

Shareholder Rights & Protection of Minority Shareholders in the Netherlands: An International Perspective

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Background to USS



- USS Investment Management - wholly owned investment management subsidiary for Universities Superannuation Scheme
- Principal final salary scheme for universities and higher education institutions in the UK
- UK's largest pension fund
- USSIM employs c.150 investment professionals to manage c. €69bn

USS's RI Mandate



- USS aims to be *“an active and responsible long-term investor and steward of the assets and markets in which it invests. ... expects this approach to both protect and enhance the value of the Scheme’s investments in the long-term”*
- To use USSIM’s (& external managers) influence as a representative of a major institutional investor *“... to promote good practice in the investee companies and markets to which the fund is exposed.”*



Changing context



“No problem is so bad that government intervention cannot make it worse”???

- New regulations coming into force for companies and shareholders in EU
- Other developments in other jurisdictions
- Diversification of assets
- Globalisation of portfolios



Ten Principles of Stewardship



1. Long-term value creation
2. Environmental & Social Issues
3. Capital Governance
4. **Shareholder Rights**
5. **Equal Treatment of Shareholders**
6. Accountability to Shareholders
7. Effective Leadership & Oversight
8. Alignment of Interests
9. Checks and Balances
10. Transparency

Alignment of interests



- Provision of risk capital to companies
 - > Opportunity to receive future income stream
 - > Right to hold managers to account
- Improved transparency + strengthened shareholder protections => reduced investment risk for investors and lower cost of capital for issuers.

Shareholder Rights Directive



- A missed opportunity
- Supportive of original text = more level playing field across EU
- Related Party Transaction proposals diluted
- Amendment proposed which would have undermined principle of one-share: one-vote

Differential voting rights: A cure for short-termism?

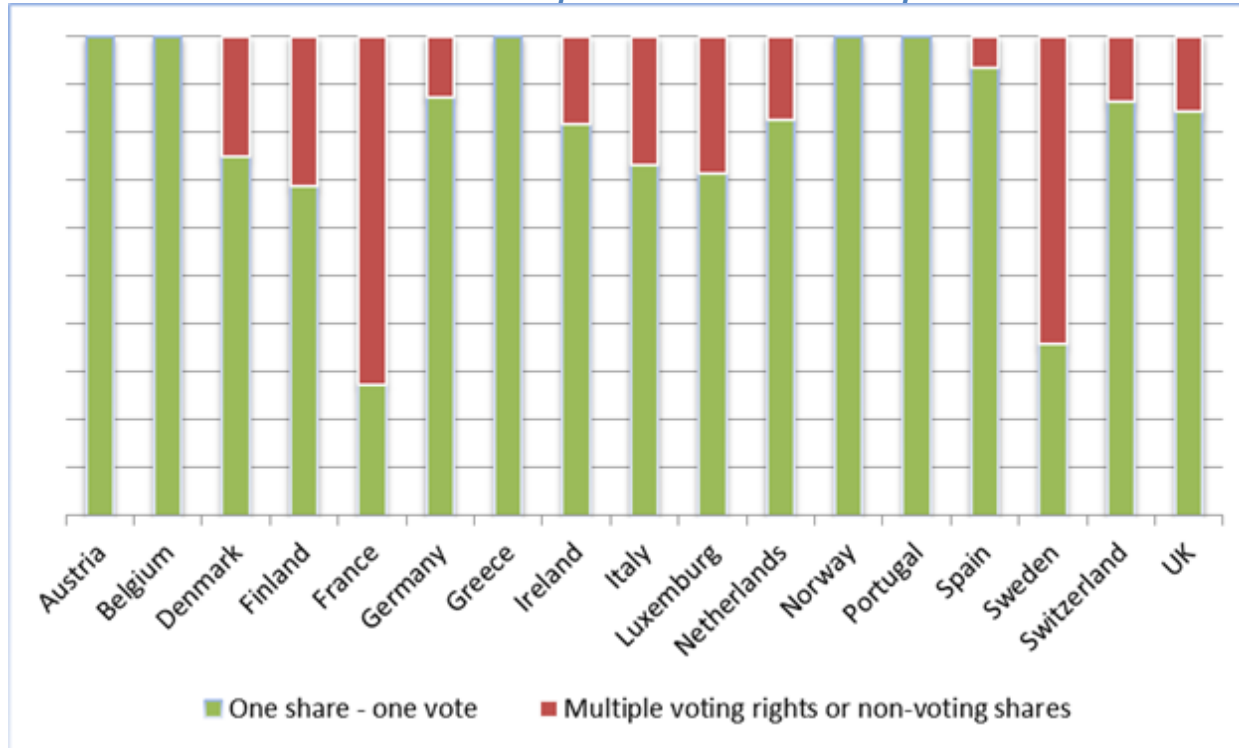


- Disenfranchises minority shareholders
- Unintended consequences
- Impact on attractiveness of market
- Loi Florange – long-term voting rights default position => micro level investor engagement.

Implications of Unequal Voting Rights



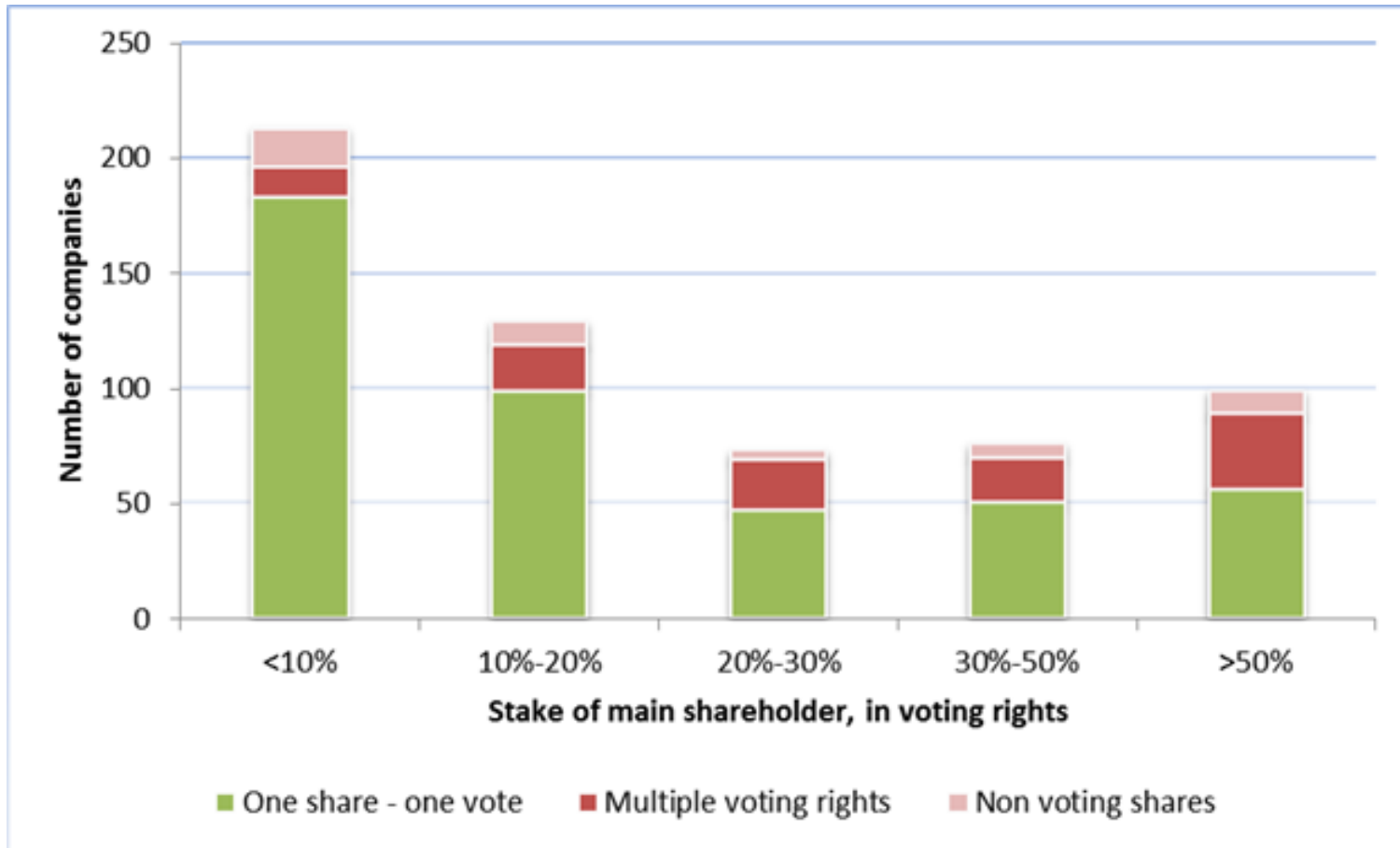
France has become a champion of shareholder unequal treatment



Reinforcing Power of Dominant Shareholders



Multiple voting rights used to reinforced voting power of dominant shareholders



Controlling Shareholders: The UK Context



- New listing rules for companies with controlling shareholder (>30%)
- Appointment of independent directors – ‘majority of the minorities’
- Agreement with controlling shareholder – minimises interference and RPT oversight

Controlling Shareholders: The Dutch Context



- Significant increase in number of AEX companies with controlling shareholder
- Concern minority shareholders lack appropriate protection
- Intro of loyalty shares at several companies
- Increasing representation of majorities on supervisory boards
- Dilution of checks and balances

Eumediton proposals



- Extension of takeover protection to minorities
- Disclosure of relationship agreements including safeguards for minorities –annual
- Independent director representation on boards
- Majority of minority shareholder approval for independent director appointments
- Supermajority voting for significant changes & RPTs

In Summary



Protection of minority shareholders:

- Pan-EU solution not forthcoming
- Limitations to ‘Comply or explain’ and Principles based approach
- Regulatory fixes also required at market level
- Proportionate with demonstrable benefits
- Beware of unintended consequences