved liquidity. However, the impact assessment also underlines that the regulatory measures included in this initiative would not, on their own, necessarily lead to an increased number of public listings in the EU, the latter being dependent on many different factors.

- **Regulatory fitness and simplification**

No administrative cost impacts related to the 'one in, one out' approach have been identified, even though some adjustment costs are expected to arise from this initiative. Minimum direct adjustments costs for companies may arise so as to ensure that a listing is structured in accordance with the new rules and more specifically, with the investor protection safeguards in place.

- **Fundamental rights**

This proposal respects fundamental rights and freedoms laid down in the Charter of the Fundamental Rights of the European Union. The free movement of persons, services and establishment constituting one of the basic rights and freedoms protected by the Treaty on the European Union and the Treaty on the Functioning of the European Union is relevant for this initiative.

The proposal affects the right to privacy and protection of personal data of certain shareholders and persons exercising voting rights in the company, as well as holders of securities with special control rights. The provision requiring disclosure of the identity of those shareholders and persons aims at strengthening investor confidence and facilitating informed investment decision-making, thereby enhancing both investor protection and market efficiency. Since the investor can be any member of general public, this information should be publicly available. The provision does not go beyond what is necessary to protect the interests of investors to make well-informed decisions and to guarantee investors' trust. Furthermore, the proposal requires disclosure of personal data only in relation to those shareholders and persons that have significant decision making power or may otherwise exercise control rights in the company. In the absence of such disclosure, investors would not be able to take fully-informed investment decisions.

[36] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions COM(2020) 103 final - An SME Strategy for a sustainable and digital Europe, p. 1.

[37] Eurostat, 2018 Key Figures (europa.eu).

4. BUDGETARY IMPLICATIONS

This initiative is not expected to have any noteworthy impact on the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

An evaluation is envisaged 5 years after the implementation of the measure and according to the Commission's better regulation Guidelines. The objective of the evaluation will be to assess, among other things, how effective and efficient the Directive has been in achieving the policy objectives and to decide whether new measures or amendments are needed. Member States shall provide the Commission with the information necessary for the preparation of that evaluation.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 sets out the subject matter. Article 1, in particular, sets out that this Directive only concerns the adoption of multiple-vote share structures by companies seeking listing on an SME growth market in one or more Member States for the first time.

Article 2 sets out the definitions used in this Directive, including 'company', 'multiple-vote share structures', 'multiple-vote shares' and 'SME growth market'.

Article 3 clarifies that this Directive is a minimum harmonisation Directive and that Member States may adopt or retain national provisions that allow companies to adopt multiple-vote share structures in situations not covered by this Directive.

Article 4 lays down the principle that Member States must ensure that companies may adopt multiple-vote share structures when they seek admission to trading of their shares on an SME growth market for the first time. Article 4 also ensures that Member States leave flexibility to companies to adopt multiple-vote share structures before seeking the admission of their shares to trading. In those cases, Member States have a possibility to set out that the enhanced voting rights associated to multiple vote shares, can only be used after the admission to trading has occurred.

Article 5 sets out the obligation for Member States to ensure the fair and equal treatment of shareholders and provide for the adequate protection of the interests of the company and of the shareholders that do not hold multiple-vote shares by introducing appropriate safeguards. For this purpose, Article 5 provides for a minimum level of harmonisation in relation to safeguards by requiring Member States to include certain safeguards listed in the Article. Article 5 also lists additional safeguards that Member States may consider to that end.

Article 6 sets out disclosure requirements for companies that adopted multiple-vote share structures that apply both at the point of admission to trading of the company's shares and then recurrently on an annual basis. This includes information relating to the structure of the company's share capital, the characteristics of the multiple-vote shares as well as the presence of other control-enhancing mechanisms in the company.

Article 7 contains a provision on the review of this Directive.

Article 8 contains provisions on the transposition of the Directive.

Article 9 includes the date as of when this Directive enters into force.

Article 10 sets out the addressees of this Directive.

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)

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[38],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) To reinforce the attractiveness of SME growth markets 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 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 SME growth markets, while enjoying the benefits associated to trading on those markets, as long as the rights of minority shareholders continue to be safeguarded.

(2) Fear of losing control over a company constitutes one of the main deterrents for controlling shareholders to access SME growth markets. Admission to trading usually entails dilution of ownership for controlling shareholders, thus reducing their influence over important investment 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.

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

[38] OJ C [...], [...], p. [...]

(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 on SME growth markets due to the lower disassociation between economic and voting rights.

(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 SME growth market without their controlling shareholders having to relinquish control. While admission to trading on regulated markets is 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[39] 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. It is therefore appropriate that the introduction of the right to adopt multiple-vote share structures applies to all companies seeking admission of their shares on an SME growth market for the first time.

[39] 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).

(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 SME growth market. That includes allowing companies to adopt multiple-vote shares when already admitted to trading, when seeking admission on a Multilateral Trading Facility that is not registered as SME growth market or on a regulated market, or ensuring that private companies can adopt multiple-vote shares, regardless of whether they intend to request admission to trading of their shares. This may also include cases whereby companies transfer from an SME growth market to a regulated market, while retaining multiple-vote shares.

(9) Companies may adopt multiple-vote share structures through a new issuance of shares or through another type of corporate transaction, such as the conversion of already issued shares. Companies should have the flexibility to choose the most appropriate type of corporate transaction to adopt multiple vote share structures in compliance with national law. Furthermore, companies should also have the flexibility as to the timing of the adoption of multiple-vote share structures, provided they do so to seek a first time admission of shares to trading on a SME growth market. 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 an SME growth market 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 SME growth markets.

(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 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. Furthermore, Member States should limit the voting weight of multiple-vote shares by introducing restrictions either on the design of the multiple-vote share structure or 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.

(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 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. Furthermore, those companies should 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 and 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 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 5 years following the date of transposition.

(16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[40], 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.

---

40 OJ C 369, 17.12.2011, p. 14.

(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[41] and delivered an opinion on [XX XX 2022/2023][42]

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject Matter

This Directive lays down common rules on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market 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 I to Directive (EU) 2017/1132;

(b) 'multiple-vote shares' means shares belonging to a distinct and separate class and that carry higher voting rights 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) 'weighted voting ratio' means the ratio of votes attached to multiple-vote shares to votes attached to shares with the least voting rights.

Article 3

Introduction or maintenance of national provisions on multiple-vote shares

Member States may introduce or maintain in force national provisions that allow companies to adopt multiple-vote share structures in situations not covered by this Directive.

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

[41] 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).

[42] [OP: Footnote once available].

for the admission to trading of shares on an SME growth market in one or more Member States. Member States shall not prevent the admission to trading of shares of a company on an SME growth market 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 an SME growth market.

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 an SME growth market in one or more Member States.

Article 5

Safeguards for fair and non-discriminatory treatment of shareholders of a company

1. Member States shall ensure fair and non-discriminatory treatment of shareholders, as well as adequate protection of the interests of the shareholders who do not hold multiple-vote shares and of the company through appropriate safeguards. To that effect, Member States shall do all of the following:

   (a) ensure that a company's decision to adopt a multiple-vote share structure and any subsequent decision to modify a multiple-vote share structure that affects voting rights are taken by the general shareholders' meeting of that company and are approved by a qualified majority as specified in national law.

   For the purposes of this point, where there are several classes of shares, such decisions shall also be subject to a separate vote for each class of shareholders whose rights are affected;

   (b) limit the voting weight of multiple-vote shares on the exercise of other shareholders' rights, in particular during general meetings, by introducing either of the following:

      (i) a maximum weighted voting ratio and a requirement on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent;

      (ii) a restriction on the exercise of the enhanced voting rights attached to multiple-vote shares for voting on matters to be decided at the general meeting of shareholders and that require the approval by a qualified majority.

2. Member States may provide for further safeguards to ensure adequate protection of shareholders and of the interests of the company. 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);

   (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 to ensure that the enhanced voting rights cannot be used to block the adoption of decisions by the general shareholders' meeting aiming at preventing, reducing or eliminating adverse impacts on human rights and the environment related to the company's operations.

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 an SME growth market make publicly available, in the [EU Growth issuance document referred to in Article 15a] of Regulation (EU) 2017/1129 of the European Parliament and of the Council[43] 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[44], detailed information on all of the following:

   (a) the structure of their capital, including securities which are not admitted to trading on an SME growth market in a Member State, with an indication of the different classes of shares and, for each class of shares, the rights and obligations 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 person or legal entity 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.

---

43 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)

44 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).

Article 7

Review

By [five years after the entry into force], 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 [four years after the entry into force], Member States shall provide the Commission with 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 2 years 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	*For the Council*
The President	*The President*
[...]	*[...]*