

Multiple-voting right shares directive: Keep the minimum harmonisation directive approach

The Danish Committee on Corporate Governance and the Danish Committee on Foundation Governance have reviewed the European Parliament's proposal regarding share classes with multiple voting rights (MVR's).

MVR shares are widely used in Denmark, and the main shareholder in such companies is in many cases a commercial foundation, including e.g., A. P. Møller - Maersk A/S, Carlsberg A/S, Novo Nordisk A/S and Lundbeck A/S. Commercial foundations have a very long-term perspective, and are also subject to specific authority requirements in a number of situations. This structure has been developed over many years, and also supports a focus on long-term value creation for the company and its shareholders. Further this has been to substantial benefit for the Danish business world, Danish research and education and for the Danish society as such.

In our view, the proposal should give SME's the opportunity to introduce shares with MVR in all Member States, while safeguards should be kept at a minimum only providing adequate minority protection such as for instance the Danish Companies Act.

Notably, the ECON report¹ illustrates an unfortunate development that risks hindering the possibilities for SMEs to attract growth capital and thereby also limiting their competitiveness. Particularly, the suggested exclusion of the use of enhanced voting rights attached to multiple-vote shares at general meetings on the votes on resolutions tabled by shareholders is inappropriate. Such a proposal will significantly limit the control majority owners, such as for instance founders or commercial foundations, have over the company. Such a restriction is inappropriate and will infringe established national systems that already allow MVR's and provide adequate minority protection. For example, the Danish Companies Act contains important safeguards (i) to ensure board accountability, (ii) to ensure equal treatment of shareholders and (iii) to protect against disproportionate power that may result from the existence of unequal voting shares. Certain decisions to amend the articles of association mentioned in the Danish Companies Act article 107 (2) must be passed by at least nine-tenths of the votes cast as well as at least nine-tenths of the share capital represented at the general meeting. In Denmark, unequal voting rights (with or without limits to the voting rights attached to a single share) will need to be stipulated in the articles of association and be approved by the shareholders with a qualified majority.

Secretary:
**Danish Business
Authority**
Langelinie Alle 17
2100 Copenhagen Ø

cg-komite@erst.dk
godfondsledelse@erst.dk

Tlf. 35 29 10 00
CVR-nr. 10 15 08 17

¹ https://www.europarl.europa.eu/doceo/document/A-9-2023-0300_EN.html

Moreover, safeguards such as maximum voting ratio and transfer-based sunset clause (upon the death, incapacitation, or retirement) should be voluntary, as especially the latter can be an issue for founders in case of generational succession.

Generally, we believe that Company law should create as flexible a basis as possible for the companies to make it possible for the companies to attract capital from investors as easy as possible, while keeping the safeguards at a minimum. In this connection we believe that the legislators should avoid any unnecessary interference in Member States' legislation.

We support the proposal's purpose of making it possible for companies to have share classes with multiple voting rights as we believe the proposal can ease the access to attract capital from investors, while some shareholders, e.g. the founder, retains a deciding influence.

In Member States with a well-functioning MVR-regime, appropriate safeguards are already in place, and there is a substantial risk that introducing arbitrary and excessive safeguards will have the opposite effect than intended with the proposal. SMEs in such Member States may end up having a lower chance of raising capital on SME growth markets. If the scope of the proposal is broadened to include regulated markets, thereby also affecting larger companies, this will have a substantial negative effect causing substantial negative consequences for the Danish business world, Danish research and education and for the Danish society as such.

Company law (including MVR) is a delicate subject, and it is important to avoid unnecessary interference in Member States' legislation. Therefore, we urge the Parliament to take into consideration the Council mandate² where the mandatory safeguards accommodated existing national legislation and voluntary safeguards, such as sunset clauses etc., were deleted. This strikes a good balance of providing companies the possibility for the use of MVR's while at the same time avoiding unnecessarily restricting the use hereof.

Sincerely yours,

Lars Rasmussen Marianne Philip

Danish Committee on Corporate Governance
Danish Committee on Foundation Governance

² <https://data.consilium.europa.eu/doc/document/ST-8192-2023-INIT/en/pdf>