POSITION ON THE PROPOSAL FOR A DIRECTIVE ON MULTIPLE-VOTE SHARE STRUCTURES IN COMPANIES THAT SEEK ADMISSION TO TRADING OF THEIR SHARES ON AN SME GROWTH MARKET (COM(2022) 761 final)

SUMMARY OF KEY MESSAGES

Eumedion, representing the interests of institutional investors who have more than € 8 trillion assets under management, has reviewed the proposals that are part of the Listing Act package. Eumedion generally supports the proposals for making public capital markets more attractive for EU companies and for facilitating access to capital for small and medium-sized companies (SMEs). This will increase the pool of investee companies for our members. Notwithstanding our general support we are of the opinion that the proposals should not go at the expense of an adequate level of investor protection and should respect national corporate governance systems and legislation that has gradually been developed over the years and which resulted in a well-balanced division of duties between governance bodies and shareholder powers and protections. Against that background we would like to make some comments on the proposal on multiple-vote share structures.

1. The proposed obligation for Member States to introduce the possibility for companies to adopt multiple-vote share structures is unnecessary and undesirable

The proposal (art. 4) lays down the principle that Member States must ensure that companies may adopt multiple-vote share structures when they seek admission to trading of their shares on an SME growth market for the first time. We are of the opinion that this obligation for Member States is unnecessary and undesirable and we doubt whether it respects the principles of subsidiarity and proportionality. The current differences in national company laws *do not* create obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment. They are not deterring investors from acquiring shares in companies registered in Member States that do or do not allow multiple-vote share structures and have in fact not hindered the free movement of capital. If a company in a certain Member State feels deprived from the opportunity to adopt a multiple-vote share structure, it can rather easily migrate to a Member State that allows such share structures (via Directive (EU) 2019/2121 and Directive (EU) 2019/1151) and is therefore not obstructed to exercise the freedom of establishment. Member States that see an exodus of companies will have an incentive to amend their national legislation. European legislation is therefore unnecessary and undesirable. Moreover, the proposed obligation for Member States to introduce the possibility for companies to adopt multiple-vote share structures disregards the reasons for the multitude of governance frameworks that exist within the Member States (e.g. historical reasons, differences in companies' ownership structures, shareholder powers and the division of duties between the governance bodies).

2. Should the European legislators move forward with the proposed obligation for Member States to introduce the possibility for companies to adopt multiple-vote share structures, additional safeguards are needed for the protection of minority shareholders

Although we do not see the necessity and desirability for European legislation that introduces an obligation for Member States to ensure that companies may adopt multiple-vote share structures, we would like to make the following comments should the European legislators move forward with that proposal.

2.1 Extra safeguards for the protection of minority shareholders are needed

We agree with the remark of the European Commission that the diminished voting power as a result of the introduction of multiple-vote share structures in a company could lead to specific problems if not properly mitigated. Against this background the proposal (art. 5) introduces certain minimum safeguards. We are of the opinion that the proposed safeguards to protect minority shareholders are too weak and should be strengthened. For example, the requirement that the decision to adopt a multiple-vote share structure is taken by a qualified majority at the shareholders' meeting is meaningless, as this decision is generally taken by the selling shareholder(s) (i.e. the founder(s)) in a general meeting prior to the IPO. The requirement to maximise the weighted voting rights ratio *or* to restrict the exercise of the enhanced voting rights attached to multiple-vote shares to certain resolutions also gives too much flexibility to controlling shareholders. This requirement still allows practices such as a voting ratio of 1000:1 (as is the case at one company in The Netherlands) or *de facto* decisions by the controlling shareholders on which resolutions the use of multiple-vote shares should be limited. For institutional investors multiple-vote share structures are only acceptable if they meet the following cumulative and mandatory conditions:

- A maximum duration of five years;
- The enhanced voting rights cannot be transferred to third parties;
- The enhanced voting rights may only be used (i) for a shareholders' meeting resolution regarding the removal of the holder of the enhanced voting rights as a board director and (ii) in hostile take-over bid situations, on any matter; and
- A maximum weighted voting rights ratio of 10:1.

2.2 Member States with national provisions on multiple-vote share structures should be obliged to introduce safeguards for the protection of minority shareholders

It follows from art. 3 that Member States may introduce or maintain in force national provisions that allow companies to adopt multiple-vote share structures in situations not covered by the proposal. Member States that already have regimes on multiple-vote shares in place would - according to the explanatory memorandum (p. 13) - not have to amend their rules and companies in those Member States would not have to adapt to a new regime. We disagree with that approach. There is no justification why the protection of shareholders should differ from Member State to Member State and the importance of the protection of the rights of shareholders is independent of a company's size. Therefore we are of the opinion that Member States with already existing national provisions on

multiple-vote share structures or Members States that introduce national provisions that allow companies to adopt multiple-vote share structures in situations not covered by the proposal should also be obliged to introduce safeguards for the protection of minority shareholders.

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