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The Listing Act – Easier access to EU capital markets

Part 3 – Directive on multiple-vote share structures

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Background

On 24 April 2024, the EU Parliament adopted the EU Listing Act. The Listing Act is part of a package of measures aiming to further develop the Capital Markets Union. The purpose of the Capital Markets Union is to enable companies to diversify their funding and access funding sources other than bank lending, to help them grow and to adapt their financing structure when maturing.

The Listing Act package introduces reforms to make EU public capital markets more attractive for companies to seek listing and stay listed by alleviating and making more proportionate the requirements that apply both at the moment of listing and when a company is already listed.

The reform consists in targeted amendments to:

- EU Regulation 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the **Prospectus Regulation**);
- EU Regulation 596/2014 on market abuse (the **Market Abuse Regulation**); and
- EU Directive 2014/65 on markets in financial instruments (**MiFID II**) and EU Regulation 600/2014 on markets in financial instruments (**MiFIR**).

A new Directive on multiple vote share structures has also been adopted. Additionally, Directive 2001/34 on the admission of securities to official stock exchange listing and on information to be published on those securities is repealed (the **Listing Directive**).

While one of the expressed purposes of the Listing Act is to facilitate access to capital for small and medium-sized enterprises, the scope is more general, and all listed companies and companies seeking a listing are concerned by the reform.

This briefing is part of a series of briefing in three parts covering the Listing Act. Part 1 of the series provided an overview of the most important changes to the Prospectus Regulation. Part 2 analysed the changes made to the Market Abuse Regulation and MiFID 2. This Part 3 discusses the key features of the new Directive on multiple-vote share structures.

Key insights

- As part of the Listing Act, a new Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on a multilateral trading facility (**MTF**) has been adopted.
- This new directive aims to encourage listings on MTFs while guaranteeing founders to keep a certain level of control on their companies.

1. Scope

The new Directive on multiple-vote share structures applies to companies seeking admission of their shares on an MTF and whose shares are not already admitted to trading on an MTF or a regulated market.

As mentioned in the name of the Directive, its scope is not limited to SME growth markets, contrary to the initial proposal of the EU Commission. For the avoidance of doubt, the Directive does not apply to companies listed on a regulated market.

The Directive requires Member States to allow (not oblige) companies to adopt **multiple-vote shares (MVS) when they first list their shares on an MTF**.

The aim is to encourage founders to go public while retaining control of the company once it is listed. Indeed, MVS will allow them to continue to shape the business according to their strategic vision, while benefiting from a listing and access to the capital markets. This is especially relevant if there are long-term projects that require significant up-front investments.

2. MVS structures

An MVS structure implies **different classes of shares** and is not a structure where differences in voting rights result solely from differences in the value of shares. Non-voting shares, shares with veto rights and loyalty shares are also excluded from the scope of the Directive.

In addition, the Directive provides that the possibility for companies to create an MVS structure may not be made conditional upon the provision of enhanced economic rights for shares without enhanced voting rights.

Member States may still prohibit or restrict MVS structures for purposes other than the admission to trading on an MTF.

For example, in Belgium, companies are generally allowed to adopt multiple voting structures, except if their shares are listed on a regulated market (in which case a double loyalty voting right may apply if provided for in the articles of association). In the Netherlands, there are currently no specific restrictions on companies adopting a multiple voting structure and, in practice, a number of Dutch listed companies have adopted such a multiple voting structure. Although not expected, it is yet unclear whether the Dutch legislator, when implementing this new Directive, may introduce restrictions on multiple voting structures not only for issuers listed on an MTF.

3. Safeguards

The new requirement is accompanied by the inclusion of safeguards to protect the interests of shareholders who do not hold MVS. To this end, the adoption or amendment of such structures will be subject to a vote at the general meeting with a qualified majority (where applicable, for each class of already existing shares).

In addition, the impact of the MVS on the decision-making process of the general meeting must be limited by the introduction of either:

i. a **maximum ratio** of the number of votes attaching to shares with multiple-voting rights to the number of votes attaching to shares with the fewest voting rights, or
ii. for decisions subject to a **qualified majority** of the votes at the general meeting (other than the appointment and removal of members of the administrative, management and supervisory bodies and operational decisions of such bodies submitted to the general meeting for approval), (a) a qualified majority of the votes cast AND a qualified majority of the share or number of shares represented at the meeting, or (b) a qualified majority and a separate vote for each class of shares the rights of which are affected.

Member States may provide for further safeguards, including sunset clauses, which may be:

i. transfer-based (preventing the transfer of enhanced voting rights to third parties or their survival after a founder's death, incapacity, etc.);
ii. time-based (lapsing of enhanced rights after a designated period of time); or
iii. event-based (lapsing of enhanced rights upon the occurrence of certain events).

MVS structures must be **disclosed** in prospectuses and annual financial reports, including the structure, applicable transfer and voting restrictions and, if known to the company, the identity of shareholders holding multiple vote shares representing more than 5% of the total voting rights of all shares in the company.

Such structures need to be clearly identified as such by investment firms and market operators. Technical standards should clarify how this is to be implemented: the recitals mention the possibility of a specific marker in the ticker.

4. Entry into force

The Directive on multiple vote structures will enter in force on the 20th day following its publication (which has not yet taken place) and will have to be implemented within 2 years of the entry into force (likely in the course of 2026).

Contact

Belgium

Vanessa Marquette

Partner - Attorney at Law
T +32 27 73 23 25
M +32 4 73 50 01 47
E vanessa.marquette@loyensloeff.com

Davina Devleeschouwer

Counsel - Attorney at Law
T +32 27 43 43 46
M +32 4 79 21 12 35
E davina.devleeschouwer@loyensloeff.com

Mathias Hendrickx

Counsel - Attorney at Law
T +32 27 43 43 35
M +32 4 73 85 06 45
E mathias.hendrickx@loyensloeff.com

The Netherlands

Michel van Agt

Partner - Civil Law Notary
T +31 20 578 52 61
M +31 6 10 89 85 88
E michel.van.agt@loyensloeff.com

Menno Baks

Partner - Attorney at Law
T +31 20 578 50 42
M +31 6 23 35 83 82
E menno.baks@loyensloeff.com

Martijn Schoonewille

Partner - Attorney at Law
T +31 20 578 57 35
M +31 6 51 86 27 25
E martijn.schoonewille@loyensloeff.com

Luxembourg

Noémi Gémesi

Partner - Attorney at Law
T +35 24 66 23 02 91
M +35 26 91 96 32 93
E noemi.gemesi@loyensloeff.com

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