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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law
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 - Consolidated table of Comments

Delegations will find attached for their information the consolidated table containing the comments sent by Member States with regard to the 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 (ST16168/22).

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Table for comments on doc. ST 16168/22 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 (184 rows)
 deadline for comments: **09/02/23 cob**

Commission proposal (ST 16168/22)	MS drafting suggestions and comments (IT – SK – EE – FI – HU – AT – RO – CZ – DE – NL – ES – IE – LT – LV)
2022/0406 (COD)	
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 (Text with EEA relevance)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) and Article 50(2), point (g) and Article 114 thereof,	
Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national Parliaments,	

Having regard to the opinion of the European Economic and Social Committee ¹ ,	
Acting in accordance with the ordinary legislative procedure,	
Whereas:	
(1) To reinforce the attractiveness of SME growth markets and to reduce inequalities for companies seeking admission to trading in the single market, it is necessary to address obstacles to the access to such markets that stem from regulatory barriers. Companies should be able to choose governance structures that suit best their development stage, including by enabling controlling shareholders of those companies to retain control of the business after accessing SME growth markets, while enjoying the benefits associated to trading on those markets, as long as the rights of minority shareholders continue to be safeguarded.	
(2) Fear of losing control over a company constitutes one of the main deterrents for controlling shareholders to access SME growth markets. Admission to trading usually entails dilution of ownership for controlling shareholders, thus reducing their influence over important investment and operating decisions in the company. Maintaining control of the company may in particular be important for start-ups and companies with long-term projects that require significant upfront costs, because they may wish to pursue their vision without becoming too exposed to market fluctuations.	

¹ OJ C [...], [...], p. [...]

(3) Multiple-vote share structures are an effective mechanism to enable controlling shareholders to retain decision-making power in a company, while raising funds from the public. Multiple-vote share structures are a form of a control enhancement mechanism involving at least two distinct classes of shares with a different number of voting rights. Under such structures, at least one of the classes of shares has a lower voting value than another class (or classes) of shares with voting rights. The share carrying the superior amount of votes is a multiple-vote share.	FI (Drafting): FI proposal (a new last sentence added) [---]. As a starting point, multiple-vote share structures, as referred to in this directive, carry equal economic rights. FI (Comments): FI comments It is an underlying and implicit starting point in the proposal for the directive that economic rights of shares are equal, even if the voting rights are different from one share class to another. E.g. in Finland shares carrying different voting rights and same economic rights are allowed. Yet, even different voting rights with different economic rights are allowed in Finland, even if this may not be as common (cf. contractual freedom and safeguards for the minority shareholders in the decision-making). In our opinion, different voting rights and same economic rights should be the starting point for this directive as well. It may be that certain companies want to have structures whereby a lower voting value is compensated with specific economic rights. This should be maintained possible. However, the discretion should be left to the companies. In other words, in our understanding the directive is about differences in
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	voting power only (and applying to different classes of shares carrying a voting right). It could be considered that this was generally and explicitly spelled out in the directive.
(4) There are other control enhancing mechanisms that allow leveraging voting power, apart from multiple-vote share structures. Such mechanisms may include non-voting shares, non-voting preference shares and voting right ceilings. However, those alternative control enhancing mechanisms, being more rigid in their set-up, are liable to constrain the amount of capital that a company can raise at the point of admission to trading on SME growth markets due to the lower disassociation between economic and voting rights.	
(5) Loyalty shares, like multiple-vote shares, confer superior voting rights to a shareholder. A shareholder may obtain additional voting rights attached to loyalty shares, holding the share for the designated time and complying with certain conditions. Loyalty shares are control-enhancing mechanisms that are designed to foster a more stable, long-term oriented ownership among shareholders rather than to increase the attractiveness of raising funds from the public. It is therefore not appropriate to include loyalty shares in the scope of this Directive.	HU (Drafting): (5) Loyalty shares, like multiple-vote shares, confer superior voting rights to a shareholder. A shareholder may obtain additional voting rights attached to loyalty shares, holding the share for the designated time and complying with certain conditions. Loyalty shares are control-enhancing mechanisms that are designed to foster a more stable, long-term oriented ownership among shareholders rather than to increase the attractiveness of raising funds from the public. It is therefore not appropriate to include loyalty shares in the scope of this Directive. <u>Besides loyalty shares other preference shares with a veto right are also out of the scope of this directive.</u>

	HU (Comments): HU: Other kind of preference shares with a veto right are also control-enhancing mechanisms that are designed to block a resolution unless it is supported by the holders of this shares. For Hungary it is important to indicate in one of the recitals that preference shares with a veto right are out of the scope of this directive.
(6) There are substantial differences between national provisions on multiple-vote shares across Member States. Some Member States allow multiple-vote share structures, while others ban them. In some Member States, the ban on multiple-vote shares is limited to public companies, while in others it applies to all companies. The differences in national regimes create barriers to the free movement of capital within the internal market. Moreover, the regulatory fragmentation creates an uneven playing field for companies in different Member States. Companies in a Member State that bans multiple-vote share structures have to move to another Member State or even outside the Union if they seek admission to trading with multiple-vote shares, and hence face higher costs. In some cases, because of those higher costs, companies may decide against raising funds from the public, which may limit their funding opportunities. Such considerations are particularly relevant for SMEs and start-ups that lack financial resources to cover those costs.	DE (Drafting): (6) There are substantial differences between national provisions on multiple-vote shares across Member States. Some Member States allow multiple-vote share structures, while others ban them. In some Member States, the ban on multiple-vote shares is limited to public companies, while in others it applies to all companies. The differences in national regimes create barriers to the free movement of capital within the internal market. Moreover, the regulatory fragmentation creates an uneven playing field for companies in different Member States. Companies in a Member State that bans multiple-vote share structures have to move to another Member State or even outside the Union if they <u>want to adopt multiple-vote shares with a view to seeking</u> admission to trading with <u>a</u> multiple-vote share <u>structure</u>, and hence face higher costs. In some cases, because of those higher costs, companies may decide against raising funds from the public, which may limit their funding opportunities. Such

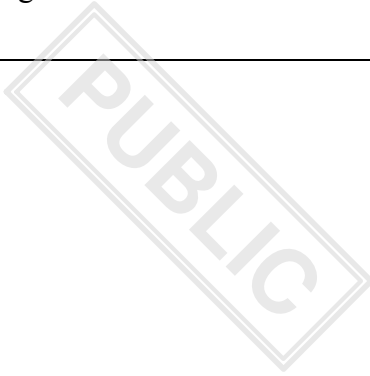
	considerations are particularly relevant for SMEs and start-ups that lack financial resources to cover those costs. DE (Comments): The recital seems to refer only to the situation that the national law does not allow admission to trading for companies that have multiple vote shares. We understand that it should also cover the issue that national company law does not allow to establish multiple-vote shares. National law (as e. g. German law) may ban multiple-vote shares in company law and nevertheless allow IPOs for companies that have established multiple-votes-shares in its articles of association. Therefore, we suggest to include the proposed wording for clarification.
(7) Member States should provide companies with the possibility to adopt multiple-vote share structures to allow them to seek admission to trading on a SME growth market without their controlling shareholders having to relinquish control. While admission to trading on regulated markets is more suitable for larger and more mature companies, SME growth markets are generally more appropriate for SMEs. SME growth markets were originally designed as SME dedicated trading venues with a regulatory treatment that takes the particularities of SMEs into account. Not all companies with securities listed on SME growth markets are, however, SMEs. Directive 2014/65/EU of the European Parliament and of the Council² requires that SMEs constitute at least 50 % of the issuers of	DE (Drafting): (7) Member States should provide companies with the possibility to adopt multiple-vote share structures to allow them to seek admission to trading on a SME growth market without their controlling shareholders having to relinquish control. While admission to trading on regulated markets is more suitable for larger and more mature companies, SME growth markets are generally more appropriate for SMEs. SME growth

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

financial instruments admitted to trading on SME growth markets. Companies other than SMEs generally have more liquid securities and hence their admission to SME growth markets enables those markets to generate higher trading fees to maintain profitability of their business model. Nevertheless, to ensure clarity for investors, all issuers on SME growth markets, irrespective of their size, are currently subject to the same rules. It is therefore appropriate that the introduction of the right to adopt multiple-vote share structures applies to all companies seeking admission of their shares on an SME growth market for the first time.	markets were originally designed as SME dedicated trading venues with a regulatory treatment that takes the particularities of SMEs into account. Not all companies with securities listed on SME growth markets are, however, SMEs. Directive 2014/65/EU of the European Parliament and of the Council³ requires that SMEs constitute at least 50 % of the issuers of financial instruments admitted to trading on SME growth markets. Companies other than SMEs generally have more liquid securities and hence their admission to SME growth markets enables those markets to generate higher trading fees to maintain profitability of their business model. Nevertheless, to ensure clarity for investors, all issuers on SME growth markets, irrespective of their size, are currently subject to the same rules. It is therefore appropriate that the introduction of the right to adopt multiple-vote share structures applies to all companies <u>under Annex I to Directive (EU) 2017/1132</u> seeking admission of their shares on an SME growth market for the first time. DE (Comments): It should be clarified that only companies under Annex I of Directive (EU) 2017/1132 are included in the scope.
(8) Member States should be able to introduce, or maintain in force, national provisions that allow companies to adopt these structures for purposes other than the first time admission to trading of shares on a SME	DE

³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

growth market. That includes allowing companies to adopt multiple-vote shares when already admitted to trading, when seeking admission on a Multilateral Trading Facility that is not registered as SME growth market or on a regulated market, or ensuring that private companies can adopt multiple-vote shares, regardless of whether they intend to request admission to trading of their shares. This may also include cases whereby companies transfer from an SME growth market to a regulated market, while retaining multiple-vote shares.	(Drafting): (8) <u>Outside the scope of this directive, Member States should remain free to allow, prohibit or limit multiple-vote shares. Therefore, Member States should e.g. also</u> be able to introduce, or maintain in force, national provisions that allow companies to adopt these structures for purposes other than the first time admission to trading of shares on a SME growth market. That includes allowing companies to adopt multiple-vote shares when already admitted to trading, when seeking admission on a Multilateral Trading Facility that is not registered as SME growth market or on a regulated market, or ensuring that private companies can adopt multiple-vote shares, regardless of whether they intend to request admission to trading of their shares. This may also include cases whereby companies transfer from an SME growth market to a regulated market, while retaining multiple-vote shares. DE (Comments): It should be clarified that outside of the scope of the directive, MS are completely free in regulating multiple voting rights, i.e. not only to allow (Article 3), but also to prohibit or limit the use of MVR structures.
(9) Companies may adopt multiple-vote share structures through a new issuance of shares or through another type of corporate transaction, such as the conversion of already issued shares. Companies should have the flexibility to choose the most appropriate type of corporate transaction to adopt multiple vote share structures in compliance with national law.	

Furthermore, companies should also have the flexibility as to the timing of the adoption of multiple-vote share structures, provided they do so to seek a first time admission of shares to trading on a SME growth market. Member States should not prevent companies from adopting multiple-vote share structures at a point prior to the moment of the admission of shares to trading. Member States should, however, be allowed to lay down that the exercise of the enhanced voting rights, which represent additional voting rights attached to multiple-vote shares compared to voting rights of shares of other classes, is conditional upon the admission to trading of shares on an SME growth market in one or more Member States. In that case and until the admission to trading, multiple-vote shares should have the same voting rights as other classes of shares in the company. That would ensure that multiple vote shares specifically promote a first-time admission to trading on SME growth markets.	
(10) Due to a diminished voting power of non-controlling shareholders in the company relative to their investments, multiple-vote share structures may provide controlling shareholders of that company with perpetual control and thereby lead to controlling shareholder entrenchment. That may increase the risk that controlling shareholders extract private benefits from control. To address those risks, the adoption of multiple-vote share structures should be subject to safeguards to protect minority shareholders.	
(11) Member States that allow multiple-vote shares provide for safeguards to protect minority shareholders and the interests of the company. However, the existing safeguards vary between Member States due to national specificities and diverging company law systems. Having regard to the objectives of the internal market as set out in particular in Article 50(2), point (g) of the Treaty on the functioning of the European Union, Member States should ensure a coordinated approach in their	EE (Drafting): (11) Member States that allow multiple-vote shares provide for safeguards to protect minority shareholders and the interests of the

national laws on multiple-vote share structures with respect to the protection of the interests of minority shareholders and of the company. This includes protection against decisions creating risks for or resulting in adverse human rights, climate change, and environmental consequences. Under that coordinated approach, all Member States should ensure that any decision to adopt a multiple-vote share structure, or to modify that structure where there is an impact on voting rights, is taken by a qualified majority at the general shareholders' meeting. Furthermore, Member States should limit the voting weight of multiple-vote shares by introducing restrictions either on the design of the multiple-vote share structure or on the exercise of voting rights attached to multiple-vote shares for the adoption of certain decisions. The restriction on the exercise of voting rights may be implemented by requiring that an approval by qualified majority necessitates both a qualified majority of the votes cast at the general meeting of shareholders and of the share capital represented at the general meeting of shareholders.	company. However, the existing safeguards vary between Member States due to national specificities and diverging company law systems. Having regard to the objectives of the internal market as set out in particular in Article 50(2), point (g) of the Treaty on the functioning of the European Union, Member States should ensure a coordinated approach in their national laws on multiple-vote share structures with respect to the protection of the interests of minority shareholders and of the company. This includes protection against decisions creating risks for or resulting in adverse human rights, climate change, and environmental consequences. Under that coordinated approach, all Member States should ensure that any decision to adopt a multiple-vote share structure, or to modify that structure where there is an impact on voting rights, is taken by a qualified majority at the general shareholders' meeting. Furthermore, Member States should limit the voting weight of multiple-vote shares by introducing restrictions either on the design of the multiple-vote share structure or on the exercise of voting rights attached to multiple-vote shares for the adoption of certain decisions. The restriction on the exercise of voting rights may be implemented by requiring that an approval by qualified majority necessitates both a qualified majority of the votes cast at the general meeting of shareholders and of the share capital represented at the general meeting of shareholders. EE (Comments): Please see comments below (art 5 (2)). FI
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(Drafting):

FI proposal (an addition to the last sentence)

[---]. The restriction on the exercise of voting rights may be implemented by requiring that an approval by qualified majority necessitates both a qualified majority of the votes cast at the general meeting of shareholders and of the share capital or, where applicable, of the shares represented at the general meeting of shareholders.

FI

(Comments):

FI comments

We pay attention to the fact that the directive is all about a pre-IPO stage, and some Member States allow non-listed companies to be founded and operate with a very low share capital.

Moreover, some Member States allow for their companies to apply a capital system of “no par value”. In such a system, the share and the share capital are disassociated. On the condition that the minimum share capital requirement is fulfilled, a company has wide consideration to register in its accounting the proceeds that the company received for the issue of the share(s).

In such conditions, where a share does not *per se* represent any fixed portion of the share capital, the requirement [of votes cast at the general meeting of shareholders and] of the *share capital* represented at the general meeting can lead to arbitrary results, depending on a given

company. Therefore, we deem it necessary to complement the recital by adding an alternative requirement, where the reference is made to “*shares* represented at the general meeting”.

We acknowledge that in a “par value” capital system these requirements lead to a very much the same result. But, in a “no par value” capital system these can lead to significantly different results, and more protection to the minority shareholders is needed. Of course, this could be done on the basis of Art. 5(2) and recital 12 on additional safeguards, but it appears clearer to guarantee such safeguards already under Art. 5(1) and recital 11 (please note our comments on Art. 5(2) and recital 12 below).

DE

(Drafting):

(11) Member States that already allow multiple-vote shares provide for safeguards to protect minority shareholders and the interests of the company. ~~However, t~~The existing safeguards vary between Member States due to national specificities and diverging company law systems. Having regard to the objectives of the internal market as set out in particular in Article 50(2), point (g) of the Treaty on the functioning of the European Union, Member States should ensure a coordinated approach in their national laws by allowing ~~on~~ multiple-vote share structures in

	<u>companies that seek the admission to trading of their shares on an SME growth market.</u> with respect to the protection of the interests of minority shareholders and of the company. This includes protection against decisions creating risks for or resulting in adverse human rights, climate change, and environmental consequences. Under that coordinated approach, all Member States should <u>and ensuring</u> that any decision to adopt a multiple-vote share structure, or to modify that structure where there is an impact on voting rights, is taken by a qualified majority at the general shareholders' meeting. <u>This also encompasses the possibility for national law to require the approval of all shareholders affected by the adoption of a multiple vote share structure. In such a case, no separate vote for each class of shareholders is needed. In case that national law establishes a time-based sunset clause and allows a renewal of the multiple vote share structure once the initial period of time has expired this is not considered a modification of such structure.</u> Furthermore, Member States should limit the voting weight of multiple-vote shares by introducing restrictions either on the design of the multiple-vote share structure or on the exercise of voting rights attached to multiple-vote shares for the adoption of certain decisions. The restriction on the exercise of voting rights may be implemented by requiring that an <u>certain</u> approval <u>s</u> by qualified majority necessitates both a qualified majority of the votes cast at the general meeting of shareholders and of the share
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	capital represented at the general meeting of shareholders. DE (Comments): Article 5, in particular para 2., explicitly grants flexibility with respect to the safeguards, taking into account the different national specificities and company law regimes. Only certain safeguards are prescribed and thus coordinated (“shall”). Safeguards that are optional should therefore not be mentioned as a coordinated approach. Also, safeguards applied under national law for multiple voting structures outside the scope of the directive do not necessarily have to be the same as applied with a view to SME growth markets. Article 3 grants full flexibility on these matters. This should not be put into question by the wording of the recital. As the Commission explained at the WP meeting on 17 January 2023, the term qualified majority may also include a requirement for the approval of all shareholders affected as this also aims at granting protection for minority shareholders. The recital should therefore be amended as proposed for clarification. With a view to the restriction of multiple vote shares under Article 5 (1) (b) (ii), it should be clarified that not all matters that require a qualified majority under national law should have to be restricted with a view to the exercise of multiple voting shares. The qualified majority as such already constitutes a restriction. Furthermore, national company law systems diverge with a view to the number and content of matters subjected to a qualified majority and the type of qualified majority deemed necessary. Some legal systems also require qualified majorities for matters that are central to keeping control (e.g. the composition of boards) and thus the core of the reasoning of the Commission for putting forward the proposal (see also recital (12): <i>while ensuring that such safeguards do not defeat</i>
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	<i>the purpose of multiple-vote share structures, i.e. the possibility for a company's controlling shareholders to influence important decisions, including the appointment of directors"). Therefore, it should not be required that a member states necessarily restricts the use of multiple voting rights for ALL matters requiring a qualified majority under national company law. This would also reflect the flexibility (i) grants member states with a view to deciding on the exact maximum voting cap and the exact percentage of outstanding share capital.</i>
(12) Member States should be given discretion to introduce additional safeguards, where needed, to ensure adequate protection of minority shareholders' interests and the interest of the company. Member States should assess the appropriateness of additional safeguards in light of their effectiveness in protecting the interests of minority shareholders and of the company, while ensuring that such safeguards do not defeat the purpose of multiple-vote share structures, i.e. the possibility for a company's controlling shareholders to influence important decisions, including the appointment of directors.	EE (Drafting): (12) Member States should have discretion to introduce additional safeguards, where needed, to ensure adequate protection of minority shareholders' interests and the interest of the company. Member States should assess the appropriateness of additional safeguards in light of their effectiveness in protecting the interests of minority shareholders and of the company, while ensuring that such safeguards do not defeat the purpose of multiple-vote share structures, i.e. the possibility for a company's controlling shareholders to influence important decisions, including the appointment of directors. <u>Those safeguards may include in particular:</u> <u>a provision to avoid that the enhanced voting rights attached to multiple-vote shares are transferred to third parties or continue to exist upon the death, incapacitation or retirement of the original holder of multiple-vote shares (transfer-based sunset clause);</u> <u>a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist after a designated period of time (time-based sunset clause);</u>

[a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist upon the occurrence of a specified event \(event-based sunset clause\).](#)

EE

(Comments):

[Please see comments below \(art 5 \(2\)\).](#)

FI

(Comments):

FI comments

Move to the recitals: The second sentence of the introductory paragraph in Art. 5(2) and its subparagraphs (a)-(d).

DE

(Drafting):

(12) Member States should be given discretion to introduce additional safeguards, where needed, to ensure adequate protection of minority shareholders' interests and the interest of the company. Member States should assess the appropriateness of additional safeguards in light of their effectiveness in protecting the interests of minority shareholders and of the company, while ensuring that such safeguards do not defeat the purpose of multiple-vote share structures, i.e. the possibility for a

	company's controlling shareholders to influence important decisions, including the appointment of directors. <u>This includes sunset clauses or a protection against decisions creating risks for or resulting in adverse human rights, climate change, and environmental consequences</u> DE (Comments): Flexible safeguards should not be mentioned in recital (11) as a "coordinated approach", but could be mentioned here. NL (Comments): NL would appreciate that explicitly is stated that Member States are not obliged to implement the proposed safeguards for multiple-vote share structures that fall outside the scope of this proposal (i.e. structures that are adopted by companies that do not seek admission to a SME growth market, but other markets).
(13) The disclosure of accurate, comprehensive and timely information about issuers strengthens investor confidence and allows for informed investment decision-making. Such informed investment decision-making enhances both investor protection and market efficiency. Member States should therefore require companies with multiple-vote share structures to publish detailed information on their share structure and corporate governance system at the moment of the admission to trading, as well as	DE (Drafting): (13) The disclosure of accurate, comprehensive and timely information about issuers strengthens investor confidence and allows for informed

periodically in the annual financial report. Such information should mention whether there are any limitations on the holding of securities, including whether any transfer of securities requires the approval either of the company, or of other holders of securities. It should also mention whether there are any restrictions on voting rights, including limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby the financial rights attached to securities are separated from the holding of securities. Furthermore, those companies should disclose the identity of holders of multiple-vote shares as well as of the natural persons entitled to exercise voting rights on their behalf and of persons exercising special control rights to provide investors, as members of general public, with transparency on ultimate ownership and de facto influence on the company. This would allow investors to make informed decisions and thereby strengthen their confidence in well-functioning capital markets.	investment decision-making. Such informed investment decision-making enhances both investor protection and market efficiency. Member States should therefore require companies with multiple-vote share structures to publish detailed information on their share structure and corporate governance system at the moment of the admission to trading, as well as periodically in the annual financial report. Such information should mention whether there are any limitations on the holding of securities, including whether any transfer of securities requires the approval either of the company, or of other holders of securities. It should also mention whether there are any restrictions on voting rights, including limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby the financial rights attached to securities are separated from the holding of securities. Furthermore, those companies should disclose the identity of holders of multiple-vote shares as well as of the natural persons entitled to exercise voting rights on their behalf and of persons exercising special control rights to provide investors, as members of general public, with transparency on ultimate ownership and de facto influence on the company, <u>if known to the company</u>. This would allow investors to make informed decisions and thereby strengthen their confidence in well-functioning capital markets. DE (Comments): It should be made clear that the identity of the natural person or legal entity entitled to exercise voting rights only has to be published if known to the company.
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	We would like to point out that, in order to comply with the requirements of the GDPR, the publication of identities must be appropriate and necessary to achieve the purpose. With respect of the appropriateness, we suggest to examine whether the identity could be concealed through legal constructs. Furthermore, the publication of identities would not be necessary if the purpose pursued could be achieved even without. We therefore suggest that a precise purpose is examined and laid down in the proposal, with an explanation of appropriateness and necessity and as well the public interest of the purpose.
(14) Since the objectives of this Directive, namely to increase funding options for businesses and make SME growth markets more attractive, cannot be sufficiently and timely achieved by Member States but can rather, by reason of the scale and effects of the measures, be more effectively and expeditiously achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.	
(15) To take account of market developments and developments in other areas of Union law or Member States' experiences with the implementation of this Directive, the Commission should review this Directive 5 years following the date of transposition.	

(16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁴ , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.	
(17) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁵ and delivered an opinion on [XX XX 2022/2023] ⁶	
HAVE ADOPTED THIS DIRECTIVE:	
Article 1	

⁴ OJ C 369, 17.12.2011, p. 14.

⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance.), (OJ L 295, 21.11.2018, p. 39–98).

⁶ [OP: Footnote once available].

Subject Matter	
This Directive lays down common rules on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market in one or more Member States and that do not have shares already admitted to trading on any trading venue.	SK (Drafting): This Directive lays down common rules on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market in one or more Member States and that do not have <u>and did not have</u> shares already admitted to trading on any trading venue. SK (Comments): The Slovak Republic supports aims pursued by the proposal, as well as the instrument chosen to achieve them. It is clear from the recitals as well as Explanatory Memorandum, that the proposal aims at companies, that want to find new ways of financing by listing. It is also clear, that this instrument is designed for companies, that do not have shares admitted to trading and also did not have them admitted to trading ever before. This, however, is not expressed in the operative part of the proposal, as we read it. Therefore we suggest addition as proposed in <u>column 2</u>. We think, this addition might be useful in order to clarify the scope of the proposal. The same comment applies to Article 4 para 1.

FI

(Comments):

FI comments

The directive should provide the possibility for structures with different classes of shares with regard to voting rights while the economic rights related to such shares being equal. Within that general framework, companies should be able to decide whether they want to adjust the economic rights of shares with varying voting values.

AT

(Comments):

The Vienna Stock Exchange does not currently operate an SME growth market, but does offer other services for SMEs, such as "direct market plus", where Austrian small and medium-sized enterprises and expanding start-ups are offered easy capital market entry with a segment regulated by the stock exchange.

In Austria the principle of "one share - one vote" applies. However, it is not strictly designed, as there is already the possibility of non-voting preferred shares and the restriction of voting rights by setting a maximum amount. Multiple-voting shares exist in Austria only to the extent that shares can be denominated in different nominal amounts and thus - in relation to other shares - embody several voting rights. However,

	multiple-voting shares whose multiple voting rights exceed the ratio of the nominal amount or the proportionate participation in the share capital are currently prohibited. This is based on the idea that each shareholder should only be able to influence the content of resolutions at the Annual General Meeting in proportion to his or her shareholding in the capital stock (congruence of risk and influence). Private investors are often reluctant to invest in unusual shareholder rights structures such as "golden shares". There is a risk of abuse of these structures, often against the interests of minority shareholders. RO (Comments): RO: As the proposal introduces specific rules on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market, we are of the opinion that, for a harmonised approach, it should be considered the extension of the scope of the proposal to other companies that intend to be listed on the capital market.(e.g. regulated market) Mention should be made that our company law does not contain any express provisions regarding the rules on multiple-vote share structures in companies and the means by which such structures function. Therefore, we are analysing how companies could adopt multiple-vote share structures in practice and what would be the regulatory framework applicable to such structures. CZ
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	(Comments): As requested by some MSs, CZ could be open to discussions on a possibility to broaden the scope of the proposed Directive, provided that our doubts concerning Article 5 are cleared up. ES (Comments): ES: we could support the current scope of this directive. IE (Comments): Ireland has a general scrutiny reserve on the proposal, as further time is needed to fully consult with stakeholders. While Ireland is still examining the proposal, we are supportive of the proposal in the context of the Capital Markets Union of which Ireland is a strong supporter. LT (Comments): Multiple-vote right (MVR) share structures are not available in Lithuania. In addition to this, there is no SME growth market in Lithuania and currently we have regulated market and alternative market, therefore we support an idea of minimum EU harmonisation of MVR share structures with the general framework at the EU level, so that Member States could shape/design national legislation according to local needs. Current provision covering companies that seek the admission to trading of their
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	shares on SME growth market is acceptable.
Article 2	
Definitions	
For the purposes of this Directive, the following definitions shall apply:	
(a) 'company' means a legal entity incorporated as one of the types of companies listed in Annex I to Directive (EU) 2017/1132;	SK (Drafting): 'company' means a legal entity incorporated as one of the types of companies listed in Annex I to Directive (EU) 2017/1132; <u>that does not have and did not have shares already admitted to trading on any trading venue</u> SK (Comments): Technical remark: in case the definition of the company in Article 2 letter a) contains reference to the fact that the company does not have shares admitted to trading and did not have them admitted to trading before, this

might save the space in Article 4 para 1.

HU

(Drafting):

(a) ‘company’ means a legal entity incorporated as one of the types of companies listed in Annex I to Directive (EU) 2017/1132; or a legal entity who has decided into convert to that type of company;

HU

(Comments):

HU: The directive declares in Article 1 that the scope covers the companies that do not have shares already admitted to trading on any trading venue. By definition the company means a legal entity incorporated as one of the types of companies listed in Annex I to Directive (EU) 2017/1132. In case of Hungary, the Annex refers to one type of legal entity. In Hungarian it is called: *nyilvánosan működő részvénytársaság*, which are defined in the Civil Code of Hungary as companies whose shares are traded on any trading venue. Consequently, the companies defined in the Art 2 (a) never meet the criteria set in the scope under Article 1. In our view the definition of company should be applicable for companies that are not mentioned in Annex I., but decided to convert their type to a type covered by Annex I to Directive (EU)

	2017/1132. NL (Comments): Why is the scope of this proposal limited to companies listed in Annex I to Directive (EU) 2017/1132? A particular NL legal entity (the ‘<i>besloten vennootschap met beperkte aansprakelijkheid</i>’) falls outside of this scope. This entity however, is allowed to seek admission to trading of their shares on a SME growth market. Could the scope be broadened, for example to (non listed) companies that - according to the national law of their member state - are allowed to seek admission to trading of their shares on SME growth markets?
(b) ‘multiple-vote shares’ means shares belonging to a distinct and separate class and that carry higher voting rights than another class of shares with voting rights on matters to be decided at the general meeting of shareholders;	FI (Comments): FI comments/question: The current wording of the definition of multiple-vote shares seems to render it possible for Member States to claim that a MVS system as defined herein could also be a system where preference shares have <i>lower</i> voting rights than ordinary shares. Was this the intention of the Commission when drafting the proposal? If

	not (as we assume), should Art. 1 or the definition of MVS be complemented with a mention of equal economic rights of shares? (cf. also FI Comments on Art. 1). A clarification on these would be much appreciated. RO (Comments): RO: We are of the opinion that it should be clarified what is meant by "distinct and separate class" NL (Comments): NL allows companies to have a multiple-vote share structure, regardless of seeking admission to any (SME growth) market. There are various ways for companies to implement such a structure. Question: If a company has two classes of shares: (A) one class of shares, with a nominal value of EUR 10 per share and <i>one</i> voting right per share, and (B) one class of shares, with a nominal value of EUR 20 per share and <i>two</i> voting rights per share. Underlying rule is the connection between the nominal value of the share and the amount of voting rights. Would this qualify as a multiple-vote share structure as meant in the proposal? Question: In NL a multiple-vote share structure could, for example, look as follows. The share structure contains a class of common shares and a (distinct and separate) class of special right shares. The shares have the same nominal value. The special right shares are held by a shareholder,
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	but have been paid ('<i>volgestort</i>') by the company (out of their reserves) and not by the shareholder. In this scenario, a special right share does not carry multiple voting rights, but the result is the same: by getting multiple special right shares, the shareholder gets multiple voting rights, without providing capital. Could a structure like this fit the purpose of the proposal?
(c) 'multiple-vote share structure' means the share structure of a company that contains at least one class of multiple-vote shares;	LT (Comments): <i>General comment:</i> We would like to have an answer as to whether the same person can hold different classes of shares, for instance both - ordinary and multiple-voting shares?
(d) 'trading venue' means a trading venue as defined in Article 4(1), point 24, of Directive 2014/65/EU;	HU (Drafting): (d) 'trading venue' means a trading venue as defined in Article 4(1), point 24 21 or 22, of Directive 2014/65/EU; HU (Comments):

	We propose to omit OTF markets from the definition, since on an OTF market shares cannot be traded.
(e) 'SME growth market' means an SME growth market as defined in Article 4(1), point (12) of Directive 2014/65/EU;	AT (Comments): It is questionable what happens to the multiple voting shares if the SME exceeds any specified size criteria once or repeatedly. If a company with multiple voting rights changes from the SME growth market to another stock market segment, for example because the company has grown, the multiple voting rights cannot simply end as a result. The question also arises how multiple-voting shares are to be treated in the event of reorganization processes (such as a merger of the SME AG with a "normal" AG).
(f) 'weighted voting ratio' means the ratio of votes attached to multiple-vote shares to votes attached to shares with the least voting rights.	LT (Comments): We have doubts for the need of this definition, since the Proposal does not propose establishing a general rule that a multiple-vote share shall be expressed in a weighted voting ratio. As regards the weighted ratio of voting rights, the text of the Proposal is not clear enough. The question arises whether it is intended to leave the Member States complete freedom in determining the way of expression of

	enhanced voting rights of multi-vote shares, or whether multiple-vote shares should in all cases be expressed in a specific wighted voting ratio compared to ordinary shares. However, the idea of introducing a general rule on the weighted voting ratio of multiple-vote shares should be considered, by providing the Proposal with provision that the Member States shall establish a provision determining the maximum weighted ratio of voting rights (in Article 4). We do not see the need to set such a ratio at the EU level, but we believe that a provision for Member States to ensure that the maximum weighted ratio is set by national law (and not by company itself) would bring more clarity.
Article 3	
Introduction or maintenance of national provisions on multiple-vote shares	
Member States may introduce or maintain in force national provisions that allow companies to adopt multiple-vote share structures in situations not covered by this Directive.	AT (Comments): We support this member state option. Currently, there is no SME growth market in Austria, but many companies listed on the regulated market of the Vienna Stock Exchange fall under the definition of an SME (market cap below EUR 200 million), so that some national stakeholders have

	questioned why the instrument of multiple voting shares should only be limited to SME growth markets. RO (Comments): RO: We support Article 3 as it clarifies the possibility of Member States to introduce national provisions enabling companies to adopt share structures with multiple voting rights in situations not covered by the directive, giving in the same time the flexibility of Member States to decide if such provisions will be introduced at national level. ES (Comments): ES: aligned with our previous comment, this article allows member states to broaden the possible markets or trading venues that permit these structures. In consequence, we could support it. LT (Comments): This Article is closely related to Article 1 and as we mentioned above, we support the minimum EU harmonisation regarding introduction of multiple-vote share structures. It is also important to leave freedom for all Member States to apply the possibility of creating multiple-vote share structures in other situation or for all companies.
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Article 4	
Adoption of multiple-vote share structures	
1. Member States shall ensure that companies that do not have shares that are admitted to trading on a trading venue have the right to adopt multiple-vote share structures for the admission to trading of shares on an SME growth market in one or more Member States. Member States shall not prevent the admission to trading of shares of a company on an SME growth market on the ground that the company has adopted a multiple-vote share structure.	SK (Comments): Please see comment on Article 1. NL (Comments): Question: Are the requirements of the proposal met, when a national regime allows companies to adopt a multiple-vote share structure, without an explicit statutory provision as legal basis?
	LT (Comments): <i>See comments above regarding the need of general rule on the weighted voting ratio of multiple-vote shares</i>
2. The right referred to in paragraph 1 encompasses the right to adopt multiple-vote share structures in time prior to seeking the admission to	

trading of shares on an SME growth market.	
3. Member States may make the exercise of the enhanced voting rights attached to the multiple-vote shares conditional upon the admission to trading of shares on an SME growth market in one or more Member States.	
Article 5	
Safeguards for fair and non-discriminatory treatment of shareholders of a company	
1. Member States shall ensure fair and non-discriminatory treatment of shareholders, as well as adequate protection of the interests of the shareholders who do not hold multiple-vote shares and of the company through appropriate safeguards. To that effect, Member States shall do all of the following:	HU (Drafting): 1. Member States shall ensure fair and non-discriminatory treatment of shareholders, as well as adequate protection of the interests of the shareholders who do not hold multiple-vote shares and of the company through appropriate safeguards. To that effect, Member States shall do all of the following: HU (Comments): HU: In our view the obligations regarding the fair and non-discriminatory

	treatment of shareholders are not prescriptive therefore it cannot be implemented by Member States, so this provision should be deleted or placed in a recital. AT (Comments): Any new class of shares carries the risk of discriminatory treatment. The proposed safeguards in Article 5 of the draft are of particular importance. We take a critical view of the reclassification of existing shares or the issue of new MVS in existing structures. CZ (Comments): Article 5 is of crucial importance for CZ. As the safeguards are set out in the proposed Directive, CZ could not support them even though it supports the aims of the proposed Directive. As mentioned before, in CZ both listed and non-listed companies are allowed to issue multiple-vote shares. The proposed provision on safeguards is stricter than the national legislation, therefore it would result in discouraging the companies to seek the admission on SMEs Growth Market. CZ agrees with the proposed para 1 point (a) and with para 2 (under the condition that it stays optional for the MSs). On the other hand, CZ cannot support para 1 point (b). Therefore, the first optimal solution would be to delete para 1 point (b). If the safeguard in para 1 point (b) is crucial for the rest of the MSs then as
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	a second option CZ proposes to add a new point (iii) in para 1 point (b), as indicated below. The problem with the current wording of para 1 point (b)(ii) is that it forces MSs to restrict the exercise of enhanced voting rights without specifying such a restriction and without differentiating between all the matters that could be decided at the general meeting that require the approval by a qualified majority. The matters requiring the approval by a qualified majority are not harmonised among the MSs, nevertheless the proposed Directive forces MSs to limit the exercise of enhanced voting rights in all matters where the qualified majority is required. In CZ, the qualified majority or the separate vote for each class of shareholders are the safeguards itself aiming at protecting the interests of minority shareholders and of the company itself. In the view of CZ, there is no need to further restrict the exercise of enhanced voting rights. NL (Comments): The NL regime has open norms that protect the interests of minority shareholders and the company in case of a multiple-vote share structure, as opposed to the more detailed safeguards that are proposed. Therefore, NL is still studying the possible effects of the proposed safeguards (particularly the mandatory ones). As a preliminary remark, NL notes the following. As multiple-vote share structures are possible in NL regardless of seeking admission to trading on any market, the proposed mandatory safeguards could result in a special regime for SME's only that differs from the existing, regular regime that
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	would apply to all other companies (and markets). The proposed mandatory safeguards seem stricter than the NL regime, which would mean that for SME's a stricter regime will apply than for larger companies. NL would be opposed to such a differentiation in its regime for multiple-vote share structure and it does not seem to be the intention of the proposal to make SME companies subject to a stricter regime than larger companies. A possible solution would be a more general rule, making clear that the interestst of minority shareholders and the company should be protected in the member states, but leaving it to the member states how to accomplish that and leaving room for open norms such as NL has. In addition, the proposed mandatory obligations inA article 5 (1) could be made optional, so that there is still a "coordinated approach" that the Commission seeks as mentioned in recital 11. ES (Drafting): 1. Member States shall ensure fair and non-discriminatory treatment of shareholders, as well as adequate protection of the interests of the shareholders who do not hold multiple-vote shares and of the company through appropriate safeguards. To that effect, Member States shall do all either of the following: ES (Comments): ES: there are no multiple vote share structures in Spain. However, and
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	supporting the goal of the proposal, we would prefer a more flexible approach on the safeguards. So, we do not see the need to make all the options mandatory. We could prefer an alternative wording. IE (Comments): Irish company law does not prohibit multi-vote share structures Companies may via their constitutions provide for different classes of shares with different rights attaching to each class.
(a) ensure that a company's decision to adopt a multiple-vote share structure and any subsequent decision to modify a multiple-vote share structure that affects voting rights are taken by the general shareholders' meeting of that company and are approved by a qualified majority as specified in national law.	HU (Drafting): (a) ensure that a company's decision to adopt a multiple-vote share structure and any subsequent decision to modify a multiple-vote share structure that affects voting rights are taken by the general shareholders' meeting of that company and are approved by a qualified majority as specified in national law. <u>-If the company exercises the right to the authorisation of the company body to increase share capital in accordance with Article 68(2) of Directive (EU) 2017/1132, the approval of the general shareholders' meeting shall be deemed to be granted.</u>

	HU (Comments): HU: In our opinion it needs to be clarified how the reference to the decision of the general shareholders' meeting relates to para (2) of Article 68 of the codified company law directive. The latter provision allows - with certain conditions - the empowerment of other company body to decide on the increase in the subscribed capital. It seems that the present proposal (as <i>lex specialis</i>) would create an exclusive power to the general meeting. Instead of this we would prefer maintaining the current more flexible approach that makes it possible for bodies of the company, other than the general meeting to decide on the issuance of shares. RO (Comments): RO: For clarity and for a proper application of the provisions at national level we are of the opinion that the Directive should clarify what is meant by "qualified majority" LT (Comments): Does the word "modify" includes conversion of multiple-vote shares to ordinary shares? In accordance with Republic of Lithuania Law on Companies decisions to determine the class, number, nominal value and the minimum issue price of the shares issued by the company, as well as to convert the company's shares of one class into shares of another class shall be approved by a
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	qualified majority vote that must be not less than 2/3 of all the votes carried by the shares held by the shareholders attending the meeting. Despite the fact that we do not have multiple-vote share structures in Lithuania, we apply this requirements for other decisions related to classes of shares.
For the purposes of this point, where there are several classes of shares, such decisions shall also be subject to a separate vote for each class of shareholders whose rights are affected;	DE (Drafting): For the purposes of this point, where there are several classes of shares <u>and national law does not require the approval of all shareholders affected</u>, such decisions shall also be subject to a separate vote for each class of shareholders whose rights are affected DE (Comments): Clarification as a qualified majority could also require the approval of all shareholders affected.
(b) limit the voting weight of multiple-vote shares on the exercise of other shareholders' rights, in particular during general meetings, by introducing either of the following:	RO (Comments): RO: We are of the opinion that it should be clarified what is meant by the phrase "other shareholders rights"

(i) a maximum weighted voting ratio and a requirement on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent;	HU (Drafting): (i) a maximum weighted voting ratio and-or a requirement on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent; HU (Comments): In Hungary the MVS structures are allowed and companies are using them for several decades. Besides 1:10 maximum weighted voting ratio, our regulation included a provision on maximum percentage (50%) of the outstanding capital that the total amount of preference shares can represent. Consultations with stakeholders confirmed that maintain both conditions are not essential, so the condition regarding the proportion of shares was repealed last year. In Hungary the maximum weighted voting ratio combined with a null and void provision provides enough guarantee. Furthermore, if there are too much MVS shares in the structure, the shares won't be saleable on the market, so the market provides feedback to the company. Therefore, we propose 2 alternative conditions.

	DE (Drafting): (i) a maximum weighted voting ratio and a requirement on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent; DE (Comments): We understand that each of the safeguards proposed aims at granting protection for minority shareholders. However, the two safeguards under (i) do not necessarily have to be combined. A maximum voting ratio can itself be considered a strong safeguard. This change would be in line with the approach of the proposal to opt for a minimum harmonisation and to guarantee flexibility to the Member States. LT (Drafting): (i) a maximum weighted voting ratio and a requirement on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent; LT
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	(Comments): In case the Presidency accepts our proposal to introduce a general rule on a maximum weighted voting ratio in Article 4, we suggest the following drafting of this point.
	DE (Drafting): <u>(ii) a requirement on the maximum percentage of the outstanding share capital that the total amount of multiple-vote shares can represent;</u>
(ii) a restriction on the exercise of the enhanced voting rights attached to multiple-vote shares for voting on matters to be decided at the general meeting of shareholders and that require the approval by a qualified majority.	CZ (Drafting): (ii) a restriction on the exercise of the enhanced voting rights attached to multiple-vote shares for voting on matters to be decided at the general meeting of shareholders and that require the approval by a qualified majority; DE (Drafting): (iii) a restriction on the exercise of the enhanced voting rights attached to multiple-vote shares for voting on <u>certain</u> matters to be decided at the general meeting of shareholders and that require the approval by a qualified majority.

	DE (Comments): Cf. recital (11): It should be clarified that not all matters that require a qualified majority under national law should have to be restricted with a view to the exercise of multiple voting shares. The qualified majority as such already constitutes a restriction. Furthermore, national company law systems diverge with a view to the number and content of matters subjected to a qualified majority and the type of qualified majority deemed necessary. Some legal systems also require qualified majorities for matters that are central to keeping control (e.g. the composition of boards) and thus the core of the reasoning of the Commission for putting forward the proposal (see also recital (12): <i>while ensuring that such safeguards do not defeat the purpose of multiple-vote share structures, i.e. the possibility for a company's controlling shareholders to influence important decisions, including the appointment of directors</i>”). Therefore, it should not be required that a member states restricts the use of multiple voting rights for ALL matters requiring a qualified majority under national company law. This would also reflect the flexibility (i) grants member states with a view to deciding on the maximum voting cap and the percentage of outstanding share capital. LT
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	(Comments): We find this provision problematic, and we think that provision should be more flexible as most important decisions (the number of questions that require qualified majority in Member States may vary) require the approval by qualified majority. Placing this safeguard, the legislation of multiple-vote shares would become practically ineffective, because under point b of Article 2 multiple-vote shares carry higher voting rights compared to another class of shares <u>on matters to be decided at the general meeting of shareholders</u>. Enhanced voting rights and control maintenance is the essence of the Proposal, therefore restrictions on all matters decided at the general meeting of shareholders that require the approval by qualified majority would be contrary to the main purpose of the Proposal. Member States should have an opportunity to decide, which questions are considered particularly important and a restriction on the exercise of the enhanced voting rights attached to multiple-vote shares should be applied for those questions.
	CZ (Drafting): <u>(iii) a qualified majority or a separate vote for each class of shareholders whose rights are affected for the approval of important [crucial] matters to be decided at the general meeting.</u> CZ (Comments): CZ proposes the wording of a new point (iii). The idea, as explained

	above, is that setting the qualified majority (and possibly different qualified majorities for different matters, as is the case in CZ) or the requirement to have a separate vote for each class of shareholders whose rights are affected is a sufficient measure to protect the interests of minority shareholders and the company itself. This should not apply to all matters to be decided at the general meeting, but only to those that MSs consider being important (or crucial). This is necessary so that the MSs are not forced to introduce a qualified majority or separate voting for all matters decided at the general meeting.
2. Member States may provide for further safeguards to ensure adequate protection of shareholders and of the interests of the company. Those safeguards may include in particular:	EE (Drafting): 2. Member States may provide for further safeguards to ensure adequate protection of shareholders and of the interests of the company. Those safeguards may include in particular: EE (Comments): <u>In our preliminary opinion, article 5 (2) (a), (b) and (c) should be moved into recitals (please see above, recital 12). The provisions are not compulsory (and we are in favor of this solution) and it's not necessary to have these in the articles.</u> <u>Point (d) should be fully deleted from the proposal. The scope of the point (d) is unclear and may cause uncertainty in the practice. It would also be difficult to enforce this requirement. In the same reason, a sentence in recital 11 should be deleted as well (please see above).</u>

	FI (Drafting): FI proposal “Member States may provide for further safeguards to ensure adequate protection of shareholders and of the interests of the company.” FI (Comments): FI comments Move to the recitals: The second sentence of the introductory paragraph in Art. 5(2) and its subparagraphs (a)-(d). To our knowledge, there are no such sunset clauses in any Member States’ legislation nor major issues of blocking certain AGM decisions. Moreover, such additional safeguards may include other elements, too, than those enumerated in the subparagraphs. We believe that detailed examples of possible further safeguards suit better to the recitals, as the best market practices may develop over time. HU (Drafting): Member States may provide for further safeguards to ensure adequate
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	protection of shareholders and of the interests of the company. These safeguards may include in particular: HU (Comments): HU: As this is a “may” provision and - given the wording “in particular” - the list in points from a) to d) is not exhausting, we do not really see the added value here, so it seems sufficient to us to maintain only the first sentence. CZ (Comments): For CZ it is important to ensure that this provision remains only an option for MSs. Under this condition, CZ is open to potential changes in the list of safeguards, either by deleting some of them altogether or moving them to recitals. NL (Comments): NL refers to its remark under 5 (1). ES (Drafting): 2. Member States may provide for further safeguards to ensure
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	adequate protection of shareholders and of the interests of the company. Those safeguards may include, among others in particular: ES (Comments): ES: while we could support the alternative options that the proposal foresees, we should clarify that those are some options among others. IE (Comments): Ireland supports a flexible approach as it has a pre-existing framework and pre-existing safeguards as such flexible approach is the most desirable outcome. LT (Drafting): Member States may provide for further safeguards to ensure adequate protection of shareholders and of the interests of the company. Those safeguards may include in particular: LT (Comments): We have doubts about the inclusion of provisions, which are not
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	mandatory for the Member States, in the main text of the Proposal. We believe that the first sentence of this paragraph is sufficient. We do understand the purpose of this provision. The measures proposed in this paragraph are to be evaluated as particularly important and must be evaluated when establishing national rules, therefore we propose to transfer these provisions to the recitals of the Proposal, as guidelines for Member States.
(a) a provision to avoid that the enhanced voting rights attached to multiple-vote shares are transferred to third parties or continue to exist upon the death, incapacitation or retirement of the original holder of multiple-vote shares (transfer-based sunset clause);	EE (Drafting): a) — a provision to avoid that the enhanced voting rights attached to multiple vote shares are transferred to third parties or continue to exist upon the death, incapacitation or retirement of the original holder of multiple vote shares (transfer based sunset clause); FI (Drafting): FI proposal Move to the recitals. FI (Comments):

	FI comments (see above Art. 5(2)) HU (Drafting): (a) — a provision to avoid that the enhanced voting rights attached to multiple vote shares are transferred to third parties or continue to exist upon the death, incapacitation or retirement of the original holder of multiple vote shares (transfer-based sunset clause); LT (Drafting): (a) — a provision to avoid that the enhanced voting rights attached to multiple vote shares are transferred to third parties or continue to exist upon the death, incapacitation or retirement of the original holder of multiple vote shares (transfer-based sunset clause);
(b) a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist after a designated period of time (time-based sunset clause);	EE (Drafting): (b) — a provision to avoid that the enhanced voting rights attached to multiple vote shares continue to exist after a designated period of time (time-based sunset clause);

	FI (Drafting): FI proposal Move to the recitals. FI (Comments): FI comments (see above Art. 5(2)) HU (Drafting): (b) — a provision to avoid that the enhanced voting rights attached to multiple vote shares continue to exist after a designated period of time (time-based sunset clause); LT (Drafting): (b) — a provision to avoid that the enhanced voting rights attached to multiple vote shares continue to exist after a designated period of time (time-based sunset clause);

(c) a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist upon the occurrence of a specified event (event-based sunset clause);	EE (Drafting): (c) — a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist upon the occurrence of a specified event (event-based sunset clause); FI (Drafting): FI proposal Move to the recitals. FI (Comments): FI comments (see above Art. 5(2)) HU (Drafting): (c) — a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist upon the occurrence of a specified event (event-based sunset clause); DE
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	(Drafting): (c) a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist upon the occurrence of a specified event (event-based sunset clause); LT (Drafting): (c) — a provision to avoid that the enhanced voting rights attached to multiple-vote shares continue to exist upon the occurrence of a specified event (event-based sunset clause);
(d) a requirement to ensure that the enhanced voting rights cannot be used to block the adoption of decisions by the general shareholders' meeting aiming at preventing, reducing or eliminating adverse impacts on human rights and the environment related to the company's operations.	EE (Drafting): (d) — a requirement to ensure that the enhanced voting rights cannot be used to block the adoption of decisions by the general shareholders' meeting aiming at preventing, reducing or eliminating adverse impacts on human rights and the environment related to the company's operations. FI (Drafting): FI proposal

	Move to the recitals. FI (Comments): FI comments (see above Art. 5(2)) HU (Drafting): (d) — a requirement to ensure that the enhanced voting rights cannot be used to block the adoption of decisions by the general shareholders' meeting aiming at preventing, reducing or eliminating adverse impacts on human rights and the environment related to the company's operations. DE (Comments): In our view, the practical success of multiple-vote shares will depend to a large extent on whether sufficient account is taken of the need for legal certainty in practice. There, it will most likely be hard to determine with legal certainty if a decision touches upon these matters or not, and therefore, if the multiple voting rights can be used (and counted) or not. The Commission also explained that so far, there is no model for such a safeguard in any member state and, accordingly, no level of experience.
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	Therefore, this optional safeguard should be drafted in a way that avoids uncertainty for the vote count and hence the validity of the decisions. Otherwise it should be moved to the recitals. ES (Comments): ES: we should be careful with this safeguard, due to a possible legal uncertainty (concepts such as <i>adverse impacts on human rights and the environment</i> are too broad and not clear). An option could be its deletion. LT (Drafting): (d) — a requirement to ensure that the enhanced voting rights cannot be used to block the adoption of decisions by the general shareholders' meeting aiming at preventing, reducing or eliminating adverse impacts on human rights and the environment related to the company's operations. LV (Comments): Delegation of Latvia has a comment about Art. 5(2)(d) that states: "Member States may provide for further safeguards to ensure adequate protection of shareholders and of the interests of the company. Those safeguards may include in particular: [...] (d) a requirement to ensure that the enhanced voting rights cannot be used to block the adoption of
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	decisions by the general shareholders' meeting aiming at preventing, reducing or eliminating adverse impacts on human rights and the environment related to the company's operations." Could you give an example on decisions by the general shareholders' meeting, which are aimed at preventing, reducing or eliminating adverse impacts on human rights and the environment related to the company's operations. In our understanding direct impact of decisions would be comparatively rare. However, indirect impact or at least connection between decision by the general shareholders' meeting and human rights and the environment could be detected more often. For insight, according to Art. 268 of the Commercial Code of Latvia, which regulates competence of a Meeting of Stockholders, only a meeting of stockholders has a right to take decisions on: 1) the annual accounts of the company; 2) the use of the profit from the previous year of activities; 3) the election and recall of members of the council, the auditor, the company controller, and liquidator; 4) the bringing of actions against members of the board, the council and the auditor or withdrawing actions against them, as well as regarding the appointment of a representative of the company to maintain actions against members of the council; 5) [14 February 2002]; 6) amending the articles of association of the company; 7) increasing or reducing equity capital; 8) the issuance and conversion of the company's securities; 9) specifying the remuneration for members of the council and the auditor; 10) the termination of the activities of the company or their continuation, suspension or renewal or regarding the reorganisation of the company; 11) the general principles, types and criteria for determination of remuneration intended for the members of the board and the council; 12) granting of company stock to employees and members of the board and council. A meeting of stockholders shall take decisions on other issues only if it is
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	provided for by law. Analysing types of decisions that are named in Art. 268 of the Commercial Code of Latvia, we do not see any that would directly affect human rights or the environment. Therefore, we would highly appreciate any clarification or explanation on this issue.
Article 6	
Transparency	
1. Member States shall ensure that companies with multiple-vote share structures whose shares are traded or are to be traded on an SME growth market make publicly available, in the [EU Growth issuance document referred to in Article 15a] of Regulation (EU) 2017/1129 of the European Parliament and of the Council ⁷ or in the admission document referred to in Article 33(3), point (c), of Directive (EU) 2014/65/EU and in the company's annual financial report referred to in Article 78(2), point (g), of Commission Delegated Regulation (EU) 2017/565 ⁸ , detailed information on all of the following:	HU (Drafting): 1. — Member States shall ensure that companies with multiple-vote share structures whose shares are traded or are to be traded on an SME growth market make publicly available, in the [EU Growth issuance document referred to in Article 15a] of Regulation (EU) 2017/1129 of the

⁷ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12)

⁸ Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

	European Parliament and of the Council⁹ or in the admission document referred to in Article 33(3), point (e), of Directive (EU) 2014/65/EU and in the company's annual financial report referred to in Article 78(2), point (g), of Commission Delegated Regulation (EU) 2017/565¹⁰, detailed information on all of the following: HU (Comments): We agree with COM that the same disclosure rules should apply for companies who enter, and those who are already on the SME growth markets all over the EU, because that would serve better the goal of the directive. We suggest to move the Transparency rules into the other two documents under discussion parts of the Listing Act package. (See below under General Comments) AT (Comments): It is questionable whether this provision is consistent with the transparency obligations of other legal acts. RO
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⁹ ~~Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12)~~

¹⁰ ~~Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).~~

	(Comments): RO: We are of the opinion that additional clarifications regarding the documents to be published are necessary. Will the Member States be able to decide on the documents to be published? CZ (Comments): CZ would like to raise the question of whether the reference to Article 78(2), point (g) of Commission Delegated Regulation (EU) 2017/565 is fitting since it regulates the time frame for publishing the annual financial report and not the annual financial report itself. NL (Comments): NL is still examining the transparency provisions in light of the GDPR and the Transparency Directive. Question: Are there situations where listing would be possible without the obligation of the transparency requirement? Are situations considered when a voluntary prospectus is published or when companies fall under prospectus exemptions? As drafted now, it seems that you can only use the new multiple-voting right regime when publishing an EU Growth issuance document or admission document. It is important for adequate and transparent investor protection that investors are aware of the information from the
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	transparency requirement, especially of the voting-rights structure. Question: If NL understands correctly, article 6 (1) proposes to oblige companies to make the information as set out under (a-e) publicly available in (in short) the EU growth issuance document or the admission document, as well as in the annual financial reports. It is not clear what the benefit is of this extra publication requirement in the annual financial reports. The annual financial reports concern financial information of the company, while the information that the company should disclose on basis of article 6 (1) is not financial information. Also, it does not seem to concern information that is subject to change each year (as opposed to financial information). Moreover, the information as set out in article 6 (1) (except sub c and e) is included (according to Dutch law) in the articles of association which are also publicly available. Considering the above, is it necessary for the purposes of this proposal to make the information mentioned in article 6 (1) publicly available in other documents than the EU Growth issuance document or admission document? And if so, are annual financial reports the designated documents to do that? IE (Comments): The requirements of this Article 6.1 cross reference with the proposed Annex VII.XII (following Art.15a) - amendments to the Prospectus Regulation ("PR").
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	While we would be supportive of the requirements a,b,c,d,e of this Art.6.1, it may be difficult to understand how these provisions interact with the standards set out in the PR (i.e. in Annex VII.XII) for the EU Growth issuance document. Please see comment in paragraph (a) below for an example. There may be a need to either add Level II disclosures to the proposed Annex VII of the PR, or include detailed language in the Level 1 Annex VII itself. It appears that it would be more straightforward for market participants (and NCAs) if all disclosure requirements for prospectuses were included in the same place. Considering that other clarifications may be needed in other points of Annex VII, we could support the production of Level II disclosure under the PR for an EU Growth issuance document. E.g. our previous comment in relation to Annex VII.VIII regarding clarification on the provision of financial information. LT
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	(Comments): The most important is that the information proposed to be disclosed by this Article of the Proposal should not duplicate with the information already required to be disclosed, therefore this Article should be evaluated in this aspect.
(a) the structure of their capital, including securities which are not admitted to trading on an SME growth market in a Member State, with an indication of the different classes of shares and, for each class of shares, the rights and obligations attached to that class and the percentage of total share capital and total voting rights that such class represents;	HU (Drafting): (a) — the structure of their capital, including securities which are not admitted to trading on an SME growth market in a Member State, with an indication of the different classes of shares and, for each class of shares, the rights and obligations attached to that class and the percentage of total share capital and total voting rights that such class represents; RO (Comments): RO: We are of the opinion that it should be clarified why the proposal uses the term "securities" and not "shares" If the term "securities" is maintained, the meaning of this term should be clarified for the purpose of this article (e.g. – a definition of the term of securities should be introduced) IE

	(Comments): E.g. Annex VII of the PR states: “Provide the following essential information about the shares offered to the public:” The proposed text in this Art.6.1a appears to require description of each share class, regardless of admission to trading, whereas the PR requires only description of shares offered to the public.
(b) any restrictions on the transfer of securities, including any agreements between shareholders which are known to the company that could result in restrictions on the transfer of securities;	HU (Drafting): (b) — any restrictions on the transfer of securities, including any agreements between shareholders which are known to the company that could result in restrictions on the transfer of securities; AT (Comments): It should be ensured that this provision does not result in participation agreements or syndicate agreements having to be made available for

	public inspection, but rather that only information on this point has to be provided.
(c) the identity of holders of any securities with special control rights and a description of those rights;	HU (Drafting): (c) — the identity of holders of any securities with special control rights and a description of those rights; RO (Comments): RO: For clarity, we are of the opinion that the directive should specify what is the meaning of "securities with special control rights"? DE (Drafting): (c) the identity of holders of any securities with special control rights and a description of those rights; DE (Comments): The wording should be in line with article 10 para. 1 letter (d) of the directive 2004/25/EC.

	NL (Comments): See comment at article 6(2).
(d) any restrictions on voting rights, including any agreements between shareholders which are known to the company that could result in restrictions on voting rights;	HU (Drafting): (d) — any restrictions on voting rights, including any agreements between shareholders which are known to the company that could result in restrictions on voting rights;
(e) the identity of the shareholders holding multiple-vote shares and of the natural person or legal entity entitled to exercise voting rights on behalf of such shareholders, where applicable.	HU (Drafting): (e) — the identity of the shareholders holding multiple-vote shares and of the natural person or legal entity entitled to exercise voting rights on behalf of such shareholders, where applicable. DE (Drafting): (e) the identity of the shareholders holding multiple-vote shares and₁

	<u>as known to the company</u>, of the natural person or legal entity entitled to exercise voting rights on behalf of such shareholders, where applicable. DE (Comments): Cf. c). Moreover, information on the persons and entities entitled to exercise voting rights can only be published as known to the company. NL (Comments): See comment at article 6(2).
2. Where the holders of multiple-vote shares or the persons entitled to exercise voting rights on their behalf or the holders of securities with special control rights are natural persons, the disclosure of their identity shall require only the disclosure of their names.	HU (Drafting): 2. — Where the holders of multiple-vote shares or the persons entitled to exercise voting rights on their behalf or the holders of securities with special control rights are natural persons, the disclosure of their identity shall require only the disclosure of their names. NL (Comments):

	Question: How do the transparency requirements in article 6 (1) for shareholders of companies listed on an EU growth market relate to the transparency requirements for shareholders of companies listed on a regulated market, as set out in Directive (2004/109/EC)? Question: There are no transparency thresholds in this proposal as opposed to the Transparency Directive. Is there a valid reason why no thresholds are included in the proposal? If not, it should be considered to introduce thresholds for natural persons, as to protect the privacy of these natural persons.
Article 7	
Review	
By [five years after the entry into force], the Commission shall submit a report to the European Parliament and the Council on the implementation and effects of this Directive. To that effect by [four years after the entry into force], Member States shall provide the Commission with information in particular on the following:	FI (Drafting): FI proposal By [five years after the date of transposition], the Commission shall submit a report

	FI (Comments): FI comments As the Commission explained in the second meeting of the council working party, this matter should be corrected. LT (Comments): The deadlines set in this Article are too short and the practice will not be clear yet. It should be noted that the Member States will have 2 years to adopt legislation implementing the provisions of this Directive, and additional time will be needed for the adoption of multiple-vote share structures in companies and entry into the SME growth market, therefore we believe that Member States could provide objective information on the impact of the Directive much later, for instance in 6-7 years after the entry into force of the Directive. We propose that the timelines for the COM report and the information provided by the Member States be linked to the transposition of the Directive rather than its adoption.
(a) the number of companies admitted to trading with multiple-vote shares;	RO (Comments):

	DE (Drafting): (a) the number of companies admitted to trading <u>on an SME growth market</u> with multiple-vote shares <u>after [date specified in Article 8 (1)]</u>; DE (Comments): The provision should clarify the relevant date on which the companies need to be admitted to SME growth market trading in order to be included in the information to the Commission.
(b) the sector in which the companies referred to in point (a) are active and the respective capitalisation at the moment of issuance;	DE (Comments): It might be difficult for Member States to receive the required information, in particular the capitalisation of the company as this is not necessarily registered.
(c) the investor protection safeguard applied by the companies referred to in point (a) with respect to multiple-vote share structures;	LT (Comments):

	This provision should be treated with caution, and we should take into account the progress of the negotiations of the Directive. As regards safeguards set by national legislation, Member States will have to notify the COM of national provisions which they adopt in the field of this Directive, therefore this requirement might be redundant. We would suggest to clarify this provision in order to ensure, that this paragraph would only apply to additional safeguards applied by the companies, that are not mandatory and provided by the national law (which will be notified to the COM).
Article 8	
Transposition	
1. Member States shall bring into force the law, regulations and administrative provisions necessary to comply with this Directive by 2 years after the date of entry into force of this Directive. They shall immediately inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.	NL (Comments): NL reserves the right to comment on the term in which the directive should be implemented.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	

Table for comments on doc. ST 16168/22 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 (184 rows)
 deadline for comments: **09/02/23 cob**

Article 9	
Entry into force	
This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	
Article 10	
Addressees	
This Directive is addressed to the Member States.	
Done at Brussels,	
For the European Parliament For the Council	

The President	The President	
[...]	[...]	
		General Comments
		IT (Comments): The Italian delegation supports the Commission's proposal aimed at introducing a minimum harmonization in such an important piece of legislation, but, since the legislative reform is still under scrutiny by the Italian Parliamentary Commissions, we reserve to express more detailed comments at further stages of the negotiation. However, at this stage we can state that we are open to further improvements in the following areas: 1) The scope of the directive, because it should not be limited only to companies listed in SME growth markets, but it should also include for example the ones listed on all MTF; 2) The introduction of a cap to the voting right multiplier in order to secure a better and wider harmonization and avoid forum shopping SK (Comments): The Slovak Republic welcomes aims pursued by the proposal as well as instrument chosen to achieve them.

All of the comments provided are subject to general scrutiny reservation (which should be lifted by the end of February).

HU

(Comments):

We agree with COM that the same disclosure rules should apply for companies who enter, and those who are already on the SME growth markets all over the EU, because that would serve better the goal of the directive. After governmental discussions we suggest from the point of view of legislative technique that the disclosure norms regarding to the MVS structures for the companies who are on the SME growth market should be included in the Prospectus Regulation and a reference in Directive 2014/65/EU if required.

Drafting suggestion:

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises

The following paragraph (2) should be inserted into new Article 15a of :

„2. By way of derogation from Article 6(1) and without prejudice to Article 18(1), an EU Growth issuance document shall contain the relevant reduced and proportionate information that is necessary to enable investors to understand the following:

(a) the prospects and financial performance of the issuer and the significant changes in the financial and business position of the issuer since the end of the last financial year, if any, as well as its growth

	strategy; (b) the essential information on the securities, including the rights attached to those securities and any limitations on those rights; (c) the reasons for the issuance and its impact on the issuer on the overall capital structure of the issuer, and the use of proceeds. <u>In case of companies with multiple-vote shares structures, the EU Growth issuance document shall contain detailed information on all of the following:</u> <u>(a) the structure of their capital, including securities which are not admitted to trading on an SME growth market in a Member State, with an indication of the different classes of shares and, for each class of shares, the rights and obligations attached to that class and the percentage of total share capital and total voting rights that such class represents;</u> <u>(b) any restrictions on the transfer of securities, including any agreements between shareholders which are known to the company that could result in restrictions on the transfer of securities;</u> <u>(c) the identity of holders of any securities with special control rights and a description of those rights;</u> <u>(d) any restrictions on voting rights, including any agreements between shareholders which are known to the company that could result in restrictions on voting rights;</u> <u>(e) the identity of the shareholders holding multiple-vote shares and of the natural person or legal entity entitled to exercise voting rights on behalf of such shareholders, where applicable.</u> <u>Where the holders of multiple-vote shares or the persons entitled to exercise voting rights on their behalf or the holders of securities with special control rights are natural persons, the disclosure of their identity shall require only the disclosure of their names.”</u> AT
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	(Comments): We welcome the initiative to support SMEs in obtaining financing via the stock markets. By listing on public markets, companies can diversify their investor base, reduce dependencies on bank financing and raise their profile. CZ (Comments): CZ still applies a scrutiny reservation. CZ will send written comments on recitals at a later stage. DE (Comments): We maintain a general scrutiny reservation on the whole text. NL (Comments): <u>Introduction:</u> The Netherlands (NL) welcomes this proposal from the Commission (COM). NL supports its goal to facilitate access to capital for small and medium-sized companies (SMEs) and thinks that multiple-vote share structures can contribute to achieving this goal. NL is still examining the new proposal and its possible effects. As consultations with, among others, experts from the field are ongoing our position is still evolving and subject to change. Therefore, the NL has a
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	general scrutiny reservation. NL does have some (preliminary) questions and comments as set out in this table below.
END	END