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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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Subject:	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 - Preparation for the trilogue

I. INTRODUCTION

1. On 7 December 2022, the European Commission submitted the above-mentioned proposal to the Council and the European Parliament. The proposed Directive is part of the Listing Act package, a set of measures to make public capital markets more attractive for EU companies and to facilitate access to capital for small and medium-sized companies (SMEs). The proposal aims at encouraging company owners to list the shares of their company for the first time on SME growth markets using multiple-vote share structures, so that they retain sufficient control of their company after listing, while protecting the rights of shareholders by introducing safeguards.

2. At its meeting of 19 April 2023, under the Swedish Presidency, the Permanent Representatives Committee approved the Council's mandate for negotiations with the European Parliament.
3. The European Parliament's Committee on Economic and Monetary Affairs (ECON) appointed Mr Alfred SANT (S&D, MT) as rapporteur on the proposal. The European Parliament approved its report at the plenary session on 8 November 2023.
4. The opinion of the European Economic and Social Committee was adopted at the plenary session on 23 March 2023.

II. STATE OF PLAY

5. The first trilogue took place on 23 November 2023 and the Permanent Representatives Committee was debriefed on 29 November 2023.
6. The position of the European Parliament has been discussed at the Working Party on Company Law meetings on 16 and 30 November 2023. Technical meetings with the European Parliament took place on 27 November 2023 and on 4 December 2023.
7. The Presidency considers that in view of the second trilogue with the European Parliament, foreseen on 14 December 2023, the Council's mandate could be updated in order to allow co-legislators to achieve a political agreement on the file. The main issues on which compromises need to be found, as a basis for agreement, are presented in Section III. In Section IV, the Presidency presents the options for a compromise on those main issues.

III. MAIN ISSUES

8. The Presidency considers that there are two core elements that have strong political and practical relevance within the proposal: the scope (Article 1) and the safeguards that companies will have to put in place (Article 5). Next to the two core issues, transparency also plays an important role for the final architecture of the text.
9. The differences between the two institutions on the two core issues as well as on transparency are notable. The current positions of the co-legislators on the main elements of the proposal are as follows:

A. Scope (Article 1)

10. The Council largely endorses the approach proposed by the Commission, maintaining that these common rules will apply to companies that seek admission to trading of their shares on an SME growth market. Given that the impact assessment essentially considers SME growth markets, the Council took proper consideration of the implications that an expansion of scope would have on legal certainty.
11. The European Parliament expands the scope of application in order to cover a wide variety of markets (regulated markets, SME growth markets and any other Multilateral Trading Facilities), arguing that a less ambitious scope could generate less interest from markets.
12. At the first Trilogue, the Commission put forward a compromise proposal to include in the scope the Multilateral Trading Facilities, namely those markets that satisfy the essential condition of providing a safe environment for SMEs listing for the first time. Initial reactions from the European Parliament were negative.

B. Safeguards in companies that have adopted a multiple-vote share structure (Article 5)

13. The Council amended the proposal to ensure appropriate safeguards to protect shareholders holding shares with lower voting rights. It sets two mandatory safeguards linked (i) to decisions to modify the multiple-vote share structure and (ii) to the need to limit the impact of these structures in the company's decision-making process. The latter safeguard allows two alternative conditions to fulfil its observance. Moreover, the optional safeguards envisaged in the Commission proposal are moved to the recitals.
14. The Parliament establishes three mandatory safeguards: firstly, the EP sets a common range for the maximum voting ratio between one-to-two and one-to-twelve and a limit on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent (both are cumulative conditions). Secondly, about limiting the impact of multiple-vote shares on decision-making, the Parliament includes only one, mandatory, possibility. Moreover, a new safeguard is introduced which excludes the use of enhanced voting rights attached to multiple-vote shares when a shareholder tables, at the general meeting, a resolution pertaining in particular to environmental and human rights issues. The Parliament maintains the optional safeguards of the Commission proposal, including a new one that limits the application of enhanced voting rights attached to multiple-vote shares in matters relating to executive remuneration and dividend policy or to the approval of related party transactions.

C. Transparency (Article 6)

15. The Council position has removed the obligation for companies to publish certain information related to their multiple-vote share structures on their annual financial report. Furthermore, in relation to the obligation to disclose the identity of shareholders, the Council limits it to cases where such identity is known to the company and the shareholder represents more than 5 % of the voting rights of all shares in the company.
16. The Parliament maintains the obligation to disclose the identity of shareholders (in all cases and without any threshold) and introduces (i) a marker (“WVR”) to raise investor awareness and allow to easily distinguish companies with multiple-vote shares, and (ii) an obligation to promote investor understanding and awareness concerning the WVR marker and the impact on voting rights associated.

IV. OPTIONS FOR COMPROMISE

17. Given the interrelationship between the proposal’s elements, the Presidency wants to present to Member States two compromise options, covering both main political elements and transparency, alongside with other technical modifications of the proposal. The two compromise packages are as follows:

A. First compromise option: middle-ground approach

18. In this package, the Presidency considers a middle-ground approach on a number of elements of the proposal. Most prominently, **the scope is expanded** to also include, besides SME growth markets, any other Multilateral Trading Facility that allows the admission to trading of SMEs shares which would be consistent with the original objective of the proposal.

19. With regard to the **safeguards**:

- On the maximum voting ratio, the Presidency could consider making it mandatory and removing the option between the ratio and the double majority for the exercise of multiple-vote rights. In addition, the Council would consider including the level for the maximum voting ratio of 1 to 12.
- Regarding the exercise of multiple-vote rights, the Council could be open to a mandatory safeguard based on one of the two double voting modalities introduced in the General approach.
- On the safeguard related to the impact of the exercise of multiple-vote rights related to environmental and human rights issues, the Council may include a possibility for Member States to consider the introduction of additional measures where deemed necessary by those Member States.
- On the other safeguards the Presidency may consider including them in the operative part provided they remain optional.

20. On transparency aspects:

- Regarding the annual financial information, the Presidency would like to reintroduce a reference to periodic disclosure in annual financial statements where relevant (i.e. where there is a change). For companies on Multilateral Trading Facilities a disclosure could be done in a document where required by national law.
- On the marker 'WVR', the Presidency could show openness provided the solution does not interfere excessively with the existing market practices also be included.

21. This package would not significantly alter the logic behind the original proposal and would ensure an adequate balance between the scope and the safeguards. Other elements of the proposal could be adapted to fit this logic.

B. Second compromise option: maximum extension of scope

22. In this package, a maximalist approach is endorsed **on scope**: the scope is extended to cover not only SME growth markets, but also regulated markets and any other Multilateral Trading Facilities that allow the admission to trading of SME shares, as requested by the European Parliament.
23. **On the safeguards** under this option: (i) the maximum voting ratio would either be entirely deleted or be rendered optional based on a choice between the ratio and the amount of outstanding capital; (ii) the safeguard related to the impact of the exercise of multiple-vote rights related to environmental and human rights would not be included; and (iii) optional safeguards would not be included in the operative part (i.e. would stay in the recitals).
24. In relation to **transparency**, under this option, the Presidency would not include additional periodic disclosures in an annual financial statement, nor would incorporate the marker 'WVR' as proposed by the EP.
25. This package would include less safeguards and transparency requirements.

V. CONCLUSION

26. The Presidency considers that the options outlined above could pave the way for an overall compromise on this proposal.
27. The Permanent Representatives Committee is therefore invited to:
- examine the options as set out in Section IV above and indicate which of the two options (including both options where relevant) could be acceptable with a view to adapting the Presidency's mandate to continue the negotiations with the European Parliament at the second trilogue on 14 December 2023 on the basis of one of the options outlined above.
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