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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. Two trilogues have taken place on 23 November and 14 December 2023. The Permanent Representatives Committee was debriefed on 29 November and 20 December 2023 respectively.
6. At the second trilogue, the European Parliament put forward the suggestion to extend the scope to all regulated markets, while limiting mandatory safeguards to only one, the maximum voting ratio ranging from one-to-two to one-to-twelve, whereby the quantum is negotiable, with all other safeguards becoming optional. The Parliament invited the Presidency to submit this potential way forward to Member States.

7. The Presidency considers that, in view of the third trilogue with the European Parliament, the Council's mandate could be updated in order to allow co-legislators to achieve a political agreement on the file. To this end, at the Company Law Working Party meeting of 9 January 2024, the Presidency presented delegations with two options for a compromise on this proposal's main issues. These options are presented in Section III underneath.

III. OPTIONS FOR COMPROMISE

8. Given the interrelationship between the proposal's elements, the Presidency presents two compromise options, covering the scope, safeguards and transparency, alongside with other technical modifications of the proposal. Both options acknowledge that the divergence in scope between the Commission proposal and the European Parliament position impacts on the safeguards, which had been intended to be limited in scope. The tentative drafting proposals presented at the Working Party meeting would serve as a basis for the upcoming negotiation. The two compromise packages are as follows:

A. First compromise option: limited extension of scope to MTFs

9. In this option, **the scope is extended** to also include, besides SME growth markets, any other relevant multilateral trading facility (namely, those that allow the admission to trading of shares). This extension of scope builds on the idea that there are currently markets which may not formally have the status of an SME growth market, however they also target SME shares. As the primary objective of this proposal is to facilitate access to public equity markets for SMEs, while balancing flexibility for issuers and investor protection, extending the scope to other MTFs (i.e. those that have not been registered by the relevant national competent authority as SME growth markets) would – according to information received from the Commission – continue to be fully in line with this objective. MTFs are generally used for listing by smaller companies, with larger companies typically choosing regulated markets, due to reputational aspects and a considerably wider investor base. While not all companies listed on MTFs may be SMEs (as is the case also for SME growth markets), the preliminary assessment based on a sample of 7 MTFs across 7 Member States that would be included in the scope, should the scope of the proposal be extended to companies seeking the admission to trading on all MTFs, showed that the average market capitalisation for companies listed on those MTFs is well below the threshold set out in MiFID II for an SME. Therefore, an extension of the scope of the proposal to MTFs would likely affect largely the same type of companies (i.e. SMEs), as would be the case under the original scope of the proposal. Furthermore, in order to ensure a level playing field among trading venues that primarily target SMEs, it may appear even desirable policy-wise to ensure that they offer the same level of flexibility to companies with respect to the choice of a company structure. Finally, given the fact that a number of Member States currently do not have MTFs registered as SME growth markets, the extension would also create a better level playing field across all Member States in the EU. In this option, the limited extension of scope would be combined with a review clause on a possible extension of scope to regulated markets. This would allow, on the basis of a proper impact assessment and after having gathered information in the span of a longer timeframe, to decide whether such an extension is indicated and needed.

10. Under this option, it is proposed to keep all mandatory **safeguards** of the Council compromise text, namely the restriction in the design of multiple-vote share structures, which imposes either a maximum voting ratio (left to the discretion of Member States) or a restriction for (most of the) qualified voting majority decisions by the general meeting.

In order to give some flexibility to the Presidency, it is suggested to allow the inclusion of the following elements as part of a compromise proposal, should they be necessary in order to reach an agreement with the European Parliament:

- the optional safeguards – with the exception of the safeguard on executive remuneration and dividend policy, which is rejected – in the operative part (Article 5(2)), instead of a recital;
- an optional safeguard relating to human rights and the environment, adapted from the Parliament's proposal, in Article 5(2).

11. On **transparency** aspects:

- Regarding the information on the share structure, the Presidency suggests obliging companies to include this in any prospectus required by law at the time of admission to trading and could accept obliging companies to provide this information in any legally required annual financial report, but only where there had been a change in the structure since admission or the previous annual financial report. For SME growth markets, EU law requires such reports. For other multilateral trading facilities, in most cases national law applies. Where there is no EU or national law obligation to publish a prospectus or annual report, companies would have no obligation to provide this information;
- With regard to the identity of shareholders, the Presidency suggests maintaining the Council mandate;
- The Presidency could accept the marker. In order to allow more time for developing the most appropriate way of marking companies, considering the established market standards and well-functioning practices, the Presidency could thus propose including an empowerment to develop these standards, most likely by mandating the European Securities and Markets Authority to develop them in level 2.

12. This option entails a more gradual approach for the introduction of multiple-vote share structures in Member States with no relevant experience, offers a more proportionate (legislative) response to the identified issue and ensures a higher degree of harmonisation, further limiting the negative impact of an uneven playing field. Attention would be required as stronger safeguards could affect systems already in place at national level.

B. Second compromise option: full extension of scope

13. In this option, the **scope** would not only cover SME growth markets, but also any other multilateral trading facility and regulated markets, as put forward by the European Parliament.
14. **On the safeguards**, as suggested by the European Parliament at the second trilogue:
- the maximum voting ratio would range from one-to-two to one-to-twelve, whereby the quantum is negotiable;
 - the maximum voting ratio would now become a requirement for all Member States who would no longer be able to choose between a maximum voting ratio and a safeguard with a double majority voting modality, as was the case in the Council compromise text; and
 - the sustainability safeguard would become optional and be included in Article 5(2).

15. In relation to **transparency**, while it wasn't discussed at the second trilogue, the Presidency assumes it to be open for discussion. Under this option:
- the Presidency would maintain the mandatory character of the obligation to publish information on the share structure at the time of admission to trading and could include it, thereafter, in an annual financial report, when this report is required by European Union law or national law and only if there are modifications in the multiple-vote share structure;
 - on the identity of shareholders, the Presidency could maintain the Council mandate wording; and
 - the Presidency could delete the two new provisions suggested by the Parliament on markers and investor awareness.

IV. CONCLUSION

16. In light of the above, the Permanent Representatives Committee is invited to examine the options set out in Section III and indicate their position on the two proposed options with a view to adapting the Presidency's mandate and to continuing negotiations with the European Parliament at the third trilogue, scheduled for 29 January 2024.