



Council of the European Union
General Secretariat

Brussels, 29 November 2023

Interinstitutional files:

2022/0051 (COD)

2022/0406 (COD)

WK 16046/2023 INIT

LIMITE

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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Company Law (Attachés)
Subject:	Presidency Flash - 30/11/2023 Company Law WP meeting (Attachés and Experts)

Delegations will find attached the Presidency Flash in view of the Company Law Working Party meeting (Attachés and Experts) on 30th November 2023.

Working Party on Company Law

Presidency Flash

30 November

Dear Colleagues,

We are pleased to provide you with the second Flash of the Spanish Presidency for the discussion on 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 took place in the European Parliament's premises in Strasbourg on 23 November 2023. In the Trilogue, the two core differences between the two institutions were outlined: the scope and the safeguards (Articles 1 and 5 of the MVSS). On the basis of the close interrelationship between these two elements, the aim of this meeting is to present two different comprehensive packages providing a general overview of the landing zone that could be proposed by the Presidency.

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

I. LIST OF POLITICAL ELEMENTS TO BE CONSIDERED.

There are two core elements in the text that have strong political and practical importance within the proposal. These are: (1) the extension of the scope - Article 1 -; (2) the safeguards to be put in place by companies -referred to in Article 5. The differences between the two institutions in these respects are notable, which means that the negotiation will necessarily pivot on them.

Given the interrelationship between these two elements, the PCY would like to know the position of the Member States regarding two possible compromise packages that include both political elements, alongside with other technical modifications of the proposal that might be needed.

II. FIRST PACKAGE SOLUTION

2.a. APPROACH

Context. Council's approach is articulated on the basis of a scope covering only companies applying for admission of their shares to trading on an SME growth market. In contrast, the EP proposal creates a scope of application covering a wide variety of markets (regulated markets, SME growth markets and any other multilateral trading facility). This difference has a logical impact on the safeguards (originally intended to be limited in scope) and on the validity of the impact analysis that underpins the proposal.

Solution proposed. For the sake of compromise, the PCY could consider a middle ground approach. This means expanding the scope to encompass not only SME Growth Markets, but also any other multilateral trading facility. This extension builds on the logic advocated by the Commission, according to which there are currently markets which are targeted to SMEs -in line with the proposal- but which do not formally operate as SME growth markets. This allows for a gradual approach and would not significantly alter the logic by which the safeguards were originally designed.

Implications:

- Risk: stronger safeguards would certainly have an impact on the systems already in place at national level.
- Advantages: (1) it entails a more gradual approach for the introduction of these systems; (2) the impact analysis would still be valid; and (3) a sufficient harmonisation would be ensured, further limiting the impacts in terms of the level playing field.

2.b. DETAILS

Scope.

In line 29, the scope would be adapted to and extension for MTF. The proposed wording is subject to further fine tuning.

Proposed wording:

Line 29 of the EP mandate – “This Directive lays down common rules on multiple-vote share structures in companies that seek the admission to trading of their shares on ~~a regulated market~~, an SME growth market, **or any other multilateral trading facility**, ~~in one or more Member States~~ and that do not have shares already admitted to trading on any trading venue.

Adoption/modification of the MVSS (compromise of a technical nature)

The PCY considers that there is room for a middle ground with the EP mandate (see line 43a of the EP text). In this sense, the safeguard established by the Council in line 46 could be combined with Article 4 (adoption of multiple-vote share structure), by keeping the Council wording as it is.

Proposed wording:

Line 41 of the Council mandate – “[...] *Member States shall ensure that the company’s decision to adopt **or modify** a multiple-vote share structure is taken by the general meeting by at least a qualified majority as specified in national law. [...]*”.

Maximum voting ratio

In line 46 of the European Parliament mandate, the EP set a maximum voting ratio (1/2 to 1/12) and limit the maximum percentage of the outstanding share capital that multiple vote shares can represent. In the working party of 16 November, Member States declared that they considered these combined conditions too burdensome for the proposal. So, the PCY would like to know if a partial inclusion of this safeguard (including only the maximum voting ratio) could be acceptable.

Proposed wording:

Line 46 of the EP mandate – “*(a) introduce a maximum voting ratio ranging 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.*”

Additionally, the PCY would like to know what kind of ratio could be reasonable for the Member States, in order to make it compatible with the ongoing national systems of these structures already put in place.

Q1 – Are Member States opened to the inclusion of this addition foreseen in the EP mandate? Which should be the voting ratio set up in the proposal?

Cumulative Vs non-cumulative condition - safeguard 5.1.b.

In lines 48 to 50b of the Council mandate and 48 to 50 of the European Parliament mandate, 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. The PCY proposed to keep the wording of the Council mandate, but deleting the alternative nature of both conditions, turning them into cumulative conditions. Lines 49 to 50b of the Council would remain the same.

Proposed wording:

Line 48 of the Council mandate – “(b) *limit the impact of the multiple-vote shares on the decision-making process at the general meeting by introducing ~~at least one of the following~~.*”

Use of enhanced voting rights (resolutions) – line 50a

In line 50a of the EP mandate, the EP establishes a new safeguard to 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. During the last Working Party on MVSS, there was no flexibility on this issue from Member States. Thus, the PCY would like to propose to keep this safeguard as an optional one, placing it on Article 5(2).

Proposed wording:

Line 50a of the EP mandate – “~~(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.~~”. Reframe to place it on 5(2)

Optional safeguards

Include on Article 5(2) the optional safeguards, instead of putting those in a recital, as it is in the Council mandate. Lines 52 to 54 of the EP mandate would be included in the proposal, while a last optional safeguard could be the exclusion of the use of enhanced voting rights. The PCY considers this possibility as a middle ground to the extent that it would be legally feasible and would ensure flexibility for Member States. The wording of line 51 (“*Member States may [...]*”) ensures a minimum harmonization while avoiding constraints for Member States in the transposition phase.

It should be noted that the optional safeguard of the EP mandate in line 55 would be erased due to the problems it might generate in terms of incentives. It would not be included in the articles nor in the recitals.

Proposed wording:

Line 55 of the EP mandate – “~~(d) a requirement that enhanced voting rights attached to multiple vote shares do not apply in matters relating to executive remuneration and dividend policy or to the approval of related party transactions.~~”

Apart from the political elements explained, there are other aspects of the MVSS that the PCY could include in the package, namely:

Annual information (line 57)

The PCY would include in the package the option to having this obligation be mandatory for companies in the first year and, after that, only if there are modification of the multiple vote share structure. If there are no changes, there would be no obligation for companies to publish any information on an annual basis. The final wording of this approach would be subject to further tuning.

Tentative proposed wording:

Line 57 of the Council mandate – *“Member States shall ensure that companies with multiple-vote share structure whose shares are to be traded on an SME growth market [possible inclusion of the MTF expansion of scope] after relying on the right referred to in Article 4 make publicly available, in the [EU Growth issuance **prospectus** document referred to in Article 15a] of Regulation (EU) 2017/1129 of the European Parliament and of the Council¹ or in the admission document referred to in Article 33(3), point (c), of Directive (EU) 2014/65/EU and, **where relevant**, in the company’s annual financial report referred to in Article 78(2), point (g), of Commission Delegated Regulation (EU) 2017/5652, detailed information on all of the following.”*

This indicative wording would be accompanied by a recital.

Identity of shareholders (line 62)

In line 62 of the EP mandate, there would be an obligation to disclose the identity of shareholders. The PCY considers that for any inclusion of this provision a specific threshold would be needed. If there is such participation in the company, there should be a possibility for companies to know the identity of those shareholders. Due to that, the PCY would like to include in the package the following wording:

Proposed wording:

Line 60 of the Council mandate – “deleted”.

Line 62 of the Council mandate – *“(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.”*

Markers and investor awareness

In lines 63a and 63b, the EP mandate includes two new provision that are not included in the Council mandate. In the Working Party of 16 November, the PCY observed more flexibility for the markers of “WVR” than for the second provision included (obligation to promote investors understanding and awareness). Despite the need for adaptation that this would imply for the national systems already in place, given the existence of precedents for such markers in other stock markets (i.e. Japan), and given the importance of transparency, the PCY would propose the following amendments:

Proposed wording:

Line 63a of the EP mandate – *“2a. Companies with multiple-vote share structures, the shares of which are traded or are to be traded on a regulated*

market, an SME growth market, or any other MTF, shall have a stock name that ends with the marker 'WVR' (weighted voting rights) in order to clearly indicate to the public that their shareholder structure is different from that of traditional companies."

~~Line 63b of the EP mandate – "2b. National competent authorities, regulated markets, SME growth markets and MTFs, shall promote investor understanding and awareness concerning the WVR marker and the impact on voting rights associated with investing in companies with multiple vote share structures."~~

Transposition

In line 70, regarding transposition, the PCY would keep the Council wording. Thus, the transposition period would be, in any case, 2 years after the entry into force of the Directive.

III. SECOND PACKAGE SOLUTION: MAXIMUM EXTENSION OF THE SCOPE

3.a. APPROACH

Context. The Council's approach is articulated on the basis of a scope that covers only companies applying for admission of their shares to trading on an SME growth market. In contrast, the EP proposal sets a scope that covers a wide variety of markets (regulated markets, SME growth markets and any other multilateral trading facility). This difference has a logical impact on the safeguards (originally intended to be limited in scope) and on the validity of the impact analysis that underpins the proposal.

Solution proposed. For the sake of compromise, the PCY could consider a maximalist approach. This means an extension of the scope in order to cover not only SME growth markets, but also regulated markets and any other multilateral trading system. This option would condition concessions on the other relevant political element, which refers to the safeguards imposed on companies. This would also entail fewer concessions in other elements, such as transparency and transposition. The logic would be to avoid significant disruptions on the national frameworks already in place at national level for the different financial markets.

Implications:

- Risks: (1) the lack of experience in countries where these structures are novel; (2) the lack of a sufficiently robust impact analysis; and (3) the weakening of the harmonisation that would be ensured with the Directive and its possible impacts in terms of the level playing field.
- Advantages: flexibility for the MS to accommodate these new structures.

3.b. DETAILS

Scope. The following changes would be needed:

In line 29, the scope would be adapted to a full extension, aligned with the EP wording proposal.

Proposed wording:

Line 29 of the EP mandate – *“This Directive lays down common rules on multiple-vote share structures in companies that seek the admission to trading of their shares on a regulated market, an SME growth market, or any other multilateral trading facility, in one or more Member States and that do not have shares already admitted to trading on any trading venue.”*

Adoption/modification of the MVSS (compromise of technical nature)

Idem than in the previous package.

Maximum voting ratio

In line 46 of the European Parliament mandate, the EP set a maximum voting ratio (1/2 to 1/12) and limited the maximum percentage of the outstanding share capital that multiple vote shares can represent. In the working party of 16 November, Member States declared that they considered these combined conditions too burdensome. Given the maximalist approach in the scope, the safeguard proposed by the EP should be deleted or turned into an alternative one.

Proposed wording 1 (full deletion):

Line 46 of the EP mandate – ~~“(a) introduce a maximum voting ratio ranging 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.”~~

Proposed wording 2 (alternative conditions):

Line 46 of the EP mandate – *“(a) introduce a maximum voting ratio ranging from one to two to one to twelve **and or** a limit on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent.”*

Cumulative Vs non-cumulative condition - safeguard 5.1.b.

Lines 48 to 50b of the Council mandate -lines 48 to 50 of the European Parliament mandate- include two alternative conditions (“at least one of the following” reference). By contrast, the EP mandate only includes one possibility, set in a mandatory manner.

Proposed wording:

The PCY proposes to keep the wording of the Council mandate, with the alternative option for both conditions. Lines 49 to 50b of the Council will remain the same.

Use of enhanced voting rights (resolutions) – line 50a

In line 50a the EP mandate establishes a new safeguard to 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. During the last Working Party on MVSS, there were no flexibility on this issue from Member States. Thus, the PCY would like to propose the deletion of this safeguard.

Proposed wording:

Line 50a of the EP mandate – ~~“(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.”.~~

Optional safeguards

Lines 52 to 54 of the EP mandate would be included in the proposal. The PCY considers this as a feasible middle ground that is legally feasible and ensure certain flexibility for Member States. The wording of line 51 (“*Member States may [...]*”) ensures a minimum harmonization while it is not a constraint for Member States in the transposition phase. The optional safeguard of the EP mandate of line 55 would be erased. It would not be included in the articles nor in the recitals.

Proposed wording:

Line 55 of the EP mandate – ~~“(d) a requirement that enhanced voting rights attached to multiple-vote shares do not apply in matters relating to executive remuneration and dividend policy or to the approval of related party transactions”.~~

Apart from the political elements of the proposal, there are other aspects of the MVSS that the PCY would like to include in the package, namely:

Annual Information

The inclusion of annual information foreseen in line 57. The PCY would include this option in both packages. The reasoning and wording would be the same in both cases.

Identity of shareholders

In line 62, there are references to the identity of shareholders in the EP mandate. The PCY considers that the threshold imposed remains the pivotal aspect of the Council mandate. However, due to the maximalist approach of the scope, the PCY would like to include in the package the Council’s wording on this regard.

Proposed wording:

Line 60 of the Council mandate – “deleted”.

Line 62 of the Council mandate – “(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.

Markers and investor awareness

In lines 63a and 63b, the EP mandate includes two new provisions that aim at reinforcing transparency and that are not included in the Council mandate. In the Working Party of 16 November, the PCY saw that Member States expressed some concerns. Thus, the PCY could, if needed, defend the deletion of both elements from the final proposal:

Proposed wording:

Line 63a of the EP mandate – ~~“2a. Companies with multiple vote share structures, the shares of which are traded or are to be traded on a regulated market, an SME growth market, or any other MTF, shall have a stock name that ends with the marker 'WVR' (weighted voting rights) in order to clearly indicate to the public that their shareholder structure is different from that of traditional companies.”~~

Line 63b of the EP mandate – ~~“2b. National competent authorities, regulated markets, SME growth markets and MTFs, shall promote investor understanding and awareness concerning the WVR marker and the impact on voting rights associated with investing in companies with multiple vote share structures.”~~

Transposition

In line 70, regarding transposition, the PCY would keep the Council wording. Thus, the transposition period would be, in any case, 2 years after the entry into force of the Directive.

OVERALL PACKAGE QUESTIONS

A change of mandate would be needed to move forward in any of the packages proposed by the PCY. To this extent:

Q2 – Do you consider acceptable both packages proposed by the PCY? In case you have a strong preference for one of them, which one would you prefer?

Q3 – Do you consider necessary any further adaptation of the elements contained in the packages? If so, on which of them?