November 28, 2023

Legislators must stay focused on the purpose of the Listing Act to <u>strengthen</u> the capital markets within the EU – not the opposite

The legislative procedure regarding the Listing Act and notably the proposal for a Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market has reached its final stage. Some highly worrying proposals unfortunately remain among the points that will be negotiated between the European Parliament, the Council, and the Commission. Therefore, the co-signing confederations ***now call on the legislators to remain focused on the purpose of the proposed Directive, which is to strengthen the capital markets*** *within the EU through "<u>increasing the flexibility</u>[1] given under company law to companies' founders/controlling shareholders to choose how to distribute voting rights after the admission to trading of shares" on SME Growth Markets. Several proposals from the Commission and the European Parliament will do the opposite, and thus must be removed to avoid negative impacts.*

Enabling access to private capital within the EU is key for European companies to be competitive and innovative and for their ability to contribute to the green transition. In the EU we see a reduction in initial public offerings (IPOs) and a decrease in the number of listed companies. In Europe, listed companies are less likely to finance themselves on the stock market than in the US where the stock market is three and a half times the size of the European market (EUR 41 trillion versus EUR 12 trillion) and almost three times as deep relative to GDP (227 % versus 81 %). The level of venture capital investment is nearly ten times higher (relative to GDP) in the US than in European countries.

It has therefore been positive to see EU initiatives to turn the trend (including, importantly, the Listing Act as proposed by the Commission) aiming to strengthen the capital markets, and to make it easier to become and stay a listed company, especially for small and medium-sized companies. Rules incentivizing and facilitating listings, and keeping companies listed, within the EU are most welcome, not least since a favorable set of rules will be a key enabling factor to make the capital markets within the EU more attractive, and in turn secure innovation and the necessary contribution of the business community to the green transition.

[1] See p. 2 of the Commission's proposal for Directive.

However, **some proposals put forward by the Commission and the European Parliament stand in sharp contrast to the intended purpose of the Directive** and would counteract the said objective to increase the flexibility under national law to apply multiple voting share structures and strengthen the EU capital markets. These proposals are far-reaching and deeply concerning as they would not only make it *less attractive* to list on the stock market (contrary to the aim of the Directive) but also risk *ruining existing well-functioning structures* in the Member States with potential devastating effects also outside the scope of the Directive.

Today, according to the Commission's Impact Assessment, twelve EU Member States allow multiple-vote share structures, including the countries our confederations represent. In some Member States, like Sweden and Denmark, it has been possible for listed companies to have multiple-vote share structures for a hundred years. There is no evidence of any of these jurisdictions having a problem related to these structures justifying EU intervention. Protection is ensured inter alia through transparency requirements and a corporate governance framework designed to ensure due minority protection.

Setting restrictions on the use of multiple-vote share structures at the EU-level that go beyond existing practices in the Member States is very controversial and without empirical evidence to support it. A successful minimum harmonization must instead focus on the enabling element of the proposal and the need for transparency and accommodate all existing differences in national practices.

This is also what is promised in the Commission's Impact Assessment (p. 42) where it is stated that the preferred option "*would ensure that Member States currently banning MVR share structures would allow them, without imposing **any** further constraints on those Member States that currently already have a flexible regime in place*". (our highlight)

It should be noted that the problem that the Directive intends to address, does not exist in the Member States already allowing multiple vote share structures. By putting mandatory restrictions that go beyond existing national practices, and by recommending further national restrictions that are not generally applied in the Member States today, whilst at the same time giving Member States the possibility to set any other restrictions they may see fit (i.e. minimum harmonization), **the Directive will end up having the exact opposite effect than the intended**. The Member States allowing multiple vote share structure would be forced to *reduce the flexibility* they offer to companies, and thereby *create* the exact problem that the proposal intends to solve. On the other hand, since this is a minimum harmonization Directive, the other Member States are free to put all the restrictions they want, even without these being explicitly spelled out in the Directive, and could therefore make the intended enabling legislation for the companies in those Member States illusionary in practice, if those Member States want to continue not wanting to encourage multiple-vote shares.

We would like to stress, that it is not our mission to force a certain legislation onto Member States that currently do not allow multiple-vote shares. Our aim is to *avoid negative impacts* for the companies – and capital markets – in our Member States, and in other Member States that currently allow multiple-vote shares.

In addition, combining the proposed restrictions with the proposal from the European Parliament to expand the scope of application to regulated markets (not only SME growth markets) would multiply the negative effects for companies and capital markets in our countries manyfold. The effect could be that there will be no listings in the future in the EU with enhanced voting rights – the exact opposite of the original intention of the Directive.

The negative effects could even go beyond the formal scope of the proposed Directive, since Member States currently allowing multiple-vote share structures would have to choose between two evils: (1) either limit the negative impacts of the proposed new restrictions by applying them only to the companies covered by the scope, accepting that the national system for multiple-vote share structures becomes incoherent and complex with different rules applying to different types of companies, or (2) expand the restrictions to all national companies, accepting that the negative impacts will multiply manyfold. If option 2 is chosen, the

negative effects would also have devastating effects on the EU venture capital and private equity market, putting the EU even further behind the US also in this area.

To be clear, the proposals to which we want to express our **strong disagreement**, and which would result in adverse impacts for companies in our countries, are the following:

1. **Exclusion of the right to use enhanced voting rights at general shareholders meetings when the matter has been tabled by a shareholder**. Since shareholders, in all the EU Member States that we know of, have extensive rights to table matters to shareholders meeting, and resolutions adopted are binding, this restriction would have far-reaching consequences and effectively undermine the purpose of the Directive (poison pill). No Member State has such a restriction today and no empirical evidence supports it.

2. **Maximum voting ratios and a maximum percentage of the capital that could consist of multiple-vote shares**. There is no empirical evidence to support such restrictions. Only a few Member States apply maximum voting ratios and, to our knowledge, no Member States apply a maximum percentage of capital. There is no one-size-fits all, which is why maximum voting ratios and percentages are not suitable for harmonization.

3. **Encouraging Member States to include additional restrictions**. The voluntary restrictions (sunset clauses and annulling the rights attached to enhanced voting shares at certain types of votes at the general meeting) are not evidence-based and are – to our knowledge – not applied in any EU Member State today. These restrictions constitute effective poison pills and it would stand in sharp contrast to the objectives of the proposed Directive to encourage Member States to adopt such restrictions. Since the Directive is a minimum harmonization directive it is also unnecessary to point Member States to any further restrictions.

4. **Transparency rules that would be impossible for companies to comply with in practice**. Transparency on holders of multiple-vote share structures traded publicly cannot go beyond what is known to the company.

5. **Expanding the scope to regulated markets if those restrictions are in place.** The proposed directive is intended for SME's and SME Growth Markets. Combining any of the counter-productive restrictions with an expansion of the scope to regulated markets would multiply the problems. An expansion to regulated markets should therefore only be considered, if no negative consequences are encountered in any Member State.

We respectfully call on the legislators to focus on ensuring that the important objectives of the Listing Act are materialized, meaning we strengthen the capital markets within the EU and improve conditions for SMEs, our most important catalyst for future growth. When doing so, it should be easy to stand firm and insist that the above restrictions must not be adopted.

ASSONIME, ASSOCIAZIONE FRA LE SOCIETÀ ITALIANE PER AZIONI

VNO-NCW, The Confederation of Netherlands Industry and Employers

Confederation of Finnish Industries EK

The Polish Association of Listed Companies

Danish Industry

The Confederation of Industry of the Czech Republic

The Confederation of Swedish Enterprise

Romanian Employers Organisation Concordia