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Multiple voting rights increase the attractiveness of capital markets for all growth companies

Do not restrict the scope to companies seeking admission to trading on SME growth markets

Position paper on the proposed Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market, 28 March 2023

Wider scope is necessary – uncertainties stemming from the inclusion of ESG criteria should be avoided

Deutsches Aktieninstitut welcomes the proposal to introduce multiple-vote share structures in the European Union. Nevertheless, we think that the aim of the proposal should be an increase of the attractiveness for issuers listed on capital markets in the EU as a whole.

Therefore, we deem the the reference to the SME growth market as too narrow. The same holds true for the requirement, that already listed issuers should not benefit from the possibility to introduce multiple voting shares.

New issuances in recent years show that many IPOs of growth companies, among others, have taken place in the regulated market. If those growth companies are the addressees of multiple voting shares, they would not benefit from the Commission's proposal. Therefore, we plead for an extension of the scope of the directive to all listed companies, irrespective whether they are already listed or whether they will seek admission to trading on every trading venue.

While we welcome safeguards to protect minority shareholders, we deem it unjustified to restrict the amount of multiple voting shares to a maximum percentage of the outstanding share capital. This contradicts existing practices in member states and should not be introduced as minimum harmonisation.

We also welcome that the various sunset clauses, which lead to the lapse of the multiple voting rights after a certain time, after an event or upon the transfer of shares, are treated as optional in the draft Directive.

In this context, we consider the possibility that multiple voting rights expire after a certain period of time to be a necessary safeguard for shareholders. However, we are against designating a fixed period of time after which the multiple voting rights expire. This fixed period would not adequately reflect the specific situation of the company in question. In some companies the shareholders benefit longer from the strategic measures of the founder and thus from the multiple voting rights, in others they benefit for a shorter period. It should be left to the shareholders themselves to judge the benefits of the multiple voting rights and remove them if they deem it justified.

Therefore, after a certain period of time and an event to be defined (e.g. when the founders' capital share has fallen below a certain percentage of the share capital), the general meeting should vote on the continuation of the multiple voting rights. Of course, the holders of multiple voting shares will only receive a single voting right in this vote.

The other sunset clauses should be treated in the articles of association.

We reject the proposed clause that the multiple voting rights may not be used to block decisions that prevent, eliminate or reduce adverse impacts on human rights and environmental related company activities for the following reasons:

- The legislator uses undefined legal terms that will lead to massive uncertainties regarding the assessment of whether the decision to be taken prevents, eliminates or reduces adverse impacts on human rights and the environment. It is unclear who has to make this determination at the moment of the decision. Ultimately, these decisions, if made at the general meeting, remain open to judicial review. Companies would thus have a long period of uncertainty as to whether they are actually allowed to implement the decision or not. This would considerably impair the companies' ability to act. Furthermore, the proposed regulation would be susceptible to abuse.

- The proposed regulation would be an unacceptable violation on the structure of competences within the companies. The legal systems of the member states do not provide for shareholders to vote on strategic issues at the general meeting. Strategic issues are the sole competence of the board of directors.

- The board's independent action also creates its liability towards the company. The described encroachment on the structure of competences would therefore also be an encroachment on this liability regime if the board were deprived of its own responsibility.

- Moreover, there is no need for the proposed regulation. The remuneration systems are already designed to adress the sustainable and long-term development of the company. The board therefore already has a strong incentive to take ESG criteria into account appropriately in the corporate strategy.

- Companies already have to fulfil numerous reporting and transparency obligations. These obligations will be significantly expanded in the future, especially with regard to the pursuit of ESG criteria. This path has already led to a significant change in corporate strategies.

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