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General Secretariat

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REQUEST FOR CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Company Law
Subject:	Call for written comments – Proposal for a Directive on multiple-vote share structures

Delegations will find attached the table for written comments on 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 (doc.16168/22).

Delegations are invited to provide their comments directly in the table in Word format. In order to streamline the processing of comments coming from Member States, delegations are also invited to read carefully the attached instructions for commenting.

Delegations' comments should reach the Presidency (catarina.olsson@gov.se and rolf.skog@gov.se) and the Council Secretariat (companylaw@consilium.europa.eu) by **09 February 2023 cob** at the latest.

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	MS comments
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,		

¹ OJ C [...], [...], p. [...]

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.		
(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.		
(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.		
(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.		
(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 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.		
(8) Member States should be able to		

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).

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.		
(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 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.		
(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.		
(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 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.		
(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 ³ , 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 ⁴ and delivered an opinion on [XX XX 2022/2023] ⁵		
HAVE ADOPTED THIS DIRECTIVE:		

³ OJ C 369, 17.12.2011, p. 14.

⁴ 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).

⁵ [OP: Footnote once available].

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)
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Article 1		
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.		
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;		
(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;		
(c) ‘multiple-vote share structure’ means the share structure of a company that contains at least one class of multiple-vote shares;		

(d) 'trading venue' means a trading venue as defined in Article 4(1), point 24, of Directive 2014/65/EU;		
(e) 'SME growth market' means an SME growth market as defined in Article 4(1), point (12) of Directive 2014/65/EU;		
(f) 'weighted voting ratio' means the ratio of votes attached to multiple-vote shares to votes attached to shares with the least voting rights.		
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.		
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.		
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:		
(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.		
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;		
(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:		
(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;		
(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.		
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:		

(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);		
(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.		
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 ⁶ 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 ⁷ , detailed information on all of the following:		
(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;		
(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;		

⁶ 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)

⁷ 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).

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(c) the identity of holders of any securities with special control rights and a description of those rights;		
(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.		
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.		
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		

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the following:		
(a) the number of companies admitted to trading with multiple-vote shares;		
(b) the sector in which the companies referred to in point (a) are active and the respective capitalisation at the moment of issuance;		
(c) the investor protection safeguard applied by the companies referred to in point (a) with respect to multiple-vote share structures;		
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.		
2. Member States shall communicate to the Commission the text of the main provisions of		

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national law which they adopt in the field covered by this Directive.		
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
END	END	END