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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Company Law (Attachés)
Subject:	Presidency Flash - 16/11/2023 Company Law WP meeting (Attachés)

Delegations will find attached the Presidency Flash in view of the Company Law Working Party meeting (Attachés) on 16th November 2023.

Working Party on Company Law

Presidency Flash 16 November

Dear Colleagues,

We are pleased to provide you with the first Spanish Presidency Flash for the discussion of the Directive on Multiple Vote Share Structures in companies that seek the admission to trading of their shares on an SME growth market (MVSS).

The first political Trilogue on the MVSS will take place in the European Parliament's premises in Strasbourg on 23 November 2023. This Flash note focuses on the core differences between the two institutions in order to ensure an overall view of the different delegations.

We thank you in advance for your discretion and for maintaining the confidentiality of the information provided, which is particularly necessary for the ongoing negotiation.

We hope this information helps to have a fruitful discussion.

Kind regards,

The Spanish Presidency Team

Points for Discussion

1. Scope (article 1, and related provisions in articles 2, 4, 5 and 6)

Regarding this point, the Council mandate is aligned with the original proposal of the COM, with minor modifications. The basis of this approach is to create a scope that encompasses **only the companies seek the admission to trading of their shares on an SME growth-market**. The reason would be: (i) reinforce the attractiveness of SME growth markets, as maintaining control of the company may in particular be important for start-ups and companies with long-term projects that require significant upfront costs; (ii) provided that some member states have similar systems already implemented, to ensure a progressive approach, setting a common framework in a first moment on this sort of markets, and then assessing the possibility to extend the scope for new ones according to the review clause.

On the other hand, the EP proposal creates a scope that encompasses a wide variety of markets (regulated markets, SME growth markets and any other multilateral trading facility). The companies that seek admission to trade their shares on those markets would be included and affected by this directive.

During the discussion in the Council, certain member states expressed their positive views to broaden the scope of the proposal, in the line of the Parliament. This topic, together with the safeguards for companies that have adopted MVSS, will be one of the main elements of

Q1 – What should be the approach regarding the subject matter and scope (article 1) of the MVSS:

- a) Keep the general mandate, limiting the scope to SME growth markets.
- b) Broaden the scope, in line with the EP position. And if so, to which extent.

discussion during the upcoming trilogues negotiation. This is why the PCY would need to know the approach of the delegations regarding the scope.

2. Safeguards for companies with MVSS (article 5)

As regards the safeguards in companies that have adopted a multiple vote share structure, the Council mandate establishes certain safeguards to protect the interests of those shareholders who do not hold multiple vote shares:

- It sets two mandatory safeguards for the companies, linked to (i) decisions made by the company to modify the multiple vote share structure, imposing a qualified majority and separate votes for each class of shares; (ii) the need to limit the impact of these structures in the decision-making process of the company, by imposing two different conditions (that are alternative, not cumulative).
- Furthermore, the Council allows the possibility for Member States to provide for further safeguards, but without any indication in this sense (it is foreseen in recital 12).

By contrary, the EP approach is based on three mandatory safeguards, which entails that companies should fulfil in a cumulative way the following conditions:

- a) To set a maximum voting ratio (1/2 to 1/12) and to limit the maximum percentage that multiple vote shares can represent.
- b) To limit to the impact of these shareholders on the decision-making process at general meetings, by imposing qualified majorities (with the exception of certain decisions).
- c) To exclude the use of these enhance voting right attached to multiple-vote shares at general meetings of shareholders during the votes on resolutions tabled by shareholders in accordance with Article 6(1) of Directive 2007/36/EU, in particular on matters related to the impact of the company's operations on human rights and the environment.

Additionally, the EP allows the possibility for Member States to provide for further safeguards, including several options. The options (a) to (c) are identical to those foreseen in the COM proposal. The last one is a limitation to apply the voting rights attached to these kinds of structures in matters relating to executive remuneration, dividend policy and approval of related party transactions. It should be pointed out that the EP deletes the first safeguard of the Council (line 46 and 47 of the 4c document, Council Colum) for a reason: they modify the article 4 to include the reference to “*adopt or modify*” in par. 3, so they understand they are including the Council's safeguard.

This topic, together with the scope, will be one of the main elements of discussion during the upcoming trilogues negotiation. Therefore, the PCY would need to know the position of the delegations on article 5:

Q2 – Do you consider acceptable to put the safeguard 5.1(a) of the Council Mandate on article 4, as is it the case in the EP text?

Q3 – On article 5 (a) of the EP proposal, could you accept to include the safeguard with the maximum voting ratios fixed by the EP (1/2 to 1/12)? If not, would you accept that safeguard with another voting rating?

EP mandate: (a) *introduce a maximum voting ratio **raging from one-to-two to 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.*

Q4 – On article 5 (a) of the EP proposal, could you accept to include the second part of the safeguard –with technical fine tuning-? In this sense, it should be pointed out that the spirit is quite similar to Article 5.1.b) (i) in the Council's text.

Council Mandate – (i) **a maximum ratio of the number of votes attached to multiple vote shares attached to shares with the least voting rights.**

EP mandate - (a) *introduce a maximum voting ratio raging from one-to-two to 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.***

Q5 – On the safeguard contained in article 5 (b) the Council mandate includes two alternative conditions (“*at least one of the following*” reference). By contrast, the EP mandate only includes one possibility set in a mandatory manner. However, the spirit and the wording are almost identical for this second condition. In relation to this, would you consider acceptable to delete the “alternative” reference included in article 5.1.(b) and to turn it into a “cumulative” one?

Possible wording – *(b) limit the impact of the multiple vote shares on the decision-making process at the general meeting by introducing one of the following:*

Q6 – EP mandate establishes a new safeguard (line 50a) to exclude the use of enhanced voting right attached to multiple vote shares at general meetings in certain situations. In this line, would you consider acceptable to include the EP wording for this safeguard? Otherwise, could you accept alternative solutions –see indicative text below-?

(ba) exclude the use of enhanced voting rights attached to multiple-vote shares at general meetings of shareholders during the votes on resolutions tabled by shareholders in accordance with Article 6(1) of Directive 2007/36/EC of the European Parliament and of the Council, ~~in particular on matters related to the impact of the company's operations on human rights and the environment.~~

Q7 – in line 51 of the 4 column-table, the EP and the Council mandate are rather similar. However, there are two aspects that should be discussed:

1. Would Member States accept the obligation to communicate the non-mandatory safeguards to ESMA and to the Commission, as proposed by the EP?
2. Lines 52 to 55 of the EP mandate are deleted in the Council text, which introduce them in recital 12 (line 21). Would Member States find room to reintroduce them in Article 5.2?

3. Other technical aspects (articles 2, 4, 6, 7 and 8)

The remaining Articles of the Directive show minor differences, that the PCY considers of less importance from a political perspective. The main ones are as follow:

- a) **Article 2 (definitions):** the differences are linked to the scope discussion. Once the article 1 is negotiated, article 2 should not imply any political difficulties.
- b) **Article 4 (adoption of multiple vote share structures).** Even if the structure of the article is different, the PCY finds a common spirit in both texts. If the scope is agreed, the differences should be rather technical (except for the inclusion on this Article of the first safeguard of the Council by including the “*or modify*” reference).
- c) **Article 6 (transparency).** From a technical perspective, this Article keep some differences between both texts. To this extent:
 - In line 57, regarding the annual financial report:

Q8. Would its inclusion be acceptable for Member States, or should we stick to the General mandate?

- In line 60 and 62, there are references to the identity of shareholders in the EP mandate. The PCY wants to know the option to move forward with a possible wording for those lines:

Line 60 – *deleted (Council mandate)*

Line 62 – *(e) the identity, ~~if known to the company,~~ of shareholders holding multiple-vote shares representing more than 5 % of the voting rights of all shares in the company, and of natural persons or legal entities entitled to exercise voting rights on behalf of such shareholders, where applicable.*

Q9. Could this approach be accepted

- In lines 63a and 63b:

Q10. Are Member States opened to the inclusion of those addition foreseen in the EP mandate?

- d) **Article 7 (review).** The main debate will be around the period to submit the report and the requirements of information for Member States. The PCY see room for a landing zone in the upcoming technical meeting.
- e) **Article 8 (transposition).** The EP set a transposition period of 12 months, instead the two years of the Council Mandate.

Q11. Would the delegations be open to explore a middle ground? If so, what would be the transposition period to be included?