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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law (Attachés)
Subject:	NON PAPER MSVD from DK, FI, and SE

Ahead of the Company Law Working Party (Attachés) meeting of 16/11, delegations will find attached a Non Paper from the DK, FI and SE delegations.

Danish, Finnish and Swedish Non-Paper on the Proposal for a directive on multiple-vote share structures in companies that seek admission to trading of their shares on an SME growth market

Share classes with multiple voting rights are widely used in Denmark, Finland and Sweden. This structure has been developed over many years and supports a focus on long-term value creation for the company and its shareholders. Multiple voting rights are permitted within clearly defined limits set out in the companies' act(s) where the freedom of contract is balanced by stringent disclosure requirements and minority shareholders' rights. The use of shares with multiple voting rights and other control enhancing mechanisms are furthermore required to be fully disclosed to the shareholders and the market.

We are therefore generally positive towards the endorsement of using share classes with multiple voting rights (MVRs) in companies that are seeking admission to trading on an SME growth market. To this end, the proposal should focus on providing the legal basis for allowing businesses to seek admission to trading on a SME growth market using multiple vote-share structures. Ensuring this right where it does not exist today will strengthen the incentives for businesses to use capital markets for growth funding without jeopardizing their control over the business. However, while doing so the proposal should not interfere with existing well-functioning systems. If the directive becomes excessively restrictive, particularly in safeguarding minority shareholders, it risks deterring businesses from using multiple-vote share structures to access capital markets, contrary to the aim of the proposal.

The position of the ECON committee raises concerns on multiple fronts in this regard. Notably, it excludes the use of enhanced voting rights attached to multiple-vote shares at general meetings of shareholders during the votes on resolutions tabled by shareholders. Such limitations can significantly impact the control founders or shareholders or, where applicable, commercial foundations have over crucial investment and operational decisions. This, in turn, might discourage them from trading their shares on public markets. Moreover, this requirement may infringe on established national systems that already offer adequate protection for minority shareholders through alternative mechanisms like a qualified majority both of the votes cast and of the share capital or shares represented at the meeting. Additional safeguards such as sunset clauses and a maximum voting ratio should furthermore be left to national discretion in line with the Council's General Approach, respecting national systems without a compulsory fixed time constraint or a fixed maximum voting ratio attached to the use of multiple-vote share structures. National discretion should likewise be given to the idea of limiting the maximum percentage of the outstanding share capital or shares that the total amount of multiple-vote shares can represent.

Lastly, we believe that the proposal's scope should remain limited to companies seeking admission to trade their shares on SME growth markets, without extending it to all regulated markets. Expanding the scope contradicts the original purpose of the proposal, which aimed to facilitate SMEs' access to capital on private markets. Larger companies often possess the resources to seek trading on international capital markets that allow multiple-vote share structures if deemed decisive for their decision to access public markets, making such an extension unnecessary. Moreover, broadening the scope would necessitate reevaluating safeguards, as these were initially designed with SMEs in mind.