Multiple-voting shares in Europe - A comparative law and economic analysis –

Law Working Paper N° 786/2024
July 2024

Klaus J. Hopt
Max Planck Institute for Comparative and International Private Law and ECGI

Susanne Kalss
Vienna University of Economics and Business

ECGI Working Paper Series in Law

Multiple-voting shares in Europe - A comparative law and economic analysis –

Working Paper N° 786/2024
July 2024

Klaus J. Hopt
Susanne Kalss

Abstract

Whether the rule should be one share, one vote or multiple-voting shares (dual-class stock) is, in international legal and economic terms, highly controversial. The European Union's 27 Member States as well as the United States all have very different rules. Lately the EU has attempted a harmonisation. On February 14, 2024, the European Council agreed on a Multiple Voting Rights Directive, for inclusion in the Listing Act, that permits multiple voting shares as a minimum harmonization. The European Parliament agreed on 24 April 2024. This is a step in the right direction but falls short in that it is limited to the SME growth market. The EU Member States are trending towards broader approval of multi-voting shares. Germany recently executed a complete turnaround in a law of 11 December 2023 that largely permits multi-voting shares, but only with limits and clear restrictions for listed companies to protect other shareholders. The article deals with the pros and cons of multiple voting shares from an economic and legal policy perspective and discusses the legal situation in the US and the 27 EU Member States. From a comparative law perspective, one finds very liberal countries such as the USA, the Scandinavian countries and the Netherlands; countries that are completely or highly restrictive, such as Austria; and countries, such as Germany, that broadly allow multiple voting structures for unlisted companies but impose clear restrictions for listed shares. An ample body of economic theory supplies arguments for and against multiple voting structures. Traditionally, the one-share, one-vote principle was considered preferable due to the risks for non-multiple voting shareholders (agency theory). More recent opinions, however, tend to see advantages for society and shareholders, stock exchanges, the economy and international competitiveness. For legislators, the comparative law, economic theory and empirical findings suggest that it makes sense to authorise multiple-voting structures, but only with limits and protections applicable to listed shares. A whole range of quite distinct regulatory options exist that legal scholars have yet to sufficiently examine, which is the focus of this article. Loyalty shares serve a different purpose, are subject to different requirements, and are therefore not an alternative to multiple-voting shares. Limitations on the voting weight multiple and on when multiple-voting rights can be exercised are essential; internationally, a multiple of 10 is common and enables a simple majority. Time-limits and restrictions on the transfer of multiple voting rights are also common. Under German law, resolutions on the appointment of auditors and special auditors are excluded from multiple voting; resolutions on pursuing or waiving actions for damages and perhaps on the remuneration system ought to have been; however, the selection of board members should not be excluded.

Keywords: multiple voting rights, multiple voting shares, corporate governance, sustainable corporate goverance, shareholder, comparative law, Europe, financing Act, dual- class votes

JEL Classifications: D21, G32, G34, G38, K22

Klaus J. Hopt*
Emeritus Professor of Law
Max Planck Institute for Comparative and International Private Law
Mittelweg 187
D-20148 Hamburg, Germany
phone: +49 404 190 0206
e-mail: hopt@mpipriv.de

Susanne Kalss
University Professor
Vienna University of Economics and Business
Building D3 / 3rd floor
1020 Vienna, Austria
e-mail: susanne.kalss@wu.ac.at

Multiple-voting shares in Europe

- A comparative law and economic analysis –

Klaus J. Hopt, Hamburg, and Susanne Kalss, Vienna[#] [##]

Abstract

Whether the rule should be one share, one vote or multiple-voting shares (dual-class stock) is, in international legal and economic terms, highly controversial. The European Union's 27 Member States as well as the United States all have very different rules. Lately the EU has attempted a harmonisation. On February 14, 2024, the European Council agreed on a Multiple Voting Rights Directive, for inclusion in the Listing Act, that permits multiple voting shares as a minimum harmonization. The European Parliament agreed on 24 April 2024. This is a step in the right direction but falls short in that it is limited to the SME growth market. The EU Member States are trending towards broader approval of multi-voting shares. Germany recently executed a complete turnaround in a law of 11 December 2023 that largely permits multi-voting shares, but only with limits and clear restrictions for listed companies to protect other shareholders. The article deals with the pros and cons of multiple voting shares from an economic and legal policy perspective and discusses the legal situation in the US and the 27 EU Member States. From a comparative law perspective, one finds very liberal countries such as the USA, the Scandinavian countries and the Netherlands; countries that are completely or highly restrictive, such as Austria; and countries, such as Germany, that broadly allow multiple voting structures for unlisted companies but impose clear restrictions for listed shares. An ample body of economic theory supplies arguments for and against multiple voting structures. Traditionally, the one-share, one-vote principle was considered preferable due to the risks for non-multiple voting shareholders (agency theory). More recent opinions, however, tend to see advantages for society and shareholders, stock exchanges, the economy and international competitiveness. For legislators, the comparative law, economic theory and empirical findings suggest that it makes sense to authorise multiple-voting structures, but only with limits and protections applicable to listed shares. A whole range of quite distinct regulatory options exist that legal scholars have yet to sufficiently examine, which is the focus of this article. Loyalty shares serve a different purpose, are subject to different requirements, and are therefore not an alternative to multiple-voting shares. Limitations on the voting weight multiple and on when multiple-voting rights can be exercised are essential; internationally, a multiple of 10 is common and enables a simple majority. Time-limits and restrictions on the transfer of multiple-voting rights are also common. Under German law, resolutions on the appointment of auditors and special auditors

[#] *Klaus J. Hopt* is Director emeritus and Professor at the Max Planck Institute for comparative and international private law in Hamburg, Germany; *Susanne Kalss* is professor and managing board member of the Institute for Business Law at the Vienna University of Economics and Business.

[##] An earlier paper authored by *Hopt/Kalss*, authored in German, focused on the German stock corporation law and was prepared for the Deutsche Gesellschaftsrechtliche Vereinigung, Frankfurt: Mehrstimmrechtsaktien – Grundsatzprobleme, Regelungsbausteine, Praxisfragen, ZGR 2024, 84-154. The present article, by contrast, is based on the 2024 European Directive on multiple-vote share structures. It deals with multiple-voting rights in the 27 Member States of the European Union, including the new laws adopted in Germany 2023 and France and Italy in 2024, and it focuses on the economic reasons for and against multiple-voting share structures (dual-class shares) as well as the various safeguards for shareholders in listed companies.

are excluded from multiple voting; resolutions on pursuing or waiving actions for damages and perhaps on the remuneration system ought to have been; however, the selection of board members should not be excluded.

<u>Overview</u>

I. The authorisation of multiple-voting shares in the European Union and in Germany: a legal and political policy sensation

1. The European Directive of 24 April 2024: Minimum harmonisation with very limited admission of multiple-voting shares
    - a) Overview of the development of the Directive
    - b) Mandatory limits for shares with multiple-voting rights
    - c) Additional optional limits on multiple-voting shares
    - d) Brief outline of the legal policy debate at the European level
    - e) Content of the Multiple-voting shares Directive of 2024
    - f) Compatibility with European primary law and the "golden share" cases of the European Court of Justice
    - g) Overall assessment of the European Directive of 2024

2. The German Future Financing Act of 11 December 2023: General authorisation of multiple-voting shares, but with limits and safeguards for listed companies

II. Comparative legal experience

1. Countries that extensively authorise multiple-voting shares
    - a) The United States
    - b) Scandinavian countries in the European Union
    - c) The Netherlands
    - d) Switzerland

2. Countries with a liberal regime for unlisted companies, but clear restrictions for listed companies
    - a) Countries with loyalty shares for listed companies: France, Belgium, Spain, Italy
    - b) Countries that ban multiple-voting shares in listed companies

3. Countries with far-reaching restrictions
    - a) Germany until 2023
    - b) Austria and other countries

4. Countries featuring general authorisation, but with limits and safeguards
    - a) Germany since 11 December 2023
    - b) United Kingdom
    - c) New laws on loyalty and multiple-voting shares: Italy in 2024 and France in 2024

5. Comparative legal studies, historical development
    - a) Comparative legal studies
    - b) Historical overview: Germany and Austria as examples

III. Economic reasons for authorising of multiple-voting shares, but for listed companies only with limits and safeguards

1. Economic pros and cons of one share, one vote versus multiple-voting share structures
    - a) The company and its shareholders
    - b) Capital market and stock exchanges
    - c) Economy, places for doing business and international competitiveness
    - d) Private ordering and lack of constraints on articles of association
    - e) Empirical research on multiple-voting shares

I. The authorisation of multiple-voting shares in the European Union and in Germany: A legal and political policy sensation

1. The European Directive of 24 April 2024: Minimum harmonisation with very limited admission of multiple-voting shares

a) Overview of the development of the Directive

On 7 December 2022, the European Commission proposed a directive[1] that fully revises its previous position on the one-share, one-vote principle and multiple-voting shares. On 14 February 2024,[2] the Permanent Representatives Committee was able to agree on a joint text as part of the Listing Act and, accordingly, on 24 April 2024 the European Parliament took a position with a view on the adoption of the Directive,[3] meaning that it is expected to come into force in 2026. At the European level, the Commission's draft had met with approval and

[1] European Commission, Proposal for a Directive for 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, 7.12.2002, COM (2002) 761 final.
Articles from the sparse (and mostly in German) legal literature on the European regulation of multiple-voting shares: e.g., in particular, *German Bar Association (DAV, Deutscher Anwaltsverein),* Opinion on the European Commission's proposal for a Directive on structures with multiple-voting shares in companies applying for admission of their shares to trading on an SME growth market – COM (2022) 761 final, in German: NZG 2023, 464; furthermore *Tobias Gumpp*, Die Kommissionsvorschläge zum EU Listing Act, BKR 2023, 82; *Philip Denninger*, Mehrstimmrechte in der Aktiengesellschaft – ein Wiedergänger in der deutschen und europäischen Reformdebatte, DB 2022, 2329; *Alexander Herzog/Bero Gebhard*, Mehrstimmrechte im Aktienrecht, ZIP 2022, 1893; *Sebastian Mock/Jean Mohamed*, Goodbye One Share One Vote? – Welcome Dual-Class Shares! Ein komparativer Überblick zu rechtspolitischen Reformüberlegungen, NZG 2022, 1275; *Julia Nicolussi*, Mehrstimmrechtsaktie Renaissance auf europäischer und auf nationaler Ebene, AG 2022, 753; *Alain Pietrancosta*, The European proposal to open up multiple-vote share structures to listing companies: a simplification in trompe l'oeil, OBLB 5.9.2023, available at < https://blogs.law.ox.ac.uk/oblb/blog-post/2023/09/european-proposal-open-multiple-vote-share-structures-listing-companies >; *Michael Schlitt/Susanne Ries*, Listing Act: Entwurf der Mehrstimmrechtsaktien-RL, NZG 2023, 145; *Susanne Kalss*, Das Kommen, Gehen und Wiederkommen des Mehrstimmrechts, ZHR 187 (2023) 438 at 486; *Matthias Casper*, Das Zukunftsfinanzierungsgesetz – Zwischen Griff in die historische Mottenkiste und behutsamer Fortentwicklung der Unternehmensfinanzierung, ZHR 187 (2023) 5; *Eckart Bueren/Jennifer Crowder*, Mehrstimmrechte im Spiegel von Rechtsvergleichung und Ökonomie, RabelsZ 88 (2024) 86 at 126 et seq.;
[2] Council of the European Union, Proposal for a Directive of the European Parliament and the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market, Final compromise of 14 February 2024, C 6524/24.
[3] European Parliament, Multiple-vote structures in companies that seek the admission to trading of their shares on an SME growth market, Legislative resolution of 24 April 2024, P9_TA(2024)0352. Very useful information about the development process of the Directive and the final changes is provided by *Rolf Skog,* On the advent of the EU directive on shares with different voting rights, unpublished manuscript, it is in the authors' hands. Skog was involved in the negotiation process.

rejection.[4] In 2002, the High Level Group of Company Law Experts[5] was still proposing that the principle of "one share, one vote" should be established,[6] a political demand that the Commission adopted in its 2003 Action Plan.[7] In a Commission proposal for the Takeover Directive – shaped by Commissioner Bolkestein[8] – the principle of one share, one vote was to be enshrined with a few exceptions for pre-existing multiple-voting structures.[9] Around twenty years ago, however, the European Parliament (with the active involvement of members from Germany) prevented this determination from being enacted at the European level. But as will be explained in III 2 a below, times have changed. Following a heated legal policy debate driven by completely disparate status quos in the Member States (see below), the newly adopted Directive restricts itself to a narrow, minimum level of harmonisation[10] of a very limited portion of the market. Articles 1 of the Directive only covers companies that seek admission to trading of their shares on multilateral trading facilities (MTFs), which include SME growth markets, and whose shares are not already admitted to trading on an MTF or a regulated market.[11] The Directive sets very significant limits and safeguards for ordinary shareholders. The Commission's idea was to authorise multiple-voting shares only for companies not yet listed and only on the SME growth market, but MTFs are now included. The Directive prescribes some mandatory and some optional limits on multiple-voting shares.

Under the Directive, the only companies the law must permit to introduce multiple-voting shares (as per their articles of association) are those contemplating an initial listing on an MTF. The mandate that multiple-voting shares must be authorised relates only to the MTF admission

---

[4] For rejection, see, e.g., German Association for Financial Analysis and Asset Management e. V., as well as the opposing stakeholders mentioned below at I 2 note 45 and at III 2 c, some of which have already formulated this in relation to the draft directive.

[5] Report of the High-Level Group of Company Law Experts on a Modern Company Law Framework in Europe of 4 November 2002, available at www.ec.europa.eu/internal_market/company/docs/modern/report_de.pdf..

[6] See also Arbeitsgruppe Europäisches Gesellschaftsrecht, ZIP 2003, 863; *Silja* Maul,Vorschläge der Expertengruppe zur Reform des EU-Gesellschaftsrechts, DB 2003, 27; and finally Modernising Company Law and Enhancing Corporate Governance in the European Union – Action Plan, COM (2003) 284.

[7] Modernising Company Law and Enhancing Corporate Governance in the European Union – Action Plan, COM (2003) 284; *Nicolussi* (note 1); *Gumpp* (note 1).

[8] *Frits Bolkestein*, Die Europäische Union und ihre Ambitionen – Plädoyer für ein mittelatlantisches Wirtschaftsmodell, NZZ 9 November 2000, 83; see *Eckart Bueren*, Short-termism im Aktien- und Kapitalmarktrecht, 2022, 342 note 535.

[9] *Bueren* (note 8) p. 342; *Kalss* (note 1) at 469.

[10] Art. 1 Subject matter and scope; Art. 2 Definitions; Art. 3 Adoption or modification of a multiple-vote share (MVS) structure before admission to trading; Art. 4 Safeguards; Art. 5 Transparency; Art. 7 Review; Art. 7 Transposition; Art. 8 Entry into force; Art. 9 Addresses.

[11] Directive Art. 1 and Directive Recital (7a); as to the definition of MTS see Directive Art. 2 (fa). On the Multiple-voting rights Directive *Jessica Schmidt*, The Multiple-voting rights Directive (MVRD) – comeback of multiple voting rights with the Listing Act, ECCML Working Paper 2024/1, March 2024, available at < https://ssrn.com/abstract=4765465 >; see also the German version: *Jessica Schmidt,* Die Mehrstimmrechte-RL (MVRD): Das Comeback der Mehrstimmrechte mit dem Listing Act, Betriebs-Berater 2024, 643.

phase.[12] The crucial idea is that the founders and original owners of the shares should be able to exercise significant influence beyond an IPO despite the eventual listing of the company's shares.[13]

b) Mandatory limits on shares with multiple-voting rights

Article 4 (1) of the Directive contains various mandatory safeguards. These relate in part to the introduction of the share class and in part to the scope of the right. Article 4 (1) of the Directive stipulates that the decision to introduce multiple-voting shares should be by a qualified majority of the general assembly as specified in national law and by special resolution of each class of voting shares. Multiple-voting shares must be open to all legal entities. The original proposal called for the determination of a maximum voting-rights multiplier combined with a cap on the amount of capital subject to multiple-voting rights or, alternatively, for the multiple-voting rights to be restricted to certain kinds of resolutions; however, capping the amount of associated capital was ultimately dropped as a requirement. The Directive itself also does not stipulate a maximum voting-rights multiplier.

In principle, these requirements are appropriate, and they fit the power-sharing arrangement between the European Union and the Member States. For the Member States to set limits is an appropriate regulatory mandate. To ensure good corporate governance, however, Article 4(1)(b) should have contained more specific quantitative limits.[14]

c) Additional optional limits on multiple-voting shares

Article 4(2) of the Directive specifies a series of optional safeguards that it groups into three categories, each a type of sunset clause, i.e., a clause that stipulates when the multiple-voting structure must expire under the articles of association: upon first transfer by the first owner to a legal successor (a transfer-based sunset clause); after a certain period of time (a time-based sunset clause); or upon the occurrence of a certain event (an event-based sunset clause). [15]

[12] *Jessica Schmidt* (note 11) at 3 et seq.; on the Commission's draft: *Kalss* (note 1) at 486; *Gumpp* (note 1).
[13] *Alain Pietrancosta*, "Propositions françaises et européennes pour ouvrir le vote multiple aux sociétés entrant en bourse", BJS janv. 2023, n° BJS201q7
[14] *German Bar Association* (note 1) *at* 469; *Kalss* (note 1) at 468.
[15] *Kalss* (note 1) at 487.

It is correct in principle that it should be left to national law to set limits on how long a multiple-voting structure can remain in place.

d) Brief outline of the legal policy debate at the European level

The European Parliament proposed a massive overhaul of the European Commission's original proposal. According to the Draft Report of the Committee on Economic and Monetary Affairs of the European Parliament, dated 14 June 2023,[16] the introduction of multiple-voting rights as per the articles of association ought to be permitted for all companies rather than be limited to the SME market. But in return the multiple-voting-rights multiplier was to be no more than between two and five, and the right was to be valid for no more than ten years as per the articles of association, after which they would automatically expire. Some safeguards that the proposed directive had treated as optional for the Member States were to be made mandatory and the bar against exercising multiple-voting rights on resolutions affecting human rights and the environment was added. Extending the scope of the directive therefore came at the price of massive restrictions on private ordering, and Member States fiercely opposed it.[17]

The Legal Affairs Committee of the European Parliament published its position in September 2023.[18] While holding firm that the directive should be extended to cover the regulated market, it rejected the specification of a fixed maximum-voting-rights multiplier as well as the mandatory sunset. It also came out against the mandatory provision on resolutions on human

[16] See Committee on Economic and Monetary Affairs Draft Report 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 (COM(2022)0761 – C9-0416/2022 – 2022/0406(COD)), 14 June 2023; Draft Opinion of the Committee on Legal Affairs for the Committee on Economic and Monetary Affairs 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 (COM(2022)0761 – C9 0416/2022 – 2022/0406(COD)); see also www.europarl.europa.eu/doceo/document/ECON-PR-749139_EN.pdf; *adde*, Draft Opinion of the Committee on Legal Affairs, https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2024-03-12&atto.codiceRedazionale=24G00041&elenco30giorni=false. For background information on the position of the European Parliament and the tripartite negotiations see *Skog* (note 3).

[17] *Jesper Lau Hansen*, A Harmonising Step Too Far – A Comment on the Proposal for a Directive on Multiple-voting rights in SME, Nordisk Tidsskrift for Selskabsret nr. 1/2023, available at < https://www.linkedin.com/posts/jesper-lau-hansen-7b8aa81_jl-hansen-a-harmonising-step-too-far-nts-activity-7069257976837984256-XJJM?utm_source=share&utm_medium=member_desktop. >

[18] European Parliament, Opinion of the Committee on Legal Affairs (20 September 2023), in European Parliament, Report (note 16), p. 10 et seq.; *Alain Pietrancosta*, The EU Commissions Forward Measures on CMU and the new proposals on Company Listing, ECCL (European Company Case Law) Conference Lisbon, 3 November 2023, to be printed in ECCL 2024.
As a final compromise the preamble (19) states: "It is important that the enhanced voting rights attached to MVSs within the scope of this Directive are not used to prevent companies from complying with applicable Union environmental or fundamental rights law."

rights and environmental issues. One new thrust was a provision for the protection of employees stipulating that their voting rights could not be restricted.

The European Parliament Committee on Economic and Monetary Affairs presented a compromise proposal.[19] The Spanish presidency ultimately set up trilogue negotiations beginning on 23 November 2023 by working up the different positions of Council and Parliament and framing the issues into several questions for discussion.[20] In a nutshell, the Council's position favoured retaining the narrow scope of application and restriction to the SME market[21] as well as limiting the protections for existing shareholders to a few requirements while enabling the Member States to provide additional safeguards.

The European Parliament took the contrary position, seeking the broadest possible scope of application (including the regulated market as well as companies trading on an MTF or OTF) and strict mandatory safeguards in return, such as a maximum voting-rights multiplier of between two and twelve and a cumulative cap on the number of shares subject to multiple-voting rights that could be authorised. Complementing these were additional proposed restrictions on multiple-voting rights that would require qualified capital majorities to pass various types of resolutions and, finally, that no multiple voting be permitted on items placed on the agenda by other shareholders. Whether Europe would opt for a narrow approach (limited to planned listing on an SME market) with relatively liberal rules characterised by private ordering or strive for a broad directive with strict protections for other shareholders – interfering deeply with corporate law in the Member States – turned on these negotiations.

And so it was an interesting development if not a turning point at the European level[22] that, in a reversal of the original intention of the draft, the (basically desirable) extension of the directive's scope beyond SME growth markets to companies listed on the regulated market now looked certain, accompanied by greater restrictions. Thus what first had the character of a door-

[19] Draft European Parliament Legislative Resolution, European Parliament, Report – A9-0300/2023 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 share on a SME growth market, 26.10.2023, available at < https://www.europarl.europa.eu/doceo/document/A-9-2023-0300_EN.html.>; *Pietrancosta* (note 18).
[20] General Secretariat of the Council of the European Union; Presidency Flash – Interinstitutional Files 2022/0406 (COD) of 14 November 2023.
[21] Council mandate for negotiations with the European Parliament, General Secretariat of the Council of the European Union, note, 8192/23, 14.4.2023; the Nordic states advocated adhering to the general approach mandate in the trilogue, Non Paper MSCD from DK, FI and SE – Interinstitutional Files 2022/0406 (COD) of 13.11.2023.
[22] *Pietrancosta* (note 1).
.

opener and "enabling instrument" now significantly raised both the ceiling and the floor for the more liberal Member States: broader scope (all listed companies), but with the quid pro quo, in terms of content, of significantly stricter requirements. Support and acceptance of the directive among interest groups in several Member States – Sweden, Finland and Denmark, for example – had therefore morphed into complete rejection.[23]

e) Content of the Multiple-voting shares Directive of 2024

According to Art. 3, the operator of the MTF must also accept multiple-voting structures that pre-date listing on an MTF; existing multiple-voting structures are not grounds for denial. Article 4 requires that a qualified majority is needed to introduce a multiple-voting structure, though certainly not unanimity. The Directive also mandates minimum safeguards, leaving a broad choice of options to the Member States,[24] either to enact a maximum voting quota or, alternatively, special regulations requiring decision by a qualified majority. A key protective measure consists in requiring that the introduction of multiple-voting share structures be published in the company's prospectus and annual financial reports.[25]

f) Compatibility with European primary law and the "golden share" cases of the European Court of Justice

That multiple-voting rights as per the articles of association are compatible with European primary law (the freedom of establishment and free movement of capital in particular)[26] can be deduced from the ECJ's cases on "golden shares".[27] Golden shares are special rights public owners hold in companies in order to maintain state influence without a corresponding capital investment in the company.[28] Only state entities are entitled to hold these special rights. Conceptually, the golden share would be an ideal candidate for multiple-voting rights, but this

[23] Statement Business Europe of 22 August 2023.
[24] The preamble (15) states that Member States should insure "that the safeguards do not defeat the purpose of MVS structures, inter alia the possibility for holders of MVSs to influence the appointment and dismissal of members of the administrative, management and supervisory bodies of the company and thereby the operational decisions of the company."
[25] See Article 5 on transparency.
[26] *Nicolussi* (note 1) at 757; *Denninger* (note 1) at 2335; *Herzog/Gebhard* (note 1) at 1898.
[27] *Stefan Grundmann/Florian Möslein*, Die Goldene Aktie – Staatskontrollrechte in Europarecht und wirtschaftspolitischer Bewertung, ZGR 2003, 317; *Stefan Grundmann*, Europäisches Gesellschaftsrecht (2011) Rz 648, 651; *Susanne Kalss*, Aktienrecht im Lichte der Kapitalverkehrsfreiheit, Journal für Rechtspolitik (JRP) 13 (2005), 26; *Nicolussi* (note 1) at 757; *Marco Ventoruzzo*, The Disappearing Taboo of Multiple Voting Shares: Regulatory Responses to the Migration of Chrysler-Fiat, ZVglRWiss 2015, 192 at 212.
[28] *Jessica Schmidt*, Golden Shares – VW and beyond, in Susanne Kalss/Holger Fleischer/Hans-Ueli Vogt, eds., Der Staat als Aktionär (2019) 171 at 178 et seq., 173.

obviously has not been done, directly, and so state-held multiple-voting shares have yet to be examined by the ECJ.[29] Instead, the Court has only dealt with special rights to appoint board members[30] or to veto individual resolutions[31] as well as rights to authorise or object to equity investments.[32] From these limits, one can derive limits on the permissibility of state entities holding multiple-voting rights: only if they serve the needs of public order and security or other compelling reasons in the public interest while fulfilling the substantive requirement of proportionality.[33] However, only state shareholders are subject to this restrictive approach. In line with ECJ case law, Art. 4 of the Shareholder Rights Directive assumes that as long as the principle of equal treatment of all shareholders with the same voting rights is established, the Member States will be able to enact alternative rules.[34]

g) Overall assessment of the European Directive of 2024

The overall assessment of the European Directive has been mixed.[35] Its basic approach – minimum harmonisation with some mandatory and some optional safeguards – is generally worthy of approval,[36] but its scope of application – whether to the SME market alone as in the original proposal or to MTFs including SME growth markets – is certainly too narrow, and it entails a risk of unequal treatment of similar situations. It does mean a kind of (rather hesitant) relaxation of the rules in the few Member States that now ban multiple-voting shares; at least for companies in MTFs and SME growth markets, these states must now enact rules that permit multiple-voting shares. For Germany, the Directive will cover only the Scale segment of the German Stock Exchange, which has existed since 2019, whereas in other countries such as Austria or the Netherlands there is currently no SME growth market. In this respect, there have been broad (and justified) calls for the Directive to be extended to cover all stock exchanges, including the regular market.[37] The EU Member States whose legal regimes currently permit

[29] *Schmidt* (note 28); *Marcus Lutter/Walter Bayer/Jessica Schmidt*, Europäisches Unternehmens- und Kapitalmarktrecht, 6th ed., 2018, § 15; *Nicolussi* (note 1) at 757. On loyalty rights, see II 2.a and III 3a. below.
[30] ECJ 11 November 2010 Rs-534/08.
[31] ECJ 11. 11.2010 Rs-534/08.
[32] *Marcus Lutter/Walter Bayer/Jessica Schmidt*, Europäisches Unternehmens- und Kapitalmarktrecht, 6th ed. (2018) Rz 15.2; *Schmidt* (note 28) at 173.
[33] *Lutter/Bayer/Schmidt* (note 32) at para. 15.8; *Schmidt* (note 28) at 178 et seq.
[34] *Kalss* (note 1) at 472; *Nicolussi* (note 1) at 757.
[35] *German Bar Association* (note 1) at 464 et seq.
[36] Likewise *German Bar Association* (note 1) *at* 466.
[37] *Gumpp* (note 1) at 88. According to the Directive Recital (4) any control-enhancing mechanism leveraging voting rights other than multiple voting structures, such as non-voting shares and shares with a right to veto certain decisions, falls outside the scope of the Directive. This considerably reduces the effect of the mandatory safeguards as envisaged by the Directive.

limited multiple-voting-share structures will remain largely unaffected by the Directive, but not entirely, because once the Directive takes effect they will have to implement mandatory safeguards for their MTFs and national equivalents of the SME growth market and each face the question of the appropriate regulatory regime.[38]

However, for those countries that already permit multiple-voting shares under current law, either in general or with minor limits for the SME growth market, the European legislation represents a step backwards since it leads to different solutions for MTFs and the SME growth market on one hand and their regular markets on the other. This accounts for the resistance – particularly in Scandinavia – to the adoption of more far-reaching regulations at the European level.[39]

2. The German Future Financing Act of 11 December 2023: General authorisation of multiple-voting shares with limits and safeguards for listed companies

In proposing to and ultimately abolishing the ban on multiple-voting shares, the draft bill of the Future Financing Act (the "ZuFinG") of April 2023,[40] government draft of 16 August 2023[41] and final legislation of 11 December 2023[42] were a legal policy sensation.[43] With a wealth of

[38] *The European Company Law Experts Group (ECLE)* (note 22).
[39] See, for example, Business Europe statement of 22 August 2023; see also Confederation of Swedish Enterprise, Dual class share structures with differentiated voting rights,1 February 2023; see also: The European Company Law Experts Group (ECLE) (note 22).
[40] Ministerial draft of the German Multipole Voting Law (ZuFinG, Referentenentwurf, RefE) 12.4.2023. Shared responsibility of the Federal Ministry of Finance and the Federal Ministry of Justice.
[41] Governmental Draft of the German Multiple-voting Law (ZuFinG, Regierungsentwurf, RegE) 17.8.2023, furthermore cited as Governmental Draft Act.
[42] Act on the Financing of Future Investments (Future Financing Act – ZuFinG) of 11 December 2023, Federal Law Gazette 2023 I No. 354. In the Finance Committee, the content of the draft bill remained unchanged apart from reversing the order of Section 12 of the Stock Corporation Act as amended (multi-voting shares, preference shares), BT-Drucks 20/9363 15 November 2023. In contrast, the Bundesrat suggested either generally waiving the time restrictions and the restrictions on transfer to third parties (Section 135a II1 and 2 of the Stock Company Act (Draft)) or introducing them for all multi-voting shares. The Bundesrat also requested clarification that multi-voting rights (also) not be taken into account when calculating capital majorities, which the government's counterstatement declined to do, BT-Drucks 20/8675 6.10.2023.
[43] *German Bar Association (DAV) Commercial Law Committee*, Stellungnahme zum Entwurf eines Zukunftsfinanzierungsgesetzes, NZG 2023, 738 at 742; *Matthias Casper*, Das Zukunftsfinanzierungsgesetz – Zwischen Griff in die historische Mottenkiste und behutsamer Fortentwicklung der Unternehmensfinanzierung, 187 ZHR 187 (2023) 5 at 17 et seq.; *Matthias Casper*, Das Zukunftsfinanzierungsgesetz: Sammelsurium oder großer Wurf? ZRP 2023, 105; *Philipp Ceesay*, Mehrstimmrechtsaktien nach § 135a AktG im Blickfeld von Aktien-, Übernahme,- Konzernrecht und DCGK, AG Sonderbeilage 6/2024, S2 with an earlier German version available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4585581 >; *Denninger* (note 1); *Tim Florstedt, Das Zukunftsfinanzierungsgesetz* – Börsenmantelaktiengesellschaft und Mehrstimmrechtsaktie, NZG 2024, 139 at 143 et seq.; *Tim Florstedt*, Mehrstimmrechte, ZGR 2024, issue 2; *Gumpp* (note 1); *Horst Hammen*, Reform des Rechts der Mehrstimmrechtsaktien, Der Konzern 2023, 289; *Rafael Harnos*, Unternehmensrechtliche Regelungsvorschläge im Referentenentwurf des Zukunftsfinanzierungsgesetzes – eAktie, Mehrstimmrechtsaktie, Kapitalerhöhungsrecht und Börsenmantelaktiengesellschaften (SPACs), AG 2023, 348 ff; *Herzog /Gebhard*

new instruments and amendments to more than 30 laws, the new regime aims to make it easier for family businesses, start-ups, and other small and medium-sized enterprises (SMEs) to raise capital. Many of the 58 comments received and published by the Federal Ministry of Finance primarily addressed the new regime for multiple-voting shares.[44] The reactions were mixed, with approving as well as a number of critical and some utterly negative comments.[45] Those in favour emphasised increased flexibility for companies interested in the capital market, the potential boost to the stock exchanges and capital markets, and the possibility of enshrining the spirit of a company's founders even after listing. Opposing voices criticised the divergence of capital investment from the associated risk, the weakening of the traditional, well-tried and well-tested control mechanisms, and the disregard of active shareholders. In particular, there were concerns that multiple-voting rights should not be exercised on certain resolutions, such as to ratify the acts of the management and supervisory board members, sue for damages, or appoint a special auditor. As for the sunset clause issue, it was noted that should multiple-voting rights be granted to a legal entity, they should expire upon a change in control of the entity.

(note 1); *Niklas Joser*, Der Referentenentwurf zum Zukunftsfinanzierungsgesetz, ZIP 2023, 1006; *Jörg-Peter Kraack*, Übernahmerechtliche Implikationen des Zukunftsfinanzierungsgesetzes, NZG 2023, 1151; *Thorsten Kuthe*, Der Referentenentwurf zum Zukunftsfinanzierungsgesetz, BB 2023, 1603; *Thorsten Kuthe*, Commission Proposal for the EU Listing Act Prospectus Law, Market Abuse Law, Multi-voting Share, AG 2023, R28, R29; *Sebastian Mock/Alexander Herzog*, Mehrstimmrechtsaktien im Kapitalmarktrecht, WM 2024, 1005; *Sebastian Mock/Jean Mohamed*, Goodbye One Share One Vote? – Welcome Dual-Class Shares! A comparative overview of legal policy reform considerations, NZG 2022, 1275 ff; *Nicolussi* (note 1); *Schlitt/ Ries* (note 1); *Klaus Ulrich Schmolke*, Dual-class shares on the rise. Some remarks on the (re)introduction of multiple-voting rights in German stock corporation law, available at < https://ssrn.com/abstract=4664886 >; *Andreas Seidel*, Die Renaissance der Mehrstimmrechtsaktie, NZG 2023, 1205; *Klaus von der Linden/Thomas Schäfer*, Der RefE eines Zukunftsfinanzierungsgesetzes – die wichtigsten Punkte aus aktienrechtlicher Perspektive, DB 2023, 1077; *Klaus von der Linden Klaus/Cornelius Wilk*, Neue Guidelines der Stimmrechtsberater, Kraftproben bei HV-Formaten und Mehrstimmrechten, NZG 2023, 193; *Friederike Volkmann/Carl-Friedrich Thoma*, ZuFinG – Mehrstimmrechtsaktien als Instrument für Familienunternehmer und Gründer? RFamU 2023, 443; *Arne Wittig/Jakob Hummelmeier*, Back to the Future: Mehrstimmrechtsaktien nach dem Zukunftsfinanzierungsgesetz, WM 2024, 332. More generally, *Christoph Beckmann*, Das aktienrechtliche Mehrstimmrecht, Geschichte, Corporate Governance und Perspektive, 2023; *Lisa Wolf*, Mehrstimmrechtsaktien – Ein Vergleich des US-amerikanischen mit dem deutschen Recht unter Berücksichtigung ökonomischer und empirischer Gesichtspunkte sowie des EU Listing Act and des ZuFinG, 2023 at p. 229 et seq..

[44] See also in addition: https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_VII/20_Legislaturperiode/2023-04-12-ZuFinG/0-Gesetz.html

[45] *In favour*, e.g., the following institutions: German Bar Association (DAV), Committee on Commercial Law; Die Deutsche Kreditwirtschaft; German Share Institute (Deutsches Aktieninstitut, DAI); German Stock Exchange Group (Deutsche Börse Group); Association of Financial Markets in Europe (afme/); Verband der Chemischen Industrie eV (VCI); Start-up Verband.

Critically in favour: Bundesverband der Wertpapierfirmen; Institute of the Auditors (Institut der Wirtschaftsprüfer, IDW); Deutsche Gesellschaft des Steuer und Gesellschaftsrecht (DGDSG); Interessenverband kapitalmarktorientierter kleiner und mittlerer Unternehmen e.V.

Negative and rejecting: e.g., DGB (Deutscher Gewerkschaftsbund); BVI (Bundesverband Investment und Asset Management ev); Deutsche Schutzvereinigung für Wertpapierbesitz e.V (DSW) Transparency International Deutschland eV; Initiative Minderheitsaktionäre; Deutscher Notarverein (DNotV).

After many years of multiple-voting (i.e., dual-class) shares being banned,[46] the draft bill, while not surprising per se, did surprise the wider public. In 2021, in the run-up to the most recent election and during the ensuing negotiations to form a governing coalition, studies appeared that clearly recommended that multiple-voting shares should be authorised.[47] The governing Bundestag coalition (known as the *Ampel* or "traffic-light" coalition) agreed, in December 2021,[48] to allow dual-class structures in particular for growth companies. Its key-issues paper of 29 June 2022[49] explicitly identified multiple-voting rights as in important legislative priority. The contemplated main features[50] were (i) for unlisted companies, unfettered private ordering; for listed companies, multiple-voting rights with a series substantive requirements; (ii) that multiple-voting shares could issue only with the consent of all shareholders; (iii) for listed companies, that multiple-voting rights must sunset after ten years or upon transfer of the shares, (iv) a maximum voting-right multiplier of 10 for multiple-voting shares; and finally, (v) special restrictions on the exercise of multiple-voting rights to appoint auditors, whether for statutory or special audits.

Germany's departure from the long-established mandate of the one-share, one-vote principle[51] surprised other EU Member States. Germany – along with Austria, Bulgaria, Greece and Croatia, among others – had been regarded as prototypical of the uncompromising ban on multi-voting structures and because of this had been either attacked or praised in the major legal-policy debate over one share, one vote in the European Union in the early 2000s.[52] Though Germany had just abolished multiple-voting share structures in 1998, it was mainly German members who, in 2003, only a few years later, stalemated the European Parliament, scuttling a proposed version of the Takeover Directive that included a mandatory ban on multiple-voting structures for listed companies.[53] In a subsequent re-evaluation and possible alteration of the takeover regime, Germany wanted to act independently of other Member States, and

[46] For more on the shifting history of authorisation or prohibition of multiple-voting shares in the German Stock Corporation Act, see *Kalss* (note 1); *Casper* (note 43) ZHR 187 (2023) 187 at 5.
[47] See for example *German Stock Exchange Group,* Strategien für eine nachhaltige Kapitalmarktfinanzierung (2020) pp. 55, 59.
[48] Coalition agreement for the 20th legislative period, p. 169
[49] 29/06/2022 – *Key points* for a *Future Financing Act*. Measures to improve the financing of future investments and to facilitate access to the capital market for companies, in particular start-ups and SMEs.
ups, growth companies and SMEs (in German), available at <https://www.bundesfinanzministerium.de>
[50] See in detail below IV.
[51] There has been comprehensive discussion of the legal economics and policy dimensions of the one-share, one-vote principle, see III 1, 2 a below.
[52] *Bolkestein* (note 8); see *Bueren* (note 8) p 339.
[53] *Bueren* (note 8) p. 339; *Peter Wiesner,* Die neue Übernahmerichtlinie und die Folgen, ZIP 2004, 345; *Andreas Engert*, Gesellschaftsrecht, in Katja Langenbucher, ed., Europäisches Privat- und Wirtschaftsrecht 5th ed. (2022) § 5 Rz 117.

consequently the prerogative and option to ban multiple-voting structures shifted from the European level to the Member States – at least as long as the Takeover Directive applied. Only a few Member States actually exercised the regulatory option of establishing a mandatory prohibition in the takeover situation.[54]

The new German provisions in Sections 12 and 135a of the Stock Corporation Act as amended by the 2023 legislation[55] are actually only a partial turnaround, since, while multiple-voting structures are now permissible if accomplished by an amendment to the articles of association, they are still subject to a whole series of far-reaching, controversial limits to be discussed in more detail below (see IV). To lead off the present assessment of the new German law on multiple-voting structures, it should be said that readers will encounter general approval, accompanied by a number of suggestions on how the law might be complemented as well as reservations about how the law handles particular issues.

II. Comparative legal experience

1. Countries that extensively authorise multiple-voting structures

a) The United States

[54] *Kalss* (note 27); *Silja Maul/Larissa Furtwengler*, in Peter Kindler/Jan Lieder, European Company Law, Takeover Directive (2021) Art 11 Rn 3, p 1012.
[55] Section 12 of the Stock Corporation Act as amended reads:
Each share confers voting rights. In accordance with the provisions of this Act, shares with multiple-voting rights and preference shares without voting rights may be issued.
Section 135a of the Stock Corporation Act as amended:
(1) The Articles of Association may provide for registered shares with multiple-voting rights. The multiple-voting rights may not exceed ten times the voting rights pursuant to Section 134 (1) sentence 1. A resolution by the annual general assembly to issue shares with multiple-voting rights requires the approval of all shareholders concerned.
(2) In the case of listed companies and companies whose shares are included in over-the-counter trading in accordance with Section 48 of the German Stock Exchange Act, the multiple-voting rights shall expire in the event of the transfer of the share. They expire no later than ten years after the company is listed on the stock exchange or the shares are included in over-the-counter trading, unless the articles of association provide for a shorter period. The period pursuant to sentence 2 may be extended in the articles of association by a specific period of up to ten years. The resolution on the extension may be passed at the earliest one year prior to the expiry of the period pursuant to sentence 2 and requires a majority of at least three quarters of the share capital represented at the time the resolution is passed. The articles of association may stipulate a larger capital majority. If there are several classes of shares with voting rights, the resolution requires the approval of the shareholders of each class in order to be effective. The shareholders of each class must pass a special resolution on the approval. Sentences 4 and 5 apply to this.
(3) The articles of association may stipulate further requirements.
(4) In the case of resolutions in accordance with section 119 (1) no. 5 and section 142 (1), multiple-voting shares entitle the holder to only one vote.

The development and use of multiple-voting structures in the United States[56] underwent several major phases. Between 1900 and 1980, multiple-voting rights were initially used to facilitate market access for companies; from 1980 onward, they were used to defend against unfriendly takeovers; and finally, beginning in 2004 with the Google IPO, they were used to help technology companies raise capital while preserving the influence of the driving founders.[57] Individual state laws, Delaware law in particular, authorise multiple-voting structures.[58] But of greater significance are the listing rules of the New York Stock Exchange (NYSE) and the NASDAQ.[59] The NYSE was initially very reluctant to admit multiple-voting shares. As early as 1926, the NYSE ruled to exclude multiple-voting rights and banned them outright in 1940 while competing exchanges such as the American Stock Exchange (AMEX) and NASDAQ continued to accept dual-class listings.[60] The listing rules of these exchanges stipulate that multiple-voting rights must already exist at the time of the IPO and may not be introduced with pre-existing or ongoing listings. [61]

In 2015, 14% of all IPOs featured a multiple-voting structure; between 2017 and 2019, it was 20%. By 2021, 24% of tech companies had one.[62] The proportion of multiple-voting structures introduced immediately before an IPO rose from 1% in 2005 to 32% in 2022; of these, 46% were in the tech sector.[63] However, non-tech companies are also increasingly utilising multiple-voting structures.[64] But overall, these figures are relative, since 90% of all listed stock corporations have only one share class and therefore no multiple-voting rights.[65] Typically[66], the new structures create a two-tier system and set a ten-fold multiplier. For example, the

---

[56] For an account of the history, current status and economic pros and cons, see the extensive literature listed in note 135. For a recent comparison of multiple-voting rights (dual-class stock) in the United States and Germany in German, see *Lisa Wolf* (note 43).
[57] *Jill E. Fisch*, Does one size fit all? Individualised Tailoring of Dual Class Structures, lecture ECCL Conference Lisbon on 3.11.2023.
[58] In particular *Wolf* (note 43) with a comparison of Germany and the USA; see also *Bueren/Crowder* (note 1) at 108 et seq.; *Kalss* (note 1) at 451.
[59] OECD Corporate Governance Factbook 2021, 100.
[60] *Jill E. Fisch/Steven Davidoff Solomon*, The Problem of Sunsets, B.U.L.Rev. 99 (2019) 1057 at 1065 et seq.; *Dorothy S. Lund*, Non-Voting Shares and Efficient Corporate Governance, 71 Stan. L. Rev. 687 (2019) at 701 et seq.
[61] Nasdaq 5600 Corporate Governance Requirements (5640 Voting Rights) SR-Nasdaq-2009-018; NYSE Listed Company Manual Section 313.00 Voting Rights, OECD Corporate Governance Factbook 2021, 100.
[62] *Jill E. Fisch/Steven Davidoff Solomon*, Dual Class Stock, Law Working Paper No. 715/2023, June 2023, available at < https://ssrn.com/abstract_id=4436331 >.
The best-known names are: Google (=Alphabet); Facebook, LinkedIn, Alibaba, Square, Pinterest, Uber, Airbnb, Slack Technologies, all cited in HCJ, Rapport sur les droits de vote multiples, 15.9.2022, 49.
[63] *Pietrancosta* (note 18).
[64] *Haut Comité Juridique de la Place Financière de Paris (HCJP),* Rapport sur les droits de vote multiples, Paris, 15 September 2022, p. 50.
[65] *HCJP* (note 64) p. 49.
[66] *HCJP* (note 64) p. 51.

certificate of incorporation of META PLATFORMS INC (Delaware Corporation) reads, in excerpts, in section 3.2: “(i) Each holder of shares of Class A Common Stock shall be entitled to one (1) vote for each share of Class B Common Stock held as of the applicable date on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation. (ii) Each holder of the shares of Class B Common Stock shall be entitled to ten (10) votes for each share of Class B Common Stock held as of the applicable date on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation.”

But one also finds more involved structures, as in the example of Snap, which has a three-tier structure:[67] “Class C shares are held by cofounders and have ten votes per share. Based on outstanding amounts, founders have total control of the company; Class B shares are held by pre-IPO investors and employees. Holders of class B shares have one vote per share; Class A shares were offered to new investors in the IPO. Holders of class A shares have no voting rights.”

b) Scandinavian countries in the European Union[68]

Eighty per cent of all listed companies in Sweden feature multiple-voting shares. Since 2000, the law has limited the maximum voting-right multiplier to 10.[69] The multiple-voting shares are not time-limited (no mandatory expiry clause). They are accessible to any person. In Finland, as in Denmark, multiple-voting shares are permitted without restriction[70]. In practice, the ten-fold multiplier is most common and is the market standard,[71] but it is not prescribed by law.[72]

c) The Netherlands

---

[67] *HJCP* (note 64) p. 51.
[68] See the annex at the end of this article: Multi-voting shares in the EU.
[69] *Erik Lidman/Rolf Skog*, London Allowing Dual Class Premium Listings – A Swedish Commentary, Journal of Corporate Law Studies 2021, 21 = ECGI Law Working Paper N° 580/2021, Stand April 2021, p. 25, available at < https://ssrn.com/abstract=4590616 >.
[70] *Wolf-Georg Ringe* in Ulf Bernitz/Wolf-Gerog Ringe (eds.), Company Law and Economic Protectionism 2010, p. 209, 236 at 236.
[71] *Glass Lewis* 2020 Proxy Paper, Guidelines Danmark (2020) 4.
[72] *ISS/Shearman & Sterling/ECGI*, Report on the Proportionality Principle in the European Union, 2016 p. 27; *Nicolussi* (note 1) at 757 et seq.

Dutch company law permits the introduction of multiple-voting shares or loyalty shares.[73] In September 2022, five large listed companies had provided for loyalty rights,[74] and now that the case law has clarified the framework, other companies are considering them.[75] Article 2:38 of Book 2 of the Dutch Civil Code also permits the introduction of multiple-voting shares by establishing different classes, or simply by converting ordinary shares in a high/low voting scheme.[76]

Dutch law does not currently restrict the multiple-voting structure or provide a maximum voting-right factor, maximum number of shares subject to multiple-voting rights, or a sunset clause.[77] Resolutions of the annual general assembly usually pass by a majority of votes cast; a quorum of the share capital is generally not required. However, where provided by law or in the articles of association, higher majorities may be required if (for example, on important resolutions) less than half of the subscribed capital is present at the annual general assembly.[78]

Although many Dutch companies use a multiple-voting structure, in most cases the multiple-voting shares are not traded on the stock exchange (though it is permissible). Many companies that employ various forms of multiple-voting rights (loyalty or multiple-voting shares) have no longstanding corporate tradition in the Netherlands and are taking advantage of the freedom of establishment and very aggressive openness of Dutch company, commercial and tax law. [79]

d) Switzerland

Switzerland enforces a system of indirect voting shares (*Stimmrechtsaktien*)[80] in accordance with Art. 693 para. 1 of the Swiss Code of Obligations (CO) labelled as a separate class of

---

[73] *Roest*, Dual Class and Loyalty Shares – The Dutch Perspective, lecture ECCL conference in Lisbon, 3 November 2023; *Foris C. M. in de Braekt*, Limitations to the Development of Loyalty Shares in the Netherlands?, European Company Law 20, nr 2 (2023) 40. As to loyalty shares see II 2 a below.
[74] *HCJP* (note 64) p. 74.
[75] Amsterdam Court of Appeal, 1 September 2020, ECLI:NL:GHAMS:2020:2379.
[76] Book 2 Civil Code (Boek 2 Burgerlijk Wetboek) Stb. 1976, 395 as amended; *Hans de Wulf*, An Introduction to and Evaluation of the 2019 Belgian Companies Act – Preparing for the Previous War?, ECFR 2023, 109 at 114.
[77] *Roest* (note 73).
[78] *Regine Nuckel*, in Stefanie Jung/Peter Krebs/Sascha Stiegler, Gesellschaftsrecht in Europa, 2019, Section 16 Netherlands Rn 202.
[79] For Belgium *De Wulf* (note 76) at 114, 159.
[80] *HCJP* (note 64) at nos 23 et s., p. 10, and p. 66 et s.; *Isabelle Chabloz, Alexandra Vraca*, Actions de loyauté : une fausse bonne idée, SZW 2023, 286; *Jean Nicolas Druey/Lukas Glanzmann*, in Jean Nicolas Druey/Eva Druey-Just/Lukas Glanzmann, Gesellschafts- und Handelsrecht, 12th ed. (2021) Section 10 para. 29; *Peter Böckli*, Schweizer Aktienrecht, 5th ed. 2022, § 3 comments 141 et seq.; *Nicolussi* (note 1) at 762. Despite criticism, the 2020 reform of stock corporation law has retained the voting rights and even strengthened their influence, *Peter Forstmoser/Marcel Küchler*, Schweizerisches Aktienrecht 2020, 2022, p. 312 et seq.

shares that are privileged in terms of voting rights in that the articles of association stipulate that they have a lower nominal value. While "one share, one vote" formally applies, voting shares with this lower nominal value exercise greater voting power in relation to the associated capital investment. This power is limited to a maximum of ten times the nominal value. However, the proportion of public companies with such indirect voting shares has declined sharply over the decades.

2. Countries with a liberal regime for unlisted companies and clear restrictions for listed companies

a) Countries with loyalty shares for listed companies: France, Belgium, Spain, Italy

A number of countries permit the introduction of multiple-voting structures in the articles of association of unlisted companies but either reject it if the stock is listed on an exchange or only permit the introduction of loyalty shares. Loyalty shares are characterised by double- or triple-voting rights for shareholders as a reward for and in consideration of them holding the stock for a certain period of time. The increased voting right attaches to the person of the shareholder and long-term ownership of the share, not to the share itself.[81] The loyalty share is not a separate class of shares, and the increased voting rights are lost upon transfer.

France traditionally recognises a double-voting right for listed shares registered for at least two years in the name of the same shareholder pursuant to Article L225-123.[82] Loyalty shares were introduced in 1933 and consolidated in 1966.[83] Since 2014, loyalty shares are the rule by default, so a company that does not want loyalty shares must opt out of this regime. Their default status in this solution explains the high number of companies with loyalty share structures.[84]

Article 7:52 of the Belgian code has provided for classes of multiple-voting shares as per the articles of association since 2019.[85] Listed companies, however, are limited to providing loyalty

---

[81] *Yannick Chatard*, Treuestimmrechte, 2023, p. 39 ff; *Christoph Burckhardt*, Loyalitätsaktien im schweizerischen Recht de lege lata und de lege ferenda (2023) p. 9 et seq. As to loyalty shares see infra III 3 a.

[82] *Peter Jung*, Loyalitäts- und Aktivitätsprämien für Publikumsaktionäre – Ein kritischer Rechtsvergleich, ZvglRWiss 120 (2021) 104 at 107; *Chatard* (note 81). As to the new French law of 2024 see infra II 4 c.

[83] *Chatard* (note 81) p. 35, 39.

[84] *Chatard* (note 81) p. 39 et seq.; *Conac* and *Holger Fleischer*, both cited in Siepers, Symposion Discussion Report: The Private Limited Without Capital and Loyalty Shares in Belgium, ECFR 2023, 58 at 59 et seq.

[85] *Steven Declercq/Jeroen Delvoie/Theo Monnens/Tom Vos*, Loyalty Voting Rights in Belgium: Nothing More than a Control-Enhancing Mechanism? 20 European Company and Financial Law Review (ECFR) 2023, 27; *Marieke Wyckaert*, Classes of Shares in the Belgian Private and Public Limited Liability Company: A Search for

shares with double-voting rights[86] and a minimum holding period of two years.[87] Since the introduction of loyalty shares, around 10% of listed companies (13 in absolute terms) have made use of this option.[88]

In Spain, listed companies have been permitted to issue loyalty shares in accordance with Article 527b para. 1 Ley de Sociedades de Capital (LSC) since 2021.[89] The law grants double-voting rights if a shareholder has held the shares for at least two years without interruption.[90] The increased voting right is lost upon transfer unless the transfer takes place within the family or group of companies or through a merger or demerger.

Multiple-voting shares up to a factor of three have been available in Italy since 2014[91] in accordance with Article 2351 I of the Civil Code but were not permitted for listed companies. As of March 27, 2024 it is possible for the voting-rights multiplier to be raised to 10 in all companies.[92] It was already and still is possible to stipulate loyalty shares with double-voting rights in the articles of association of listed companies if the shares are held for more than 24 months.[93]

The introduction of loyalty shares was discussed in Switzerland but was rejected in the spring of 2023.[94]

b) Countries that ban multiple-voting shares in listed companies

---

a Reasonable Balance Between Collective an Individual Interests, ECFR 2023, 6 at, 66; *de Wulf* (note 76) at 132 et seq.; *Aurelio Gurrea-Martínez*, Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate, European Business Organisation Law Review 2021, 489, corr. 591; *Sven Tjarks*, Neues Gesetzbuch für Gesellschaften und Vereinigungen in Belgien, <www.fgvw.de/neues/archiv-2019/neues-gesetzbuch-fuer-gesellschaften-und-vereinigungen-in-belgien> (28.06.2023).

[86] Code of Companies and Associations (CCA) Belgian Official Gazette 2019 as amended.

[87] *Declercq/ Delvoie/ Monnens/Tom Vos* (note 85); *de Wulf* (note 76) at 147 et seq.

[88] *Declercq/Delvoie/ Monnens/ Vos* (note 85) at 46.

[89] *Lucian A. Bebchuk/Kobi Kastiel*, The Untenable Case for Perpetual Dual-Class Stock, Virginia Law Review 2017, 600; *Kristoffel Grechenig*, Spanisches Aktien- und GmbH Recht, in Susanne Kalss (ed.), Schriftenreihe zum Gesellschaftsrecht (2005) 120; *Gurrea-Martínez* (note 85).

[90] *Javier Garcia de Enterria*, Spanish Loyalty Shares: Effects on the General Shareholders' Meeting, on Takeover Bids and on Significant Holdings, Ibero-American Institute for Law and Finance (2022) 1; *Isabel Fernández Torres*, Loyalty Shares: An International Perspective. A Suitable Instrument to Fight Short Termism?, ECFR 2023, 556 at 575.

[91] *Marco Ventoruzzo*, The Dissappearing Taboo of Multiple Voting Shares, Regulatory Responses to the Mitgration of Chrysler-Fiat, ZvglRWiss 114 (2015) 192, 214; *Bueren* (note 8) p. 838 footnote 218; *Stefanie Jung/Paolo Flavio Mondini*, in Stefanie Jung/Peter Krebs/Sascha Stiegler (note 78) Section 14 Italy Rn 312.

[92] Law of 5 March 2024, for details see infra II 4 c. As to the situation before *Andrea Vicari*, European Company Law (2021) p. 112.

[93] See II 4 c below; *Jung/Mondini* (note 91), Section 14 Italy Rn 312.

[94] *Isabelle Chabloz, Alexandra Vraca*, Actions de loyauté : une fausse bonne idée, SZW 2023, 286; see also *Christoph Burckhardt*, Loyalitätsaktien im schweizerischen Recht de lege lata und de lege ferenda (2023) 611 Rn 1549.

Some central and eastern European countries such as Slovakia,[95] Bulgaria[96] and Poland,[97] and among the founding states of the EC, Luxembourg,[98] allow a high degree of organisational freedom for unlisted companies but completely prohibit the introduction of multiple-voting shares in listed companies. Polish company law allows unlisted companies to grant double-voting rights regardless of how long they are held.[99] In both Poland[100] and Slovakia,[101] a new structure called the "simple partnership limited by shares" permits multiple-voting shares, but only for unlisted companies.

3. Countries with far-reaching restrictions

a) Germany until 2023

The prototype beginning in 1998 of complete rejection of multiple-voting rights was Germany. Section 12 (2) of the German Stock Corporation Act prohibited multiple-voting rights for all stock corporations. The Future Financing Act has changed this (see supra I 2).

b) Austria and other countries

A similar ban on multiple-voting shares still exists in Austria as well as in Greece, Bulgaria and Croatia. With the exception of a very limited authorisation between 1938 and 1965, Austrian law has flatly prohibited multiple-voting shares; there was discussion of introducing multiple-voting share structures in the early 1990s to accompany the privatisation of a number of nationalised companies, but the ban remained.[102]

---

[95] *Masurova*, Mehrstimmrecht in der Slowakei, lecture on 16 October 2023 at the Vienna University of Economics and Business.

[96] Bulgarian Commercial Law (ТЪРГОВСКИ ЗАКОН 1991) Official Gazette No. 48/18.06.1991 as amended.

[97] *Cierpial-Magnor*, Mehrstimmrecht in Polen, lecture on 16 October 2023 at the Vienna University of Economics and Business.

[98] Shearman & Sterling LLP/Institutional Shareholder Services (ISS) and European Corporate Governance Institute (ecgi), Report on the Proportionality Principle in the European Union 63.

[99] *Joanna Schubel* in Stefanie Jung/Peter Krebs/Sascha Stiegler (note 78) Section 17 Poland (as of 1 October 2017, rdb.at) 314; *Gurrea-Martínez* (note 85); *Andrea Vicari*, European Company Law (n. 92) p. 113.

[100] *Krzysztof Oplustil*, Die einfache Gesellschaft auf Aktien (PSA) – eine neue Gesellschaftsform im polnischen Recht, Martin Winner/Romana Cierpial-Magnor, Neue Regelungen für Start-ups und Investoren in MOE (2021) 117 at 133.

[101] *Kristián Csach*, Einfache Gesellschaft auf Aktien – eine neue Rechtsform im slowakischen Gesellschaftsrecht, in: Martin Winner/Romana Cierpial-Magnor, Neue Regelungen für Start-ups und Investoren in MOE (2021) 41 at 46.

[102] *Kalss* (note 1) at 480; as part of a major reform process launched by the Federal Ministry of Justice, an unofficial draft law was also drawn up by two experts: *Susanne Kalss/Julia Nicolussi*, Vorschläge für eine Reform des Aktienrechts, in: Susanne Kalss/Ulrich Torggler, Reform des Kapitalgesellschaftsrechts 2022, p. 59

Israeli law distinguishes between listed and unlisted companies. According to Section 82 of the Companies Law, unlisted companies are permitted to establish multiple-voting structures while listed companies are not (Art 46B Securities Law, 5728-1968).[103] This is particularly interesting, because many successful tech companies and start-ups are active in Israel.

4. Countries featuring general authorisation with limits and safeguards

a) Germany since 11 December 2023

For all stock corporations listed and unlisted, the Future Financing Act[104] now provides for the authorisation of multiple-voting shares under certain conditions (supra I 2).

b) United Kingdom

In the United Kingdom, multiple-voting structures have traditionally been permitted in the unlisted segment and were made admissible in the premium segment of the stock exchange in 2021 as one of several measures to counteract the UK's dwindling share of the international IPO market after Brexit.[105] The Companies Act adopts an open stance. Based on a critical analysis of the London Stock Exchange, the Financial Conduct Authority (FCA) cleared the way for the introduction of multiple-voting shares in the premium segment of the market[106] and in 2021 issued rules authorising companies listed in the UK premium segment to issue[107] multiple-voting shares at a maximum ratio of 20:1 subject to the establishment of a provision in the articles of association.[108] The regulations impose clear restrictions: only directors may become holders of such shares (9.2.22. C UK FCA Handbook), and directors who hold multiple-voting shares may not exercise their multiple-voting rights when voting on resolutions to remove them from office or in the event of a change of control. They may however exercise their multiple-voting rights for all other shareholder resolutions.[109] The multiple-voting right is subject to a strict time-based sunset of no more than five years.

---

[103] *Beni Lauterbach/Yishay Yafeh*, Long term changes in voting power and control structure following the unification of dual class shares, Journal of Corporate Finance 17 (2011) 211; *HCJP* (note 64) at 45, 47 note 12.
[104] Above I 2 note 42.
[105] *Volkmann/Thoma* (note 43) at 445.
[106] *Lidman/Skog* (note 69); *Davies*, Unequal Voting Rules in the UK, lecture ECCL conference in Lisbon 3 November 2023.
[107] *HCJP* (note 64) p. 53; *Casper* (note 43), ZHR 187 (2023) 5 at 22.
[108] *Bobby V. Reddy*, Up the hill and down again: Constraining dual-class shares 80 Cambridge Law Journal (2021) 515, 525 et seq.
[109] FCA Primary Market Effectiveness Review, Feedback and Final Changes to the Listing Rules, 2021, 9 f.

In the spring of 2023, the Financial Conduct Authority (FCA) further undertook to raise the attractiveness of UK stock exchanges on the basis of suggestions from practitioners,[110] especially since the previous regulations had not sufficed to noticeably increase the appeal of London as a stock exchange centre.[111] It proposed to merge the standard and premium segments into a single segment, importing the freer structuring options of the second (i.e., the standard) segment to the single segment and thus expanding the options for multiple-voting shares in particular.[112] Following a consultation,[113] concrete proposals were published in the first half of 2024 for the highest stock exchange segment and are to apply beginning in 2025. The plan is to remove the current (only five-year) sunset clause in the uniform segment.[114] The sunset clause and the maximum voting rights multiplier are to be completely eliminated along with the restriction of multiple-voting shares to directors and the tether to the initial listing. Multiple-voting rights are thus expected to be permitted for all companies listed in the top market segment going forward.[115]

c) New laws on loyalty and multiple-voting shares: Italy in 2024 and France in 2024

Significant changes have taken place in Italy and France, with multiple-voting rights now permissible for listed companies in addition to limited permissibility for unlisted companies and along with loyalty shares (see II 2 a above). The law in Italy since 27 March 2024 retains the regime of loyalty shares (as per articles of association) which afforded a maximum of two votes if the shares are held for no less than 24 months. Now, however, the law also allows to award each share an additional vote every year after the initial two years, up to a maximum voting-right multiplier of 10.[116]

---

[110] CP23/10: Primary Markets Effectiveness Review – Feedback to DP22/2 and proposed equity listing rule reforms, available at <https: www.fca.com.uk/press >.
[111] *Lidman/Skog*, (note 69); *Bobby V. Reddy*, The UK and Dual Class Stock-Lite – Is it really Even Better than the Real Thing? Cambridge Legal Studies Research Paper 18/2023; *Davies* (note 106).
[112] FCA proposes to simplify rules to help encourage companies to list in the UK; Press Releases 03/05/2023; https: www.fca.com.uk/press.
[113] CP23/10: Primary Markets Effectiveness Review – Feedback to CP22/2 and proposed equity listing rule reforms, available at < https: www.fca.com.uk >. The consultation ended in summer 2023.
[114] CP23/31: Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed proposals for listing rules reforms; Collaborate to compete: why we must all embrace a growth mindset, Speech by Nikhil Rathi, Chief Executive, FCA 16.10.2023, available at < https: www.fca.com.uk/speeches >.
[115] FCA Consultation Paper 10/23; Davies (note 106); FCA Consultation Paper CP 23/31. But see also the critical blog of *Caroline Escott*, Dual-class share structures are the wrong answer to the UK listing problem, ECGI blog, 7. December 2023.
[116] Legge 5 marzo 2024, n. 21, Gazetta Ufficiale n. 60, 12 marzo 2024, available at < https://www.gazzettaufficiale.it/atto/stampa/serie_generale/originario >; previously draft law so-called Capitali

France banned the introduction of multiple-voting shares in 1930 and abolished any prior multiple-voting rights regimes in 1933.[117] Apart from loyalty shares (see II 2 a above), unlisted stock corporations have been able to establish multiple-voting structures in their articles of association since 2019[118] (Loi Pacte).[119] In 2022, the Haut Comité Juridique de la Place Financière de Paris (HCJP) proposed that multiple-voting shares be permitted in companies listing their shares on a regulated market or an MTF, over and above the loyalty shares regime,[120] to be reserved for directors and senior executives, with a maximum of twenty per cent of all shares being granted multiple-voting rights and a maximum voting-right factor of 10. Multiple voting would be excluded on certain resolutions such as "say on pay", related-party transactions or the appointment of auditors.[121] The French legislator took up this proposal and in June 2024 passed a law allowing multiple-voting shares in the context of the first admission of a company's shares to trading on a regulated market or an MTF.[122] These *actions de preference* can only vest in one or more named persons with a voting rights ratio of no more than 25:1 over an ordinary share in the case of an admission to trading on an MTF. They are limited in time (ten years plus an optional five-year renewal to be granted without the participation of the privileged shareholder(s)). In the event of transfer (inter vivos or upon death), they are converted into ordinary shares, which may only confer double voting rights. In the case of the appointment of auditors, the approval of the annual financial statements and amendments to the articles of association other than capital increases, approval of related party transactions and say on pay votes, these shares only confer a single voting right, including in the case of takeover bids if the company's articles of association so stipulate.

5. Comparative legal studies; historical development

a) Comparative legal studies

(disegno di legge c.d. capitali p. 674), Dossier XIX Legislatura, 23 ottobre 2023: Interventi a sostegno della competitivitá dei capitali; A.S.n 647 A, p 45 et seq.

[117] *Chatard* (note 81) p. 35; *Alain Pietrancosta*, Propositions françaises et européennes pour ouvrir le vote multiple aux sociétés entrant en bourse, BJS janv. 2023, n° BJS201q7.

[118] Loi Nr 2019-486 (Loi Pacte); *Maurice Cozian/Alain Viandier/Florence Deboissy*, Droit des sociétés, 34th ed. ed. Paris 2021, paras 1158-1164, 1601.

[119] *HCJP* (note 64) p. 2.

[120] *HCJP* (note 64) conclusion, p. 37; *Alain Pietrancosta* (note 117) and *idem* (note 18).

[121] *Pietrancosta* (note 18).

[122] Loi n° 2024-537 du 13 juin 2024 visant à accroître le financement des entreprises et l'attractivité de la France, JORF n° 0138 du 14 juin 2024 , Art. L. L. 22-10-46-1.

A number of comparative legal studies have addressed the permissibility and ordering of multiple-voting structures.[123] For example, two reports (by the OECD[124] in 2021 and the Haut Comité Juridique de la Place Financière de Paris[125] in 2022) give current overviews.[126] A comparative law study for the European Commission by ISS Shearman & Sterling and the ECGI[127] in 2016 concluded that a ban on multiple-voting shares, including for listed companies, was unnecessary. According to the German Lawyers Association (the "DAV"), half of EU member states permit multiple-voting shares,[128] though the permitted structures may vary. Besides the division into holding-time-related (loyalty) shares and multiple-voting shares as part of a dual- or multi-class structure, the rights differ mostly in the level of deference to private ordering and in the prescribed safeguards for other shareholders.[129] The most important protective instruments are the determination of a maximum voting multiplier and the recognition of capital majority requirements to pass specific kinds of resolutions. Whether current or planned, the regulations exhibit varying and even contradictory tendencies with respect to who can hold the shares, details of various sunsets, and the range of excluded resolutions.

b) Historical overview: The examples of Germany and Austria

The history of multiple-voting structures[130] in Germany has ranged from substantial liberty when stock corporations emerged in the second half of the nineteenth century to a complete ban. In three stages – and completely different political and economic circumstances – the right to institute multiple-voting rights as per the articles of association was restricted for all stock

---

[123] *Fernández Torres* (note 90); *Gurrea-Martínez* (note 85). – Apart from the United States, the following discussion is limited to European countries and in the appendix infra (even more narrowly) to EU countries, because the economic assessments under III and IV cannot easily be transferred to countries with completely different economic systems. For example, there is an interesting study on the People's Republic of China, which very cautiously authorised multi-voting shares in 2019, by *Sang Yop Kang/Tong (Terry) Ling*, Exploring China's Dual-Class Equity Structure: Investor Protection Measures and Policy Implications, 18 July/28 September 2023, available at < https://ssrn.com/abstract=4506660 >; also *Sang Yop Kang/Tong (Terry) Ling*, China's Experiment: Dual Class Equity Structure, 26 January 2024, available at < https://www.ecgi.global/blog/china%E2%80%99s-experiment-dual... >. The China Securities Regulatory Commission (CSRC) has authorised them in general, so far with a maximum multiple-voting factor of 10, but only eight out of around 5,000 listed companies have received specific authorisation. As to Hongkong, Singapore and Shanghai see briefly *Bueren/Crowder* (note 1) at 111 et seq.

[124] OECD Corporate Governance Factbook 2021, 100.

[125] Report 15.9.2022, also already above II 4 c.

[126] *Fernández Torres* (note 90); *Nicolussi* (note 1) at 757.

[127] *ISS/Shearman & Sterling/ECGI*, Report on the Proportionality Principle in the European Union, 2016, see also *Erik Lidman/Rolf Skog*, The Journal of Corporate Law Studies 21 (2021) part 2, 5.

[128] *German Bar Association* (note 1) at 465.

[129] See III 3 a below.

[130] *German Bar Association* (note 1) at 464 et seq.

corporations, regardless of listing on the stock exchange, and ultimately abolished.[131] While the Austrian General Commercial Code (the "AHGB") stipulated one share, one vote as the default rule, it did not restrict private ordering of the articles of association in any way. Here, the German Stock Corporation Act set a counterpoint in 1937 based on a broad and controversial legal policy debate that played out at two law conferences and in preliminary work dating to the Weimar Republic. The law subjected the introduction of new multiple-voting structures to authorisation by the Minister of Economic Affairs if justified, as one might say in today's parlance, for the benefit of the company and by macroeconomic concerns. Existing stocks were unaffected. Preparatory work on the German Stock Corporation Act of 1965 sought to completely abolish multiple-voting rights until a compromise was struck that provided narrow limits in which they could be newly introduced. Exemptions could only be legitimised for macroeconomic reasons.

The last decade of the twentieth century saw discussion of opening the German market to international investors, and a 1998 law, the "KonTraG", would ultimately abolish multiple-voting shares in all stock corporations, with no exceptions, not even for existing articles of association. But shortly afterwards, a legal policy debate on reintroducing multiple-voting rights in various forms resumed, never abated,[132] and has recently enlivened with the European Directive and new laws enacted in EU Member States such as Germany, France and Italy (see I 2 and II 4 c above).

The development in Austria has been linear. The AHGB afforded the founder of a company the freedom to craft articles of association as they saw fit, but the licencing system for stock corporations applied in Austria until 1938, and the licensing authority would not accept multiple-voting structures and publicly decreed as much in the *Aktienregulativ*, an administrative publication.[133] The Austrian Stock Corporation of 1965 completely banned multiple-voting shares in all public limited companies and remains in force.[134]

III. Economic reasons for authorising multiple-voting shares, but for listed companies only with limits and safeguards

[131] *Casper* (note 43) ZHR 187 (2023) 5 at 20 et seq.
[132] *Kalss* (note 1); *Casper* (note 43) ZHR 187 (2023) 5 at 21 et seq.; *Beckmann* (note 43).
[133] *Kalss* (note 1) at 479.
[134] *Susanne Kalss/Christina Burger/Georg Eckert,* Entwicklung des österreichischen Aktienrechts (2003) 337, 521.

1. Economic pros and cons of one share, one vote versus multiple-voting structures

The literature on the economic and political arguments for and against multiple-voting structures is extensive, particularly in the most recent English-language law and finance literature.[135] In Europe, the issue had become controversial by 2003, particularly with regard to anchoring the one share, one vote principle in European law.[136] Multiple-voting structures allow voting rights and share ownership to diverge ("decoupling"; the divergence is the "wedge").

---

[135] *Anita Anand*, Governance Complexities in Firms with Dual Class Shares, 3 Annals of Corporate Governance 184 (2018), draft available at < https://ssrn.com/abstract=3104712 >, with extensive compilation of relevant empirical and theoretical studies, Appendix 1.7; *Vittoria Battocletti/Luca Enriques/Alessandro Romano*, Dual Class Shares in the Age of Common Ownership, ECGI Law Working Paper No. 628/2022, available at < https://ssrn.com/abstract=4046244 >; *Lucian A. Bebchuk/Kobi Kastiel*, The Untenable Case for Perpetual Dual-Class Stock, Virginia L. Rev. 585 (2017); *Lucian A. Bebchuk/Kobi Kastiel*, The Perils of Small-Minority Controllers, 107 Geo. L. J. 1453 (2019); *Beladi/Hu/Yang/Zhu*, Dual-class stock structure and firm investment, Finance Research Letters 47 (2022) 102939; *Martijn Cremers /Beni Lauterbach /Anete Pajuste*, The Life-Cycle of Dual Class Firm Valuation, Finance Working Paper No. 550/2018, August 2022, available at < http://ssrn.com/abstract_id=3062895 >; *Jill E. Fisch/Steven Davidoff Solomon*, The Problem of Sunsets, 99 B.U.L.Rev. 1057 (2019); Jill E. *Fisch/Steven Davidoff Solomon*, Dual Class Stock, Law Working Paper No. 715/2023, June 2023, available at < https://ssrn.com/abstract_id=4436331 >; *Zohar Goshen/Assaf Hamdani*, Corporate Control and Idiosyncratic Vision, 125 Yale L. J. 560 (2016); *Jui-Chia Lin/Wei-Zhong Shi/Li-Fang Tsai/Min-The Yu*, Corporate Cash and the Firm's Life-Cycle: Evidence from Dual-Class Firms, 80 International Rev. Econ. & Fin. (2022), available at < https/ssrn.com/abstract=4386731 >; *Dorothy S. Lund*, Nonvoting Shares and Efficient Corporate Governance, 71 Stan. L. Rev. 687 (2019); *Mingze Ma/Wenchuan Zhao*, Dual Class Structure and Shareholder Voice, February 2024, available at < https:/ssrn.com/abstract=4689164 >; *Alessio M. Pacces*, Controlling Shareholders and Sustainable Corporate Governance: The Role of Dual-Class Shares, ECGI Law Working Paper No. 700/2023, October 2023, available at < https://ssrn.com/abstract_id=4412205 >; *Bobby V. Reddy*, More than Meets the Eye: Reassessing the Empirical Evidence on U.S. Dual-Class Stock, 23 U. Pa J. Bus. L. 955 (2021); *Gregory H. Shill*, The Social Costs (and Benefits) of Dual-Class Stock, 75 Ala. L. Rev. 2023, available at < https://ssrn.com/abstract=4414298 >; *Gladriel Shobe/Jarrod Shobe*, The Dual Class Spectrum, 39 Yale J. of Regulation 1343 (2022); *Andrew William Winden*, Sunrise, Sunset: An Empirical and Theoretical Assessment of Dual-Class Stock Structures, 2018 Colum. Bus. L. Rev. 852.

From the *earlier discussion*, especially from 2008 onwards, which is not substantiated here, *e*.g. *Renee B. Adams/Daniel Ferreira*, One share-one vote: The empirical evidence, Review of Finance 2008, 51; *Lucian Aye Bebchuk/Reinier Kraakman/George Triantis*, Stock pyramids, cross-ownership, and dual class equity: The creation and agency costs of separating control from cash flow rights, in: Morck/ed., Concentrated Corporate Ownership, Chicago 2000, p. 295; *Paul A. Gompers/Joy Ishii/Andrew Metrick*, Extreme Governance: An Analysis of Dual-Class Firms in the United States, The Review of Financial Studies 2010, 1051; *Ronald W. Masulis/Cong Wang/Fei Xie*, Agency Problems at Dual-Class Companies, 64 Journal of Finance 1697 (2009), Finance Working Paper No. 209/2008, June 2008, available at < http://ssrn.com/abstact_id=1080361 >. Also *Reinier Kraakman et al*, The Anatomy of Corporate Law, 3d ed, Oxford, 2017, 4.1.1 Shareholder appointment rights and deviations from one-share-one-vote, p. 480 et seq.

From Germany in particular *Bueren/Crowder* (note 1) at 97 et seq. and *Wolf* (note 43); furthermore eg. *Beckmann* (note 43); *Casper* (note 43), 187 ZHR 187 (2023) 5 at 24 et seq.; *Herzog/ Gebhard* (note 1) at 1895 et seq.; *Denninger* (note 1) at 2331 et seq.; *Herzog/Gebhard*, Die Wiederzulassung von Mehrstimmrechten – zurück in die Zukunft? ZIP 2023, 1161, 1162 et seq.; Kalss (note 1) at 463 et seq.; *Seidel* (note 43) at 1207 et seq.; From France and the Netherlands, *Titiaan Adam Keijzer*, Vote and Value. An Economic, Historical and Legal-Comparative Study on Dual Class Equity Structure, Wolters Kluwer, 2020; *idem*, Dual Class Equity Structures – an Economic, Historical and Legal-Comparative Analysis in Support of Current Developments in France and Europe, RTDF 2023, No 1, 24 at 25 et seq.

[136] Institutional Shareholder Services, Proportionality between ownership and control in EU listed companies: External study commissioned by the Europan Commission, available at < http//www.ecgi.org/osov/documents/final_report_en.pdf >; Report of the High-Level Group of Company Law Experts on Modern Company Law Frameworks in Europe of 4 November 2002, available at < https://www.ecgi.global/sites/default/files/report_en.pdf >; Working Group on European Company Law, ZIP 2003, 863.

Whether the effects of this are positive, negative, or none remains disputed. The most important arguments for or against multiple-voting shares pertain to a) the company and its shareholders; b) the capital market and stock exchanges; c) the economy, place for doing business, and international competitiveness; and d) the fundamental principles of private autonomy and freedom of association. Part e) concludes with a brief review of the empirical research on multiple-voting structures.

a) The company and its shareholders

Multiple-voting rights give the holders of multiple-voting shares significantly greater long-term influence than a same-sized stake with ordinary voting rights would. Powerful owners can determine company strategy and help shape the company's direction.[137] This influence is an important incentive for multiple-voting rights holders to be more involved and actively participate in monitoring and shaping the company. Multiple-voting shares make it possible for holders who have not necessarily invested the most capital but who are indelibly linked to the company – through entrepreneurial performance, purpose, or some other relationship – to exercise greater control over management and strategic decision-making in the long term.[138]

A powerful shareholder with real influence, motivated to carefully monitor, participate in and control the company, is valuable not only to the company but also to his fellow shareholders, including minority shareholders, and is not a threat a priori.[139] Whether this shareholder's position is supported by multiple-voting rights is immaterial in that regard. Small shareholders and non-multiple-voting shareholders who may be unwilling or unable to participate or exercise control themselves can to some extent benefit from the increased activity of shareholders with multiple-voting rights, tagging along, as it were.[140] The beneficial activity of multiple-voting shareholders can rub off on them too, motivating them to increase their own involvement either independently or in cooperation with a multiple-voting shareholder.

[137] See, fundamentally, *Zohar Goshen/Assaf Hamdani*, Corporate Control and Idiosyncratic Vision, 125 Yale L. J. 560 (2016); *Anita Anand*, 3 Annals of Corporate Governance 184 (2018) (note 135) at 15 *et seq.* (principal cost theory, private ordering). From the recent legal literature also, e.g., *Kalss* (note 1) at 463 *et seq.*; *Nicolussi* (note 1) at 760.
[138] *Naveen Thomas*, Golden Shares and Social Enterprise, 12 Harvard Business Law Review 12/2022; *Nicolussi* (note 1) at 760 para. 31.
[139] *Alessio M. Pacces*, Rethinking Corporate Governance, London/New York 2012.
[140] *Nicolussi* (note 1) at 760 para. 31.

The objection here is that economically speaking, decisive control and decision-making should lie with those who bear the risk of the capital investment: one share, one vote. Agency theory holds that control and equity interest should coincide, since this is the best way to organise the control function.[141] A lower capital investment and relatively lower economic risk could tempt riskier decision-making by the multiple-voting shareholder, who is affected less than and disproportionately to their fellow shareholders should the risks eventually materialise.[142] This danger is exacerbated if the multiple-voting shares are transferred from an original owner or purchaser who was uniquely bound to the fate of the company to a successor who may only be interested in returns even at greater risk to the company and fellow shareholders.[143] And so probably the most important arguments against multiple-voting shares are that they court mismanagement because they reduce the risk of loss and that they incur efficiency risks because they skew the relationship between ownership and control.

Another objection to the instrument of the multiple-voting shares is that they can facilitate the holder of multiple-voting rights diverting the company's resources to personal advantage at the expense of the company and other shareholders.[144] Examples of this include excessive remuneration, related-party transactions, self-dealing and other conflicts of interest as well as the appointment of inefficient personnel from nepotism and personal favouritism. Legal safeguards against such risks, in company law or in other areas, do not obviate these risks, as such provisions could never cover every relevant scenario or are not effectively enforced.

Multiple-voting rights not only increase the influence of those who hold them but can also tend to have a negative impact on other shareholders whose importance, alongside powerful voting shareholders, is so much reduced that they no longer consider it worthwhile to look after their investment beyond awaiting dividends.[145] This can exacerbate the negative impact on corporate governance. Multiple-voting rights risk having managers concerned less with increasing the value of the company than with attending to shareholders with multiple-voting rights or, if the multiple-voting rights are controlling, to the interests of the controlling shareholder, which may

[141] *Frank H. Easterbrook/Daniel R. Fischel*, 26 Journal for Law and Economics (1983) 395 at 403 et seq.; *Anita Anand*, 3 Annals of Corporate Governance 184 (2018) (Fnote 135) at 12 et seq.; *Casper*, (note 43) 187 ZHR 187 (2023) 5 at 25 et seq.
[142] *Bebchuck/Kastiel*, 103 Virginia Law Review (2017) 607 at 610; *Hamid Beladi/May Hu/JingJing Yang/Ruicheng Zhu*, Finance Research Letters 47 (2022) 102939: overinvestment; *Ronald W. Masulis/Cong Wang/Fei Xie*, Agency Programs at Dual Class Companies, 64 The Journal of Finance (2009) 1679 at 1706.
[143] *Kalss* (note 1) at 463 et seq..
[144] *Lucian A. Bebchuk v Kobi Kastiel*, 103 Virginia Law Review 585 (2017) at 602 at seq; *Bebchuck v Kastiel*, 107 Geo. L. J. 1453 (2019) at 1458, 1460; *Gregory H. Shill* (note 135).
[145] *Casper* (note 43) 187 ZHR 187 (2023) 5 at 25; aA *Mock/Mohamed* (note 43) at 1276.

not align with the company's.[146] In such circumstances, it is more difficult for other shareholders to assert their own interests and, if necessary, change management.

Overall, this comparison shows that multiple-voting shares can have both positive and negative effects. But none are automatic. It is therefore important that legislators and regulators weigh the conflicting interests and find solutions that allow shareholders the flexibly to account for the company's special circumstances. All-or-nothing statutory or regulatory solutions are unsuitable for this, especially if the company is in a phase during which shareholders with special ideas and commitment are particularly important, for example at start-up or prior to an IPO or financing on the capital market (b below). In general, the company as well as the other shareholders has a special interest in there being core or anchor shareholders, particularly when facing major national or international competition or an imminent takeover (c below). But also, more generally, the needs of high financing and long-term, sustainable investment make it important for both the company and the shareholders to secure opportunities to invest and innovate.

b) Capital market and stock exchanges

As one of the obstacles to going public, many companies – from start-ups in sectors like tech and life sciences to growth companies and family businesses – cite the fear of sooner or later losing control.[147] In certain cases this also applies to state-owned companies contemplating privatisation as well as to non-profits and others that are not or not exclusively profit- and dividend-oriented. This means that these companies forego financing opportunities via capital markets and stock exchanges through an IPO[148] and thereby timely access to important funding for the next step in their corporate development. They have to rely instead on their own organic growth or on the narrow private equity market.[149]

This has a negative impact not only on companies but also on the capital markets and stock exchanges, which depend on inflows of new funds, new market entrants and new listings, particularly in the face of international competition. Indeed, the German capital market has been

---

[146] *Daniel R. Fischel*, Organised Exchanges and the Regulation of Dual Class Common Stock, 54 University of Chicago Law Review 119 at 136; *Gregory H. Shill* (note 135).
[147] Proposed Directive, supra I 1 a (note 1), p. 3; *Holger Fleischer*, Der Zoo der Gesellschaftsformen in Deutschland, DB 2021, 51 at 54.
[148] Proposal for a Directive, above I 1 a (note 1), p. 3.
[149] *Kalss* (note 1) at 464.

struggling: not only is there a dearth of new listings, but important companies are either leaving the stock exchange altogether or moving their headquarters abroad; the government's draft of the Future Financing Act rightly cites the foreign listings of BioNTech and CureVac & Co.[150] The most recent prominent example is the withdrawal of the gas and gas-plant manufacturer Linde, Germany's most valuable stock exchange group, from the Frankfurt Stock Exchange and its leading index, the DAX 40. Relocations have been plentiful.[151] There is considerable need to catch up with foreign capital markets, which German legislators have now recognised with the Future Financing Act[152] and other initiatives. Another factor has been the long-standing (but so far not very encouraging) effort to promote the European capital market.

The findings are similar for other European stock exchanges. Even the London Stock Exchange has considerable problems; the US stock exchanges have moved ahead, which the Hill Review analysed, resulting in fundamental reforms.[153] Prominent in Italy was Chrysler/Fiat's 2014 move from Italy to the Netherlands. With the implementation of the Mobility Directive[154] in 2023 and simplification of transferring the company's registered office abroad (with change of legal form), this trend will increase both within the EU and vis-à-vis non-EU countries that court the move. As a result, stock exchanges will lose not only income from listing fees and trade-related commissions but also the opportunity to provide services as well as risking a loss of reputation and competitiveness. This also applies to international competition among the places hosting stock exchanges.

A complete lack of or overly restrictive authorisation of multi-voting shares is certainly only one motivator among many other restrictions and regulatory requirements.[155] In particular, there are regulatory costs for the listed company: disclosures imposed by law or regulation, threat of

---

[150] Draft Act Explanatory Memorandum on Section 12 of the Stock Corporation Act (Draft), p. 125, with reference to: DAI, Foreign Listings of BioNTech, CureVac & Co, 2021, p. 10 at 38 et seq.; Deutsche Börse Group, Strategies for the Sustainable Financing of Germany's Future, 2021.

[151] *Nicolussi* (note 1) at 758; *Casper* (note 43) 187 ZHR 187 (2023) 5 at 28. On the "eclipse of the public corporation" *Bueren/Crowder* (note 1) at 92 et seq.

[152] Supra I 2.

[153] *Bobby V. Reddy,* The UK and Dual-Class Stock-Lite – Is It Really Even Better Than the Real Thing? University of Cambridge Faculty of Law Paper No. 18/2023, May 2023, available at < https//ssrn.com/abstract=4436612 >; supra II 4 b. Also: The London Stock Exchange gets the short end of the stick, FAZ 16 March 2023, no. 64 p. 23.

[154] Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

[155] *Brian R. Cheffins/ Bobby V. Reddy,* Law and Stock Market Development in the UK Over Time: An Uneasy Match, ECGI Law Working Paper No 722/2023, July 2023, available at < http://ssrn.com/abstract_id=4497278 > at 44 et seq.; *Katja Langenbucher,* Rückgang börsennotierter Unternehmen: Gründe und rechtliche Gegenmaßnahmen, ZGR 2024, 287.

high penalties for managerial bodies or the company itself, and many other regulatory and location-related factors.[156] All of this also impairs the stock exchanges' own important role as upholders of corporate governance principles, which they are increasingly no longer able to fulfil via listing requirements or including companies in indices.[157] Admitting multiple-voting structures opens up room to manoeuvre, and the effect should not be underestimated. A leading M&A lawyer from London recently reported that almost all the companies he had been involved in advising on an IPO or delisting cited the lack of or excessive restrictions on multiple-voting rights an obstacle.[158] The risk of losing control is evidently more important to companies than the advantages of raising capital. Dual-class IPOs could also help to solve or at least mitigate the governance problems among start-up unicorns in the technology sector.[159] The stock exchanges have not traditionally seen it this way, but pressure from companies with multiple-voting rights has led to a certain shift in thinking, initially in the US and now to some extent in other countries as well. And the availability of multiple-voting structures affects not only the stock exchanges but also the balance between the financial centres and private equity, which ought not to be disturbed by unnecessary regulation.[160]

With regard to capital markets and stock exchanges, the legislator must therefore react – despite one American author's certainly exaggerated comment that introducing multiple-voting shares is "a bribe for companies to get public".

c) Economy, places for doing business and international competitiveness

The fundamental authorisation of multiple-voting shares – albeit with limits and safeguards, as will be discussed – is important not only for companies and shareholders and capital markets and stock exchanges but also for the economy, the country as a place for doing business, and

[156] Proposal for a Directive, supra I 1 a (note 1), p. 3 with reference to the Study on proportionality between ownership and control in Member States, 2007. In detail, *Oxera*, Primary and secondary equity markets in the EU, Final Report for the European Commission, November 2020, p. 52 *et seq.* (reasons for listing and delisting), p. 73 *et seq.* (reasons for delisting, delisting data), p. 114 *et seq.* (reasons for large firms not seeking to list and drivers of the EU listing gap). Also, *Mock/Mohamed* (note 43) with reference to the study of 27 September 2021 by *Oxera/ Christoph Kaserer* for the BMWiE 27 September 2021, available at www.bmwk.de.
[157] *Idem* at 4, List of the corporate governance requirements of European Stock Exchanges in *Oxera* (note 156), Annex Table A3.3 at p. 281-284.
[158] *James Wooton* at the conference at the Federal Ministry of Finance, Academic Expert Group Financial Markets Law 19 and 20 September 2023 in Berlin. But see *Escott* (note 115), citing another IPO adviser who noted that governance practices were "a marginal consideration, if at all" for their clients, and that the key is strong investor protection.
[159] *Ofer Eldar*, Dual-Class IPOs: A Solution to Unicorn Governance Failure, ECGI Law Working Paper, November 28, 2023, available at < https://ssrn.com/abstract=4647143 >.
[160] *HCJP* (note 64) at no. 62, p. 25.

international competitiveness.[161] A strong stock exchange or the very fact of hosting an important stock exchange revitalises the economy, not only as a source of financing, but also through the increasingly important other services the stock exchange and other complementary services provide in the environment of the exchange: legal and economic advising, reporting, advising on voting rights, ratings, all of which add value overall. Multiple-voting shares can therefore have an indirect positive impact on the economy to the extent that the financing boost via the stock exchange enables investments and drives the market for research services.[162]

This strengthening of the national economy both domestically and in international competition,[163] which the authorisation of multiple-voting shares can promote to a certain extent,[164] can also have positive effects on an entire economic or geographical region, especially if other regions and economic blocs and stock exchange locations open up such opportunities too.[165] This also speaks in favour of legislative intervention.

d) Private ordering and lack of constraints on articles of association

It is also very important to emphasise the valuable legal principles of private ordering and a lack of constraints on articles of association. This is a regulatory interest in its own right, apart from the macroeconomic impact and other positive effects mentioned in the literature. Above all, it involves the motivation of the founder, strong identification with the company, and improving the position of venture capital vis-à-vis management.[166] At least for unlisted companies, there is no reason at all to restrict, much less prohibit, bespoke multiple-voting structures as per the articles of association; rather, it should be left to the shareholders themselves to decide how they wish to organise their company and the voting and other relationships within it. Practitioners in other countries, for example France,[167] have taken the same view. But even for companies poised to list on the capital market and for already-listed companies, it is important that shareholders have the freedom to organise as a company (albeit bound by framework regulations) and to invest in companies with multiple-voting structures.

---

[161] *Casper* (note 43) 187 ZHR 187 (2023) 5 at 27 et seq.; *Kalss* (note 1) at 464 et seq.
[162] Proposed Directive, supra I 1 a (note 1), p. 3; *Kalss* (note 1) at 465.
[163] The *HCJP* (note 64) *at* no. 63, p. 24 et s.
[164] Likewise Section 49 I 1 No. 1 WpHG: when convening the annual general assembly of issuers of authorised shares. On the conversion right for start-ups and growth companies in the legal form of a GmbH into a stock corporation, Section 135a of the Stock Corporation Act (Draft), explanatory memorandum to para. 1 p. 130.no. 61.
[165] Proposed Directive, supra I 1 a (note 1); *Kalss (*note 1) at 465.
[166] *Zohar Goshen/Assaf Hamdani*, Corporate Control and Idiosyncratic Vision, 125 Yale L. J. 560 (2016).
[167] This was the point of departure for the *HCJP* (note 64), p. 24, supra II 4 c.

Conversely, the clearly over-rigid German principle of constraining the articles of association (*Satzungsstrenge*), to an extent unknown in other legal systems, should be relaxed in favour of greater autonomy in drawing the articles of association.[168]

e) Empirical research on multiple-voting shares

Empirical analyses of the problem of multiple-voting shares have long been available, particularly in the context of the European debate on one share, one vote in EU law in the early 2000s.[169] What was recognised then still applies: deviations from one share, one vote are hard to assess from an economic perspective, and the empirical findings are contradictory.[170] Fisch/Solomon, summarising the most recent empirical research on dual-class structures,[171] conclude there is an "uncertain theoretical basis" and "unclear evidence on the effect".[172] Negative consequences of such structures include a loss of value and higher control costs.[173] Yet more recent studies have found that multiple-voting shares alone do not lead to lower valuations.[174] However, the latest studies have also shown that the advantages of dual-class structures appear to decline over time, and their negative effects on agency costs increase.[175] Fisch/Salomon point out various significant methodological weaknesses in many of the relevant

---

[168] See infra IV 5 b at the end.

[169] Summarising *Renee B. Adams/ Daniel Ferreira*, One Share, One Vote: The Empirical Evidence, 12 Review of Finance 51 (2008), Finance Working Paper No 177/2007, December 2007, available at < https.com/abstract=987488 >; *I. J. Alexander Dyck/ Luigi Zingales,* Private Benefits of Control: An International Comparison, 59 Journal of Finance 537; Anita Anand, 3 Annals of Corporate Governance 184 (2018) (note 135) at 18 *et seq*.

[170] *Renee B. Adams/ Daniel Ferreira* (fn. 169), at 44-46, at least at 45: "Overall, there is some support in the literature for the hypothesis that deviations from one share-one vote affect the value of outside equity negatively." On ownership and control in various countries *Fabrizio Barca/Marco Becht*, eds, The Control of Corporate Europe, Oxford 2001.

[171] *Jill E. Fisch/Steven Davidoff Solomon*, The Problem of Sunsets, 99 B.U.L.Rev. 1057 (2019) at 1070 et seq.; from Germany *Bueren/Crowder* (note 1) at 103 et seq.; *Wolf* (note 43) at p. 178 et seq.

[172] *Idem*, 99 B.U.L.Rev. 1057 (2019) at 1071. See *Jill E. Fisch/Steven Davidoff Solomon,* Dual Class Stock (fn. 135) at 10-12. Similarly *Bueren/Crowder* (note 1) at 103 et seq.

[173] *Lucian A. Bebchuk/Kobi Kastiel*, 107 Geo. L. J. 1453 (2019); *Paul A. Gompers/Joy Ishii/Andrew Metrick*, The Review of Financial Studies 2010, 1051; *Ronald W. Masulis/Cong Wang/Fei Xie* (fn. 135) at 26.

[174] *Martijn Cremers/Beni Lauterbach /Anete Pajuste* (fn. 135) at 2 et seq.; *Oxera/Christoph Kaserer,* Wie können Börsengänge für Start-ups in Deutschland erleichtert werden? International Comparison and Recommendations for Action, 2021 p. 20 f.; *Final Report of the Technical Expert Stakeholder Group on SMEs,* Empowering EU Capital Markets for SMEs, p. 33. This is referred to in the Governmental Draft, Explanatory Memorandum to Section 12 of the Stock Corporation Act, p. 125.

[175] *Martijn Cremers /Beni Lauterbach /Anete Pajuste*, The Life-Cycle of Dual Class Firm Valuation (fn. 135) at 2 et seq: after seven to nine years after the IPO; *Lucian A. Bebchuk/Kobi Kastiel*, 103 Virginia L. Rev. 585 (2017) at 590, 604 et seq.; *Hyunseob Kim/Roni Michaely,* Sticking round too long? Dynamics of the Benefits of Dual-Class Voting, Swiss Finance Institute Research Paper Series No. 19-09, January 2019; *Jui-Chia Lin/Wei-Zhong Shi/Li-Fang Tsai/Min-Teh Yu* (fn. 135), at 23.

empirical studies as well as the difficulty of drawing theoretical or political conclusions from them.[176]

Furthermore, multiple-voting shares pose particular problems in light of social and environmental issues.[177] While multiple-voting shares could enable their holders to pursue social and environmental issues long-term and from within, they could also prevent it; here, too, there are contradictory empirical findings.[178]

For legislators, this means that individual empirical studies should be handled with caution and cannot serve in isolation as a basis for specific regulations.[179] As far as the regulation of multiple-voting shares is concerned, legislators should bear in mind the numerous other ways of decoupling economic ownership from control.[180]

2. Reasons for imposing limits and safeguards on multiple-voting share structures in listed companies

a) Reasons for anchoring multiple-voting shares in the German Stock Corporation Act and in other German and European reforms

Review of the economic arguments and empirical findings for and against multiple-voting structures produces no clear picture, neither in favour of a strict one-share, one-vote principle, nor, conversely, in favour of a general, unlimited admission of multiple-voting structures.[181]

---

[176] *Jill E. Fisch/Steven Davidoff Solomon*, The Problem of Sunsets, 99 B.U.L.Rev. 1057 (2019) at 1073 et seq.

[177] On rejecting the relevant provision in the Proposed Directive, see supra I 2 a (note 1); also IV 3 b below. Negative effects of multiple-voting rights on employees can also be considered as social costs; see also the position of the Legal Affairs Committee of the European Parliament of September 2023 at I 2 d above. Potential political activities of shareholders with multiple-voting rights (such as through donations *etc.*) are also regarded as social costs, *Gregory H. Shill* (fn. 135), but these effects too should not be countered under company law but rather in a more targeted manner, such as through special regulations on party donations *etc*.

[178] *Vittoria Battocletti/Luca Enriques/Alessandro Romano* (fn. 135); *Jill E. Fisch/Steven Davidoff Solomon,* Dual Class Stock (fn. 135), p. 5; *Alessio M. Pacces,* Controlling Shareholders and Sustainable Corporate Governance: The Role of Dual-Class Shares, ECGI Law Working Paper No 700/2023, April 2023, available at < http://ssrn.com/abstract_id=4412205 >; *Gregory H. Shill* (fn. 135).

[179] In the Governmental Draft, Explanatory memorandum to Section 12 of the Stock Corporation Act, p. 125, individual studies are only cited as examples; see also the answer to the minor interpellation by the parliamentary group DIE LINKE and others on multiple-voting rights, BTDrucks 20/8385, 18 September 2023, under no. 14 p. 8.

[180] Also supra III 3 c. For a brief overview, see *Jill E. Fisch/Steven Davidoff Solomon,* Dual Class Stock (fn. 135) at 15-17.

[181] George *Dallas,* Head of Content at the ECGI, recently drew attention to the numerous unanswered questions regarding multi-voting shares on the ECGI Blog, European Corporate Governance Institute, 13 October 2023: Relevance of context such as legal system, life cycle of the company, role of stock exchanges and indices and conflicts of interest therein, role of sunset clauses et al.

Despite the number of good reasons for authorising multiple-voting shares, they can also have negative effects and entail risks. The power of the IPO market does not appear to be sufficient to ensure optimal corporate governance in the case of multiple-voting rights.[182] For legislators, the most likely and most reasonable approach will therefore tend to favour the general authorisation of multiple-voting structures while enacting limits and safeguards for other shareholders in listed companies.[183] That there are no reliable empirical results on whether these constraints and safeguards actually achieve their purpose and that some authors have fundamental doubts about their utility[184] does not disturb this conclusion.

Germany's earlier solution, a strict one-share, one-vote policy enacted with the KonTraG in 1998, is no longer appropriate and the reasons for it no longer convincing from today's perspective. For example, the view that it is crucial for voting rights and share ownership to coincide, that only this strengthens the owners' control of the corporation, is, as we have seen, too one-sided. Nor does the reason still apply, at least not in blanket fashion, that "the granting of influence without corresponding share ownership does not meet the expectations of the capital market ...",[185] neither for companies listing on the stock exchange or the capital market nor, especially, for companies that are not broadly accessible to investors. In view of the earlier-mentioned disputed assessment and controversy at the European level in early 2003, the assertion that the capital markets demand one share, one vote was suspect even then, and is no longer tenable at any rate, as shown by comparative legal analysis and current sentiments in the field. The German legislator's fundamental decision to authorise multiple-voting shares with limits and safeguards for listed companies[186] is therefore factually correct, and quite welcome.

This is also the approach the European legislator is taking with the Directive of 2024, according to which multiple-voting shares are permitted in certain segments of the market, but only with a few mandatory limits.[187] This is based on the observation[188] that "[o]ne of the main issues that deters founders and families from deciding to go public (at the pre-IPO stage) is the fear of

---

[182] *Albert H. Choi*, Pricing Corporate Governance, July 2023, UC Law Journal 75 (2023) 67, also as ECGI Law Working Paper No. 719/2023, available at < https://ssrn.com/abstract=4039126 >.
[183] Likewise *HCJP* (note 64) at nos. 74, 75, p. 28.
[184] E.g. *Jill E. Fisch/Steven Davidoff Solomon*, The Problem of Sunsets, 99 B. U. L. Rev. 1057 (2019); briefly also *Fisch/Steven Davidoff Solomon*, Dual Class Stock (fn. 135), p. 14.
[185] Governmental Draft KonTraG, BT-Drucks 13/9712, p. 12. In contrast, Governmental Draft of Section 12 of the Stock Corporation Act (Draft), Explanatory Memorandum, p. 136. See also the answer to the minor interpellation by the parliamentary group DIE LINKE and others on multiple-voting rights, BTDrucks 20/8385, 18 September 2023, under no. 15 and 16, p. 9.
[186] Governmental Draft of Section 12 of the Stock Corporation Act (Draft), Explanatory Memorandum p. 136.
[187] On the fact that these limits are too narrow, see I 1 e. above.
[188] Proposed Directive, supra I 1 a (note 1), p. 3.

losing control over their company once it is listed". This is particularly relevant for smaller, family-owned companies, start-ups, and companies with long-term projects and significant start-up costs, all of which are exposed to fluctuations in the capital markets and the risk of hostile takeovers. Multiple-voting shares are an effective mechanism for retaining corporate control. However, limits and safeguards are necessary to protect other shareholders from individual risks.[189]

The German Future Financing Act of 2023 also justifies the authorisation of multiple-voting shares, not only by citing the experience of other countries and the European Commission's proposal, but also by observing that companies, particularly start-ups and growth companies, are increasingly expressing a need for them.[190] That other legal systems are more liberal in this regard results in a competitive and locational disadvantage that leads to growth companies either lacking investment capital (and therefore flagging on innovation and growth opportunities) or choosing to organise under foreign law or to list on foreign exchanges.[191]

b) Effects under takeover law

There is a long-standing debate about the connection between multiple-voting shares and takeovers,[192] which grew both obvious and virulent during the takeover boom of the 1980s when it became apparent that multiple-voting rights could create an almost insurmountable obstacle to takeovers.[193]

In the European Union, it was left to national legislators to grapple with the effects of multiple-voting shares on corporate governance, in particular the takeover market. Initially, a mandatory one-share, one-vote rule was proposed for the Takeover Directive, followed by, in a first attempt at compromise, a mandatory breakthrough rule, i.e., the non-exercise of multiple-voting

---

[189] Proposed Directive, supra I 1 a (note 1), p. 4: "Such problems could include, for example, shareholder entrenchment, the funneling of company's assets and, in general, the extraction of private benefits by the controlling shareholder, through for example related party transactions. Moreover, the diluting effect of multiple-vote shares may result in controlling shareholders blocking certain resolutions, included those aimed at sustainability goals ...".
[190] Governmental Draft ZuFinG (footnote 41), explanatory memorandum p. 124 et seq.
[191] Already above III 1 c a.E. This with reference to: DAI, Auslandslistings von BioNTech, CureVac & Co, 2021, p. 10, 38 f.; Deutsche Börse Group, Strategien zur nachhaltigen Finanzierung der Zukunft Deutschlands, 202, p. 39 et seq. Also for France *HCJP* (note 63), no. 61-63, p. 24-25.
[192] Fundamental *Sanford Grossman/Oliver Hart*, One share-one vote and the market for corporate control, Journal of Financial Economics 20 (2988) 175.
[193] *Jill E. Fisch/Steven Davidoff Solomon*, Dual Class Stock (fn. 135), p. 4: "It rapidly became apparent that a dual class structure was a virtually impenetrable obstacle to a hostile takeover."

rights on takeover decisions. When that also proved unworkable, the Member States were ultimately given the option of suspending multiple-voting rights in takeover situations.[194] But only very few member states exercised this option. It is interesting to note the UK's regulation: directors who hold multiple-voting rights cannot exercise them solely for the purpose of maintaining their office or preventing a change in control of the company,[195] however without practical specification of when those issues are at stake.

For the Member States such as Germany that had the one-share, one-vote principle enshrined into company law, the authorisation of multiple-voting shares has significant consequences for takeover law, and the new law leaves these unregulated,[196] with ambiguities and delimitation difficulties arising from the proposed limits and protective provisions. This relates in particular to the expiry of multiple-voting rights after ten years and in the event the multiple-voting shares change hands; to the passive acquisition of control (Section 35 of the German Takeover Act, the "WpÜG"); and to the transparency of shareholdings.[197] According to the explanatory memorandum, it should be possible to obtain an exemption for passive acquisitions of control.[198]

c) Comments by proxy advisors and institutional investors

Institutional investors and proxy advisors overwhelmingly reject multiple-voting shares,[199] as shown, e.g., by various statements and voting recommendations of BlackRock,[200] State Street Corporation,[201] Fidelity,[202] DWS[203] and others. The Council of Institutional Investors (CII)[204]

---

[194] *Kalss* (note 1) at 467 et seq., 479.
[195] On the United Kingdom, see II 4 b above.
[196] *Philip Denninger/ Daniel von Bülow*, Mehrstimmrechtsaktien im Recht der öffentlichen Übernahmen, AG 2023, 417; *Ceesay* (note 43) at 10.
[197] Also *German Bar Association* (note 43) at 744 no. 51. For details, see *Jörg-Peter Kraack*, Übernahmerechtliche Implikationen des Zukunftsfinanzierungsgesetzes, NZG 2023, 115; *Mock/Herzog* (note 43) at 1009 et seq.
[198] Below IV 7 d. See also *German Bar Association* (note 43) at 744 no. 51 at the end.
[199] *Jill E. Fisch v. Steven Davidoff Solomon*, 99 B. U. L. Rev. 1057 (2019) at 1075 et seq.; *Dorothy S. Lund*, 71 Stan. L. Rev. 687 (2019) at 708 et seq.; *Lucian A. Bebchuk/Kobi Kastiel*, 103 Virginia L. Rev. 585 (2017) at 597 et seq.
[200] *BlackRock Investment Stewardship*, Proxy voting guidelines for U.S. securities, January 2023, Equal voting rights, p. 11.
[201] *State Street Global Advisors*, Proxy Voting and Engagement Guidelines, March 2023, North America, Unequal Voting Rights, p. 10.
[202] *Fidelity Investments*, Proxy Voting Guidelines, February 2023, Multi-Class Share Structures, p. 11: "However, Fidelity will evaluate all such proposals in the context of their likelihood to enhance long-term economic returns or maximise long-term shareholder value."
[203] *DWS Investment GmbH*, Corporate Governance and Proxy Voting Policy 2022, p. 20: voting against, if company "issues stock with multiple-voting rights or other control enhancing rights".
[204] *Council of Institutional Investors*, Dual Class Stock, available at < https://www.cii.org/dualclass_stock >. However, in view of the fact that 24% of U.S. companies that went public in the first half of 2021 had a dual class

has also opposed them.[205] Representatives of major proxy advisors emphasise that they are voting against the introduction of multiple-voting structures or abstaining and, in any case, are advocating for repeal because they see multiple-voting structures as detrimental.[206] The Council of Institutional Investors has called for a time-based sunset for companies with multiple-voting structures.[207] The major proxy advisors like Glass Lewis[208] and ISS are either opposed or cautious. Institutional Shareholder Services (ISS),[209] however, abandoned its original opposition and differentiated its stance to recommend that multiple voting on resolutions concerning directors with such shares be rejected.[210] Nor is it surprising on the other hand that major investors in countries such as Sweden that allow multiple-voting structures either in full or with minor limitations are opposed to further restrictions.[211] The materials accompanying the German draft legislation stated that investors are "by no means fundamentally" opposed to multiple-voting structures. [212]

The possibility, mentioned earlier, that multiple-voting shares could further disaffect small shareholders[213] may also reach institutional investors in view of the aforementioned comments.[214] Proxy advisors pool votes, including those of many small companies, and make corresponding voting recommendations; so, one might compare the effects of proxy advisors' activities to that of multiple-voting shares, as accumulating voting power in the hands of legal entities whose capital is not at stake. The process of aggregation and exercise of voting rights therefore has the de facto effect of decoupling voting rights from capital investment[215] (though individual investors de iure retain voting rights and are also entitled to instruct their proxies). If multiple-voting structures are authorised and widespread, proxy advisors lose influence and

structure, the Council has spoken out in favour of a "reasonable time-based 'sunset' provision in their charters". The *International Corporate Governance Network (ICGN)* has also expressed criticism with regard to the reform plans in the UK (supra II 4 b): "We are particularly concerned by the introduction of a more permissive approach to dual class share structures – with few shareholder protection safeguards ...", ICGN Statement on High Standards of Corporate Governance and Investor Protections as Pre-requisites for UK Capital Market Competitiveness and Growth, 9 February 2024.

205 *von der Lindens/Wilk* (note 43).

206 For France *HCJP* (note 64), p. 18 et seq., nos 43 et seq.

207 *Council of Institutional Investors*, Dual Class Stock (note 204).

208 *Glass Lewis*, Policy Guidelines – Continental Europe (2023) 58.

209 *Institutional Investor Advisory Services (IiAS),* Voting Guidelines 2023-24, p. 25: generally recommend voting for such issuances, but may recommend voting against "if the dilution is excessive and there is no clear business case to raise capital", then on a case-to-case basis.

210 *ISS,* Proxy Voting Guidelines – Continental Europe (2023) 13.

211 For example, *Wallenberg*; Swedish industrialist criticises ISS over dual-class share attack, Financial Times 11.4.2023, p. 9.

212 Governmental Draft of Section 12 of the Stock Corporation Act (Draft), Explanatory Memorandum p. 126.

213 Above III 1 a.

214 *Casper* (note 43) 187 ZHR 187 (2023) 5 at 25.

215 See only *Rüdiger Veil* in Rüdiger Veil, Europäisches und deutsches Kapitalmarktrecht, 3d ed. (2022) Section 28 Rn 3.

significance relative to strong individual shareholders, who, with multiple-voting rights, are even stronger. These groups' opposition must therefore be assessed in light of this inherent conflict of interest; comments by proxy advisors must be weighted accordingly.

d) The view of the stock exchanges

Stock exchanges, above all the New York Stock Exchange (NYSE), have traditionally been vocal opponents of multiple-voting shares. The NYSE ruled against listing a company with a dual class structure in 1926 and banned dual-class share structures altogether in 1940 even as competing exchanges, such as the American Stock Exchange (AMEX) and NASDAQ, permitted dual-class listings.[216] This did not change until 1986, when, under pressure from General Motors, the NYSE sought to abolish its one-share, one-vote rule in connection with a takeover. The Securities and Exchange Commission responded with a rule that prohibited dual-class voting structures in most instances, which the courts then overturned as being outside the agency's regulatory powers, whereupon US stock exchanges permitted multiple-voting shares, but only upon recapitalisation and other conditions. But the number of companies with dual-class stock remained low until the takeover boom of the 1980s, and the dam broke with Google's 2004 IPO, in which, to maintain the control of the two founders, which was still rare at the time, the company issued multiple-voting shares with ten-fold voting rights. Multiple-voting shares have now become the norm for technology companies, but they are also becoming more prevalent in other sectors.[217]

Because the prior German ban on multiple-voting shares did not apply to foreign companies, multiple-voting shares in foreign companies were already being traded on the stock exchange and capital market in Germany.[218]

Regulation of stock-market and other index listings constitutes another source of limitation on multiple-voting structures. Examples are the S&P Dow Jones Indices, the Financial Times Stock Exchange (FTSE) Russell and MSCI, though these apply only prospectively, not for

[216] On the following in more detail *Jill E. Fisch/Steven Davidoff Solomon,* B.U.L.Rev. 99 (2019) 1057 at 1065 et seq.; *Dorothy S. Lund,* 71 Stan. L. Rev. 687 (2019) at 701 et seq.
[217] *Jill E. Fisch/Steven Davidoff Solomon,* Dual Class Stock, Law Working Paper No. 715/2023, June 2023, p 13, available at < https://ssrn.com/abstract_id=4436331, cite 12.6 % of IPOs with dual class structures for the years 2004 to 2020 and also cite a whole series of non-technology companies with dual class structures. From Canada *Anita Anand,* 3 Annals of Corporate Governance 184 (2018), (fn. 135) Annex 2 at 66.
[218] This is also pointed out in the government draft of Section 12 of the Stock Corporation Act (Draft), Explanatory Memorandum p. 126.

companies already listed.[219] The S&P Dow Jones Indices relaxed its policy for inclusion in the S&P 1500 in April 2023.[220]

3. A lack of (fully-fledged) alternatives, in particular loyalty shares

a) Loyalty shares

Akin to dual-class structures, loyalty shares like in France, Italy, Spain, Belgium and the Netherlands, do enhance control. But they serve a different purpose and do not fulfil the above-mentioned needs.[221] Time-related loyalty shares do not offer the same benefits as class-related multiple-voting rights. In principle, loyalty shares benefit every shareholder who holds them for a certain period of time, so this arrangement avoids the concentration of voting rights and influence-bundling, because everyone can participate. But despite this formal equivalence, loyalty shares in the end benefit major shareholders who wish to hold larger blocks of shares for long periods.[222] Time-related rewards, namely the doubling or tripling of voting rights, are not a sufficient incentive for small shareholders, since the loyalty bonus simply turns a tiny position into a less-tiny position, still without significant influence in the general assembly.[223] This lack of leverage means that the "apathetic" or passive institutional investor cannot be activated through the instrument of loyalty voting rights. Ultimately, the weakness of loyalty shares is the lack of transparency as to the current allocation of voting rights.[224] In order to create transparency, a register would have to record the exact holding period for each individual share vis-à-vis the company so as to track the greater voting power of the affected shares – bringing additional bureaucracy down on the small shareholders who were supposed to be

[219] *Scott Hirst/Kobi Kastiel*, Corporate Governance by Index Exclusion, 99 B.U. L. Rev. 99 (2019) 1229; *Dorothy S. Lund*, 71 Stan. L. Rev. 687 (2019) at 710 et seq.
[220] *Jill E. Fisch/Steven Davidoff Solomon*, Dual Class Stock, Law Working Paper No. 715/2023 at 13, June 2023, available at < https://ssrn.com/abstract_id=4436331.
[221] Directive Recital (5); *Marco Becht*, Loyalty Voting Structures: A Better Dual Class?, Law Working Paper No. 769/2024, May 2024, available at < http://ssrn.com/abstract_id=2154648 >; *Kalss* (note 1) at 560 et seq.; *Isabel Fernández Torres* (note 90), but with older literature; *Tom Vos/Jeroen Delvoie/Theo Monnens/Steven Declercq*, Why loyalty voting rights and dual class shares should coexist, ECGI blog 7 December 2023.
[222] *Chatard* (note 81) p. 102 et seq.; *Burkhardt*, Loyalitätsaktien im schweizerischen Recht de lege lata und de lege ferenda (2023) 611 et seq.
[223] *Kalss* (note 1) at 460, 462.
[224] *Javier Garcia de Enterria*, Spanish Loyalty Shares: Effects on the General Shareholders' Meeting, on Takeover Bids and on Significant Holdings, Iberio American Institute for Law and Finance, 2022, 1 et seq; *Kalss* (note 1) at 471et seq.

encouraged to hold for longer. Thus the primary positive effect of loyalty shares favours long-term block shareholders.[225]

b) Other organisational forms

There are ways to organise a company that are both suitable for the stock exchange and allow a clear bundling of influence; in Germany, for example, these would be the Kommanditgesellschaft auf Aktien (KGaA) or GmbHs with listed debt instruments or GmbH & Co KGs.[226] But references to other organisational forms than the stock corporation fall short. They are certainly not an alternative, as only very few listed companies are not organised in the legal form of a stock corporation. Large, successful start-ups and large technology companies in particular are organised as stock corporations.

Hybrid structures such as the KGaA or the GmbH & Co. KG are not well understood internationally. The dual board system of the AG, the German stock corporation, is already relatively obscure and now would be joined by another organisational form that requires a great deal of explanation on the international capital market.

c) The draftsman's toolkit

German stock corporation law offers a number of alternatives to multiple-voting shares.[227] The best-known instruments are non-voting preferred stock under Section 139 of the German Stock Corporation Act and the maximum voting right (*Höchststimmrecht*). Though not complete alternatives to multiple-voting shares, they do to some extent replicate certain aspects of them (saliently, the unbundling of capital investment from voting rights). Yet they do not fully achieve the pooling of influence in favour of a shareholder or group of shareholders but rather have an indirect effect: because some shareholders are restricted, the voting power of the unrestricted shareholders grows accordingly, so the result is not a direct pooling of influence. Reciprocal shareholdings, secondment rights, syndicate agreements, or shareholder agreements,[228] which were used in the United States even before the stock exchanges would list

[225] *Chatard* (note 81) at 102 et seq.; *Fernández Torres* (note 90) at 580; *S Kalss* (note 1) at 460 et seq.; *Jung* (note 82) at 108; *Burkhardt* in FS Vogt (2020) 372; *Burkhardt* (note 222) p. 611 et seq.; *Bueren* (note 8) p. 816 et seq.
[226] *Kalss* (note 1) at 458.
[227] *Kalss* (note 1) at 458 et seq.
[228] *Nicolussi* (note 1) at 756; *Herzog/Gebhard* (note 1) at 1897.

companies with dual-class structures, have similar effects.[229] The Directive as well as the new German law on multiple-voting structures leaves all these other control-enhancing mechanisms untouched and thereby reduces the effect of mandatory safeguards envisaged by them considerably.[230]

IV. Regulatory components of the limitations and safeguards for listed companies: Comparative legal experience, economic reasons, legal policy options

1. Companies covered, share classes and the relevant market

a) Multiple-voting shares as registered shares for all companies, but with limitations and safeguards for listed companies

The question of whether to authorise shares with multiple-voting rights arises for all stock corporations and, under section 10 of the SE Regulation, also for SEs (the Societas Europea).[231] Multiple-voting shares imply the same economic considerations for all stock corporations and should be authorised, not only for listed shares (including shares traded on an over-the-counter market), but with certain limitations and protections that only apply to these (IV 2-7 below). For all unlisted companies, the shareholders can decide whether to authorise shares with multiple-voting rights in their articles of association as they see fit, as has long been called for[232] and as is now the law in Germany.[233] Any other solution would be inconsistent with the principle of private autonomy.[234] The shareholder protections in current company law ought to be sufficient; however, should the legislator deem it necessary, then these protections ought to be the subject of a more general review and new codification.

As the German solution rightly provides, multiple-voting rights should only be permissible for registered shares[235] – regardless of whether registered shares should be prescribed in general,

---

[229] *Jill E. Fisch/Steven Davidoff Solomon,* Dual Class Stock, Law Working Paper No. 715/2023, June 2023, available at < https://ssrn.com/abstract_id=4436331 at 14 >.
[230] Supra I 1 g note 37.
[231] Section 12 of the German Stock Corporation Act (Draft), Explanatory Memorandum p. 126, also for France *HCJP* (note 64) no. 72, p. 27.
[232] E.g. *Walter Bayer,* Expert Report for the 67th German Jurists' Conference, 2008, E 109 and thesis 20.
[233] Section 135a para. 1 sentence 1 of the German Stock Corporation Act as amended, "The articles of association may provide for registered shares with multiple-voting rights." Restrictions only for listed companies and those with shares included in over-the-counter trading pursuant to Section 48 BörsG, Governmental Draft Act, section 135a (2-4). In favour e.g. *Casper* (note 43) at 23, 30; *Herzog/Gebhard* (note 1) at 1164 et seq.
[234] Supra III 1 d.
[235] Section 135a (1) sentence 1 of the German Stock Corporation Act as amended.

which is a separate and controversial question.[236] The reason multiple-voting rights should be limited to registered shares is the increased (and perhaps controlling) influence of their holders over and above the number of shares held, which makes it important that this be transparent to the company's other shareholders as well as to the capital markets and the public; registered shares are the only way to achieve this. Transparency as to the existence of multiple-voting shares is not enough; it must also be transparent who holds them. And not even registered shares solve the problem of concealed trusteeships, though this has been mitigated by new transparency regulations on the exercise of voting rights.

With regard to the various uses of multiple-voting shares, companies have very different needs. They may wish to create of several tiers of multiple-voting rights, as is often done in the United States.[237] German law[238] rightly permits this, which means that different classes of multiple-voting shares are permissible within one company, and their introduction may require the shareholders to pass special resolutions.

b) The relevant market (stock exchange segments)

Only the SME growth market is covered under the European directive, i.e., only that particular segment of the market, which in Germany is currently only the "Scale" segment of the Regulated Unofficial Market of the Frankfurt Stock Exchange.[239] But this is too narrow and leads to an unjustified differentiation of the markets.[240] The same view has established itself in the UK, where multiple-voting shares are also permitted in the premium listing segment.[241] The German solution provides for listing of multiple-voting shares in the premium market segment as well,[242] but, as explained in more detail below, for individual regulatory issues it may be appropriate to differentiate between unlisted companies and other companies. German law rightly provides different rules for listed companies and companies whose shares are included in over-the-counter trading than for unlisted companies.[243]

---

[236] See *Klaus J. Hopt/Susanne Kalss*, Grundkapital, Aktienübertragung und Stimmrecht, in: Gesellschaftsrechtliche Vereinigung, ed., Reformbedarf im Aktienrecht, 2024. § 4.
[237] Above II 1 a.
[238] R Governmental Draft Act Section 135a para. 1, Explanatory Memorandum p. 128.
[239] *German Bar Association* (note 43) at 742 et seq.; *German Bar Association* (note 1) at 466; *Kalss* (note 1) at 486.
[240] Above I 2 f.
[241] Above II 3 b.
[242] Section 135a (1) and (2) of the German Stock Corporation Act as amended; also *German Bar Association* (note 1) at 466; however, Harnos (note 43) at 350, for example, is cautious.
[243] Sections 48 and 48a BörsG; section 135a (2) sentence 1 of the German Stock Corporation Act as amended.

c) Multiple-voting shares permitted only until the IPO or also permitted later

The European directive is limited to authorising multiple-voting shares for companies seeking to list their shares on a multilateral trading facility (an MTF). Other legal systems that continue to adhere to but have relaxed the principle of one share, one vote provide for multiple-voting shares only in the initial offering; one example of this is the US.[244] In France reform proposals had also contemplated confining the availability of multiple-voting shares to IPOs and excluding them for companies that are already publicly traded.[245] The German solution goes so far as to allow multiple-voting shares for companies that have already listed on the stock exchange,[246] which seems appropriate from an economic perspective.

However, because the German solution provides that all "affected" shareholders must consent,[247] the introduction of multiple-voting shares remains practically impossible outside an initial offering; the legislative materials explain as much, and as shown below, this seems like an appropriate solution.[248] Some advocates have argued from an economic perspective that it should also be legal to introduce multiple-voting shares later, but then with an appraisal or exit right.[249]

2. Personal requirements for shareholders with multiple-voting rights

a) All shareholders or only board members or officers

Considering that it is the founders in particular who ought not to be deterred from going public by the ban on multiple-voting shares, one could argue in favour of allowing multiple-voting rights only for them. But this would be too limiting as existing companies may also depend on fresh capital to pursue new business ideas, including risky ones. Some legal systems even restrict multiple-voting shares to founders who are also board members or officers, as is the

[244] Above II 1 a.
[245] For France *HCJP* (note 64), at nos. 65 et s., p. 26 et s.; but see above II 4 on the French law of 2024.
[246] Section 135a (1) sentence 3 of the German Stock Corporation Act as amended: Resolution of the Annual General Meeting to provide or issue shares with multiple-voting rights. Also *German Bar Association* (note 43) at 742/743. *von der Linden/Schäfer* (note 43) at 1078; *Kuthe* (note 43) BB 2023, 1603 at 1606 fear difficulties on the capital market even without an IPO due to the negative attitude of institutional investors (III 2 c above).
[247] Section 135a (1) sentence 3 of the German Stock Corporation Act as amended and explanatory memorandum Governmental Draft Act p. 129: all shareholders.
[248] Below IV 5 a; agreeing, *German Bar Association (*note 1) at 467; *Kalss* (note 1) at 492.
[249] *Titiaan Adam Keijzer* (fn. 135) RTDF 2023, 24 at36.

case for directors in the UK[250] as well as under the Haut Comité Juridique de la Place Financière de Paris proposal in France.[251] But in economic terms, this is also too restrictive, because new investors may wish to exert influence without taking a position on a board. The German solution of giving all shareholders access to multiple-voting shares therefore seems preferable.[252]

b) Minimum shareholding requirements

One could conceive of a rule whereby only shareholders with a certain amount of equity who have thus signalled their personal commitment to the company (i.e., investors with skin in the game) would be permitted to acquire multiple-voting shares. The Haut Comité Juridique de la Place Financière de Paris, for example, favours a minimum shareholding requirement of 20%.[253] In the US, such ownership-percentage sunsets are common in practice, usually up to 10%.[254] Margins of between 5% and 25% have been considered.[255] The literature has sometimes advocated a 15% stake, for example in the UK, but with fewer additional limitations.[256] Even if no minimum shareholding is envisaged, from an economic perspective the issue has been raised that founders often eventually reduce their personal investment considerably, which thwarts the expectations that other shareholders had when they granted multiple-voting rights in the first place. This would speak in favour of an event-based sunset clause.[257]

The German solution, in contrast, does not provide a minimum shareholding threshold,[258] nor do other countries such as the UK.[259] But whether a minimum shareholding requirement is called for also depends on the multiple-voting rights multiplier, i.e., the permissible multiple of the ordinary voting weight; so, for example, one might stipulate a requirement of at least 10% shareholding with a tenfold voting right, which, as will explained in the following section, gives the multiple-voting-share holder the opportunity to achieve a simple majority.

---

[250] II 4 b above. In agreement with *Bobby V. Reddy* (fn. 111) at 13 et seq.
[251] *HCJP* (note 64) *at* nos. 79, 80, p. 29 et seq. with flexible rules for holding companies and other corporate structures, no. 80.
[252] Likewise *Casper* (note 43) at 33.
[253] For France *(HCJP)* (note 64) at no. 83, p. 30.
[254] Above II 1 a; for France *HCJP* (note 64) at no. 84, p. 31, above II 4 c.
[255] *John Kong Shan Ho*, Does Imposing a Time-Based Sunset Provision on Dual Class Share Structure Genuinely Enhance Corporate Governance? (2023) J.B.L. Issue 5, 359, at 375 following *Andrew William Winden*, Sunrise, Sunset: An Empirical and Theoretical Assessment of Dual-Class Stock Structures, 2018 Colum. Bus. L. Rev. 852 at 870.
[256] *Bobby V. Reddy* (fn. 111) at 13.
[257] *Lucian A. Bebchuk v Kobi Kastiel*, 103 Virginia L. Rev. 585 (2017) at 607 et seq.; also below IV 4 b.
[258] Section 135a (1) and (2) of the German Stock Corporation Act as amended.
[259] Above II 4 b.

3. Limitation of voting weight and the exercise of multiple-voting rights

a) Limitation of voting weight

The most important limit on multiple-voting structures for the protection of other shareholders is the restriction of multiple-voting rights to a certain multiple or multiple-voting multiplier. Restrictions on the size of the multiple are found even in countries that have largely authorised multiple-voting shares, such as the US, Sweden, and Switzerland.[260] Limitation to a multiple of ten times the voting power of an ordinary share is widespread internationally. Sweden has provided such a limit since 2000, and so has the most recent Italian regulation.[261] A multiple-voting right multiplier of ten is also a typical practice in the US, for example.[262] The new German law also provides a limit of ten times the simple voting rights.[263]

This limitation on voting weight means that a shareholder with multiple-voting rights who holds around 10% (precisely 9.09%[264]) of the shares, each with ten times as many votes, can obtain a simple majority.[265] In order to achieve a qualified – say, a three-quarters majority, for example – the multiple-voting shareholder must hold around 25% of the shares.[266] A multiple-voting factor of 20:1, which is (still) current under the listing rules for the premium segment in the UK, is even more generous.[267] But other proposals would restrict the multiple-voting multiplier to a maximum of between 5:1[268], while others like the Netherlands do not provide a maximum voting-right factor at all.[269] Poland sets an even stricter limit of two,[270] whereas the EU

[260] Above II 1 a, b and d.
[261] Above II 2 b, 4 c.
[262] *Jill E. Fisch/Steven Davidoff Solomon*, The Problem of Sunsets, 99 B.U.L.Rev. 1057 (2019) at 1064; *Council of Institutional Investors*, Dual Class Stock (fn. 204) at 1. Also supra II 1 a.
[263] Thus Section 135a para. 1 sentence 2 of the German Stock Corporation Act as amended. Also *Oxera* (fn. 156) at 13. *Casper* (note 43) at 32 agrees that it is a sensible compromise; critical is *Denninger* (note 1) at 2336; *Mock/ Mohamed* (note 43) at 1278; *Ceesay* (note 43) at 4.
[264] *Bobby V. Reddy* (fn. 111) at 13: 9, %.
[265] With 10% of the shares and ten times the number of votes, i.e. 100, the remaining 90% of the shareholders retain their 90 votes, so at the annual general assembly everyone votes with a total of 190 votes, i.e. 100:x equals 190:100 = 52.63%. More precisely 9.09%, *German Bar Association* (note 43) at 743 para. 43 aE; *Bobby V. Reddy* (footnote 111) at 13.
[266] With 25% of the shares and ten times the number of votes, i.e. 250 votes, the remaining 75% of the shareholders retain their 75 votes, so at the annual general assembly everyone votes with a total of 325% of the votes, i.e. 250:x equals 325:100 = 76.92%. Also *Le Nabasque*, Revue de Droit Bancaire et Financier 2022, No. 6: Multiple-voting factor 10, shareholding 30%, majority of 80%.
[267] Above on Great Britain II 4 b. The multiple-voting shareholder must hold at least 4.8% of the shares in order to have 50% of the votes, see *Bobby V. Reddy* (note 111) at 12 et seq. For 1:10 to 1:20 *Casper* (note 43) at 31 et seq.
[268] Above note 16: two to five.
[269] Above II 1 c.
[270] Above II 2 b.

Committee on Economic and Financial Affairs proposed limiting a multiple-voting factor of (at most) between two and five and the ECON Committee resolution as well as the European Parliament mandate contemplated limits ranging from two to twelve.[271] But a factor of 5:1 already means that a shareholder would have to hold around 17% of the shares in order to achieve a simple majority,[272] a very demanding limit that seems too high (especially for start-ups with little equity) and is also unusual by international standards.

German law does not stipulate a fixed voting ratio of multiple-voting to non-privileged shareholders, and thus, as already mentioned, the articles of association can provide for shares with variously weighted voting rights.[273] An alternative would be to limit the number of shares with multiple-voting rights, but with a provision, as in section 139 para. 2 of the German Stock Corporation Act, for preferred stock under section 12 para. 2 of the draft version of the German reform law, that at least 50% of the share capital be in shares that are not multiple-voting shares or non-voting preferred stock.[274] Based on these considerations, the recommendation when drafting articles of association is to harmonise between the maximum allotment to one or more multiple-voting shareholders and the minimum level of risk assumption by the privileged shareholder(s).

A particular problem arises under Art. 5(1)(b)(i) of the Commission draft of the European directive, which stipulates a cumulative maximum voting weight and maximum quantitative volume.[275] German law does not yet reflect this, but the German Bar Association[276] sees no resultant violation of Art. 5(1)(b)(i) of the proposed directive because "with tenfold voting rights, barely over nine per cent of all shares already confers a simple majority of voting rights".[277] But that is incompatible with the plain language of the draft directive.

---

[271] Above I 2 d.
[272] With 10% of the shares and five times the number of votes, i.e. 50 votes, the remaining 90% of the shareholders retain their 90 votes, so at the annual general assembly they all vote with a total of 140 votes, i.e. 50:x equals 140: 100, then x = 35.71%. With 20% of the shares and five times the number of votes, i.e. 100 votes, the remaining 80% of the shareholders retain their 80 votes, so at the annual general assembly everyone votes with a total of 180 votes, i.e. 100:x = 180:100, then x = 55.55%. With 17% of the shares and five times the number of votes, i.e. 85 votes, the remaining 83% of the shareholders retain their 83 votes, so at the annual general assembly everyone votes with a total of 168 votes, i.e. 85:x = 168:100, then x = 50.59.
[273] Above IV 1 a.
[274] This is the proposal by *Casper* (note 43) 187 ZHR 187 (2023) 5 at 31.
[275] "[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". The Council's general approach as of April (footnote 39 above) deleted the maximum volume requirement provided for in the COM proposal.
[276] *German Bar Association* (note 43) at 743 para. 43.
[277] *German Bar Association* (note 43) at 43 para. 43 aE. The government draft points out that with the multiple-voting rights factor of 10:1, the holders of the multiple-voting rights must have at least a relevant share in the share capital for control, Governmental Draft Act Section 135a, Explanatory Memorandum to para. 1 p. 129.

b) Limitations on the exercise of multiple-voting rights on certain resolutions of the general assembly

The European directive permits the exercise of multiple-voting rights on resolutions of the annual general assembly that require a qualified majority to pass,[278] as do various national laws in light of the fundamental nature of such a decision for the company.[279] In German law, a limitation arises from the requirement of a double majority of votes as well as (a usually qualified majority of) capital to adopt significant structural measures. Multiple-voting rights are only fully valid on matters that require a majority of votes (which might be to appoint supervisory board members or the auditor or to resolve to appropriate profits). Where a capital majority is required in addition to a voting majority, the multiple-voting right will not work to push them through, but it will permit blocking them.[280] The European directive does not take issue with this.[281] The German Bar Association thinks this issue is separate from (what it regards as the valid issue of) whether multiple-voting rights should be barred from being exercised on certain types of resolutions, but believes it is "ultimately probably not a convincing solution".[282] Some countries such as Sweden[283] deliberately accept it to accommodate important anchor shareholders such as Wallenberg. In Germany, certain large listed family companies, such as Merck, have opted to organise as partnerships limited by shares, which enables the family, as the general partner, to maintain influence and to direct investors to the limited partnership.[284] Issuing non-voting shares (without the profit advantage of preferred stock) is permissible under the GmbH statute, and family GmbHs in particular make use of this as well as of issuing shares with multiple-voting rights. These instruments allow non-family members to participate as

[278] Art. 5(1)(b)(ii) of the proposed directive with restrictions by the Council, 14.4.2023: "excluding appointment and dismissal as well as operational decision to be taken by directors and that are submitted to the general meeting for approval"; supra I 2.
[279] On Basic and Structural Decisions Corporate Law Volume I, 1980, Section 6 III.
[280] Governmental Draft Act Explanatory Memorandum to Section 135a (4) of the German Stock Corporation Act; *Kalss* (note 1) at 493; *German Bar Association* (note 43) at 743 para. 44: veto position.
[281] Proposal for a Directive, supra I 2 a, recital 11, and probably also *German Bar Association* (note 43) at 743 para. 44.
[282] *German Bar Association* (note 43) at 743 para. 45 : "probably rather to be denied"; also *Casper* (note 43) 187 ZHR 187 (2023) 5 at 34: no legally certain demarcation; also *Denninger* (note 1) at 2336.
[283] Above II 1.
[284] *Carsten Burhop/Michael Kißener/Hermann Schäfer/Joachim Scholtyseck*, Merck 1668-2018; from pharmacy to global corporation (2018) 417 f.

investors without acquiring major influence, and they aid particularly in succession planning because they permit the successors to obtain influence in a tax-favourable manner.[285]

However, it should be borne in mind that the shareholder with multiple-voting rights invests less capital than the other shareholders on the way to achieving a simple or qualified majority, which tends to weaken supervision or even undermine control by the supervisory board and the auditors. These concerns make it worthwhile to consider restricting the exercise of multiple-voting rights on certain types of resolutions. This does not automatically imply a majority-of-the-minority-type provision, as is found in some countries; rather, it means that shareholders with multiple-voting rights can only vote their simple rights, reducing their voting power on those matters. The UK has been very thorough in this respect; there, the free exercise of multiple-voting rights is restricted to matters of changes of control and takeovers, and is otherwise limited to decisions to remove the multiple-voting shareholder as director.[286] German law restricts the exercise of multiple-voting rights in two cases: resolutions to appointment an auditor and resolutions to appointment a special auditor.[287]

These restrictions are well founded, and the question is whether other kinds of resolutions should have been included. Other worthy candidates for restriction are resolutions on asserting or waiving claims for damages, as in Switzerland,[288] or votes on the remuneration system.[289] Shareholder control and investor protection, both addressed in the explanatory memorandum that accompanied the German government’s draft legislation, favour the restriction on resolutions regarding claims for damages. Excluding votes on remuneration may be too great a restriction on the exercise of multiple-voting rights and eventually work as a deterrent to taking a company public. Under no circumstances, however, should multiple-voting rights be restricted in the election of the supervisory board; this is one of the most important opportunities for the multiple-voting shareholder to exert influence, and multiple-voting shares lose their

[285] *Volkmann/Thoma* (note 43) at 444; see also *Pauli* in *Sebastian Spiegelberger*, Unternehmensnachfolge, 3rd ed. 2022, para. 39 ff; *Sebastian Grever*, Disquotale Ausgestaltung von Gesellschafterrechten – zivilrechtliche Gestaltungsmöglichkeiten und steuerrechtliche Folgen, RnotZ 2019, 1, 12 ff
[286] Above II 3 b; critical and on possible reform *Bobby V. Reddy* (fn. 111) at 6 et seq.
[287] Section 135a IV of the German Stock Corporation Act as amended to Section 119 I No. 5 and Section 142 I of the German Stock Corporation Act.
[288] As to Switzerland see more generally above II 1 d.
[289] This was considered by *German Bar Association* (note 1) at 469.

significance without this right.[290] The appointment and dismissal of directors and board members is even more important in this regard.[291]

Another particular feature, which only the proposal for a European directive appears to have included so far, are resolutions on human rights and the environment (Art. 5(2)(d) of the proposed directive). The inclusion of such restrictions was criticised above and was rightly dropped from the final directive.[292]

4. Shareholder lock-up of multiple-voting shares (sunset clauses)

a) Time limits for multiple-voting rights

Sunset clauses are rules that grant multiple-voting rights either for a limited time or only as a personal entitlement.[293] In view of the uncertain economics of multiple-voting shares, sunset clauses usually make good sense.

German law currently provides a time limit only for listed companies,[294] with multiple-voting rights expiring no later than ten years after the company lists on the stock exchange or after the shares commence trading on the over-the-counter market,[295] albeit with a one-off option to extend them for another ten years by amendment to the articles of association.[296] This amounts to a time-based sunset clause under Art. 5(2)(b) of the Directive, and the time it buys is indeed sufficient for the founders to achieve their post-IPO vision and the associated growth phase,[297]

[290] The multiple-voting right does not formally change the relationship between the annual general assembly and the supervisory board may shift the balance toward the annual general assembly because the shareholder with multiple-voting rights can more easily appoint all capital representatives of the supervisory board and more easily achieve a majority on other resolutions, *Kalss* (note 1) at 482 et seq,

[291] It would be superfluous to mention motions submitted to the annual general assembly by management; they are an obvious field for the exercise of multiple-voting rights.

[292] I 2 b above. Rejecting also *German Bar Association* (note 43) at 743 para. 46, and already *German Bar Association* (note 1) at 469.

[293] A broader concept of sunset clauses also includes other limits on multiple-voting shares.

[294] For non-listed companies, the articles of association may regulate multiple-voting rights differently by restricting the free transferability of shares and setting a time limit. Also *German Bar Association* (note 43) at 744 para. 47.

[295] According to Governmental Draft Act Section 135a, Explanatory Memorandum to para. 2 p. 131, the earlier date is decisive in the event of a change between the regulated unofficial market and the regulated market.

[296] 135a para. 2 sentences 2 and 3 of the German Stock Corporation Act as amended, on the extension below IV 5 b.

[297] Governmental Draft Act on section 135a of the German Stock Corporation Act, explanatory memorandum to para. 2 p. 131.

a view that recent economic studies support.[298] There are many examples of such a rule around the world, for example in the US, where seven to ten years[299] or five to twenty years are common in practice.[300] The traditional initial expiry period in the UK, of just five years, can be extended by the non-multiple-voting shareholders.[301] Practitioners in France had proposed seven years with an option to extend.[302] The German Bar Association also believes a time limit is reasonable.[303]

While time-based restrictions can seem counterproductive, especially for long-term investments and business projects, dropping them altogether and leaving the details to private ordering by (founding) shareholders, as the German Bar Association has suggested,[304] would go too far. Empirical findings suggest that the economic advantages of multiple-voting rights persist only for a limited period of time once established[305] but also that these rights tend to outlive their original purpose, which speaks for time limits.[306] Economists have therefore favoured time limits or suggested that, instead of final expiry after ten years, the legislator should provide just the non-multiple-voting shareholders with an opportunity to extend multiple-voting rights by a simple majority.[307] That would be unlike German law, which provides that multiple-voting rights can be extended by *all* shareholders by amending the articles of association, i.e., by a resolution in which multiple-voting shareholders can vote, but without multiple voting.[308] A time limit also has the advantage of being unambiguous and clearly recognisable to shareholders and the market.[309]

---

[298] E.g. *Anita Anand,* 3 Annals of Corporate Governance 184 (2018) (fn. 135) at 8, 45 et seq.: preventing the entrenchment of an untalented management many years after the initial justification (and investor support); *Lucian A. Bebchuk/Kobi Kastiel,* The Untenable Case for Perpetual Dual-Class Stock, 103 Virginia L. Rev. 585 (2017); each with possibility of extension, IV 5 b below.
[299] *Jill E. Fisch/Steven Davidoff Solomon,* Dual Class Stock (fn. 135), p. 14; also II 1 a. above.
[300] *Lucian A. Bebchuk v. Kobi Kastiel,* 103 Virginia L. Rev. 585 (2017) at 619.
[301] Above II 4 b. Critical, and addressing possible reform to 10 years, *Bobby V. Reddy* (fn. 111) at 9 et seq.
[302] For France, cf. *HCJP* (note 64) at no. 88, p. 31, but cautiously and with unspecified reference to foreign practice. Above II 2 a, 4 c, 5 a. But above II 4 c on the French Law of 2024.
[303] *German Bar Association* (note 43) at 744 para. 48.
[304] *German Bar Association* (note 43) at 744 para. 48) and already and already *German Bar Association* (note 1) at 469. Fundamentally against sunsets, *Jill E. Fisch/Steven Davidoff Solomon,* The Problem of Sunsets, 99 B.U.L.Rev. 1057 (2019) at 1079 et seq.; they are arbitrary and do not take into account the different needs of the companies, at 1082; no one-size-fits-all approach. Instead, the issuers themselves should react with customised solutions, for example in the event of "substantial dilution of the founder's stake, transfer of high voting stock to a non-founder; and death, incapacitation, or departure of the founder", *Jill E. Fisch/Steven Davidoff Solomon,* Dual Class Stock (fn. 135) at 14.
[305] Above III 1 e.
[306] *Martijn Cremers /Beni Lauterbach /Anete Pajuste* (fn. 135) at 3 et seq., therefore in favour of a time limit of seven years, ibidem at 5;
[307] E.g. *Anita Anand,* 3 Annals of Corporate Governance 184 (2018) (fn. 135) at 8, 45; *Lucian A. Bebchuk/Kobi Kastiel,* 103 Virginia L. Rev. 585 (2017) at 590/591, 627 et seq.
[308] More details below IV 5 b.
[309] For disclosure, see IV 6 below.

b) Restrictions on the transfer of multiple-voting rights and the occurrence of other events

Internationally, it is common practice to tie multiple-voting shares to the shareholder's person such that the right is void upon sale, for example in the UK (with minor exceptions).[310] German law likewise stipulates that multiple-voting status expires upon transfer (no matter whether shares are sold or pass by operation of law, such as to heirs or successors in interest).[311] This constitutes a permissible transfer-based sunset clause as per Art. 5(2)(a) of the Directive, and in principle the rule matches the objective of attracting particular persons to the company through the prospect of owning multiple-voting shares. The law says this purpose ceases to apply upon transfer of the shares, now freely alienable with simple voting rights.[312]

But the question is how to limit the circle of persons. It may be inappropriate to have multiple-voting rights terminate with every transfer and even upon death,[313] because "experienced" founders will want to include their descendants in the company, particularly in family businesses.[314] A legitimate interest in retaining preferential voting rights upon transfer may also exist in other kinds companies; the owner of shares with multiple-voting rights may be looking for a successor to run "their" company in the same founding spirit, and automatic cancellation of the right would be antithetical to that. But arbitrary transfer of multiple-voting shares would also undermine their purpose. The German Bar Association's proposal[315] – that the consequences of transfer be left entirely to private ordering – would ultimately amount to generally authorising multiple-voting shares. Their justifying claim that the protective mechanisms of stock corporation and group law, the duty of loyalty, capital markets and transparency are enough is not convincing in view of the economically-founded limits on multiple-voting structures and shareholder protections discussed above.

Could there have been a milder but equally suitable solution than the automatic termination of preferential voting rights upon transfer of the shares? Under German law, for registered stock the articles of association may require the consent on the stock corporation for the transfer of

[310] Above II 4 b: only directors.
[311] Section 135a (2) sentence 1 of the German Stock Corporation Act as amended.
[312] Governmental Draft Act on Section 135a of the German Stock Corporation Act, explanatory memorandum to para. 2, p. 131.
[313] Critically *Hammen* (note 43) at 294.
[314] Also *Hammen* (note 43) at 294.
[315] *German Bar Association* (note 1) at 466/467; also *Jill E. Fisch v. Steven Davidoff Solomon,* 99 B.U.L.Rev. 1057 (2019) at 1094.

shares (*Vinkulierung*).[316] But if this route is chosen, it should not be the management board but rather the general assembly who must consent in accordance with the articles of association, as in German law under Section 68 (2) of the Stock Corporation Act. The consent resolution would have to pass by a majority large enough to amend the articles of association, a majority not only of those affected but of all shareholders. Any multiple-voting share holder could thus vote, though without preferential voting rights.[317] Another conceivable option would be consent by resolution of only the affected shareholders, in which case a simple majority would do.[318] Requiring the approval of all shareholders (as with the introduction of multiple-voting shares) would be too much, as it would be impossible to achieve in practice. The law also correctly assumes that companies have control in mind when multiple-voting shares are up for transfer and will therefore generally subject such transactions to review and consent.[319]

Another regulatory option even more favourable to holders of multiple-voting shares would be a mere right of withdrawal for the outvoted shareholders, as provided under takeover law.[320] In the event of a change of control, shareholders would then be protected only by a takeover bid to be submitted by the acquirer. But accommodating the holders of multiple-voting rights to this extent at the expense of other shareholders is neither economically necessary nor appropriate.

If the law sticks with automatic termination of multiple-voting rights upon transfer as under German law, then limited exceptions ought to have been considered, e.g., for the intrafamily transfer scenario.[321] As with time-based sunsets, the law could provide for transfer to be authorised by a resolution of the general assembly with at least a three-quarters majority of the share capital represented when the resolution is adopted. This would be similar to how share transfers are handled under section 36 of the German Takeover Act, which contemplates

---

[316] *Casper* (note 43) 187 ZHR 187 (2023) 5 at 33: Duty to make transfer dependent on approval by the general assembly and termination of the right unless provided otherwise in the articles of association; *German Bar Association* (note 43) at 743 para. 50.
[317] See also *German Bar Association* (note 1) at 469.
[318] Above IV 4 a.E.
[319] Governmental Draft Act on Section 135a of the German Stock Corporation Act, explanatory memorandum to para. 1, p. 128.
[320] *German Bar Association* (note 1) at 469. See also the Swiss regulation in Art. 704 Code of obligations: Introduction of so-called voting shares with a qualified resolution of the general management and the right to sell out given to the shareholders of registered shares with restricted transferability who have voted against the introduction of voting shares. See *Nicolussi* (note 1) at 762.
[321] *German Bar Association* (note 1) at 469; *German Bar Association* (note 43) at 743 para. 50. But *Lucian A. Bebchuk/Kobi Kastiel,* The Untenable Case for Perpetual Dual-Class Stock, 103 Virginia L. Rev. 585 (2017) at 606: evidence that companies run by descendants often underperform other family companies that are managed by their founds or by hired external managers.

transfers between spouses, life partners and relatives (in the direct line up to the third degree) or in case of divorce or other dissolution of marriage. Reorganisations and restructurings within a group of companies would receive the same treatment, with the "group" defined as under the Stock Corporation Act. But this could easily lead to circumvention or abuse, which is why some countries here apply the transfer sunset instead.[322]

The European directive would indeed permit event-based sunset clauses under Art. 4(2)(c); as additional triggers besides transfer of the multiple-voting rights, one might consider delisting or uplisting to the regulated market.[323] Yet this regulatory approach appears less apt and is rightly not provided for in German law.[324] In addition to sunset on transfer, the economics literature has considered sunsets upon death and in other cases of the founder departing from the company,[325] which might for example include significant reduction of an original personal investment (which apparently occurs frequently[326]) or removal as an officer if the multiple-voting right is linked to the office, e.g., if the person resigns or is ousted from the management board. Yet this is also not advisable, as explained above.[327] In any case, the articles of association may provide for events that trigger the forfeiture of multiple-voting rights.[328] This is permitted under German law and is an appropriate solution.

German law rightly does not restrict multiple-voting rights to any particular subject matter. As a consequence, compliance with the Directive does not require changing the existing model of voting majorities, which includes requiring a capital majority on certain resolutions.

As always, attention must be paid to possible circumventions of the rule, for example by keeping multiple-voting shares in an intermediate holding company.[329]

---

[322] *Bueren/Crowder* (note 1) at 137 et seq. with the examples of Italy and Belgium. On the group law problem see also *Ceesay* (note 43) AG comment 64 et seq.; *Ulrich Noack/Dirk Zetzsche* in Eberhard Schwark/Daniel Zimmer, Kapitalmarktrechts-Kommentar, 5th ed., 2020 Section 36 WpÜG para. 11.

[323] Likewise *German Bar Association* (note 1) at 469.

[324] Section 135a of the German Stock Corporation Act as amended.

[325] *Jill E. Fisch/Steven Davidoff Solomon*, The Problem of Sunsets, 99 B.U.L.Rev. 1057 (2019) at 1089 et seq., self-rejecting. Practical examples in *Lucian A. Bebchuk/Kobi Kastiel*, 103 Virginia L. Rev. 585 (2017) at 620: the founder's disability, death, or reaching of retirement age, e.g. on Google. Following corresponding sunsets in the rules of the Hong Kong Stock Exchange also *John Kong Shan Ho* (fn. 255) at 374 et seq.

[326] Above IV 2 b.

[327] Above IV 2 a.

[328] *German Bar Association* (note 43) at 744 para. 52.

[329] *German Bar Association*(note 1) at 469.

5. Introducing, extending and limiting multiple-voting share structures by amending the articles of association

a) Introducing multiple-voting share by amending the articles of association with the consent of all shareholders

Under German law, introducing a multiple-voting share structure requires amending the articles of association by a resolution (and thus a sufficient majority) of the annual general assembly.[330] The law rightly clarifies that the management board cannot use an authorised capital increase in order to issue multiple-voting shares.[331] There is no need to demand a material factual justification, especially given the procedural safeguards.[332] Multiple-voting rights can also be eliminated before and after an IPO through an amendment to the articles of association; this requires a special resolution.[333]

The introduction of shares with multiple-voting rights reduces the voting weight of ordinary (non-multiple-voting) shares and affects all other classes of shares.[334] As with the introduction of "golden shares",[335] it does not necessarily require the consent of each and every shareholder;[336] however, it is a serious intervention, and so as a matter of legal policy it may nonetheless be prudent under German law[337] to explicitly require the consent of each and every shareholder.[338] While non-voting preferred stock is not "affected" per se by a shift in the voting rights ratio, requiring the consent of all affected shareholders would mean that introducing a multiple-voting structure is only realistic pre-IPO, or, if later, then only if there are very few

[330] Section 135a (1) sentences 1 and 3 of the German Stock Corporation Act as amended. Regarding the restriction to registered shares Section 135 para. 1 sentence 1 of the German Stock Corporation Act as amended, IV 1 a. above.
[331] Section 202 (1) sentence 2 of the German Stock Corporation Act as amended; also *German Bar Association* (note 43) at 743 para. 41; see also *German Bar Association* (note 1) at 467 with the comment that this would otherwise also be contrary to the Directive.
[332] *Schlitt/Ries* (note 1); *Harnos* (note 43) at 352.
[333] Governmental Draft Act on section 135a of the German Stock Corporation Act, explanatory memorandum to para. 1 p. 129.
[334] Section 135a (1) sentence 3 of the German Stock Corporation Act as amended and explanatory memorandum p. 129: all shareholders, i.e. shareholders with multiple-voting rights and shareholders without multiple-voting rights. Non-voting preferred stock, on the other hand, is not "affected" by a shift in the voting rights ratio. On the issue of classes of shares with multiple-voting rights, see above IV 1 a.
[335] *Mathias Habersack* in MünchKommAktG, 6th ed. 2023, Section 101 para. 31; *Susanne Kalss*, Das Entsendungsrecht – "GoldenShare" zur Wahrung des Einflusses im Familienunternehmen, FS Martin Schauer 2022, 249.
[336] For details see *Kalss* (note 19 at 487.
[337] Section 135 (1) sentence 3 of the German Stock Corporation Act as amended and explanatory memorandum p. 129: the economic need exists in the run-up to or in connection with the IPO, not after listing. More precisely above IV 1 c.
[338] Also *German Bar Association* (note 1) at 467.

shareholders. Individual shareholders could theoretically take advantage of such a rule to drive up the price of a buy-out. The German Bar Association had suggested that the rule be clarified to the effect that where all shareholders are treated equally, only the majority required to amend the articles of association should be needed.[339] But it is not clear whether the legislator really ought to have explicitly provided for this and other special circumstances.[340]

Multiple-voting shares should constitute a separate class of shares, and under German law, they do.[341] If the ratio among several classes of stock will shift to the detriment of the holders of a particular class of stock, the resolution of the annual general assembly requires consent of the disadvantaged shareholders through a special resolution.[342] Special questions arise due to the different structuring options if the multiple-voting shares are not already introduced in the original articles of association, but only later.[343]

b) Extending the time limit for multiple-voting share structures by amending the articles of association

For listed companies, the European directive allows (and German law provides) that multiple-voting rights automatically expire after 10 years unless the articles of association contain a shorter period.[344] While this raises some problems as explained above,[345] 10 years makes sense under the given the approach, albeit – as in German law – with a single permissible extension by amendment to the articles of association passed by three-quarters of the share capital represented when the resolution is passed.[346] Multiple-voting shareholders vote simply, i.e.,

[339] *German Bar Association* (note 43) at 743 no. 40; for example, if all existing shares are provided with the same multiple-voting rights in order to prepare for a subsequent capital increase with single voting rights, or if multiple-voting shares issue while maintaining the subscription rights of all shareholders. In the event of unequal treatment, instead of requiring approval at the close of the annual general assembly the German Bar Association is considering a resolution by a majority sufficient to amend the articles of association plus a special resolution of the disadvantaged ordinary shareholders by a qualified majority. However, the latter puts the affected shareholders in a worse position, which even the German Bar Association considers “justifiable” at best.
[340] This also applies to the two clarifications the German Bar Association called for after the fact, *German Bar Association* (note 43) at 743 nos. 41 and 42.
[341] Section 135a (2) sentences 6 to 8 of the German Stock Corporation Act as amended, also the explanatory memorandum to Section 135a I p. 128. Likewise *German Bar Association* (note 1) at 467.
[342] Section 179 (3) of the German Stock Corporation Act.
[343] *Nicolussi* (note 1) at 761.
[344] Section 135a (2) sentence 2 of the German Stock Corporation Act as amended; *German Bar Association* (note 43) at 744 para. 47, i.e. a time-based sunset clause permitted under the proposed directive, Art. 5(2)b) of the proposed directive.
[345] Above IV 4 a; *German Bar Association* (note 43) at 743 para. 48. Strenger *Herzog/Gebhard* (note 1) at 1167: twice five years.
[346] Section 135a (2) sentence 4 of the German Stock Corporation Act as amended. In agreement with *Casper* (note 43) at 32 et seq., but with a preference for five years; *German Bar Association* (note 43) at 744 para. 49

under one share, one vote, and the resolution must be carried by the majority required to amend the articles of association.[347] This is a reasonable compromise. In contrast to when multiple-voting structures are introduced, this does not require the consent of all affected shareholders; these being listed companies, such would effectively rule out extensions. In the case of several classes of shares, the respective authorised persons vote by special resolution.[348] The possibility of requiring larger capital majorities to carry such resolutions or imposing additional requirements, as German law provides,[349] respects the principle of private ordering and is unobjectionable from an economic perspective.

It also makes sense to require a resolution to be passed no earlier than one year before the deadline, as German law likewise provides.[350] If the resolution to extend the multiple-voting structure were permissible immediately upon its introduction or even earlier, the decision would be "cemented,"[351] foreclosing consideration of later developments that might make extending it look uneconomical.

However, for listed companies it would have been reasonable to allow multiple-voting rights to be extended more than once for a period of up to ten years.[352] From the practitioner's standpoint, this one-off extension is probably insufficient to achieve the desired flexibility, and to the contrary, at least where the shares are closely held, particularly in families, many arguments favour a two-time option to extend.

It bears emphasis here that this was an opportune moment to relax the stringency of the German rules on articles of association[353] under section 23 (5) of the German Stock Corporation Act,

with the caveat that the having the period run from the time of listing does not fully comprehend the situation in which multiple-voting rights are introduced subsequently to listing; but that this is of little practical relevance.

[347] For the alternative proposed by economists – resolution by a simple majority of only those shareholders without multiple-voting rights, see IV 4 a above. In contrast, the German solution has the advantage that such fundamental decisions are left to private ordering and all the shareholders. This also takes better account of the personal investment of the shareholder with multiple-voting rights.

[348] Section 135a (2) sentences 6 and 7 of the German Stock Corporation Act as amended, the restrictions pursuant to Section 135a (2) sentences 4 and 5 of the German Stock Corporation Act (Draft) also apply here, Section 135a (2) sentence 8 of the German Stock Corporation Act as amended.

[349] Section 135a (2) sentence 5, (3) of the German Stock Corporation Act as amended.

[350] Section 135a (2) sentence 4 German Stock Corporation Act as amended.

[351] As corrected noted in Governmental Draft Act Section 135a para. 2 sentence 4, Explanatory Memorandum p. 131.

[352] Section 135a (2) sentence 3 of the German Stock Corporation Act as amended is different with the mere justification p. 131 that this ensures that the extension cannot be unlimited.

[353] *Walter Bayer,* expert opinion for the 67th German Jurists' Conference, 2008; *Heribert Hirte*, Die aktienrechtliche Satzungsstrenge: Kapitalmarkt und sonstige Legitimationen versus Gestaltungsfreiheit, in: Marcus Lutter/Herbert Wiedemann, eds, Gestaltungsfreiheit im Gesellschaftsrecht 1998, p. 61; *Klaus J. Hopt*, Gestaltungsfreiheit im Gesellschaftsrecht in Europa – Generalbericht -, ibid., p. 123; *Gerald Spindler*, Regeln für

which from an international perspective are much too rigid in certain areas, and then to see how it goes.[354]

c) Restricting multiple-voting share structures by amending the articles of association

German law allows the articles of association to stipulate requirements beyond the legal limitations, for example limits on who can hold multiple-voting shares and on the kinds of resolutions where multiple voting is allowed.[355] This rule is a good fit; nothing says the shareholders cannot provide for termination after less than ten years[356] or require a larger capital majority to extend a multiple-voting structure.[357] The articles of association can also stipulate that multiple-voting rights should expire upon certain occurrences, for example if the shareholder's investment falls below a certain level,[358] or in connection with particular resolutions.[359]

6. Transparency and disclosure

With multiple-voting shares, full transparency is essential in order to achieve the indicated level of shareholder protection. German stock corporation law already provided the numerous protections set forth in the explanatory memorandum to the legislation that authorised multiple-voting structures,[360] which need not be recapitulated here. As a separate class, multi-voting shares must be provided for in the articles of association along with the necessary information. The amended Stock Corporation Act raises transparency through several provisions. One is that if there are multiple-voting shares, the list of participants at the annual general assembly must reflect the number of voting rights attributable to each.[361] Additional disclosure requirements apply to the indications on financial statements, management and group management reports, and the final prospectus and registration statement. The rule was meant to be that the annual

börsennotierte vs. Regeln für geschlossene Gesellschaften – Vollendung des Begonnenen? AG 2008, 598, 600 et seq.

354 Also already above III 1 d.

355 Section 135a (3) of the German Stock Corporation Act as amended with explanatory memorandum p. 132.

356 Section 135a (2) sentence 2 half-sentence 2 of the German Stock Corporation Act as amended.

357 Section 135a (2) sentence 5 of the German Stock Corporation Act as amended.

358 See above under IV 2 b; for example if there is a minimum shareholding is required for the multiple-voting shareholder either by law or by the articles of association.

359 See *Herzog/Gebhard* (note 1) at 1167 et seq. on the various structuring options: dilution-based sunset clauses, divestment-based sunset clauses, separation-based sunset clauses, other substantive restrictions.

360 Section 135a of the German Stock Corporation Act (Draft), explanatory memorandum to para. 1, p. 135-136.

361 Section 129 (1) sentence 2 of the German Stock Corporation Act as amended.

report should disclose any transfer of multiple-voting shares if it affects 3% of either the share capital or the voting rights.[362]

The existence of shares with multiple-voting rights must be entered in the commercial register, and the total number of shares with multiple-voting rights as well as of other shares must be noted in connection with the subscribed capital and explained in the annual financial report. For listed companies, the articles of association must be made easily accessible to the public on the company's website so market participants can evaluate the multiple-voting rights and make an informed investment decision.[363]

An interesting proposal, from an economic perspective, is to publish breakdowns of how the holders of different classes of stock voted on resolutions that permitted the exercise multiple-voting rights,[364] the idea being that this would pressure shareholders with multiple-voting rights to take the interests of other shareholders into account to some degree. It is hard to say whether this would be useful, but it is worth considering within the framework of the German Corporate Governance Code (the "GCGC").

Multiple-voting structures affect the public's ability to inspect shareholdings, personal transactions by corporate officers ("directors' dealings"), and acquisitions and changes of control under takeover law. However, the consequences of all these effects should be codified not under stock corporation law but rather in the takeover code, such as through a special regulation – perhaps an optional exemption – that would apply where termination of the multiple-voting structure stands to result in the passive acquisition of control.[365]

7. More general consequences for stock corporation and capital market law

Multiple-voting shares pave the way for their holder(s) to achieve influence and even control with a smaller capital investment. Of course this applies to whether resolutions of the annual general assembly are carried. But it also applies, if less directly, to the monitoring and governance functions of the supervisory board, because multiple voting makes it easier to

---

[362] See sections 33 et seq. of the WpHG; *German Bar Association*. (note 1) at 470.
[363] Section 135a of the German Stock Corporation Act (Draft), Explanatory Memorandum, p. 129, on market control.
[364] *Anita Anand*, 3 Annals of Corporate Governance 184 (2018) (fn. 135) at 47 et seq.
[365] See III 2 b and IV 7 d above.

appoint all te sharehrlder representatives to the board and achieve a majority on other resolutions.[366] If one wanted to go beyond the limits and safeguards discussed above, this would only be an option for listed or capital market-oriented companies from the outset. Because only then there is a broader shareholder base to be protected.

a) Fiduciary duty of the multiple-voting shareholder

One could also consider expressly designating the holder of multiple-voting rights as a fiduciary who is bound to act in the interest of the company and fellow shareholders.[367] The rule in the UK, mentioned earlier,[368] according to which multiple-voting rights cannot be exercised solely to maintain their holder in office or prevent control of the company changing hands, may be an example. But it would not be advisable to codify a fiduciary duty specifically for shareholders with multiple-voting rights. The extent to which shareholders, controlling shareholders in particular, are fiduciaries of the company and their fellow shareholders poses a general question to be answered by the courts.[369]

b) Representation on the (supervisory) board

Another approach would be to entitle the non-multiple-voting shareholders to appoint two minority representatives as board members. Italy is an example of a jurisdiction that provides for minority representatives.[370] However, the problem here is a general one of protecting the minority against a controlling shareholder; that the shareholder controls through multiple-voting rights is not specifically relevant. The same applies to affording minority shareholders greater latitude to submit motions or request information.

c) Independence of supervisory board members

---

[366] With empirical evidence that Canadian companies with multiple-voting rights have significantly worse corporate governance, *Anita Anand,* 3 Annals of Corporate Governance 184 (2018) (fn. 135) at 27 et seq., 50.
[367] *Kalss* (note 1) at 497.
[368] See III 2 b. above.
[369] Also *Jill E. Fisch/Steven Davidoff Solomon,* Dual Class Stock, Law Working Paper No. 715/2023 at 16, June 2023, available at < https://ssrn.com/abstract_id=4436331.
[370] *Kalss* (note 1) at 485; in Austria, the provision of section 87 para. 4 of the Austrian Corporate Law is very narrowly defined: only if three members are elected at a general meeting is there any chance at all that one third of the members will be delegated.

Last, one might consider supplementing the rules on independent directors to address multiple-voting structures. Recommendation C 6 of the German Corporate Governance Code, for example, calls for there to be an appropriate number of independent supervisory board members. Since one must account for ownership structure (recognising the family in a family business or the parent company in a group affiliate) in order to determine the appropriate number of independent directors,[371] it can only be a matter of directors who are also independent of the multiple-voting shareholder anyway.[372] Thus this, too, is about the status of controlling shareholders and the protection of minorities in general and is not specific to multiple-voting structures, though the prevention of hidden dependence will be particularly difficult either way.

d) The need for regulation under capital market law

It was mentioned earlier that the authorisation of multiple-voting rights represents a consequential development in takeover law.[373] In particular, the termination of multiple-voting rights reduces the total number of available votes, and the resultant shift in voting power can easily cross the threshold of a controlling interest. This passive acquisition of control must not raise an obligation to submit a mandatory bid; or at the very least, takeover law should provide an optional exemption. There is a dispute in German takeover law as to whether such an exemption exists de lege lata anyway.[374]

V. Summary and key points

1. The European Directive of 2024, which permits multiple-voting shares as a mere minimum harmonization, is a step in the right direction. But in its limitation to the MTF market including the SME growth market, it falls short, and it would have been better to permit multiple-share structures for all listed companies, though not at the cost of overly-strict mandatory shareholder protections. Instead, the Member States should have been given regulatory leeway, with private

---

[371] Also above on the limits for exercising the multiple-voting right for certain resolutions, IV 3 at the end.

[372] *Thomas Kremer* in Thomas Kremer/Gregor Bachmann/Marcus Lutter/Axel von Werder, eds., German Corporate Governance Code, 8th ed. 2021, C 6 para. 22.

[373] Above III 2 b. For a detailed description, see *Philip Denninger/ Daniel von Bülow*, Mehrstimmrechtsaktien im Recht der öffentlichen Übernahmen, AG 2023, 417; *Jörg-Peter Kraack*, Übernahmerechtliche Implikationen des Zukunftsfinanzierungsgesetzes, NZG 2023, 1151.

[374] In the affirmative, section 135a of the German Stock Corporation Act (Draft), explanatory memorandum to para. 2 p. 131/132 already under current takeover law (section 37 WpÜG in conjunction with section 9 sentence 1 no. 5 WpÜG-AngebotsVO; also Herzog/Gebhard (note 1 at 1166). Section 9 sentence 1 no. 5 WpÜG-AngebotsVO; also *Herzog/Gebhard* (note 1) at 1166; *negative Casper* (note 1) at 34; only with reservations *Denninger/von Bülow* (note 1); *Kraack* (note 43) at 1159; see also *German Bar Association* (note 43) at 744 para. 51 and already *German Bar Association* (note 1) at 469.

ordering as the guiding principle for articles of association, but with certain limits and safeguards for listed companies. The directive should have specified a maximum multiple-voting ratio of up to 10:1. Limiting multiple-voting structures to ten years' duration without the option to extend is too restrictive, and a good compromise is to permit at least one ten-year extension. It would have been unfounded to – as contemplated in the European Commission's draft – restrict the exercise of multiple-voting rights especially on resolutions concerning human rights and the environment; rightly, the final version of the directive abandoned this position. And it ought to be clear that the limits on "golden shares" developed by the European Court of Justice cannot simply be side-stepped through the use of multiple-voting shares.

2. The picture that emerges from the comparative law of multiple-voting structures is anything but uniform. Countries such as the United States, the Netherlands and the Scandinavian countries that mostly or fully permit multiple-voting rights stand alongside countries that mostly or completely reject them, as Germany did until 2023 and as Austria and Israel still do. Others have liberal regulations for unlisted companies while allowing multiple-voting structures for listed companies but with limits and safeguards for other shareholders. In a fundamental reform, Germany recently introduced a system of this kind in 2023, as did Italy in 2024 and France in 2024. A significant liberalisation is also imminent in the UK.

3. From the perspectives of European law and comparative law, the preferable solution is for the legislator to enact a general authorisation of multiple-voting structures. For listed companies, however, this legislative authorisation should be accompanied by (more or less extensive) limits and safeguards for other shareholders. The German legislation of 2023 is a recent example.

4. Comparative law offers important insights and guidance for regulators on multiple-voting share structures, particularly with regard to limits and safeguards for non-multiple-voting shareholders. Countries such as Italy and France that allow loyalty shares, generally with double-voting rights and subject to a holding period of at least two years, traditionally have not permitted multiple-voting shares for listed companies; however, this has shifted or will be shifting in both countries with enactments in 2024.

5. A substantial body of economic theory provides reasons both for and against multiple-voting share structures. Traditionally, agency theory predominately preferred the one-share, one-vote

principle due to the risks for non-multiple-voting shareholders. More recent views tend to see and emphasise more the overall advantages for the company and its shareholders, the stock exchanges, the economy and international competitiveness. But complete deference to private ordering of the articles of association also seems ill-advised from an economic point of view. A balance must be found.

6. Empirical studies remain relatively scarce and, overall, contradictory. Conventional (mostly older) studies applying agency theory have found greater control costs and loss of value associated with deviations from one share, one vote. More recent studies have found no loss of value and even gains, but also that the advantages of multiple-voting structures decline after seven to ten years and that the agency costs increase.

7. The comparative law, economic theory and empirical findings surrounding multiple-voting share structures can inform legislation. Multiple-voting share structures make sense. But in the case of listed shares, the authorisation must be accompanied by limits and safegurads for other shareholders. Otherwise, i.e., for unlisted companies, the articles of association should be unconstrained. As for the limits and safeguards for other shareholders, a wide range of regulatory modules is already available. The new German law is basically appropriate in this respect and may serve as a blueprint, not necessarily for all its provisions, but for the various legislative options. The legislator's decision to evaluate the effects of its limits and safeguards for shareholders in a few years (in Germany, four years)[375] was a sound one.

8. Loyalty shares serve a different purpose and are subject to different requirements and are therefore no alternative to multiple-voting shares. There is no need for them in addition to the class-related multiple-voting rights. However, tradition is sticky, as the recent reforms in Italy and France 2024 have shown.

9. Multiple-voting shares should be registered and should be permitted by law on all markets. The introduction of a multiple-voting structure – such as through an IPO – should however require a qualified resolution on the articles of association and the consent of all affected shareholders. The measure need not be accompanied by a substantive justification.

[375] The plenary session of the Bundestag adopted the recommended resolution from BT-Drucks 20/9363 p. 6.

10. Multiple-voting shares must be offered to all shareholders, not just board members and other executive bodies. A minimum shareholding or "skin in the game" is important and was included in the draft European directive but dropped from the final legislation. There is much to be said in favour of 10% of the share capital for a multiple-voting shareholder.

11. A good alternative option would be a provision – as in German stock corporation law – under which at least 50% of the share capital must be in shares that are neither multiple-voting shares nor non-voting preferred stock.

12. Limits on the voting weight and the exercise of multiple-voting rights are essential. A multiple-voting right factor of 10 is common internationally. It should not be possible in any case to exercise multiple-voting rights on resolutions to appoint auditors or special auditors, and while such is proscribed in German law, the proscription ought to have included resolutions to assert or waive claims for damages and possibly resolutions on the remuneration system as well. However, the exercise of multiple-voting rights to elect board members should not be prohibited; such a rule would fail the incentivising purpose of multiple-voting structures.

13. Multiple-voting rights serve to attract founders, capital and innovators. This purpose requires sunset clauses as well as lock-ins for the holders of multiple-voting shares. An unlimited duration or unlimited transferability of the multiple-voting right is contrary to the specific purpose of the multiple-voting structure. Comparative law as well as the economics literature shows various pros and cons of such sunset clause options, and they are highly controversial.

14. German law provides a time limit of ten years with a one-off, ten-year extension by way of amendment to the articles of association (carried without the exercise of multiple-voting rights). This is a justifiable regulation. Another sound regulation would have been to provide a second ten-year extension (this time carried by only the non-multiple-voting shareholders) for certain cases such as family companies.

15. Under German law, multiple-voting rights expire upon transfer whether the shares are sold or pass by operation of law. This rule poses difficulties, at least in the case of family companies and possibly also in the group setting. It would have been better to have legislation that restricted the free transferability of multiple-voting shares subject to amendment to the articles

of association carried without multiple voting or with only non-privileged shareholders participating.

16. With multiple-voting rights, transparency or disclosure is a very important requirement. The multiple-voting structure should be indicated in the articles of association as well as in the commercial register and on the company's website. Follow-up regulations in stock corporation and capital market law seem necessary in takeover law, in particular to clarify that passive attainment of control as a result of the termination of multiple-voting rights does not trigger a mandatory bid.

17. Once legally authorised and adopted by companies, multiple-voting share structures raise considerable issues of application and practice and lead to a host of doctrinal questions for the legislators, courts and legal literature in European and other jurisdictions to resolve.

Annex:

MULTIPLE VOTING SHARE STRUCTURES IN THE EUROPEAN UNION INCLUDING SWITZERLAND, THE UNITED KINGDOM AND THE USA[376]

MEMBER STATE	Multiple-voting Shares authorisied	Maximum voting ratio*	Consideration of capital in AGM*	Stock exchange listing possible*
AUSTRIA	No	-	-	No
BELGIUM	Yes	No	Yes	No (loyalty shares only)
BULGARIA	Yes	No	Yes	No
CROATIA	No	-	-	No
CYPRUS	Yes	No	Yes	Yes
CZECH REPUBLIC	Yes	No	Yes	Yes
DENMARK	Yes	10:1	Yes	Yes
ESTONIA	No	-	-	- No -
FINLAND	Yes	No	Yes	Yes
FRANCE	Yes	25:1	Yes	Yes (MVS and loyalty shares)
GERMANY	Yes	10:1	Yes	Yes

[376] Own research and comparison with previous studies (OECD; Haut Comité Juridique de la Place financière de Paris, Rapport sur les droits de vote multiples, 15.9.2022).

GREECE	No	-	-	No
HUNGARY	Yes	10:1	No	Yes
IRELAND	Yes	-	-	Yes
ITALY	No	(up to 10:1)	Yes	(loyalty shares only)
LATVIA	No	-	-	No
LITHUANIA	No	-	-	No
LUXEMBOURG	Yes	No	Yes	No
MALTA	Yes	No	Yes	Yes
NETHERLANDS	Yes	-	Yes	Yes
POLAND	Yes	2:1	Yes	No
PORTUGAL	Yes	5:1	Yes	Yes
ROMANIA	No	-	-	No
SLOVAKIA	No	-	-	No
SLOVENIA	No	-	-	No
SPAIN	No	-	-	No (fidelity voting rights only)
SWEDEN	Yes	10:1	Yes	Yes

*These points were only analysed if the company law of a country permits multiple-voting shares.

Electronic Access to the Working Paper Series

The full set of ECGI working papers can be accessed through the Institute's Web-site (https://ecgi.global/content/working-papers) or SSRN:

Finance Paper Series	http://www.ssrn.com/link/ECGI-Fin.html
Law Paper Series	http://www.ssrn.com/link/ECGI-Law.html