Proposal COM(2022) 761 of 7 December 2022 for a **Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market**

LISTING ACT - MULTIPLE-VOTE SHARES

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LONG VERSION

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A. Key elements of the EU proposal

1 General

- In 2015, the EU Commission presented an Action Plan on building a Capital Markets Union [COM(2015) 468, p. cep**PolicyBrief**]. One of the main objectives of the Capital Markets Union is to facilitate access to market-based sources of finance for EU companies and in particular for small and medium-sized enterprises (SMEs).
- According to the Commission, since publication of the Action Plan, progress has already been made towards achieving this goal, which it hopes will bring the following benefits to businesses:
  - a diversification of their investor base,
  - a reduction in their dependence on bank financing,
  - easier access to additional equity capital and debt finance, and
  - higher public profile and wider brand recognition.
- However, according to the Commission, further efforts are needed. Recently adopted regulatory measures, such as the creation of trading venues specifically targeted at SMEs ("SME growth markets"), have not yet had sufficient impact on achieving the goal.
- In September 2021, Commission President von der Leyen therefore announced the presentation of a package of legislative measures to make public markets more attractive for EU companies and facilitate access to capital for SMEs.
- Under the label of the "Listing Act", the Commission then presented a bundle of regulatory measures on 7 December 2022. This bundle consists of proposals
  - for a Directive on multiple vote share structures which aims to address regulatory barriers in the pre-listing phase [COM(2022) 761],
  - for a Regulation amending the Prospectus Regulation [(EU) 2017/1129] and the Market Abuse Regulation [(EU) No. 696/2014], which aims to streamline listing requirements for primary and secondary markets while preserving investor protection and market integrity [COM(2022) 762], and
  - for a Directive amending the Markets in Financial Instruments Directive [2014/65/EU] and repealing the Listing Directive [2001/34/EC] which aims to increase the low level of financial research on SMEs and make SME growth markets more attractive to SMEs [COM(2022) 760].
- This cep**PolicyBrief** is dedicated to the Proposal for a Directive on multiple vote share structures [COM(2022) 761].

2 Introduction of shares with multiple voting rights

2.1 Context and objectives

- According to the Commission, many small family businesses, start-ups, founders and companies with long-term projects shy away from going public because they are particularly afraid of [pp. 2 and 3]
  - having less control over their company and thus over operating and investment decisions,
  - a dilution of ownership,
  - exposure to fluctuations on public markets, and/or
  - exposure to the threat of hostile takeovers.
- If these companies were to retain some decision-making power even after going public, they would, in the Commission's view, have more incentive to seek a listing [pp. 2 and 3].
- The Commission therefore wants to give companies that are seeking to list on a trading venue specially designed for SMEs ("SME growth market"), the possibility to issue "multiple-vote shares" [Art. 1]. Such shares create a discrepancy between financial ownership and voting power (a departure from the principle of "one share - one vote"). A shareholder or group of shareholders can thus hold a controlling stake in a company without having to make the proportionate economic investment required for the size of stake. [p. 3]

2.2 Establishing multiple-vote shares

- “Multiple-vote shares" are shares which [Art. 2 (b)]
  - constitute a distinct and separate class of shares, and

  – carry higher voting rights than other classes of shares with voting rights conferring the right to vote on resolutions at general meetings.

- Companies may introduce multiple-vote share structures provided they wish to admit shares to trading on an SME growth market in one or more Member States for the first time. They must not have been admitted to trading on any trading venue to date. [Art. 4 (1) in conjunction with Annex I of Directive (EU) 2017/1132]

- The requirement applies to all companies wishing to issue multiple-vote shares for trading on an SME growth market and is not limited to small and medium-sized enterprises (SMEs), for which these growth markets were primarily designed [Recital 7].

- Companies may also introduce multiple-vote share structures even before an application for admission has been made [Art. 4 (2)]. However, Member States may make the exercise of enhanced voting rights conditional upon admission [Art. 4 (3)].

- Member States must ensure the fair and non-discriminatory treatment of shareholders who do not hold multiple-vote shares and that their interests are adequately protected. To this end, they must ensure that [Art. 5 (1), Art. 2 (f)]
  – the introduction of multiple-vote share structures is decided by the company's general shareholders' meeting, with a qualified majority according to national law,
  – the impact of the enhanced voting weight of multiple-vote shares is limited; such limitation must include either the determination of
    – a maximum proportion of the issued share capital that can be represented by the total number of multiple-vote shares, and a maximum weighted voting ratio, i.e. the ratio of votes attached to multiple-vote shares to the votes attached to shares with the least voting rights, or
    – a restriction on the voting rights of shareholders with multiple-vote shares in resolutions of the shareholders' meeting for which a qualified majority is required.

- Member States may also introduce provisions to prevent [Art. 5 (2)]
  – the transfer of enhanced voting rights to third parties,
  – the continued existence of enhanced voting rights after the death, incapacity or retirement of the holder of multiple-vote shares,
  – the continued existence of enhanced voting rights after a designated period,
  – the continued existence of enhanced voting rights after the occurrence of a specified event,
  – the use of enhanced voting rights to block resolutions of the shareholders' meeting that are aimed at preventing, reducing or eliminating adverse impacts on human rights and the environment.

- Companies with multiple-vote shares must make certain disclosures [Art. 6]
  – in the "EU Growth issuance document", i.e. a prospectus format specifically designed for SMEs - or in the "admission document", i.e. a document admitting a financial instrument to trading, as well as
  – in the company's annual financial report.

  This includes information on, inter alia, [Art. 6]
  – the capital structure of the company,
  – the identity of the holders of multiple-vote shares,
  – the identity of the holders of any securities with special control rights,
  – any restrictions on voting rights, and
  – any restrictions on the transfer of securities.

- Member States are free to allow companies to introduce multiple-vote share structures in situations other than the first-time admission to trading on an SME growth market [Art. 3]. They may, inter alia, allow companies to adopt such structures where they [Recital 8]
  – seek admission to trading on a Multilateral Trading Facility (MTF), i.e. exchange-like trading platforms, or a regulated market, and are already admitted to trading,
  – want to transfer from an SME growth market to a regulated market while retaining multiple-vote shares.

- Member States must transpose the Directive within two years of its entry into force [Art. 8 (1)].

B. Legal and political context

1 Legislative Procedure

7 December 2022	Adoption by the Commission
19 April 2023	Adoption of a negotiating mandate in the Council
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

2 Options for Influencing the Political Process

Directorates General:	DG Financial Stability, Financial Services and Capital Markets Union
Committees of the European Parliament:	Economic and Monetary Affairs (ECON), Rapporteur: Alfred Sant (S&D Group, MT)
Federal Ministries:	Finance (leading)
Committees of the German Bundestag:	Finance (leading)
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

3 Formalities

Legislative competence:	Art. 114 TFEU (Internal market) and Art. 50 TFEU (Freedom of establishment)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

C. Assessment

1 Economic Impact Assessment

1.1 On the introduction of multiple-vote share structures in the EU

For some years now, an interesting development has been observed on the stock markets. Multiple-vote share structures are on the rise worldwide, especially in the US. While such structures were used in an average of 10.9% of annual initial public offerings (IPOs) there between 2000 and 2010, the figure rose to 19.6% in the period from 2011 to 2022. This development gained momentum particularly as a result the Google IPO (now Alphabet) in 2004. Since then, innovative tech companies in particular have been resorting to multiple-vote share structures. Their level actually rose to an average of just under 30% (2011-2022) from a low of 7.3% (2000-2010) and reached its interim peak of 50% of tech IPOs in 2022[1] (see Figure 1).[2,3]

[1] However, the total number of IPOs in the US in 2022 was also extremely low, with a total of six (i.e. three via multiple-vote shares).

[2] Battocletti, V., Enriques, L., & Romano, A. (2022). Dual Class Shares in the Age of Common Ownership. European Corporate Governance Institute-Law Working Paper, (628), p. 14.

[3] Ritter (2023), Initial Public Offerings: Dual Class Structure of IPOs Through 2022, University of Florida, January 24, 2023.

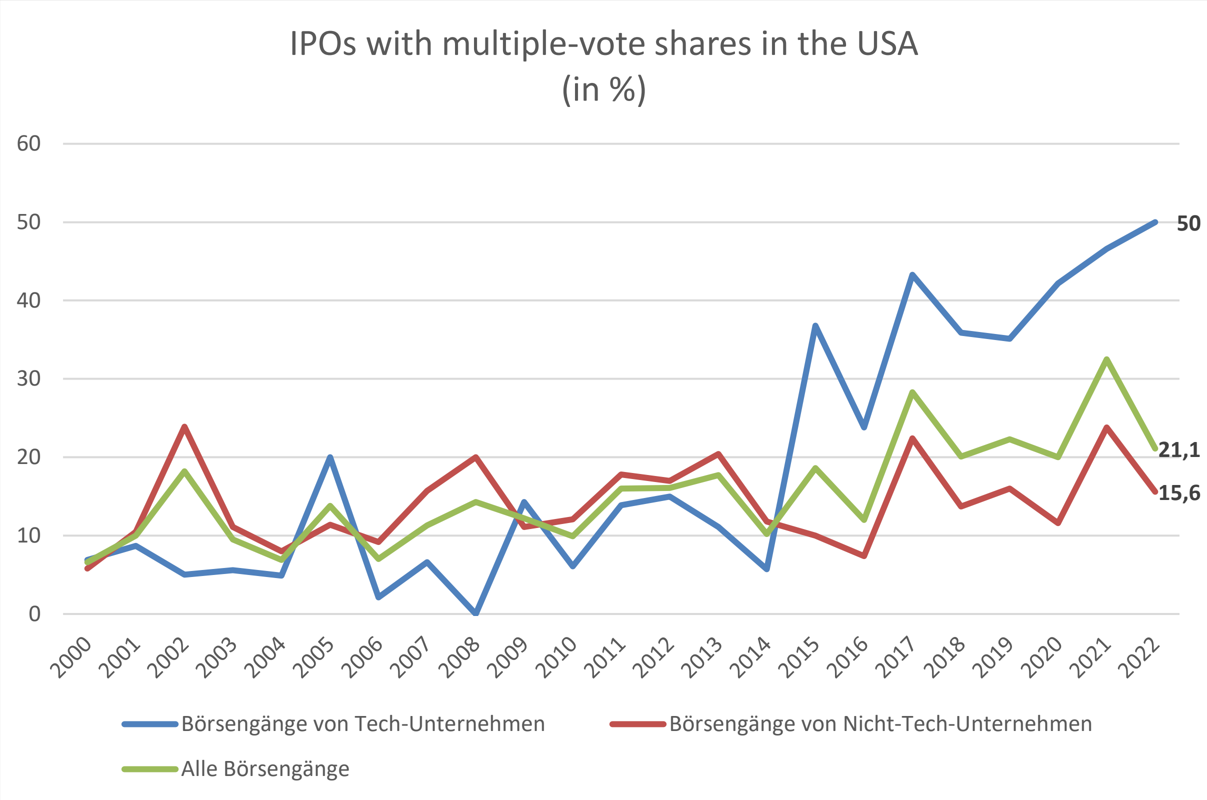

Figure 1: IPOs with multiple-vote shares in the USA (%), Source: Ritter (2023), Initial Public Offerings: Dual Class Structure of IPOs Through 2022, University of Florida, January 24, 2023.

Among the companies that have opted for multiple-vote share structures in the US are several large corporations including, in addition to Alphabet, heavyweights such as Meta (formerly: Facebook), Apple, Snap and Visa.[4],[5] In total, four of the ten largest listed companies have multiple-vote shares. And the Chinese tech company Alibaba also used such share structures when it went public on the NYSE in the US in 2014.[6] Even though the majority of companies still follow the "one share, one vote" principle, companies with multiple-vote shares already account for 60% of the market value of IPOs (status: 2020).[7]

The success of multiple-vote share structures in the US has galvanised many jurisdictions. In recent years, for example, some Asian financial centres - notably Hong Kong, Singapore and Shanghai - have decided to open up to listings via multiple-vote shares.[8] And the UK has also recently changed course, now allowing companies to use such structures in the premium segment of the London Stock Exchange.[9],[10] Multiple-vote shares already play a significant role in some EU Member States, notably Sweden, Finland and Denmark,[11] and are permitted in France and Ireland. In Belgium and Portugal, efforts are being made to approve them,[12] and there are also plans to do so in Italy.[13] However, other Member States, such as Spain, Austria and also Germany do not (yet) allow them.[14] In Germany, for example, they were largely abolished from mid-2003 onwards with the Law on Control

4 Council of Institutional Investors, Dual Class Companies List, https://www.cii.org/dualclass_stock
5 SWD(2022) 762, Commission staff working document, Impact assessment report, Brussels, 7.12.2022, p. 17.
6 Fernandez, E., Friedrich, H. J., O'Gorman, O., Huemer, G., Mazanec, L., Nieto-Márquez, J. G., ... & Vismara, A. (2021), Empowering EU Capital Markets-Making listing cool again, Final report of the Technical Expert Stakeholder Group (TESG) on SMEs, p. 33.
7 Council of Institutional Investors, Dual-Class IPO Snapshot: 2017–2020 Statistics.
8 SWD(2022) 762, p. 142 and 143.
9 The change of course was also a result of the "UK Listings Review" published by the UK's Department of Finance and Economic Affairs at the end of 2020 [HM Treasury (2020), UK Listings Review, published: 19 November 2020, last updated 21 April 2021].
10 Financial Conduct Authority (2021), Primary Market Effectiveness Review: Feedback and final changes to the Listing Rules, Policy Statement, PS21/22, December 2021.
11 SWD(2022) 762, p. 138.
12 Schönbohm, F (2022), Bald Mehrstimmrechtsaktien in Deutschland! Wichtige Neuerungen im Zukunftsfinanzierungsgesetz, Rose & Partner, 7 November 2022.
13 Guiseppe Fonte (2023), Italy's League party pushes for multiple-vote shares to boost IPOs, Reuters, 22 February 2023.
14 Oxera (2020), Primary and secondary equity markets in the EU, Final Report, November 2020, p. 43.

and Transparency in Business (KonTraG).[15],[16]However, there are currently efforts within the German government to allow multiple-vote shares again as part of the so-called Future Financing Act (ZuFinG) (see also Box 1). [17,18]

Box 1: Main requirements in the draft bill of the Federal Ministry of Finance and Federal Ministry of Justice for a German Future Financing Act (ZuFinG) on multiple-vote shares

The Federal Ministry of Finance and the Federal Ministry of Justice want to reintroduce multiple-vote shares into German company law, namely for stock companies (Aktiengesellchaft, AG), European stock companies (Societas Europaea, "SE") as well as for partnerships limited by shares (KGaA). In general, only registered shares will be able to have multiple voting rights attached to them. There will be no restriction as to the persons who can be holders of the multiple-vote shares. All affected shareholders will have to agree to the introduction of multiple voting rights.

The aforementioned companies can establish several classes of multiple-vote shares in the articles of association and provide for shares with different levels of multiple voting rights. No fixed number of votes per share is specified but there is a maximum number of votes to which the holder of a multiple-vote share can be entitled as compared with an ordinary share. The maximum voting ratio will be 1:10, as in Sweden, for example.

The period of validity of multiple-vote shares will be limited to a planned maximum period of ten years after the IPO but shorter periods can be specified in the articles of association. The articles of association may also stipulate that the 10-year period be extended once for a further period of up to ten years. The resolution for such an extension will require a majority of three quarters of the share capital represented at the time of the resolution and cannot be adopted any earlier than one year before the expiry of the statutory period.

The Commission is now also reacting to this trend with its push for a directive on multiple-vote share structures. It seems to be driven by the fear of falling (even further) behind other jurisdictions in the competition for high-growth, innovation-oriented tech companies that prefer to go public in countries with more flexible laws on multiple-vote shares. In addition, the Commission sees that many start-ups, founders and family businesses in the EU are still reluctant to venture into the public markets and prefer to raise capital through other means, such as bank loans. Ultimately, it wants to compensate for an alleged competitive disadvantage vis-à-vis other countries and remove the obstacles that prevent local companies from going public.[19]

But what makes multiple-vote share structures so attractive? Multiple-vote shares could be an incentive for innovative start-ups, founders and also family businesses to venture onto the stock exchange because they do not in that case lose control over key corporate decisions.[20] And they do not lose the ability to actually implement their ideas and entrepreneurial vision.[21] As controlling shareholders, they are more able to tackle long-term projects because the disciplinary force of the market is weakened.[22] They are also better protected against hostile takeovers.[23] All this also strengthens the incentives of management to invest and innovate.[24] In economic terms, multiple-vote share structures also allow investors to participate in these, often dynamically growing, companies

[15] Oxera und Kaserer, C. (2021), Wie können Börsengänge für Start-ups in Deutschland erleichtert werden? Internationaler Vergleich und Handlungsempfehlungen, 27 September 2021, p. 19 and 20.

[16] According to Section 12 (2) German Stock Corporation Act (AktG), multiple voting rights are "prohibited" in Germany.

[17] Federal Ministry of Finance (BMF) and Federal Ministry of Justice (BMJ) (2022), Eckpunkte für ein Zukunftsfinanzierungsgesetz - Maßnahmen zur verbesserten Finanzierung von Zukunftsinvestitionen und zur Erleichterung des Kapitalmarktzugangs für Unternehmen, insbesondere Startups, Wachstumsunternehmen und KMU, 29 June 2022.

[18] Entwurf eines Gesetzes zur Finanzierung von zukunftssichernden Investitionen (Zukunftsfinanzierungsgesetz – ZuFinG), draft bill of the Federal Ministry of Finance and the Federal Ministry of Justice, 12 April 2023, available here.

[19] Before publishing its legislative proposal, the Commission also carried out a consultation. 76% of respondents to the consultation expressed the view that the existence of multiple-vote share structures has encouraged more companies to seek a listing [SWD(2022) 762, pp. 42 and 43].

[20] Fernandez, E., Friedrich, H. J., O'Gorman, O., Huemer, G., Mazanec, L., Nieto-Márquez, J. G., ... & Vismara, A. (2021).

[21] Goshen, Z., & Hamdani, A. (2013). Corporate control and idiosyncratic vision. Columbia Law and Economics Working Paper, (444).

[22] Sharfman, B. S. (2018), A Private Ordering Defense of a Company's Right to Use Dual Class Share Structures in IPOs, Vill. L. Rev., 63, 1.

[23] Joel Seligman (1986), Equal Protection in Shareholder Voting Rights: The One Common Share, One Vote Controversy, 54 George Washington Law Review 687, 687.

[24] Oxera und Kaserer, C. (2021).

and to share in their success.[25] Furthermore, if their introduction results in additional IPOs which would not otherwise have occurred, the "breadth and depth" of the public markets increases.[26]

At the same time, multiple-vote share structures also have a downside. First, they are a departure from the basic principle that a shareholder's equity stake should be in line with his or her voting rights; they grant individual actors undue influence over the company.[27] Giving majority shareholders this marked position of power poses several risks. In particular, agency costs arise in the sense that there is increased need for supervision and monitoring on behalf of the minority shareholders[28] because the controlling shareholders have an incentive to derive private benefit from their position.[29] They may be tempted to block advantageous takeover bids[30], preferentially select certain people for management positions[31], adapt remuneration structures to their own advantage or even shy away from growth-enhancing investment decisions[32]. If multiple-vote shares give an entrepreneur long-term control, there is a danger of "entrenchment" of the majority shareholders (“managerial entrenchment”); they may therefore resist measures that would be in the interests of all shareholders and could increase the value of the company.[33] Accordingly, multiple-vote share structures regularly result in a lower enterprise value, at least in the medium to long term,[34] and the greater the disparity between voting rights and financial participation the more pronounced this effect becomes[35]. They can thus have a deterrent effect on investors making them reluctant to provide capital to the companies, or only willing to do so in return for corresponding risk premiums.[36]

By establishing an EU-wide framework for multiple-vote share structures, the Commission is thus attempting to resolve a dilemma faced by start-ups, founders and family businesses that want to tap into capital on the public markets but do not want to relinquish control. At the same time, however, the Commission is opening up another dilemma because investors often have an interest in investing in innovative and potentially successful companies but are reluctant to give up their governance rights, which they inevitably lose with multiple-vote shares.[37]

It is clear from the above that multiple-vote share structures are ultimately double-edged. From a regulatory perspective, however, multiple-vote shares are largely unproblematic, at least as long as two key conditions are met: First, there must be freedom of choice. Companies interested in an IPO must be able to use either traditional share structures (i.e. especially one share, one vote) or multiple-vote share structures, and investors should be free to invest in companies using one or the other structure. Secondly, there must be transparency. The issuer must provide the investor with sufficient information about the chosen share structure so that the investor can form a picture of the associated opportunities and risks and make an informed decision on that basis. In principle, if these two conditions are met, the formation of an efficient market outcome is possible. Issuers can then decide whether the "gain" in additional control by way of multiple-vote shares is so high that it more than compensates for any losses due to potentially lower investor interest and thus higher capital costs. And investors will consider whether they have sufficient confidence in the issuer's capabilities to entrust them with their capital despite fewer opportunities for governance. If they lack such confidence, investors will decide against investing or will only invest on the basis of a valuation discount.[38]

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25 Companies with multiple-vote share structures tend to have higher valuations, at least in the first phase following an IPO [Kim, Hyunseob and Michaely, Roni, Sticking around Too Long? Dynamics of the Benefits of Dual-Class Voting (January 2, 2019). European Corporate Governance Institute (ECGI) - Finance Working Paper No. 590/2019, Swiss Finance Institute Research Paper No. 19-09].

26 Yan, M. (2022). Permitting dual class shares in the UK premium listing regime–a path to enhance rather than compromise investor protection. Legal Studies, 42(2), 335-357.

27 von der Crone, Aktienrecht, 2nd Edn. 2020, p. 3.

28 CFA Institute (2018), Dual-Class Shares: The good, the bad, and the ugly, A Review of the Debate Surrounding Dual-Class Shares and Their Emergence in Asia Pacific, August 2018.

29 Bebchuk, L and Kastiel, K. (2017), ‘The untenable case for perpetual dual-class stock’, Virginia Law Review, 103, p. 585−631.

30 Joel Seligman, ‘Equal Protection in Shareholder Voting Rights: The One Common Share, One Vote Controversy’ (1986) 54 George Washington Law Review 687, 687.

31 Bebchuk, L and Kastiel, K. (2017).

32 Masulis R, Wang C, Xie F (2009) Agency problems at dual-class companies. J Financ 64(4):1697–1727.

33 CFA Institute (2018).

34 Shen, J. (2016), The Anatomy of Dual Class Share Structures: A Comparative Perspective, Hong Kong Law Journal, v. 46 n. part 2, p. 477–510.

35 Claessens, S., S. Djankov, J. Fan, and L.H.P. Lang (2002), Disentangling the Incentive and Entrenchment Effects of Large Shareholdings, Journal of Finance, 57: 2741–2771.

36 Martinez, A.G. (2018), Should Securities Regulators Allow Companies Going Public with Dual Class Shares?, Blog, University of Oxford.

37 Yan, M. (2022).

38 Khalil and Magnan also found such discounts in a study as early as 2007 [Khalil, S., & Magnan, M. (2007). Dual-class shares: Governance, risks, and rewards. Ivey Business Journal, May/June, 1-4].

It is therefore appropriate - from a regulatory point of view - for the Commission to advocate the establishment of multiple-vote share structures in the EU, and the fact that many jurisdictions have had positive experiences with this also indicates a certain necessity to follow suit here in order to withstand global competition and to maintain and strengthen the attractiveness of EU capital markets.

1.2 On the need for safeguards for minority shareholders

The Commission's proposal, in addition to requiring Member States to introduce multiple-vote share structures, also provides for a number of safeguards to ensure that investor protection is adequately preserved and that the integrity of the markets is not unduly compromised. Although the proposal leaves Member States broad scope for designing the safeguards, it is questionable whether legislative provisions (at EU level) are needed in this regard, especially with regard to time-based expiry (sunset) clauses. On the one hand, studies show that granting family businesses, founders and start-ups additional control, shortly after a listing, often outweighs the disadvantages as it allows them to pursue their ideas consistently. On the other, however, the initial innovative vigour generally falls away and the disadvantages of multiple-vote shares, such as the entrenchment of majority shareholders, become increasingly apparent. In addition, majority shareholders often have little incentive to relinquish control voluntarily once they have it, even though this might be advantageous looking at the business as a whole.[39] Establishing (automatic) expiry of multiple voting rights after a certain period of time is therefore often effective and can counteract this development. In this respect, however, the decision should be left to the market. If a company uses multiple-vote share structures and fails to introduce sunset clauses, or if the enhanced voting rights only expire after a long period of time, it is up to the investors to decide whether or not they want to take on this additional risk. For their part, issuers have to weigh up whether they can generate enough investor confidence if they waive sunset clauses or whether the costs of doing so might be too high. In addition, it is unrealistic to expect the legislator to be able to determine a "correct" and "suitable" time period for all companies that venture onto the public markets. This would amount to a presumption on the part of the legislator that it knows better than the market when would be the "optimum" time for expiry of the multiple-vote shares. The legislator does not yet have that capability. It should therefore refrain from the regulatory determination of expiry clauses and leave it to companies to implement such clauses for themselves.

Legislators should also largely steer clear of safeguards limiting the voting weight of multiple-vote shares because here, too, it is up to market players, i.e. in particular issuers and investors, to weigh up in each case what decision-making power should be granted to the respective side of the market and where the limits should lie. Here, too, investors are free, for example, to use valuation discounts to discipline companies that want to grant their owners a (very) high voting weight. As long as the difference in voting rights is made transparent to investors - which is what the Commission proposal envisages - such safeguards are therefore ultimately superfluous.

The optional safeguard of ensuring that enhanced voting rights cannot be used to block environmental and human rights-related decisions of the shareholders' meeting should be rejected. Firstly, it unduly mixes political concerns with issues of company law. Secondly, it is unclear which resolutions would ultimately be affected in individual cases and which instance would decide on this, thereby creating legal uncertainty. Thirdly, this politically motivated special provision for environmental and human rights issues creates the incentive for a patchwork of (further) individual provisions under which multiple-vote shareholders will not be able to use their enhanced voting rights. And fourthly, the special rule assumes - without sufficient justification - that multiple-vote shareholders focus less on environmental and human rights issues than any other shareholders. Such a sweeping statement is unverifiable. Legislators should therefore discard the clause during the legislative process.

In contrast, the safeguards providing for the expiry of multiple-vote shares upon the death, incapacity or retirement of the holder are logical and reasonable. If such events occur, the original reason for granting multiple voting rights automatically ceases to exist. Legislators should certainly therefore retain this clause.

1.3 On the transparency requirements for multiple-vote share structures

The requirements for transparency regarding the use of multiple-vote share structures in the EU Growth issuance document or the admission document, as well as in the Company's annual financial report, are appropriate and essential for the successful establishment of multiple-vote share structures. This is because only the disclosure of information on the design of the structure used will enable investors to make a considered decision on

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[39] See e.g. Lucian A. Bebchuk & Kobi Kastiel, The Untenable Case for Perpetual Dual-Class Stock, 103 VA. L. REV. 585, 594 (2017); Baran, L., Forst, A., & Tony Via, M. (2018). Dual-class share structure and innovation. Journal of Financial Research; Robert Jackson, Perpetual Dual-Class Stock: the Case Against Corporate Royalty.

whether they can and want to bear any additional risks associated with it. As an instrument for reducing information asymmetries between issuers and investors, they are key to maintaining investor confidence.

1.4 On the restriction to SME growth markets

With the Proposal for a Directive, the Commission is particularly aiming to ensure that SMEs increasingly choose to raise capital by way of public markets. However, it limits the possibilities for SMEs to use multiple-vote share structures by explicitly providing that they are only for listings on special "SME growth markets", i.e. markets that explicitly take into account the special features of SMEs. Although Member States are also free to allow such structures for listings on other trading venues, it is not mandatory. This regulatory focus on SME growth markets should be reconsidered. Firstly, it promotes false incentives as - assuming that a Member State maintains the restriction to SME growth markets - it may encourage companies to avoid listing on a regulated market or MTF that (until now) has actually been considered advantageous. And secondly, it inevitably and unnecessarily puts the latter trading venues at a disadvantage in the competition for lucrative listings and unilaterally favours SME growth markets. Legislators should therefore also explicitly and in all cases enable multiple-vote share structures on regulated markets and MTFs and not leave this decision to Member States alone.

2 Legal Assessment

2.1 Legislative Competence

The Commission rightly bases its proposal on Article 114, Article 50 (1) and Article 50 (2) (g) (TFEU).

2.2 Subsidiarity and Proportionality with Respect to Member States

Unproblematic.

D. Conclusion

The Commission is responding to a global trend with its push for a Directive on multiple-vote share structures. An increasing number of jurisdictions around the world are allowing such structures. To avoid falling (even further) behind in the competition for high-growth, innovation-oriented tech companies, the Commission wants to oblige Member States to introduce multiple-vote share structures. This is acceptable from an ordoliberal point of view. Such structures can indeed provide important leverage. The safeguards providing for the expiry of multiple-vote shares upon the death, incapacity or retirement of the holder of such shares are reasonable. The transparency requirements are appropriate, and an essential prerequisite for the success of such structures, as they help to maintain investor confidence. Multiple-vote share structures should be permitted, not only on SME growth markets but also on regulated markets and exchange-like multilateral trading facilities (MTFs). However, safeguards to limit voting weight are generally superfluous. The market could act independently in this regard. Legislators should not set fixed expiry periods for multiple-vote share structures as they are unlikely to establish "correct" and "appropriate" expiry periods for all companies.