I Quaderni di RES
4

MULTIPLE VOTING STRUCTURES, REGULATORY COMPETITION AND CAPITAL MARKETS UNION

EDITED BY M. IRRERA, I. POLLASTRO

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CENTRO STUDI D'IMPRESA

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collana coordinata da Federico Alessandro Goria

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PRESENTATION

MAURIZIO IRRERA AND IRENE POLLASTRO

The issue of multiple voting structures has been at the forefront of European legal debates for several years, with the pendulum swinging over time—from a restrictive approach that favored the 'one share, one vote' principle in the early 2000s, to a more flexible stance that ultimately culminated in the adoption of the European Directive on on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility (Dir. 2810/2024/EU).

The topic has also been highly sensitive in the Italian market, which has undergone two major reforms—spaced a decade apart—aimed first at legitimizing and later at expanding the scope of multiple voting right structures. These reforms were largely triggered by the corporate migration of major Italian industrial players to the Netherlands, with the explicit aim of taking advantage of the more permissive regulatory framework governing multiple voting rights.

This framework gave rise to the idea of structuring a multi-voice and multi-phase debate to explore the topic from different perspectives. The discussion took place during a conference held in November 2024 at the University of Turin, and this volume brings together the insightful contributions of the speakers.

The first part is devoted to the specific topic of corporate migrations between Italy and the Netherlands, with particular focus on the most recent Italian regulatory framework (as last reformed in 2024) and a comparative analysis with the Dutch regime, directly examined by Dutch scholars. The session concludes with some considerations on regulatory arbitrage within the EU and also the dual Italy–Netherlands context.

The second part, following an empirical assessment of the characteristics and motivations of the firms that opted for relocation, aims to broaden the scope by examining the European context, with a particular focus on the new directive on the subject. The analysis is presented through an overview of the Directive's scope and objectives, delivered by an officer of the European Commission's DG FISMA, who was involved from the outset in the drafting and negotiation of the proposal, followed by a policy discussion on potential critical issues and suggested improvements.

The third part concludes with a roundtable discussion, providing an opportunity to explore the topics addressed in the first two parts through the perspectives of various professionals with diverse interests in the reforms: not only academics, but also investors, policymakers, and practitioners. This session retains the multi-voice debate format, as was the case at the conference, which we believe most effectively captures the diverse opinions and insights shared on the ground.

Turin, 5th of May 2025

SECTION I

ITALIAN MIGRATIONS AND REGULATORY COMPETITION

MULTIPLE VOTING STRUCTURES, REGULATORY COMPETITION AND CAPITAL MARKETS UNION: AN INTRODUCTION

PAOLO MONTALENTI

1. European company law between harmonization and regulatory competition.

Company law has been the subject, in Europe, of a significant process of harmonization in a number of areas: the First Directive on the establishment of joint-stock companies, the Second Directive on share capital, the Fourth and Seventh Directives on financial statements and consolidated financial statements, the Third and Sixth Directive on Mergers and Corporate Splits, and the Eighth Directive on Auditing Standards. Lastly, it is worth mentioning the recent Directives (passed in 2023 and 2024 respectively) on Corporate Sustainability Report (CSRD) and on Corporate Sustainability Due Diligence (CS3D).[1]

On the other hand, however, there are large and significant areas sectors of corporate and financial law in which the harmonization process has stalled.

One of the most important areas lacking EU harmonization is *corporate governance*:[2] the Fifth Directive on corporate governance systems remained at the project level for over twenty years and was then formally withdrawn since it was difficult to find a reasonable

[1] For a general overview, see, AA.VV., *Diritto societario europeo e internazionale*, directed by Benedettelli, Lamandini, Torino, 2016; VICARI, SCHALL, *Company Laws of the UE*, Verlag C.H. Beck oHG, München, 2020 and KINDLER-LIEDER, *European Corporate Law. Article-by-Article Commentary*, Nomos, 2021; AA.VV., *Percorsi di diritto societario europeo*, edited by Pederzini, Torino, 2020; MUCCIARELLI, *E pluribus unum? Language diversity and the harmonization of company law in the European Union*, in *Maastricht Journal of European and Comparative Law*, 2019, 1 ff.; DE LUCA, *European Company Law*, 2ª ed., Cambridge, 2017; ENRIQUES, *Quanto è armonizzato il diritto societario europeo?*, AA.VV., *Regole del mercato e mercato delle regole. Il diritto societario e il ruolo del legislatore*, edited by Carcano, Mosca, Ventoruzzo, Atti del Convegno Internazionale di Studi, Venezia 13-14 November 2015, *Collana della Rivista delle Società*, Milano, 2016, 149 ff.; MONTALENTI, *Il diritto societario europeo.*, AA.VV., *Le Società,* a cura di Paolo Montalenti, *Trattato di diritto privato dell'Unione Europea*, edited by G. Ajani e G.A. Benacchio, Vol. IV, Giappichelli, Torino, 2022, 1 ff.; ID., *Il diritto societario europeo. Profili generali,* in AA.VV., *Il diritto societario europeo: quo vadis?*, Atti del Convegno Centro Nazionale di Prevenzione e Difesa Sociale CNPDS e dalla Fondazione Courmayeur, 23-24 settembre 2022, edited by P. Montalenti, M. Notari, *Quaderni di Giurisprudenza Commerciale*, Giuffrè, Milano, 2023, 21 ff.; ID., *Società per azioni*, corporate governance *e mercati finanziari*, Milano, 2011, 33 ff.; ID., *Harmonization and regulatory competition, State regulation and Freedom of Contract, Institutionalism and Contractualism in Corporate Law*, AA.VV., *Regole del mercato e mercato delle regole, Il diritto societario e il ruolo del legislatore*, cit., 81 ff.; AA.VV., *Unione Europea: concorrenza tra imprese e concorrenza tra stati*, edited by Montalenti, Convegno di studio Fondazione CNPDS – Fondazione Courmayeur, Courmayeur, 19-20 settembre 2014, Milano, 2016, 91 ff.; ID., *Il diritto societario riformato nel quadro europeo*, AA.VV., *Il diritto societario riformato: bilancio di un decennio e prospettive in un quadro europeo*, Atti del convegno di Courmayeur, 20-21 settembre 2013, Milano, 2014, 13 ff.; AA.VV., *Profili attuali di diritto societario europeo*, edited by Ferri jr. e Stella Richter jr., Milano, 2010; SANTELLA, *Prospettive del diritto societario europeo*, in *Riv. dir. soc.*, 2010, 770 ff.; AA.VV., *Diritto societario comparato*, edited by Enriques, Bologna, 2006; DRAETTA-POCAR, *La società europea. Problemi di diritto societario comunitario*, Milano, 2002; FIMMANÒ, *Armonizzazione comunitaria del diritto societario*, Napoli, 1991.

[2] I have addressed the topic in *Il modello dualistico: alta amministrazione e funzioni di controllo tra autonomia privata e regole imperative*, in *Banca, borsa, tit. cred.*, 2008, I, 689 ff.

balance between harmonization and preservation of the various domestic forms of corporate and industrial democracy.[3]

Moreover, also the matter of *company groups*, in particular the issue of the parent company liability, although subject of a proposed Ninth Directive, remains without uniform rules.

Beyond the question of partial harmonization, we also face the problem of regulatory competition among national corporate governance rules, established by the Court of Justice starting from the famous Centros ruling.

The 1999 decision on the Centros case[4] marked a turning point with the transition from the real seat doctrine to the incorporation doctrine, consolidated by subsequent rulings in the Überseering case and the Inspire Art case.[5]

The Italian legal system suffered, for example, a disadvantage from regulatory asymmetry. I refer to the issue of multiple votes, as I argued many years ago.

The general prohibition of multiple voting shares was only lifted in 2014, when the issuing of shares was allowed: too late to prevent the migration of Fiat to Amsterdam![6]

The matter has been further regulated by the recent so-called Capital Markets Act, Law n. 21 of March 5, 2024.[7]

2. *Multiple voting in the Capital Markets Act.*

On the subject of multiple voting shares, the Capital Market Act (art. 13) - with the view to "bring our system closer" to the Dutch legal system, which does not contain restrictive rules on this point - has modified article 2351, (fourth paragraph, last sentence) of the Italian civil code,[8] by increasing the possibility for non-listed companies to introduce multiple voting shares with up to ten votes per shares (compared to the prior maximum three) *from three to ten*.[9] Since the additional votes can be maintained after listing, in my opinion, there

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[3] See BIASI, *Il nodo della partecipazione dei lavoratori in Italia*, Milano, 2013; VELLA, *L'impresa e il lavoro: vecchi e nuovi paradigmi della partecipazione*, in *Giur. comm.*, 2013, I, 1120 ff.; DE FERRA, *La partecipazione dei lavoratori alla gestione delle aziende (*rectius *delle imprese)*, in *Riv. soc.*, 2015, 1298 ff.

[4] C-212/97, *Centros Ltd. c. Erhvervs-og Selskabsstyrelsen,* 9 March 199. For a reassessment of the subject with precise references to the subsequent decisions mentioned in the text, see ARMOUR-RINGE, *European Company Law 1999-2010: Renaissance and Crisis*, in *Common Market Law Review*, 48, 2011, 125-174; GHETTI, *Il problema delle forme societarie europee tra unificazione, armonizzazione e concorrenza*, in *Riv. soc.*, 2016, 521 ff., spec. 523, 561 ff.; ENRIQUES-ZORZI, *Armonizzazione e arbitraggio normativo nel diritto societario europeo*, in *Riv. soc.*, 2016, 775 ff., spec. 781 ff.

[5] C-212/97, *Centros* and C-167/01, *Inspire Art* are analyzed in Italy by LOMBARDO, *Libertà di stabilimento e mobilità delle società in Europa*, in *Nuova giur. civ. comm.*, 2005, 6, II, 353-379 ff; COLANGELO, *Da Centros a Inspire Art. Libertà d'impresa e competizione regolamentare nella più recente giurisprudenza comunitaria*, in *Contr. impr./Europa*, 2003, 1220 ff. C-208/00 "*Überseering*" is published in *Giur. it.*, 2003, 4, 703 ff., with a comment by COSCIA, *La teoria della sede effettiva o Sitztheorie e la libertà di stabilimento societario.*

[6] It's the case of Ford, Vuitton, Google, Amazon, Facebook and Fiat-Chrysler. See BERTOLDI, *Come si può (e perché) pesare le azioni oltre a contarle*, in *Il Sole 24 Ore*, 13 febbraio 2014, 16.

[7] See MONTALENTI, *La legge Capitali e la delega alla riforma del Testo Unico della Finanza: prime riflessioni* in *Giur. comm.*, 2024, II, 497 ff.; ID., *I punti cardine della riforma*, in *Dottrina e attualità giuridiche*, *La legge Capitali e la riforma dei mercati*, edited by M. Callegari e E. Desana, in *Giur. it.*, 2024, 2483 ff., where further references.

[8] Regarding the previous legislative measure (Art. 20, Law No. 116 of August 11, 2014), I had made some reflections, partly critical, in MONTALENTI, *Voto maggiorato e voto plurimo: prime riflessioni, in Il nuovo diritto delle società*, in NDS, 2015, 9 ff.

[9] CONSOB, *La deviazione dal principio "un'azione-un voto" e le azioni a voto multiplo*, edited by Alvaro, Ciavarella, D'Eramo, Linciano, in *Quaderni giuridici*, n. 5, gennaio 2014, in *www.consob.it*.

is a problem, in the medium term, of undue privilege in favor of the newly listed shares to the detriment of shares listed without the additional votes.

Furthermore, the comparative references are not uniform.[10]

On this matter, the rules of European Union member states are not harmonized and are very different from each other. In Sweden, Netherlands, Denmark there are no limits. In France and Spain only increased voting rights (so-called loyalty shares) are envisaged but we have to point out that in those legal systems the law is based on an opt-out regime whereby the increase accrues automatically by law with the expiry of the uninterrupted term of possession (unless the extraordinary shareholders meeting decides otherwise). In Austria and Germany there is an absolute prohibition. I would also like to point out that in Germany a law (so-called "Zukunftsfinanzierungsgesetz") recently approved has modified share rights by allowing multiple votes but making the relevant statutory amendment subject to the unanimous consent of the shareholders: which de facto makes its introduction impracticable in companies that are already listed or with a large shareholders' base.

On 7 December 2022, the European Commission published a Proposal for a Directive, which concerns the possibility of issuing multiple voting shares.

The fundamental characteristics of the Proposal are as follows. Multiple voting is limited to SME growth markets (SMEs) and is limited to the initial market entry phase only. The protection of minority shareholders is encouraged but left to individual state regulation; various possible protection tools are indicated (art. 5): qualified majority; maximum limit of votes and maximum percentage of capital; limits by subject; deadline (sunset clauses); expires upon the occurrence of *particular events*. But the proposal remained as such.

3. *The increased vote in the Capital Markets Act.*

As regards the increase in the vote, the Capital Markets Act amended art. 127-*quinquies* of the T.U.F., maintaining the previous provisions (increase of up to a maximum of two votes; transfer of shares; merger, demerger, cross-border operations; absence of the right of withdrawal; modifications in the case of the listing procedure; exclusion of the special category of shares; opt-in for the calculation for the purposes of constituting and deliberative quorums; right to renounce), but introducing the possibility of increasing the additional votes up to ten.

More precisely, the Capital Markets Act intended to coordinate the regulation of increased voting shares with the new rule on multiple voting shares: in fact the new paragraph 2 of art. 127-*quinquies* T.U.F. provides that the bylaws may also allocate one additional vote at the end of each subsequent twelve-month period, up to a maximum of ten votes per share.

The rule therefore coordinates the regulation of the increased vote with the new provision regarding multiple votes, allowing, in the form of opt-in, to provide for the further accrual, every twelve months, of the increased vote from two votes up to ten votes.

The new regulation raises several concerns.

[10] See POLLASTRO, *Azioni a voto multiplo: dalla ritrosia alla proposta di adozione nel mercato comune europeo*, in *Orizzonti del diritto commerciale*, 2023, 303 ff.

On one hand, a significant upgrading of minority loyalty shares can occur; on the other hand, the new provision may instead lead the incumbent shareholder to an uncontested and untouchable position of control.

Will the market be able to operate as a balanced regulator? Difficult to predict.

4. *The Corporate Governance Code: Soft law to Hard law.*

One final remark. It is well known how Self-Regulation and best practice codes – in Italy, first and foremost, the Corporate Governance Code of 2020 - provided valuable tools for the efficient functioning of management and control bodies in listed companies.

On this matter I want to raise a more general question, which, in my opinion, was not sufficiently examined.

Article 149, paragraph 1 c-bis) T.U.F. (referred to for the one-tier system in paragraph 3) requires the board of statutory auditors to supervise «the methods of actual implementation of the corporate governance rules envisaged by codes of conduct drawn up by management companies of regulated markets or by trade associations, to which the company, by means of public information, declares to comply".

Devil is in the details: the law transforms a system of *soft law* (The Corporate Governance Code) into *hard law*, closely connected - case-law confirms this consideration - with the sanctioning powers of Consob, without any restriction on the materiality of such violations. In fact, article 149, paragraph 3, T.U.F. establishes that «the board of statutory auditors communicates without delay to Consob the irregularities found in the supervisory activity» without limiting, for example, reportable wrongdoings to the most significant ones and therefore extending the reportability to irregularities relating to the provisions of the self-regulation codes, - in particular the Corporate Code Governance – that the company declared to adopt.

With significant consequences in terms of sanctions.

An example of gold-plating, contributing to the several delistings and redomiciliations to other venues, for example, the Netherlands, beyond the problem of multiple votes: in fact the art. 149, paragraph 4, T.U.F. provides that «paragraph 3 does not apply to companies with shares listed only on regulated markets of other European Union countries».

An opportunity for fine-tuning is the delegation to the reform of the Testo Unico della Finanza Act contained in the so-called Capital Markets Act.

5. *Open Issues.*

There are still many open other problems regarding harmonization and regulatory competition in the European context (the slate voting system for the appointment of the Board of Directors, the Shareholders' meetings only through designated representatives, the length of the listing procedure, and so on) in particular to analyze the reasons that led to the delisting of many Italian companies or their redomiciliation to other jurisdictions, in particular the Netherlands.

The contributions that follow will certainly provide us with an updated and complete picture of these problems which are of undoubted importance for the functioning of the markets and for the future of our corporate law system.

THE NEW ITALIAN FRAMEWORK AFTER DDL CAPITALI

IRENE POLLASTRO

SUMMARY: 1. Introduction. – 2. Multiple voting shares. – 2.1. Adoption of the instrument and aim of the new legislation. – 3. Loyalty shares. – 3.1. Withdrawal right. – 3.2. New provisions regarding cross-border transactions. – 3.2.1. Preservation of the privilege and companies that seek the admission to trading of their shares on regulated venues. – 3.2.2. Mandatory bids: a new exemption and an old problem. – 4. Differences between multiple voting and loyalty shares and final remarks.

1. Introduction.

The regulation of loyalty and multiple voting shares is undoubtedly one of the areas of corporate law most affected by the Italian legislature in recent years. Indeed, after a first intervention in 2014, which lifted the absolute ban on multiple voting and made it possible for non-listed joint-stock companies to issue shares with multiple voting rights (up to three votes per share) and for listed companies to issue loyalty shares (with up to two votes per share), a new reform is now being introduced just one decade later.

The newest rules were introduced by the *Legge Capitali* (Capital Law) (L. 21/2024) after examining the conclusions reached first by an OECD study in 2020 and then by the Italian MEF (Ministry of Economy and Finance) Green Paper in 2022[1] and also what happened in practice. Firstly, these studies propose, among other things, more flexible frameworks for introducing loyalty and multiple voting shares as tools to encourage companies to move toward market listing and to make the Italian system more attractive and competitive within the European context. Secondly, just as the FIAT Group's reincorporation in the Netherlands in 2014 was the final catalyst for removing the ban on multiple voting shares from Italian legislation[2], ten years later the relocation of other large Italian groups to other Member States (almost always to the Netherlands, with the exception of one case in Luxembourg) has convinced the government that the measures adopted were insufficient. What lies at the core of these corporate migrations is the declared intention to benefit from a more favourable regulation on control enhancing mechanisms (CEMs) which is a primary motivation for firms to relocate.[3]

As a result, the overall structure of the rules concerning multiple voting and loyalty shares has remained unchanged, with the former generally reserved for close joint-stock

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[1] See respectively OECD Capital Market Review of Italy 2020, *Creating Growth Opportunities for Italian Companies and Savers*, available at https://www.oecd.org/en/publications/oecd-capital-market-review-of-italy-2020_8443f95a-en.html and MEF, Green book "*La competitività dei mercati finanziari italiani a supporto della crescita*" available at https://www.dt.mef.gov.it/export/sites/sitodt/modules/dipartimento/consultazioni_pubbliche/LibroVerde-04.pdf.

[2] M. VENTORUZZO, *The Disappearing Taboo of Multiple Voting Shares: Regulatory Responses to the Migration of Chrysler-Fiat*, ECGI Law Working Paper No. 288/2015.

[3] M. BELCREDI, L. FAVERZANI, A. SIGNORI, *Così non fan tutte. An analysis of Italian companies moving abroad*, Study of Fin-Gov, Centro di ricerche finanziarie sulla corporate governance, 2023, available at https://centridiricerca.unicatt.it/fin-gov-centro-di-ricerca-sulla-corporate-governance-fin-gov-pubblicazioni#content.

companies and regulated by the Civil Code (art. 2351 (4)), and the latter for listed companies and regulated by the Consolidated Law on Finance (art. 127-*quinquies*). The main amendment regards the voting ratio, which has been increased from 3 to 10 votes for multiple voting rights and from 2 to 10 for loyalty shares, while other minor adjustments relate to potential protections for the other shareholders and investors: this is probably one of the more questionable aspects of the reform.

2. Multiple voting shares.

Article 13 of *Legge Capitali* amends Article 2351(4) of the Italian Civil Code, providing that "the word: 'three' shall be replaced by the following: 'ten'".

Although the new version amends only one word related to a mere numerical factor[4], its practical implications are far-reaching, especially considering that, under Article 2351 of the Civil Code, corporations can also issue non-voting shares, which can represent up to half of the equity capital, in addition to multiple voting shares. This means that before the 2014 reform, when multiple voting shares were prohibited, the deviation from strict proportionality between vote and investment through the issuance of non-voting shares up to a maximum of 50% of the share capital made it possible to control an ordinary shareholders' meeting with just 25% of the capital but following that initial reform, by combining 50% non-voting shares with multiple voting shares carrying 3 votes per share, this percentage could potentially be reduced to 12.5%. Today, with the voting ratio for multiple voting shares increased to 10, the threshold for control drops to just 9.09%, or even half of that if non-voting shares are also issued.

In this context, it becomes crucial to explore what safeguards are in place to curb potential abuses by controlling shareholders, especially in a country with highly concentrated ownership such as Italy.

First of all, the introduction of multiple voting shares, whether through the conversion of existing shares or the issuance of new shares in a capital increase, requires the qualified majorities set out in Articles 2368 and 2369 of the Civil Code for amendments to the articles of association (Art. 2365 (1)). However, controlling shareholders could hold a sufficient percentage to control even an extraordinary shareholders' meeting: this is not unlikely, considering that, on the second summons, a resolution is passed if only one-third of the capital is present, and two-thirds of those shares vote in favour.[5]

In this scenario, the second crucial protection is the potential exit available to dissenting shareholders through the right of withdrawal. The mandatory grounds for withdrawal set out in Article 2437(1) of the Civil Code include, at point g), "changes to the articles of association concerning the right to vote or to participation": at first glance, the introduction of multiple voting shares would always seem to fall under this provision, thus ensuring the right of withdrawal in every case.

However, in line with the overarching rationale of the legislation, the majority of Italian scholars tend to interpret the rule restrictively: this approach stems from the necessary

[4] A somewhat different approach was taken regarding loyalty shares, which, although included in the reform only at a later stage, are governed by a more detailed set of rules (see par. 3).

[5] M. IRRERA, B.M. SCARABELLI, *The shareholders' meeting*, in *Entrepreneurs and companies in the economic system*, edited by M. Irrera, Torino, forthcoming in 2025.

balance that rules and their application need to ensure between the interests of the company in adopting the changes desired by the majority, the interests of minority shareholders in leaving the company and ultimately the creditors' interests in not suffering a financial loss due to repayment of the shares to the withdrawing shareholders. Although it is impossible to cover all cases exhaustively, suffice it to say that, depending on the specific context and methods used to introduce multiple voting shares, the entitlement to the right of withdrawal often remains highly debatable.[6]

2.1. Adoption of the instrument and aim of the new legislation.

Beyond the rules, it is also useful to look at the current adoption of the instrument and the potential effectiveness of the 2024 reform in achieving the legislator's intended aims.

First, regarding its practical implementation, it is notable that of the 73 listed companies that have adopted the loyalty share mechanism following the 2014 reform, only 6 had issued multiple-vote shares before going public. The limited success of multiple voting shares could primarily be due to the perception that a 3-vote multiplier was insufficient to ensure the goal of acquiring the needed market liquidity while retaining control. This is partly because the IPO price might be lower due to the entrenchment of control, and, more broadly, due to the significant costs associated with going public. It is therefore possible that a multiple voting structure allowing up to 10 votes per share could encourage more companies to use the instrument. Predicting the impact on efforts to stem the exodus of Italian companies to other markets – particularly the Dutch one – is more challenging. While it is well established that greater flexibility in voting structures has been a primary driver of these migrations, it is by no means certain that merely increasing the number of votes possibly attached to shares will be effective in reversing this trend.[7]

Nonetheless, partly due to their more limited redistributive effects[8], multiple voting rights introduced pre-IPO have also been considered attractive at European level within the framework of the Listing Act and initiatives aimed at promoting listings. This is especially true for small and medium-sized enterprises, which see the potential loss of control as one of the main obstacles to entering the market.

3. Loyalty shares.

While the provision on multiple voting rights is relatively brief, the new rules on loyalty shares are so extensive that Article 14 of *Legge Capitali* dedicated to this topic replaces Article 127-*quinquies* CLF in its entirety.

Nevertheless, the core structure of the instrument remains unchanged: it is a loyalty-based system that equally rewards all shareholders who retain the shares for a certain period with increased voting rights. Thus, it does not create any special class of shares as it happens with multiple voting shares, and the privilege is lost in the event of any change in the

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[6] For a detailed analysis of the different circumstances, see A. GENOVESE, *Introduzione delle azioni a voto plurimo e recesso*, in Rivista di Diritto Societario, 2015, 789 ff.; F. MAGLIULO, *La nuova disciplina del voto plurimo e del voto maggiorato nella legge a sostegno della competitività dei capitali*, Study No. 40, 2024/I, National Notaries' Council, 40 ff.

[7] See F. GHEZZI, *Il voto multiplo nella riforma a sostegno della competitività dei mercati dei capitali*, CEDIF Conference 2024, 7.

[8] See M. BIGELLI, E. CROCI, *Dividend privileges and the value of voting rights: evidence from Italy*, in 24 *J. Emp. Fin.*, 2013, ff.

ownership of the share. As a consequence, the loyalty reward is preserved in the event of inheritance due to the death of the previous owner as well as in the case of merger and demerger and it extends to newly issued shares in the event of a capital increase under Article 2442 of the Civil Code: in all these cases the identity of the owner remains the same in practice even though the ownership of the share officially changes.

In this case too, the first substantial change is an increase in the voting ratio. Instead of simply providing an opportunity to gain up to 10 votes based on continuous ownership of the share for a predetermined period (e.g., one vote every 12 months, two votes every 24 months, etc.), the legislator has retained the previous provision and built upon it with the new regulation. Thus, alongside the 'old' loyalty mechanism introduced in 2014, which rewarded 24 months of continuous ownership with two votes per share (Article 127-*quinquies*(1) CLF), company articles of association may now provide for an additional increase of one vote for each subsequent 12-month period, up to a maximum of 10 votes per share (Article 127-*quinquies*(2) CLF). It is now therefore possible to accrue up to 10 votes per share, but this requires first going through the arrangements outlined in paragraph 1 (24 months of continuous ownership, resulting in double voting rights) and only then through those in paragraph 2 (an additional vote for each subsequent 12-month period, for up to 8 consecutive years, which, combined with the double voting rights from paragraph 1, allows a maximum of ten votes per share). Consequently, issuers who had already incorporated double voting rights under paragraph 1 into their governance rules will need to adopt a further amendment to the articles of association to enable the additional increment,[9] while companies seeking to introduce loyalty shares for the first time will be required to pass an opt-in resolution under both paragraphs.

Here too, the amendment to the articles of association must be approved by a "super majority" (Articles 2368 and 2369 (7) of the Civil Code). However, in the latter case (loyalty shares introduced for the first time), all shareholders would be on an equal footing as each vote would carry the same weight (one vote per share), while in the former case (introduction of the additional increment under paragraph 2 only), the weighting of shareholders who have already gained double voting rights would be significantly higher. In light of this, a question may naturally arise regarding potential unequal treatment contrary to Article 92 CLF, should some shareholders benefit from a double weighting when voting on the additional increment. This is actually only a de facto disparity arising from arrangements that initially placed all shareholders in an equal position to secure the double vote based on identical conditions: thus, the equal treatment principle is not formally violated.

One final note on the technical means of accessing the privilege, that also remain unchanged: the vesting period provided for in paragraphs 1 and 2 begins from the moment the shareholder is registered in a dedicated list kept by the issuer (regulated by Article 127-*quinquies*(4) CLF).

[9] Currently, eight issuers have adopted the new rules: six are taking full advantage of the provision (allowing for up to 10 votes per share), while two have applied it in a more limited manner (up to 3 votes per share).

3.1. Withdrawal right.

In situations as the one described above, where some shareholders could potentially already have a double weighting when adopting the amendment to the articles of association, the right of withdrawal appears to be an even more significant protection.

However, its regulation under the new Article 127-*quinquies*(8) CLF is really peculiar.

In line with the provisions established in 2014, the right of withdrawal does not apply in the case of an increase in voting rights under paragraph 1 (double-voting loyalty shares).[10] However, the additional increase up to 10 votes provided for in paragraph 2 triggers this protection regulated under Article 2437 of the Civil Code.

This choice can be justified as follows. If loyalty shares with double voting rights are introduced, all shareholders start on an equal footing and have the same opportunity to gain the privilege: since there is no differentiation between shareholders and no different share classes are created, no protection is needed. However, the right of withdrawal must be guaranteed in the event of an additional increase (up to 10 votes), because this represents a more significant deviation from the principle of proportionality that could potentially harm minority shareholders and disrupt market dynamics more significantly.

If the right of withdrawal already seems to be a somewhat weakened safeguard, further doubts about its effectiveness arise when considering the criteria for determining the liquidation value in the context of listed companies established under Article 2437-*ter*(3) of the Civil Code. Indeed, the fact that the value of the shares of listed companies must be determined by calculating the average of closing stock prices during the six months preceding the publication or receipt of the shareholders' meeting notice that legitimizes the withdrawal does not seem enough to reflect changes in the value of shares that are partly due to the current enhancement of voting rights and the entrenchment of control. Other options seem more appropriate for protecting the interests of dissenting shareholders, such as determining the withdrawal value by combining the fair value of the shares with the average closing prices over the three months preceding the withdrawal notice.[11]

3.2. New provisions regarding cross-border transactions.

The other modifications to the rules on loyalty shares (affecting Article 127-*quinquies* and Article 106 CLF) are essentially incentives aimed at encouraging the return of Italian companies established abroad or, in any case, making Italy a more attractive country for establishment.

3.2.1. Preservation of the privilege and companies that seek the admission to trading of their shares on regulated venues.

The first provision allows for the retention of loyalty shares in cases of European cross-border mergers, demergers, or conversions, concluded under the Italian Legislative Decree

[10] When commenting on the 2014 reform, many had already raised concerns about the explicit exclusion of the right of withdrawal if the double voting loyalty clause is introduced. See C. ANGELICI, M. LIBERTINI, *Un dialogo su voto plurimo e diritto di recesso*, in *Riv. dir. comm.*, 2015, I, 1 ff.

[11] This solution is proposed also by Assonime, the association for Italian joint-stock companies, in its Position Paper No. 4/2024 on a general reform of the Consolidated Law on Finance, 47 ff., available at www.assonime.it.

No. 19 of March 2, 2023, transposing Directive 2019/2121/EU (Article 127-*quinquies*(6) CLF). The only really new aspect regards conversions, as mergers and demergers were already covered under Article 127-*quinquies*(5)(a) CLF. Consequently, this provision enables all companies relocating to Italy through an extraordinary transaction to retain their enhanced voting rights based on the loyalty share model (that normally lose the benefit if ownership changes). This is naturally subject to the Italian mandatory provisions, including the maximum number of votes attached to a single share, minimum holding periods, and incompatibility with other forms of enhanced voting rights (i.e., multiple voting shares).

Companies – either already listed or still going through the listing process – reincorporating in Italy as a result of cross-border transactions can state in their articles of association that an uninterrupted period of share ownership in the pre-existing company must be considered for the purposes of calculating the vesting period (Article 127-*quinquies*(11) CLF). This same possibility is provided for every company that seek the admission to trading of their shares on regulated venues under Article 127-*quinquies*(9) CLF.

3.2.2. Mandatory bids: a new exemption and an old problem.

The reform of Article 106 CLF introduces a new exemption from the mandatory tender offer (MTO). This exemption applies when MTO thresholds are exceeded due to an increase in voting rights following a cross-border transaction concluded under Legislative Decree No. 19 of March 2, 2023, transposing Directive 2019/2121/EU, provided that there is no change in the control structure of the resulting entity (Article 127-*quinquies*(5-*bis*) CLF). The new paragraph establishes a legal exemption, inserted after paragraph 5, which otherwise gives Consob powers to grant exemptions from MTOs in various circumstances, including mergers and demergers (point e).

As in the case of withdrawal, it is then necessary to examine the terms of individual cross-border transaction to determine whether takeover bid thresholds are exceeded directly as a result of the loyalty votes rather than due to unrelated circumstances, or whether the exemption should not apply due to substantial changes in control.[12]

In any case, it is hard not to observe that the difference in the source of exemption for domestic versus cross-border transactions, as per paragraphs 5 and 5-bis (Consob regulation versus the law itself), introduces a marked disparity in their treatment that is not permitted within the framework of the EU's principle of freedom of establishment.[13] While a solution within a comprehensive CLF reform is certainly desirable,[14] it is evident that, in the interim, Consob regulations issued under Article 106 (5) CLF may offer a pathway for addressing this issue.

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[12] For an in-depth analysis of the potential implications of the rule and the circumstances under which the exemption applies, see G. SANDRELLI, *Articles* 13-14, in *Commentario alla legge Capitali*, edited by P. Marchetti - M. Ventoruzzo, Pisa, 2024, 125 ff.

[13] On the principle of equivalence see the ECJ decision in the Case C-378/10 of 12 July 2012, which states that rules of national law aimed at safeguarding the rights granted to individuals under European Union law in cross-border transactions cannot be less favourable than those governing similar situations under national law for domestic extraordinary transactions.

[14] And also materially possible, since Article 19 of *Legge Capitali* (L. 21/2024) gives the Italian government a mandate for a comprehensive reform of the Consolidated Law on Finance.

Despite the opportunity offered by the reform, many issues still remain unsolved. Chief among these, within the scope of mandatory takeover bids, is the determination of the offer price: this topic is particularly sensitive in the case of Italian companies that are likely to trade only ordinary shares on the regulated market, keeping the multiple voting shares held by the majority shareholder unlisted.[15]

In similar circumstances, the criteria for determining the offer price established under Article 106(2) CLF are inadequate for capturing and including the so-called "control premium," given that the transfer of multiple-vote shares – those that secure control – is conducted outside the market in a private transaction. In other words, without reference to the higher price paid by the bidder, even off-market, for types of shares not subject to acquisition (in this case, ordinary shares traded on the market), the price is calculated based solely on the previous 12-month weighted average. This arrangement fails to reflect the premium paid by the acquirer for control, thus undermining the very purpose of the mandatory takeover bid. What is more, the distortion becomes even more evident if the shares in question allow such a significant deviation from the proportionality principle (1:10).

4. Differences between multiple voting and loyalty shares and some final remarks.

As already mentioned, multiple voting and loyalty shares are considered mutually exclusive options in the Italian legal system.

Not only are multiple voting rights reserved for private companies but, under Article 127-*sexies* CLF, listed companies are prohibited from issuing shares with multiple voting rights as per Article 2351(4) of the Civil Code. However, they may retain these shares if they were issued before the company was listed, in which case the company's articles of association cannot provide for any additional voting enhancements, including in particular loyalty shares. The latter, on the other hand, are reserved exclusively for companies already listed on regulated markets, excluding for instance issuers trading on multilateral trading facilities (MTFs).

By contrast, there appears to be no reason preventing private companies from issuing shares modelled on loyalty shares. For example, such shares could entail losing voting benefits upon transfer: this effect could be achieved by issuing multiple voting shares subject to a condition as per Article 2351(2) of the Civil Code.[16] These could also coexist alongside a different class of multiple voting shares.[17]

Another significant difference regards retention of the benefit: while multiple voting rights are typically assigned to a single class of shares that are created as such (prior to listing) and continue to circulate with this feature (even post-IPO), loyalty voting rights are earned after the holding period and, being a reward for long term owners, are lost if that holding period is interrupted.

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[15] See M. LAMANDINI, *Voto plurimo, tutela delle minoranze e offerte pubbliche di acquisto*, in *Giur. comm*, 2015, I, 493 ff.

[16] See the guidelines of the Notaries' Council of Milan, No. 184 of January 7, 2020, available at https://www.consiglionotarilemilano.it/massime-commissione-societa/184/.

[17] Some doubts on this option are raised by E. BARCELLONA, *Art. 2351 c.c.*, in *Le società per azioni. Codice civile e norme complementari*, directed by P. Abbadessa – G.B. Portale, Milano, 2016, I, 587 ff.

In light of this, multiple voting shares appear to be the preferable option for both the market and the shareholders in the context of a listing.[18] From the market's perspective, implementing multiple voting shares before the IPO means that shareholders holding these shares fully bear the cost of the entrenchment of control. Consequently, the market can adjust the share price at the time of the offering taking into account their reduced voting power.[19] By contrast, loyalty shares, being introduced post-IPO, effectively shift the cost of strengthening the positions of certain shareholders onto the market. Furthermore, looking at the Italian market, this instrument has been primarily used not to ensure long-term stability, but rather to further entrench the position of shareholders who already control the company.[20]

The stability of multiple voting rights also seems to offer greater advantages for shareholders who hold them, encouraging their entry into the market by assuring them of the maintenance of control and offering them the option of transferring and monetizing their rights if they wish. Additionally, from a transparency perspective, the majority threshold remains clear at all times. In contrast, the threshold of control can fluctuate with loyalty votes, which may be gained or lost by shareholders at different times.

In this context, however, it is essential not to overlook the body of research suggesting that while the strengthening of control through multiple voting rights can drive growth for companies in the initial period after their listing, this structure may become detrimental and unprofitable once the 'momentum' of the founders diminishes or when successors take charge.[21] It is no coincidence that sunset clauses are included as optional safeguards in the European Directive (Article 5) or have already been integrated into the legislation in some countries.[22] Still, it is interesting to note that, despite the lack of a mandatory regulation on this issue, the articles of association of all six Italian companies listed with multiple voting rights incorporate arrangements for the termination of these rights upon the transfer of shares.[23] This suggests that these issuers consider sunset clauses to be an appropriate way

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[18] The same view appears to be shared by the European legislator in the Directive No. 2024/2810/UE on multiple-vote share structures in companies that seek the admission to trading of their shares on a multilateral trading facility, available at *https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=OJ:L_202402810*.

[19] With some obvious drawbacks due to the fact that the market is not always efficient in determining the "fair" price of the shares. See again M. LAMANDINI, supra at note 15, 494.

[20] E. RIMINI, *Voto maggiorato, voto plurimo*, in *Trattato delle società*, directed by V. Donativi, Milano, 2002, IV, 284 ff. ; M. BELCREDI, *Commenti e considerazioni su alcune tematiche discusse nel Libro Verde su "La competitività dei mercati finanziari italiani a supporto della crescita"*, spec. para. 3.2, submitted in response to the consultation initiated by the Ministry of Economy and Finance (MEF) in 2022, and available at *https://www.dt.mef.gov.it/it/dipartimento/consultazioni_pubbliche/consultazione_libro_verde.html*. The study emphasizes that "the impact of loyalty vote extends beyond merely strengthening voting rights, as this mechanism has frequently been employed to successfully attain specific control thresholds in both ordinary and extraordinary meetings." Specifically, "among the 48 companies in the sample, the reference shareholder would control the ordinary meeting in 62% of cases without the enhancement; with the enhancement, this percentage rises to 87% (+25%). Perhaps even more significant are the figures concerning control of the extraordinary meeting, which was achieved in only 6% of cases without enhancement; with enhanced voting rights, this percentage increases to 51% (+45%)."

[21] See L. BEBCHUCK, T. KASTIEL, *The Untenable Case for Perpetual Dual-Class Stock*, in *Virginia Law Review*, 2017, 103, 585 ff.

[22] This is the case in Germany as per § 12 and 135a Aktiengesetz.

[23] On sunset clauses to be included in Italian legislation, see C.F. GIAMPAOLINO, *Una proposta sulle azioni a voto plurimo e maggiorato del Decreto Capitali*, in *Giur. comm.*, 2024, II, 525. Regarding the potential for issuers to self-regulate even in the absence of mandatory rules, see A. Gurrea-Martínez, *Theory, Evidence, and*

of fostering investor confidence. On one hand, investors are likely to accept the strengthening of control as long as it remains with a controlling group whose intentions they understand and trust; on the other hand, they see it as being part of a virtuous' cycle, aimed at developing the project rather than merely preserving a position of power indefinitely.

One final remark regarding Italian legislation on the topic. While it is true that sometimes companies self-regulate even in the absence of mandatory rules (as in the latter case), it is still likely that their absence leads to situations of abuse that minority shareholders alone lack the power to counter.

In addition to the possible amendment to the discipline previously discussed, further insights can be drawn from observing the European Directive on this topic and from the experiences of other legal systems. Article 5 of the European Directive on MVS outlines two different approaches to regulating the qualified majority of votes cast when a company makes use of enhanced voting rights. One of these requires the achievement of a qualified majority for both the votes cast and the share capital represented at the meeting (excluding decisions on appointment and dismissal of members of the administrative, management and supervisory bodies of the company and also the operational decisions to be taken by such bodies which are submitted to the general meeting for approval). In this way, the privilege of the shareholder controlling the general meeting through multiple voting rights is diminished in all cases where the rules governing the corporate organization are being modified.[24] This option, reflecting the one adopted in the legal systems of Nordic countries, particularly Sweden,[25] seems specifically relevant to the Italian context, where data show that controlling shareholders can easily maintain total control over every decision made by the shareholders' meeting – even more so as a result of the reformed rules.

Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate, in *European Business Organization Law Review*, 2021, 491 ff.

[24] U. BERNITZ, *The Attack on the Nordic Multiple Voting Rights Model: The Legal Limits under EU Law*, in *EBLR*, 2004, 15, 1424 ff.

[25] These countries have embraced multiple voting structures since the early stages of their market development and continue to see them widely utilized today, without significant issues related to market functionality, particularly concerning control turnover. See R.J. GILSON, *The Nordic Model in an International Perspective: The Role of Ownership*, Columbia Law and Economics Working Paper No. 517/2014; G.W. DENT, *Corporate Governance: The Swedish Solution*, in *Florida L. Rev.*, 2012, 64, 1633 ss; E. LIDMAN, R. SKOG, in *London Allowing Dual Class Premium Listings: A Swedish Commentary*, ECGI Law working paper No. 580/2021.

THE DUTCH FRAMEWORK: OPTIONS & FLEXIBILITY [*]

TITIAAN KEIJZER

SUMMARY: 1. Introduction. – 2. Economic background. – 2.1. A Swing of the Pendulum. – 2.2. Information Costs. – 3. Dutch Law Concepts. – 3.1. Reasonablesness & Fairness, Equal Treatment. – 3.2. Statutory Regime. – 3.3. Types of Shares. – 4. Options & Flexibility. – 4.1. Implementation. – 4.2. Exercise of Rights. – 5. Mitigating Information Costs: Necessary, but no Longer Sufficient.

1. Introduction.

It is a great pleasure to illustrate dual class shares under Dutch corporate law.

First, I will share some observations regarding the economic background – one could also say: societal relevance – of multiple voting shares. It is fair to say that the assessment of dual class shares has changed quite substantially over the past few years. Therefore, it is worthwhile to contemplate that shift (para. 2.1). In my view, the major driver for the reappraisal of multiple voting shares is the recognition of information cost, which cost factor will therefore be analyzed as well (para. 2.2).

Second, I will discuss how existing Dutch corporate law seeks to address information costs. To that end, I analyze some of the more fundamental provisions of Dutch corporate law – in general as well as with an application towards multiple voting shares. More precisely, I delve into the principles of reasonableness and fairness and equal treatment (para. 3.1), the statutory regime regarding the allocation of voting rights (para. 3.2) and some of the types of shares permitted under Dutch corporate law (para. 3.3).

Third, I would like to draw the attention towards certain specific Dutch corporate law characteristics of dual class shares. As will be discussed in a bit, Dutch corporate law offers considerable flexibility, both with regard to the implementation of dual class shares (para. 4.1) as the exercise of the shareholder rights vested therein (para. 4.2).

I conclude that, although Dutch corporate law already goes a long way in mitigating information costs, this legal system, even if applied across all EU Member States, would be in itself insufficient for an economic renaissance. Further reforms are therefore required (para. 5).

2. Economic background.

2.1. *A Swing of the Pendulum.*

In the traditional literature, scholars just knew that multiple voting shares were evil. This approach has been dominant until fairly recently. For instance, the 2008 article of Adams & Ferreira, which even was one of the more nuanced, stated that there is "some support [...] for the hypothesis that deviations from one share-one vote affect the value of

[*] This contribution should be understood in connection with the speech of Professor Martin van Olffen, which addressed some aspects of Dutch law in more detail.

outside equity negatively".[1] At the time, multiple voting shares were primarily framed in terms of a tug of war between insiders and outsiders, where one side would always lose regardless of the outcome.

In the current policy narrative, which is much more about jointly growing the pie, everybody just knows that multiple voting shares can have positive effects. It adopts a broader perspective, considering matters such as increasing the number of stock market listings, enabling founders to pursue their visionary long-term ideas and creating a vibrant ecosystem of tech companies.[2] Suddenly, multiple voting shares are seen as the panacea for a host of socio-economic issues.

This is, of course, a stark reminder of Karl Popper's philosophy, that all knowledge is preliminary.[3] Frankly, I do not know whether either of the perspectives on multiple voting shares is always correct. Multiple voting shares still have downsides. What I do know, however, is that the debate on multiple voting shares has become more nuanced. This is a great plus, allowing for an actual exchange of ideas, rather than scholars trading severe yet ultimately academic blows to each other.

2.2. Information Costs.

In my view, the main driver for the reappraisal of multiple voting shares is the realization that there is more to the real-life picture than just agency costs, which is what traditional economists have mostly focused on.[4] Instead, other types of costs, such as information costs, bankruptcy costs and taxes, should also be recognized. Moreover, a more dynamic understanding should be adopted, a life-cycle approach, towards the various cost factors. Then, one type of cost may carry a heavier weight during a certain period of time and can become of less importance later on, and vice versa.[5]

I believe information costs are particularly important, especially during the initial stages of a company's life-cycle, but also subsequently. Information costs are an abstract concept. They relate to the effects of outsiders, such as retail investors and hedge funds, failing to adequately understand the business and pushing for a short-term payday or a change in strategy.[6] Sometimes, a move may seem irrational at first only to turn out to be genius later. YouTube, which was acquired by Google in 2006 for the then staggering amount of $1.65 billion, brought in $50 billion in revenues in the last 4 quarters.[7] Mark Zuckerberg almost got fired in 2012, when he casually informed the board of Facebook that he had acquired a company – without consulting his fellow directors – with only 30 million users for the

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[1] RENÉE ADAMS & DANIEL FERREIRA, *One Share - One Vote: The Empirical Evidence*, in *Review of Finance* 2008, 51, 84.
[2] Directive 2024/2810, Recitals 2-4.
[3] KARL R. POPPER, *The Logic of Scientific Discovery*, 1959.
[4] MICHAEL C. JENSEN & WILLIAM H. MECKLING, *Theory of the firm: Managerial behavior, agency costs and ownership structure*, in *Journal of Financial Economics*, 1976, 305.
[5] TITIAAN A. KEIJZER, *Vote and Value. An Economic, Historial and Legal-Comparative Study on Dual Class Equity Structures*, 2020, p. 123-131.
[6] ARMEN A. ALCHIAN & HAROLD DEMSETZ, *Production, Information Costs, and Economic Organization*, in *The American Economic Review*, 1972, 777.
[7] Alphabet Q3 FY 2024 Press Release, p. 1.

amount $ 1 billion.[8] That company was Instagram. It is crucial for the company which Meta is today.

This is where multiple voting shares help. They essentially do one thing, and that is to allocate corporate control. By ensuring control for a certain shareholder or preventing another shareholder from obtaining it, multiple voting shares play a crucial role in mitigating the potential adverse effects of information costs.

3. Dutch Law Concepts.

3.1. Reasonablesness & Fairness, Equal Treatment.

The meaning of Section 2:8 of the Dutch Civil Code is twofold. First, it stipulates that the corporation, its directors and its shareholders must behave reasonably and fairly toward each other. Second, it provides that statutory provisions as well as provisions in the articles will be disregarded if these would deliver, in terms of reasonableness and fairness, an unacceptable outcome. [9] That may seem a rather vague and unpredictable standard, but in the Netherlands, scholars and practitioners alike are quite used to it. When I was still in private practice, foreign lawyers would sometimes ask whether Dutch law featured a statutory provision on a certain topic. If not, the response would always be: "No, but we have Section 2:8". It really permeates into every aspect of Dutch corporate law.

In addition, there is Section 2:92 of the Dutch Civil Code, which covers companies of the Public Limited Companies-type.[10] Section 2:92 addresses the topic of equal treatment and, in doing so, distinguishes between shares and shareholders.[11] First, it states that, as far as shares are concerned, the rights attached thereto are equal in proportion to their nominal amount, unless otherwise provided. Second, it stipulates that shareholders of whom the circumstances are equal should also be treated equally.

3.2. Statutory Regime.

This concept, i.e. that the rights attached to shares are equal in proportion to their nominal amount, is often interpreted as "one share, one vote". When there exists only a single class of shares, that is indeed correct. But that is, of course, not the end of it.

Perhaps contrary to popular belief, Dutch corporate law does not offer an explicit legal basis for dual class shares. It is simply that the law does not prohibit it either so Dutch lawyers have simply, liberal as they are, assumed that, multiple voting shares are permitted. This is achieved by creating distinct classes of shares, in the company's Articles of Association, with different nominal values. The ratio between the nominal values of the

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[8] Y. HEISLER, *Once mocked, Facebook's $1 billion acquisition of Instagram was a stroke of genius* (30 December 2016), available at http://www.finance.yahoo.com/.

[9] TITIAAN A. KEIJZER, *Vote and Value. An Economic, Historial and Legal-Comparative Study on Dual Class Equity Structures*, 2020, p. 405-411.

[10] In the Netherlands, there exists a similar provision for Private Limited Companies, which curiously enough now also can go public. For multiple voting shares, we can confine ourselves to Public Limited Companies.

[11] MARIE-LOUISE LENNARTS, *Loyalty Dividend and the EC Principle of Equal Treatment of Shareholders*, in *European Company Law*, 2008, 173, 175.

various classes of shares – rather than the absolute amount of the share's nominal value – determines the difference in voting rights.[12]

One would be forgiven for thinking that it is somewhat confusing that the jurisdiction widely known for having taken a very flexible approach to multiple voting shares has not established a statutory basis for such instruments. Legislation on the topic has been in the making for quite some time now, but progress has been slow which, to share just some of our local problems, is due to the fact that stakeholder groups – that is, issuer and shareholder representatives – have been failing to reach a compromise on the way forward. The courts, of course, have not remained silent. In fact, important case law exists, mainly on the topic of loyalty (voting) shares, which however has also important implications for multiple voting shares.[13]

3.3. Types of Shares.[14]

So where does that leave us in terms of the types of shares that are permitted under current Dutch corporate law? Firstly, common shares are allowed, which provide voting rights and financial distributions in proportion to nominal value. Non-voting shares are prohibited.[15] Each shareholder must have at least 1 vote. Issuers can, however, use an alternative financial instrument (depository receipts) which (largely) replicates non-voting shares.

Multiple voting shares are also permitted. The number of votes per share is not maximized, which is of course not entirely consistent with the ban on non-voting shares. The principle of reasonableness and fairness (S. 2:8 DCC) can however, dependent on the circumstances at hand, affect the exercise of the voting right, as will be discussed in more detail in para. 4.2.

Furthermore, loyalty voting shares are allowed as well. These may be distinguished from multiple voting shares. They are, contrary to multiple voting shares (typically) time-based and require for instance a 2, 3 or 5 year activation period (a so-called low/high approach). In the past, however, there have also been loyalty mechanisms that were triggered immediately (i.e. a high/low variant). Additionally, loyalty voting shares (can) use a technically different mechanism of granting additional shares rather than additional votes, in which case the one share, one vote principle remains intact (at least formally). For control purposes, both multiple voting shares and loyalty voting shares may, depending on their design, effectively resemble each other. Case law has recognized the use of loyalty (voting) shares but the courts have, especially in the Vivendi/Mediaset-case, also set certain limits.[16]

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[12] As such, Prosus N.V, which has shares with a nominal value of EUR 0.05 and shares with a nominal value of EUR 50, can create a 1 : 1,000 voting ratio.

[13] Dutch Supreme Court 14 December 2007, ECLI:NL:HR:2007:BB3523 (*DSM*); Amsterdam Court of Appeals 1 September 2020, ECLI:NL:GHAMS:2020:2379 (*Vivendi / Mediaset*).

[14] TITIAAN A. KEIJZER, *Vote and Value. An Economic, Historial and Legal-Comparative Study on Dual Class Equity Structures*, 2020, p. 458-471.

[15] That is, for the Dutch Public Limited Company. Not that for the Dutch Private Limited Company, the situation is different.

[16] In line with ECJ case law. This may, in practice, somewhat limit the use of (overly aggressive) loyalty voting structures, the various elements of which can occasionally be challenging to justify.

4. Options & Flexibility.

4.1. Implementation.

With those more general aspects of dual class shares under Dutch corporate law having been dealt with, I would like to discuss some more specific items. To be clear, this mainly involves describing the absence of legislative interference or, essentially, a state of nothingness. However, I believe this is exactly where the main advantage of the Dutch regulatory framework lies.

To start, dual class share mechanisms can, of course, be implemented prior to the IPO. However, multiple voting and especially loyalty voting schemes can also be implemented once the company is already listed, in the midstream phase, providing ample opportunity to respond to changes in the circumstances of the company.

Shareholder decision-making takes place by simple majority, and so requires 50% of the votes cast + 1 vote.[17] In principle, Dutch corporate law mandates only a very limited number of instances where a supermajority is required. Of course, the company may stipulate, in its Articles of Association, that additional matters require a supermajority vote, but that is a matter of private ordering.

Some jurisdictions, notably the US, have something of a tradition of using sunset provisions, in a general legislative sense as well with respect to dual class shares.[18] For instance, the dual class structure may cease to exist once the equity stake of the controller decreases below a pre-defined (typically: fairly low) threshold, or after a certain period of time has lapsed, subject to a renewal vote. Dutch corporate law does not require sunset provisions and, in fact, their use is uncommon in the Netherlands.

4.2. Exercise of Rights.

A few further observations regarding the exercise of voting rights in relation to dual class shares. Contrary to e.g. the UK regime as existed following the Hill Review of 2020, Dutch corporate law does not require controlling shareholders to simultaneously hold a director position to be able to exercise the voting rights vested in the superior voting stock. Under Dutch law, the director and shareholder positions are of a rather different nature. Indeed, a controlling shareholder might also want to consider appointing a nominee to the board, for instance, rather than himself.

Moreover, Dutch corporate law does not limit the use of multiple voting shares based on the nature of the agenda item. For instance, the recent EU initiative contains certain, rather broad, wording of an optional nature, stipulating that the use of multiple voting shares should not be used to prevent compliance with EU initiatives in relation to environmental or fundamental rights.[19] It is not entirely clear what is meant by that language, but it could be implied to even extend to matters company strategy, in which case the multiple voting shares mechanism would be rather ineffective. In the Netherlands, legal practice is not accustomed to such restrictions.

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[17] S. 2:120 DCC.

[18] ANDREW W. WINDEN, *Sunrise, Sunset: An Empirical and Theoretical Assessment of Dual-Class Stock Structures*, in *Columbia Business Law Review*, 2019, 852.

[19] Directive 2024/2810, Recital 19.

Finally, and perhaps most importantly, the controlling shareholder is, under Dutch corporate law, not necessarily stripped from his voting rights in case a voting item could, conceptually, give rise to a conflict of interest. This situation can emerge, for instance, in case of a takeover offer by the controller (which offer may or may not become contested by activist hedge funds). Of course, the controlling shareholder is required to comply with the principle of reasonableness and fairness (S. 2:8 DCC) and could have a duty of care towards the minority. Circumstances might even arise so that the interest of the minority outweighs that of the controller.[20] But a Dutch court will only intervene when real harm is imminent or actually being done. This means that the dual class equity structure has a reasonable chance of doing its job precisely when it matters most.

All in all, Dutch corporate law goes a long in addressing the potential adverse effects of information costs.

5. Mitigating Information Costs: Necessary, but no Longer Sufficient.

In the current digital environment, mitigating information costs, whilst still necessary, is unfortunately no longer sufficient.

Of course, there has never been a company which provided terrible goods or services but flourished nonetheless, because of its terrific corporate governance. But now, even the prospects of EU companies with excellent engineering ideas are, compared to their mainly US competitors, increasingly bleak.[21] In my view, there are 3 main reasons for this development. The first is that, for historical reasons, the EU faces higher regulatory fragmentation, slowing cross-border corporate expansion.[22] In connection therewith, EU companies are limited by a smaller home market, reducing economies of scale. The Netherlands has only 18 million inhabitants; Germany, the largest economy in the EU, has 83 million, whereas the US has more than 330 million.[23] And then, there is the truly horrible liquidity, in relative terms, of EU stock markets. I invite you to compare, for instance, the pricing of long-term stock options at the NYSE and its continental European counterparts, in particular the German stock exchange. You will find that sometimes there is just no liquidity, and when there is, it often is at a prohibitively high cost.

All this already translates into pretty substantial competitive disadvantages. However, it becomes truly worrisome, especially long term, when one considers that many businesses in the digital era revolve around network effects, often resulting in winner-takes-all markets.[24] Frankly, I believe there is a real risk of the EU being outcompeted. In fact, the data already shows it. After 2008, European economic growth has been poor. That is often attributed to the Financial Crisis, but also coincides with the advent of the iPhone – a rough proxy for the societal relevance of network effects. In 2009 there were 60 million smartphones in the US, and now 310 million.[25]

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[20] Amsterdam Court of Appeals 10 February 2022, ECLI:NL:GHAMS:2022:302 (*Funda*).
[21] KATIE MARTIN & NIKOU ASGARI, *Why Europe's stock markets are failing to challenge the US* (25 April 2023), available at http://www.ft.com/.
[22] LUCA ENRIQUES, *A Harmonized European Company Law: Are We There Already?*, in *International and Comparative Law Quarterly*, 2017, 763, 777.
[23] Data according to the CIA World Factbook as per 22 November 2023.
[24] THOMAS EISENMANN, GEOFFREY PARKER & MARSHALL W. VAN ALSTYNE, *Strategies for Two Sided Markets*, in *Harvard Business Review*, 2006, 92, 101.
[25] Figures available at https://www.statista.com/topics/2711/us-smartphone-market/#topicOverview/.

As such, further reforms are a bare necessity. This applies to corporate law and the use of dual class shares, as well as the Capital Markets Union and the European project in general.

MIGRATIONS AND BYLAWS: DUTCH GENERAL PRINCIPLES AND APPLICATION IN COURT DECISIONS

MARTIN VAN OLFFEN

SUMMARY: 1. Introduction. – 2. Governance. – 3. Case law in the Netherlands. – 4. The future?

1. *Introduction.*

Companies take their governance seriously. More than in the past, companies make a choice to leave their country or state of incorporation and migrate to another place where the governance better fits the wishes of management or controlling shareholders. The data reflected in the chart below show an overview of listed companies migrating from the Netherlands and companies migrating into the Netherlands over the last 25 years. The vast majority of migrations are inbound migrations. In making a choice between various alternatives there are many considerations. The applicable corporate law regime and related flexibility to adopt custom made articles of association or bylaws are at the center of the spectrum. As follows from the contribution of Titiaan Keijzer, Dutch corporate law is an attractive regime because of its flexibility in many aspects. Another key driver for a company to decide on the location of its head office or its statutory seat is the applicable tax regime. For historical reasons the Netherlands has a flexible tax regime and ample experience with many international companies with head office in The Netherlands. Combined with many bilateral agreements with other countries, this provides for many companies a solid basis for a head office in the Netherlands.

In recent years, there were two large companies leaving the Netherlands. One of them is Royal Shell Oil and the other is Unilever. The general view is that they left Netherlands because of their own complicated structure and in making a choice for the UK the inclusion going forward in the FTSE-index was a key factor. There are some other examples of outbound migration. DSM that moved to Switzerland in a reverse takeover. Further, Flow Trader, a stockbroker's company, and Aegon, an insurance company, moved to Bermuda. These migrations were regulation driven by regulation.

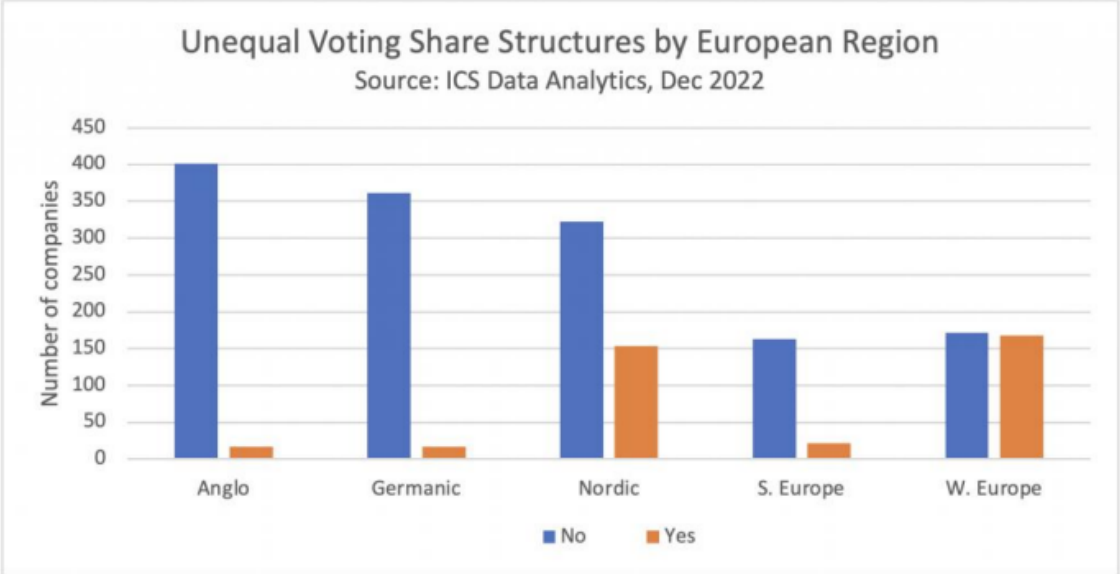
	Stand alone redomiciliation	**IPO or de_Spac-related**	**M&A related**
Inbound	**Italy:** Exor, Campari, Mediaset, Cementir **Luxembourg:** Altice **Spain:** Ferrovial **Australia:** James Hardie **UK:** Brit Insurance **Belgium:** Collibra	*In preparation of IPO* **Germany:** Qiagen, Curevac, Affimed, Curetis **France:** Universal Media Group (Vivendi) **UK:** Technip Energies (Technip FMC) **Belgium**: ArgenX SE, Collibra	*The Netherlands as neutral jurisdiction* **US:** Mylan **France**: PSA merger into Stellantis (FCA), Talend **France/US:** Publicis/Omnicom (aborted)

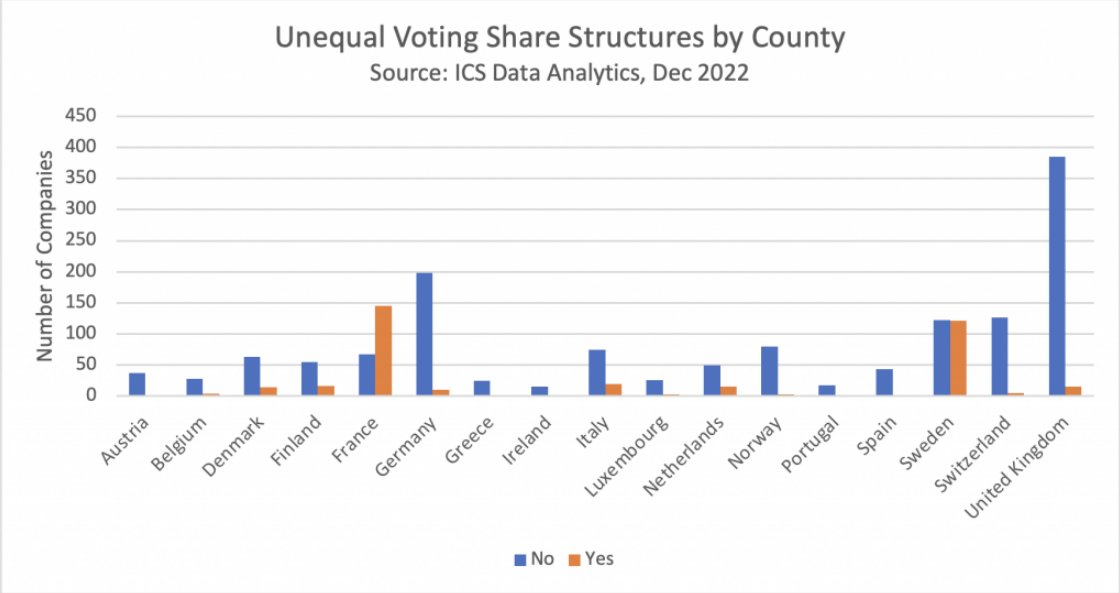
		Italy: Ferrari, Iveco, CNH Industrial **CEE:** various companies with CEE listing **South Africa:** Prosus (Naspers) **Egypt**: OCI *De-SPACs with European target or Dutch holdco structure* **Germany:** Immatics (US listing) and Cabka (NL listing) **Japan:** Coinbase **Spain:** Wallbox **France:** FL Entertainment **Italy:** Ermenegildo Zegna	**Japan/US:** Tokyo Electron and Applied Materials (aborted) **Germany/France/Spain**: EADS (Airbus) **Belgium/NL:** merger Ahold and Delhaize **Austria/Brazil:** merger RHI and Magnesita **Italy/US:** combination Fiat and Chrysler
Outbound	**UK:** Unilever, RELX, Shell, Nielsen **Ireland**: James Hardie **Bermuda:** Flow Traders, AEGON **Belgium**: Ageas	No noteworthy precedents	**Switzerland:** DSM-Firmenich **France**: Klépierre acquisition of Corio **Bermuda**: Stryker acquisition of Wright Medical N.V. (redom to Bermuda as post-closing minority exit step)

2. Governance.

As to corporate law, an interesting phenomenon is that a considerable number of companies that migrated into The Netherlands did so to make use of a governance scheme accommodating for shares with more than one vote or to introduce a scheme of loyalty shares. These schemes can easily be included in the articles of association of a Dutch company and further details can be elaborated in separate charters. In the chart above a number of Italian companies is reflected that migrated from Italy into the Netherlands: Exor, Campari, Stellantis (formerly FIAT/Chrysler), but also some other companies.

Looking at the European and Dutch landscape, we see that in Europe there's only a few number of countries that allowed in the past use of these multi-voting schemes or loyalty voting schemes. The graphic below shows some data as at December 2022.



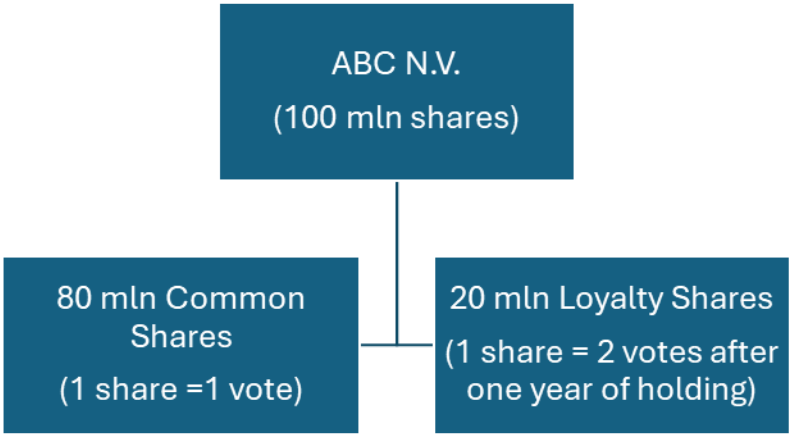


The blue ones are the countries that did not have that scheme, and the orange ones are the countries that allowed companies to make use of those schemes. And if you look at the Netherlands, you see indeed a number of companies (e.g. Ferrari, CNH, EXOR, Stellantis, Zegna, IVECO Group, Campari) that came to the Netherlands for that very reason.

The world is moving fast, there are developments since 2022, that is the last research into this matter. Some countries have introduced new laws, which also allow their companies to make use of these kind of schemes. As mentioned in the contribution of prof. Pollastro, we can see that these changes have success and less companies are leaving their home country for this specific reason We need to be careful with this observation, however, and see what the future will bring. It is often not only multiple voting shares but also other reasons that may urge companies to look for other safe havens.

A typical loyalty share scheme in the Netherlands is reflected in the graphic below. The graphic sows that upon conversion of common shares into loyalty shares, there will be two

changes to the votes. The total number of votes will increase from 100 mln to 120 mln. The person or group holding loyalty shares have an increase from 20 to 40 mln votes, or from 20 percent of the votes in the general meeting to 40 mln votes in the general meeting. As most listed companies have an attendance that will typically not reach above 90 percent, in this example the loyalty scheme results in almost structural control of the meeting.



There is quite some debate on the pros and cons of loyalty schemes and high/low voting schems.[1] Long-term interests, such as sustainability and long-term value creation, are taking on an increasingly important position in corporate law and business. Long term interests are receiving increasing attention in legislation and regulations. The ongoing discussions on the EU Directives regarding corporate governance, more in particular the CSD, the CSDDD and the Omnibus Directive reflect these discussions. [2] As to loyalty schemes, the idea is that shareholders commit themselves to a company for the long term and thus become or are loyal shareholders. They focus more on the long-term interests of the company and the associated business. The expectation is that investments (or decisions) that only yield returns in the long term and are aimed at the sustainable and sustainable success of the company will receive support from those long-term shareholders. By giving extra voting rights or dividends to shareholders who commit to the company for the long term, the influence of 'short-term shareholders' is limited. The 'long-term investment' can less easily be blocked or frustrated by shareholders who are focused on maximizing value in the short term. In short, the idea of the intended effect is: a loyalty scheme creates loyal shareholders who have the same interests in mind as the company itself. The debate on loyalty scheme and high/low voting stock includes a discussion on whether there should be a maximum ratio, a maximum bandwidth of the number of votes that can be obtained in such a scheme.

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[1] E.B. ROCK, *Shareholder Eugenics in the Public Corporation*, in 97 *Cornell L. Rev*. 849 (2012), p. 857, 900 e.v.; T. BELINFANTI, *Shareholder Cultivation and New Governance*, in *Delaware Journal of Corporate Law* (DJCL), Vol. 38, No. 3, 2014, p. 834; L.L. DALLAS & J.M. BARRY, *Long-Term Shareholders and Time-Phased Voting*, in 40 *Delaware Journal of Corporate Law* 541 (2015), p. 570 e.v.; M.J. ROE & F. CENZI VENEZZE, *Will Loyalty Shares Do Much for Corporate Short-Termism?*, in 76 *Business Lawyer* 467 (2021), p. 475.
[2] Directive - 2019/2161 - EN - omnibus directive - EUR-Lex; Commission proposes to cut red tape and simplify business environment - European Commission.

Currently there is no maximum ratio applicable in the Netherlands and as seen in case law, this may lead to uncertainty.[3] I will discuss that more in detail below.

A scheme involving loyalty shares typically requires participating shareholders to move their shares into a register that is not eligible for trading the relevant shares on the stock exchange. Upon lapse of the relevant period (typically two or three years) a shareholders is entitled to loyalty shares. The movement of shares to and from a register that is not eligible for stock exchange transactions takes some time. This is an important obstacle for institutional shareholders to participate in such schemes. There is room for improvement for such registers.

3. Case law in the Netherlands.

The discussion on loyalty shares in the Netherlands was triggered by Koninklijke DSM NV ('DSM') in 2006. DSM, a Dutch company in the old times responsible for the coal mines, that transformed itself into a chemical company. This was the first company that wanted to introduce loyalty schemes, not so much for voting rights, but to reward long time shareholders with extra dividend rights. A shareholder holding shares for three years would get a bonus, extra dividends, and every consecutive year of shareholding would be rewarded with additional bonus dividends. After DSM's announcement to introduce a loyalty dividend scheme, a number of shareholders initiated litigation on the basis of unequal treatment. In March 2007, the Enterprise Chamber of the Amsterdam Court of Appeal prohibited DSM from voting on the proposal for the amendment of the articles of association at the general meeting. The court argued that the scheme was in violation of the equal rights rule set forth in Article 92 of Dutch Civil Code.[4] This prohibition resulted in DSM not submitting the introduction of the loyalty dividend to the shareholders. A year later, the Supreme Court ultimately ruled that the prohibition of the Enterprise Chamber demonstrated an incorrect legal view. The Supreme Court argued and ruled that article 92, the equal rights principle, does not prevent companies to introduce a system where shareholders can be rewarded for long term shareholding, so the loyalty schemes in themselves are permissible. The ruling of the Supreme Court shows that Dutch law in principle does not oppose a loyalty (dividend) scheme.[5]

Since the Supreme Court's ruling on the loyalty dividend at DSM in 2007, a number of Dutch listed companies have introduced loyalty shares. This does not involve a loyalty dividend as proposed by DSM, but loyalty voting rights. A shareholder receives extra shares with voting rights from the company free of charge after two or three years of continuous shareholding. These extra shares have (de facto) no financial value, as they cannot be traded and are not entitled to dividends. In principle, it is arranged that a shareholder can receive one extra share and therefore one extra vote per share. However, there are also other examples where a shareholder can receive up to ten votes per share. Looking at the companies that make use of these schemes, it appears that in Dutch practice a loyalty scheme is almost exclusively used by companies that have a shareholder who already owns a considerable number of shares in the company at the time of the introduction of loyalty shares. Loyalty shares therefore mainly contribute to increasing or maintaining the controlling position of an existing major shareholder. But since that time, there is uncertainty in the Netherlands about the use of these loyalty schemes.

Another important precedent on litigation regarding a loyalty scheme is Mediaset/Vivendi from 2020. Two listed companies from Italy and Spain wanted to merge

[3] Court of appeal Amsterdam 1 September 2020, ECLI:NL:GHAMS:2020:2379 (Mediaset/Vivendi).
[4] Court of Appeal Amsterdam (Ondernemingskamer) 28 March 2007, ECLI:NL:GHAMS:2007:BA1717.
[5] Supreme Court 14 December 2007, ECLI:NL:HR:2007:BB3523, NJ 2008/105 (DSM).

and simultaneously convert into a Dutch NV (a cross-border merger). The litigation revolved around the introduction of a loyalty scheme in an already listed structure (a midstream introduction). It follows from the DSM ruling of the Supreme Court that a loyalty scheme may not lead to a violation of the principle of equal treatment of shareholders as laid down in Article 2:92 paragraph 2 of the Dutch Civil Code. However, the Supreme Court did not set any concrete limits or provide any guidance in that respect. In the Mediaset/Vivendi ruling, the Amsterdam Court of Appeal refers to the DSM ruling. The court states that a scheme of loyalty voting rights (also as a midstream introduction) is possible under Dutch law. Such a scheme must, however, also respect the principle of equality.[6]. Because the principle of equality has been included in Book 2 of the Dutch Civil Code as a result of the implementation of a European Directive, the Amsterdam Court of Appeal applies the test criteria of the European Court of Justice in line with a judgment of the Supreme Court from 1993.[7] Is there an objective justification for the unequal treatment of shareholders, which inequality consists of granting more voting rights to one ('loyal') shareholder and not to the other ('ordinary') shareholder? According to the Amsterdam Court of Appeal, the following proportionality criteria apply in the assessment: (i) is there an objectively justified reason for the distinction between shareholders?, (ii) is the arrangement suitable to achieve the objective?, (iii) is the arrangement necessary to achieve the objective?, and (iv) is the distinction in proportion to the objective pursued? In the Mediaset/Vivendi case, the court ruled that the proposed loyalty scheme could not pass the test of these criteria.

Reading between the lines, one may argue that the court believes that the scheme was set up mainly to promote the interests of the family Berlusconi and had no mitigation or otherwise financial compensation for minority shareholders. The court did not provide clarity or guidance on the limits for a loyalty scheme and hence, there remains a certain level of uncertainty on what is possible under these schemes and what not. Further guidance on the relevant limitations may follow from discussions around the EU Directive on mulit-voting shares in companies seeking a listing on a multilateral trading-facility.[8]

4. The future?

So what is the future of these loyalty schemes or multi-voting shares? As to the legal basis for these schemes, we can conclude that in the Netherlands we have a general view supported by case law that there is a possibility to introduce (and maintain) these schemes as long as they are sufficiently justifiable, they are proportionate (careful with the voting-ratio) and there is a balance of the relevant interests. We have seen that some countries amended their corporate laws to allow for these schemes. In practice we observe a hesitation from institutional shareholders to make use of loyalty schemes for the settlement issues that have been discussed above. Also, the institutional investors typically prefer the one share one vote principle. This may have an impact for a company to attract institutional investors, which may make it more costly for companies to acquire new capital. Finally, I note a change in the public discussions on protection of certain stakeholders, including minority shareholders, and the practice of companies in setting up a related governance. It seems that the protection of minority shareholders in that respect becomes somewhat more flexible or less relevant. This all is sufficient basis to conclude that the loyalty schemes, multi-voting schemes and high/low voting schemes are here to stay and may attract further adoption in the future. Where corporate laws of certain countries do not cater for such schemes, I expect

[6] Court of appeal Amsterdam 1 September 2020, ECLI:NL:GHAMS:2020:2379(Mediaset/Vivendi).
[7] Supreme Court 31 December 1993, ECLI:NL:HR:1993:ZC1212, NJ 1994, 436 (Verenigde Bootlieden).
[8] Directive (EU) 2024/2810 of the European Parliament and of the Council of 23 October 2024 on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility.

that these laws will be changed to attract new companies or remain attractive for companies incorporated under these laws.

REGULATORY COMPETITION IN THE EU: TRENDS, PROBLEMS AND PERSPECTIVES

GIOVANNI PETROBONI

SUMMARY: 1. Introduction. – 2. The degree of maturity of regulatory competition in the EU. – 3. The migration to the Netherlands in the context of the general debate on regulatory competition. – 4. The regulatory defensive competition and the Directive (EU) no. 2024/2810 23 October 2024.

1. Introduction.

My presentation will develop in three steps: (*i*) I will describe the current nature of regulatory competition within the European Union, as far as the market for corporate law is concerned, and I will make some remarks on the degree of maturity of such competition; then (*ii*) I will try to place the migration of Italian companies to the Netherlands in the context of the general debate about regulatory competition; and, finally, (*iii*) I will say something about the potential impact of the recently adopted European directive on multiple voting structures (Directive (EU) no. 2024/2810 23 October 2024).

2. The degree of maturity of regulatory competition in the EU.

The migration to the Netherlands of several Italian listed companies is one prominent episode of regulatory arbitrage, in the wake of the *Centros* doctrine and legacy[1]. Italian companies exercised their freedom of establishment, as granted by the European treaties and as interpreted by the *Centros* doctrine and legacy, and they moved their registered office to the Netherlands and chose the law that, according to the spirit of the EU Court of Justice decisions, better suits their needs and preferences[2].

These episodes of regulatory arbitrage have been followed by a series of legislative initiatives in various countries, in central and southern Europe: Italy, France, Belgium, Spain, Portugal, more recently Germany, Italy again, and France again[3]. The significant loss of normative (or regulatory) capacity, which was effective for Italy, but threatened as well other EU member States with a similar legislation, has determined a progressive reaction of various legislatures.

The same thing happened a few years earlier, after some episodes of regulatory arbitrage, on the minimum share capital requirement in private companies. In that case, the loss of normative capacity was mainly effective for Germany, but a series of homogeneous initiatives were taken in a short period of time in several European jurisdictions in an attempt to level any asymmetry with English law which, in that case, was the attracting jurisdiction.

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[1] For a critical review, see C .GERNER-BEUERLE/F. MUCCIARELLI/E. SCHUSTER/M. SIEMS, *The Illusion of Motion: Corporate (Im)Mobility and the Failed Promise of Centros*, in *European Business Organization Law Review*, 2019, 425 ff.

[2] See M. VENTORUZZO, *The Disappearing Taboo of Multiple Voting Shares: Regulatory Responses to the Migration of Chrysler-Fiat*, ECGI Law Working Paper, 288/2015, 1 ff.

[3] See K.J. HOPT/S. KALSS, *Multiple-voting shares in Europe. A comparative law and economics analysis*, EGCI Law Working Paper, 786/2024, 14 ff.

In both rounds of regulatory arbitrage, I mean on multiple voting structures and on minimum share capital, the subsequent initiatives were essentially aimed at preventing further arbitrage episodes. I would like to stress this because it shows that yes, those episodes of regulatory arbitrage evolved in a regulatory competition, but this regulatory competition has been, so far, "solely defensive"[4].

In a defensive regulatory competition, jurisdictions do not appear to be actively competing to make their own legal system more attractive for companies. They are not improving, as some of the literature suggests, the quality or the efficiency of the legal environment in which companies are formed and operate: for example, by specializing judicial services or facilitating ancillary services, which are able to reduce ownership costs connected with shareholdings (risks bearing, collective decision, control on managers)[5]. They simply aim at eliminating, or at least reducing, the regulatory mismatch that has been the pull factor for regulatory arbitrage. Their goal is simply to prevent other national companies from using the "*Centros* door", or from taking the "*Centros* path" and going abroad.

So, if the *Centros* doctrine has created, as they say, a market for company law, we can state that, so far, the demand side of that market has been more active than the supply side, in the sense that innovation has been driven by demand, rather than supply. On the demand side, economic operators have taken advantage of the different disciplines already available, investing money to find the national legal regime that suits them best. On the supply side, legislators simply reacted and adapted their offer. In an area such as company law, which is highly sensitive to practical needs and market dynamics, EU Member States have responded to regulatory competition by adapting their offer, but not without creating or developing new market conditions[6].

This is a crucial feature because it is very different from another form of regulatory competition, which also can be detected in the sector of multiple voting structures. I am referring to the competition that that has been developing at the global level– not therefore only at the European level, nor at European Union level – among the world's major stock exchanges and their listing requirements. That further regulatory competition is developing as the competitive struggle between negotiating venues for hosting an IPO, and it has become particularly intense over time, given the general decline in the number of IPOs worldwide: a decline which is commonly attributed to the increase in private equity transactions[7]. Moreover, this further regulatory competition shows that, although at the beginning of this century it was thought that the Anglo-Saxon jurisdictions would prevail in

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[4] See S. LOMBARDO, *Regulatory Competition in European Company Law. Where Do We Stand Twenty Years After Centros?*, ECGI Law Working Paper, 452/2019, 29. See also A. BARTOLACELLI, *Almost Capital-less Companies in Europe: Trends, Variations, Competition*, in *European Company and Financial Law Review*, 2017, 223 ff.

[5] See L. ENRIQUES, *EC Company Law and the Fears of a European Delaware*, in *European Business Law Review*, 2004, 1259 ff.

[6] The process has been described as the equivalent of a "bottom-up harmonization": E. PEDERZINI, *La libertà di stabilimento delle società europee nell'interpretazione evolutiva della Corte di Giustizia. Armonizzazione e concorrenza tra ordinamenti nazionali*, in E. Pederzini (ed.), *Percorsi di diritto societario europeo*, 4th ed., Giappichelli, Turin, 2020, 148.

[7] See E. DE FONTENAY, *The Deregulation of Private Capital and the Decline of the Public Company*, in *Hastings Law Journal*, 68 (2016); J.R. RITTER, *Initial Public Offerings: Technology Stock IPOs*, 21.2.2022 (https://site.warrington.ufl.edu/ritter/files/IPOs-Tech.pdf).

the battle for financial markets over continental Europe because of their higher ability to protect minorities, as opposed to continental Europe's greater reliance on majoritarianism[8], in the end all jurisdictions have been becoming sensitive to the interests of the controlling group.

In that context, stock exchanges have been trying to make rules more appropriate and less discriminatory and they relaxed their listing requirements to allow companies with a multiple voting structure in their memorandum or article of association to be listed. This is often the case for technology companies and some Asian exchanges, when reviewing their listing requirements, have made it explicit that the issuer must be "innovative"[9]. However, this feature is not always included as a mandatory element. It all started in the US in the late 1980s, but it really took off with Google's IPO in 2004. It then spread to Asian markets and was finally confirmed with the review of the London Stock Exchanges listing rules, once in 2014, but quite generally, and then, with more detail, in 2021[10].

This second form of regulatory competition takes the form of active regulatory competition because it has been aimed at attracting new companies even from potentially distant jurisdictions by persuading them to apply for a listing. It is not a mere defensive competition.

It is true that, in the past, some exchanges relaxed some of their requirements for multiple voting structures after being rejected by a potential issuer who had opted for another exchange that was less restrictive on this issue. This was the case of Hong Kong Stock Exchange, which was considered for an IPO by Alibaba, but was subsequently abandoned, because the issuer preferred the New York Stock Exchange. But it was also the case of Singapore Stock Exchange, which was first considered and then abandoned by Manchester United, which also ended up listing on the New York Stock Exchange. In both cases, a process of reviewing the listing rules was started, resulting in a more inclusive view for companies with multiple voting shares. However, the number of IPOs in this markets that actually involve a multiple voting structure is comparatively small out of the total[11], and this indirectly confirms that such structures are just one of the tools and strategies that stock exchanges have been putting in place to accommodate any potential issue in a very competitive environment. I will go back on this difference between a defensive regulatory competition and an active one, because it is useful to understand some aspects of the regulatory arbitrage on multiple voting structures that we can see in Europe.

3. The migration to the Netherlands in the context of the general debate on regulatory competition.

With this in mind, I would like to make a few comments on the regulatory arbitrage with the Netherlands, due to multiple voting structures regulation. I will try to place the company

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[8] See P.G. MONATERI, *Competizione fra ordinamenti: il sistema degli investimenti globali*, in A. Zoppini (ed.), *La concorrenza tra ordinamenti giuridici*, Laterza, Bari, 2004, 157 ff.

[9] See, for Honk Kong, both the *HKEX Main Board Listing Rules* (Chapter 8A), and the *Guidance Letter HKEX-GL93-18* (para. 4.2); for Shanghai's STAR Board, see *Rules Governing the Listing of Stocks on the Science and Technology Innovation Board of Shanghai Stock Exchange* (para 1.1).

[10] See M. CORGATELLI, *Azioni a voto plurimo e "fondatori visionari"*, in *Rivista di diritto societario*, 2023, 47 ff.

[11] See M. YAN, *The myth of dual class shares: lessons from Asia's financial centres*, in *Journal of Corporate Law Studies*, 2021, 397 ff.

mobility towards the Netherlands against the background of the general debate and literature on regulatory competition. In some respects, these migrations seem to confirm the existing literature, in other respects, things appear to be different, at least at first sight.

In general terms, and also beyond company law boundaries, one of the concerns raised by regulatory arbitrage is that it may be aimed at exploiting advantages in relation to taxation, working conditions, social security, etc.[12]. However, the regulatory arbitrage that has occurred in the EU in connection with multiple voting structures was mainly driven by the intention to take advantage of what was allowed under certain conditions under Dutch company law, but not allowed under Italian company law (or other company laws). Those other factors mentioned above (labor, social security) were not significant and others (like taxation) were considered as ancillary and secondary[13].

This peculiarity is important because, in principle, it shows a continuity with the first round of a regulatory arbitrage, the one which specifically concerned the minimum share capital in private companies. In both cases, the main driver fell within the boundaries of company law and with the aim of exploiting the less stringent requirements of that discipline. So far, the main rationale of regulatory arbitrage was to take advantage of the reduced constraints offered by foreign company laws, but with a significant difference between the two rounds of regulatory arbitrage: with regard to capital formation, this has been done to the benefit of all shareholders (or founders), but at the expense of third parties, creditors in particular; with regard to voting rights, the arbitrage has been to the benefit of insider only (namely: majority shareholders and their families, indirectly board members, advisors of one or the others), but to the detriment of the minority shareholders[14].

This seems to confirm those opinions according to which, in the company law market, the choice of one law, or the other, may naturally evolve into the choice of the most favorable law for those who are entitled to take the decision: who are in fact, the shareholders (and not the third parties) and in particular majority shareholders (and not minority shareholders).

We can imagine that this is related to the low level of maturity of the European company law market. The scenario would probably be different if a truly active regulatory competition were established. If the regulatory competition were active, European jurisdictions would push to improve their own attractiveness, and we might see a greater diversity of corporate behavior. Of course, some companies would continue to engage in poor regulatory arbitrage essentially seeking solutions that best serve the interests of shareholders, especially controlling shareholders; but other companies would make their choices on the basis of a global assessment of the completeness, of the efficiency, of the flexibility, of the available rules. In a truly active regulatory competition – I am tempted to say: *only* in an active regulatory competition – we could finally see and state whether in the European context the race is directed either towards the bottom or towards the top.

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[12] See M. GNES, *La scelta del diritto. Concorrenza tra ordinamenti, arbitraggi, diritto comune europeo*, Giuffré, Milan, 2004, 342 ff., 349 ff., 359 ff.

[13] See M. BELCREDI-L. FAVERZANI-A. SIGNORI, *Così non fan tutte. An Analysis of Italian companies moving abroad*, FIN-GOV (June 2023).

[14] See L. ENRIQUES, *Concorrenza tra ordinamenti e migrazioni opportunistiche: che fare?*, in *Rivista delle società*, 2024, 633 ff.

Anyway, the regulatory arbitrage on multiple voting structures with the Netherlands allows a further remark, which concerns the costs of the arbitrage. Several factors would constitute potential obstacles or constraints to the arbitrage, but they have not turned out to be such in practice. I will only consider the two most important of such costs. But other burdens of the arbitrage might be considered, for example related to the governance of the company.

The first cost of arbitrage on multiple voting structures results from the condition of relatively low certainty under Dutch law about the multiple voting structures.

As Professor Keijzer and Professor Val Olffen have a well-illustrated in their presentations, there is no explicit statement in Dutch legislation on this issue, so that the validity and practicability of multiple voting structures have to be assessed on a case-by-case basis. This is done by applying the principle of equal treatment of shareholders, and also requires a review of the reasonableness and fairness of the global share structure[15]. And all these concepts – equal treatment, reasonableness, fairness – have flexible contours and changing content. Of course, they allow to arrive at solutions that are likely to be appropriate in the individual cases, but they paint a picture that is difficult to determine *ex ante* and even in general terms. They are likely to lead to solutions that are legally coherent, but unpredictable, which would mean undesirable, at least theoretically, from an economic point of view. It is true that such an uncertainty is somewhat mitigated by the high degree of specialization and professionalism of the Amsterdam Court of Appeal, so that it does not develop into arbitrariness. But in principle this unpredictability would remain a potential and powerful selective factor and one might describe it as a transaction cost of considerable impact, capable of draining, if not stopping, potential migration.

But the reality says that things have turned out differently. The regulatory arbitrage on multiple voting structures shows that, if the lack of a clear legal framework for these structures in Dutch company law determines any transaction costs, these are considered to be smaller and less significant than the benefits sought (and apparently achieved so far) by adopting a multiple voting structure.

Moreover, a further cost of regulatory arbitrage on multiple voting structures is related to the clear stakeholder orientation of Dutch company law. By virtue of an open statement of the law, the directors of a *Naamloze Venootschap* are empowered to act "in the interest of the company and of the business(es) conducted by it" (article 2:129, paragraph 5, Dutch Civil Code), and it is quite common for the articles of association to allow the general meeting to overrule a proposal by the directors only with a higher majority[16]. Again, this shows that the pull factor represented by the practicability, under Dutch law, of multiple voting structures with a high (or very high) multiplication ratio has been stronger, and more effective, than the possible uncertainties, and threats, of a company law which tend to insulate, and protect, the company directors from the shareholders' interferences.

There is an additional element. The regulatory arbitrage on multiple voting structure also shows that companies sought maximum flexibility. It can be said that they have sought

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[15] See A. CHILOIRO/J. FINCO/M.L. PASSADOR/A. PONTECORVI/S. NUIJTEN/S. SCORDO/L. SEMINARA/P. ZIJP, *Il trasferimento di società quotate italiane in Olanda. Ragioni e ripercussioni*, in G. Petroboni (ed.), *Amsterdam Drive?*, Giuffré, Milan, 2025, 128 ff.

[16] See A. CHILOIRO/J. FINCO/M.L. PASSADOR/A. PONTECORVI/S. NUIJTEN/S. SCORDO/L. SEMINARA/P. ZIJP (fn. 13), 39 ff., 149 ff.

flexibility at all costs and, in this sense, it is possible to have some doubts about the ability of the newly reformed norms of Italian law (Law 5 March 2024, no. 21) to put a definitive stop to potential migrations. In fact, these norms explicitly allow for a significant multiplication ratio, by means of a legal statement that is undoubtedly clear in allowing for some results, but which may also prove to be rigid in the possible outcomes[17].

4. The regulatory defensive competition and the Directive (EU) no. 2024/2810 23 October 2024.

Let's deal with the third part of my presentation, which tries to provide a brief comment on the current situation in Europe.

The defensive regulatory competition that followed the regulatory arbitrage on multiple voting structures led the various jurisdictions concerned – those already mentioned above – to allow such structures, and often this occurred with some common features across jurisdictions. It has been common, for example, the introduction of loyalty shares providing with a doubling voting right attributed to shareholders after two years of ownership. However, it is difficult to draw a single unambiguous picture: Italy reviewed the position it took in 2014 and eventually allowed dual class shares also in listed companies and enriched also the mechanism of loyalty shares; France also introduced dual class shares, but only for companies seeking a listing, and so they anticipated what was then being proposed and debated at the UE level; Germany, in the end, after a long period of severe ban on multiple voting structures, recently introduced dual classes shares in all companies[18].

Moreover, we are still far from seeing a truly complete bottom-up harmonization. The current situation in Europe with regard to multiple voting structures still shows a wide variety of solutions. Some countries still maintain a rigid general ban on any form of multiple voting structures (like Austria). Others, on the other hand, have maintained their traditional permissive position and allow multiple voting structures without restrictions even in listed companies (in addition to the Netherlands, the Scandinavian region (Denmark, Sweden, Finland), and Switzerland). Finally, some jurisdictions allow multiple voting structures, but only in unlisted companies (like Luxembourg, Poland, Slovakia).

One might wonder what impact, in this rich picture, will the recent European directive on multiple voting structures have (Directive (EU) no. 2024/2810 23 October 2024)[19]. My personal impression is that it has very little to do with the regulatory defensive competition within the EU.

In fact, it does not provide for full harmonisation, but only for the introduction of multiple voting structures to be permitted by national law, in a very limited range of public companies, namely those seeking admission of their shares to a multilateral trading system. We may therefore wonder whether the Directive's focus is on global regulatory competition to launch IPOs, but even this possibility has no exit: if that were the aim of the Directive, its

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[17] See E. BARCELLONA, *Le migrazioni olandesi di grandi gruppi italiani: libertà di stabilimento e diritto societario imperativo*, in *Rivista delle società*, 2024, 611 ff.

[18] See K.J. HOPT/S. KALSS (fn. 1), 14 ff.

[19] See F. AGOSTINI/V. NOVEMBRE, *La Direttiva in tema di azioni a voto plurimo nell'era della Capital Markets Union: cui prodest?*, in *Rivista delle società*, 2024, 593 ff.; see also I. FERNÁNDEZ TORRES, *A first approach in the light of the Proposal for a Directive of the Parliament and of the Council on multiple-vote share structures*, in *European Company Case Law*, 2023, 341 ff.

scope wouldn't be limited to multilateral trading facilities, but would also include ordinary regulated markets: it is in the latter that global regulatory competition between exchanges has developed.

So what can we say about this latest EU legislative initiative? It is likely to be a compromise, given the rich legal landscape that currently exists in national company law. But it is might also suggests the idea of a legal experiment by the EU. An experiment carried out in a very narrow corner of the legal and financial system and on a subject with different levels of regulation (law, listing rules, etc.). An experiment aimed at measuring the impact of a very limited harmonised regime on multiple voting structures across the Union, mainly in those Member States that have so far been reluctant to address the issue: depending on how these Member States implement this iperspecific Directive, it will be clear what trend may develop in Europe on this issue.

Initially, I considered this initiative to be not only non-exhaustive, but also limited and timid, but in the course of preparing this presentation, I have partly changed my mind.

Since we are in the midst of two simultaneous regulatory competitions – at the EU level and at the global level – I don't think it's wrong for the EU to make its voice heard in one corner, by offering an experiment that can be used in various ways by the Member States. Apart from full harmonisation, which would be undesirable for other reasons, any other solution would prove to be a too rigid tool, in a sector where market dynamics

SECTION II

THE EU FRAMEWORK AND THE CMU

COSÌ NON FAN TUTTE. AN ANALYSIS OF ITALIAN COMPANIES MOVING ABROAD.

MASSIMO BELCREDI, LARA FAVERZANI, ANDREA SIGNORI

SUMMARY: 1. Introduction. – 2. Literature Review. – 2.1. Corporate relocations. – 2.2. Foreign IPOs. – 3. Sample and data. – 4. Empirical analysis. – 4.1. Why do Italian firms relocate? – 4.1.1. Descriptive statistics. – 4.1.2. Motivation 1: strategic purposes. – 4.1.3. Motivation 2: tax saving. – 4.1.4. Motivation 3: forum shopping. – 4.2. CEMs adoption. – 4.3. The governance implications of MVR shares. – 4.4. Italian firms going public abroad. – 5. Conclusions. – 6. Tables.

1. Introduction

Two types of corporate transaction have become increasingly common over the recent years among Italian firms, namely the transfer of the company's registered office to a foreign country and the decision to conduct an Initial Public Offering (IPO) abroad. This increasing propensity of Italian firms to "move abroad" has drawn the attention of academics, practitioners, and policy makers and stimulated two main streams of debate. On the one hand, relocations have raised the suspect that Italian firms are increasingly engaging in forum shopping practices, and that they strategically move to the country with the most favorable regulation. What is the purpose of relocation is still an open question. On the other hand, the decision to go public abroad has raised concerns about the competitiveness of the Italian financial market, thereby fueling the debate about the need for reforms aimed at improving its attractiveness at an international level. While the decline in the number of listed firms over time is common to other Western economies,[1] the extent to which the phenomenon of going public abroad has contributed to such downward trend is still unclear.

This study aims at shedding light on these two corporate decisions. First, we aim at assessing the magnitude of the two phenomena by tracing Italian companies that relocated or conducted an IPO abroad over the past two decades. Then, we investigate the reasons behind the relocation decision of Italian firms. The finance literature provides both theoretical insights and empirical evidence useful to identify a set of possible motivations. For instance, firms may relocate to increase the geographic diversification of their business. Under this perspective, the relocation may be instrumental in facilitating investment or acquisition activities in the country of destination. Alternatively, firms may move to countries where the corporate tax rate is lower.[2] Tax advantages are regarded as an important driving force of relocation decisions in the popular press, and international competition on corporate tax rates is often subject to political debate. Furthermore, firms may relocate to countries characterized by a looser regulatory framework in terms of specific corporate governance decisions, a practice known as forum shopping. Anecdotal evidence suggests that this motivation has played a crucial role in recent corporate relocations, which

[1] Kahle, K. M. and Stulz, R. M., Is the US public corporation in trouble?, Journal of Economic Perspectives, Vol. 31, 2017, pp. 67-88.

[2] Chow, T., Huang, S., Klassen, K. J. and Ng, J., The Influence of Corporate Income Taxes on Investment Location: Evidence from Corporate Headquarters Relocations, Management Science, Vol. 68 (2), 2022, pp. 1404-25.

were accompanied by the introduction of mechanisms aimed at separating ownership and control more aggressively than allowed in Italy[3]. This has aroused a debate about the possible need to further change regulation to shield the Italian market from what is perceived as an unfair legal competition (notably, from the Netherlands)[4]. Control-Enhancing Mechanisms (CEMs) have been extensively discussed in the literature due to their controversial impact on managerial incentives.[5] While serving as protection against the threat of hostile takeovers, they may insulate managers from competitive market dynamics with possible negative effects on firm value.[6] Also, recent evidence has warned about CEMs being associated with increased agency costs in the long run.[7]

As for the foreign IPOs phenomenon, our objective is to assess whether it has hampered the development of the Italian financial market and, if so, to what extent. In other words, we aim at quantifying the relevance of foreign listings by Italian firms relative to the size of the domestic IPO market. Commentators have expressed concern that the lack of a vibrant IPO market may be detrimental to a country's wealth by limiting economic development, employment growth and innovation. Consistently, some countries have reacted to a prolonged plunge in IPO activity by introducing regulatory changes, such as the Jumpstart Our Business Startups (JOBS) Act in the United States. It is therefore crucial to gauge the economic significance of the potential loss of capital associated with such IPO outflow. If the Italian stock market had become less attractive than its foreign counterparts, then we might observe many Italian firms going public abroad.

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[3] For instance, in a February 18, 2020 press release announcing the transfer of its registered office to the Netherlands, Campari refers to the "*introduction of an enhanced voting rights mechanism*" as the main rationale for the transaction (https://www.camparigroup.com/sites/default/files/downloads/20200218_press_release_transfer_of_office_eng.pdf). The Italian legislation provides for two such mechanisms; a) art.127-*quinquies* Consolidated Law of Finance (CLF) allows listed companies to attribute up to two votes to shares held for more than 24 months uninterruptedly by the same subject; b) art. 2351 Civil Code allows unlisted companies (including firms going public, *before* the IPO) to introduce MVR shares (giving up to three votes per share). While the first solution has been adopted widely, only a handful of firms made recourse to MVR shares. See Bajo et al. (2020) for a more detailed description of the Italian institutional background.

[4] The Green Book published by the Italian Ministry of Economics and Finance (MEF 2022) put forward the idea that a reflection is necessary "*on the effectiveness of the regulatory provisions that allow a strengthening of voting rights (…) and on the opportunity to a possible strengthening of these measures to encourage (…) the choice of Italy as the State of incorporation and listing*". In 2022, the European Union issued a Directive proposal on "multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market" in an attempt to harmonize national laws on multiple-vote share structures of SMEs going public. The Directive is part of the Listing Act, a regulatory proposal whose stated objective is to "*make public capital markets more attractive for EU companies and facilitate access to capital for SMEs*" (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13238-Listing-Act-making-public-capital-markets-more-attractive-for-EU-companies-and-facilitating-access-to-capital-for-SMEs_en). As of March 2023 rumors say that the Italian government is considering the introduction – before IPO – of MVR shares attributing up to 10 votes per share.

[5] Gompers, P., Ishii, J. and Metrick, A., Corporate Governance and Equity Prices, The Quarterly Journal of Economics, Vol. 118 (1), 2003, pp. 107-56.

[6] Cremers, M. and Ferrell, A., Thirty Years of Shareholder Rights and Firm Value, Journal of Finance, Vol. 69 (3), 2014, pp. 1167-96.

[7] Cremers, M., Lauterbach, B. and Pajuste, A., The Life-Cycle of Dual Class Firm Valuation, ECGI Finance Working Paper 550/2018, downloadable at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062895; Kim, H. and Michaely R.: Sticking around Too Long? Dynamics of the Benefits of Dual-Class Voting, ECGI Finance Working Paper 590/2018, downloadable at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3145209.

We address the above questions by analyzing data on relocations and foreign IPOs by Italian firms covering the 2000-2021 period. Information on relocations is obtained by combining multiple data sources, such as Refinitiv, databases maintained by Italian economic newspapers and institutions (Il Sole 24 Ore, R&S by Mediobanca), and articles in the press. We focus on transfers conducted by listed firms with a market capitalization of at least €1 bn as of the end of 2021. As for foreign IPOs, our primary source of information is the equity issues section of the Refinitiv database. At the end of the data collection and screening process, we obtain a sample of 15 relocations and 37 foreign IPOs by Italian firms. Three firms are included in both samples.

The frequency of both relocations and foreign IPOs has increased over the recent years: 93% of relocations and 76% of foreign IPOs occurred after 2010. The preferred destination of Italian companies moving abroad is the Netherlands (9 firms, 60%), while the French stock exchange attracts the largest number of foreign listings (13 IPOs, 35%).

Italian firms choosing to go public abroad account for less than 10% of both the number of IPOs and the amount of proceeds raised in the domestic market over the same period. Of the 37 foreign IPOs, only 9 took place in main markets, while the remaining 28 occurred in second-tier markets characterized by looser listing requirements,[8] such as London's Alternative Investment Market (AIM). Thus, the economic relevance of the phenomenon relative to the domestic IPO market appears quite limited. On the other hand, Italy is the European country experiencing the largest outflow of firms, both in general (15 firms) and to the Netherlands (9 firms), followed by Germany (6) and France (5).

We investigate three, non-mutually exclusive motivations behind the decision to relocate: (1) strategic purposes, (2) tax savings, and (3) forum shopping. We first look at variations in investment and acquisition activities around the relocation year, in order to investigate whether strategic considerations, such as geographic expansion, are a driving force. We also monitor changes in capital structure, profitability, and payout policy. We then explore the tax motivation and examine whether the transfer of registered office is accompanied by a transfer of tax domicile. Also, we track how the effective tax rate of firms varies around the relocation year. Finally, we investigate the forum shopping motive by focusing on the introduction of CEMs. We collect data from the companies' Articles of Association about the presence and relevance of the following mechanisms:[9] multiple voting rights (MVR) shares, priority shares, depository certificates, voting and ownership right ceilings, supermajority provisions.

We do not find any particular increase in investment or acquisition activity around the relocation year. Recent anecdotal evidence indicates that strategic considerations, such as M&A plans, may be one of the rationales behind the relocation.[10] However, no systematic evidence supports this view, at least within the first two years following the relocation. As for the tax saving motive, we find different patterns depending on whether the firm relocates

[8] Bernstein, S., Dev, A. and Lerner, J., The creation and evolution of entrepreneurial public markets, Journal of Financial Economics, Vol. 136 (2), 2020, pp. 307-29.
[9] Shearman & Sterling, ISS and ECGI, Report on the Proportionality Principle in the European Union, 2016, External Study Commissioned by the European Commission.
[10] For instance, Ariston acquired a multinational firm shortly after relocating from Italy to the Netherlands: https://investor.aristongroup.com/content/dam/aristoninvestors/documents/press-releases/2022-09-15%20Ariston%20-%20Centrotec%20Climate%20Systems_EN.pdf.

to the Netherlands or to another country. Specifically, firms relocating in countries other than the Netherlands (namely France, Luxembourg, and the United Kingdom) moved also their tax residency to the country of destination, while only 1 out of 9 firms relocating to the Netherlands did so. Of the remaining 8 firms, 6 kept their tax residency in Italy and 2 moved it to the UK, where the corporate income tax rate is lower. However, we find no significant variation in the effective tax rate around the year of transfer, suggesting that fiscal benefits are not a first-order motivation for firms to relocate.

We instead find wide support to the forum shopping motivation associated with the introduction of CEMs. In this part of the empirical analysis, we focus on the subsample of 9 Italian firms relocating to the Netherlands, a country which has adopted a permissive approach to separating ownership from control.[11] We benchmark Italian firms' adoption of CEMs to two control samples: 13 European (non-Italian) firms that transferred their registered office to the Netherlands, and 41 "native" Dutch firms domiciled in the Netherlands. The vast majority of both Italian and other European firms relocating to the Netherlands have a controlling shareholder (88.9% and 92.3%, respectively). Dutch firms, on the other hand, are mostly widely held (63.4%).

We document substantial differences in CEM adoption across the three samples. Italian firms make an extensive use of MVR shares, as 8 out of 9 (89%) authorized their issuance in the Articles of Association and 7 (78%) have already issued them. In all but 2 cases, MVRs are granted by means of a loyalty scheme that allows long-term shareholders to progressively increase their voting power. In the benchmark samples, only 31% of European firms relocating to the Netherlands and 7% of native Dutch firms issued MVR shares. The preferred CEM among European firms (77%) is supermajority, mostly associated with director appointment and dismissal procedures. On the other hand, Dutch firms tend to rely on depository certificates, issued without voting rights by 32% of firms. Moreover, 54% of them established a protective foundation acting as a takeover defense.

The implications generated by the above CEM policies on corporate governance are profoundly different. First, CEMs adopted by Italian firms do separate control from ownership rather aggressively; this reflects in an average 14.5 percentage points wedge between voting and cash flow rights associated with the position of the controlling shareholder. This wedge decreases by about two thirds (5.4%) among other European firms and is null among Dutch firms. If we assume full completion of the loyalty process, the current controlling shareholder of the average Italian relocating firm would hold 64% of the voting rights, with the control-ownership wedge widening to 23.2%. In this situation, holding 20.8% (12.5%) of the equity allows to control half (one third) of the voting rights. The average fraction of equity required to reach the same control thresholds is instead much closer to the corresponding voting thresholds both among European (39.9% for half votes, 26.1% for one third) and native Dutch (47.3% for half votes, 31.4% for one third) firms.

Second, the wide recourse to MVR shares by Italian firms allows controlling shareholders to increase their grip on virtually all decisions taken by the General Meeting (GM), while supermajority clauses adopted elsewhere usually apply only to a limited number of issues (e.g. director appointment and/or dismissal). This leaves the Board with the

[11] Gurrea-Martínez, A., Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate, European Business Organization Law Review, Vol. 22 (3), 2021, pp. 475-515.

problem of searching for a majority of votes as far as other issues (e.g. approval of directors' remuneration policy, M&A proposals) are concerned.

Third, MVR shares introduced by Italian firms usually follow a loyalty-like mechanism, thereby providing a degree of control-ownership separation which increases (sometimes dramatically) over time. The risk of entrenchment grows in parallel as MVR shares combined with the loyalty-like system not only enable founders to control a majority of the voting rights even if they have a minority equity stake, but also imply that the stake required to control GM decisions decreases over time. While founders often claim that MVR shares allow them to focus on their long-term vision and shield them from the pressure for short-term results by outside investors, they also make it easier to pass control to heirs, who may not necessarily possess the same entrepreneurial talent.[12] Also, it is important to note that multiple voting rights acquired by means of a loyalty program are cancelled in case the shares are sold. This implies the risk that controlling shareholders (and especially their heirs) could then be "locked-in", i.e. be unwilling to sell their equity stake, even if a potential buyer with superior managing skills shows up, since they would be unable to monetize the value of control. Entrenchment mechanisms may therefore turn against their creator in the long run. Overall, this mechanism is in sharp contrast with the evidence of a recent body of research which shows that their benefits tend to decline, and their costs to rise, over time, thereby supporting the adoption of time-based sunset provisions that remove MVR shares after a certain period (Bebchuk and Kastiel, 2017).[13]

The contribution of this study is two-fold. We first add to the recent but growing debate about Italian firms relocating abroad. While tax reasons are usually the primary concern of such debate, our evidence supports the forum shopping motivation by unveiling the peculiar CEM policy of Italian firms, as they select instruments increasing the separation of ownership from control, thereby reinforcing the position of the controlling shareholder. On the opposite, firms relocating from other European countries, despite having a similar ownership structure, tend to align to the Dutch standard practice by selecting mechanisms aimed at ensuring managerial continuity and protecting board stability. The implications of MVR shares on corporate governance dynamics are pervasive and long-lasting as they confer long-term shareholders a disproportionate power over *any decision* subject to shareholder vote. This stands in stark contrast to supermajority provisions and protective foundations, which give no disproportionate power to the Board – or to individual shareholders – on specific GM decisions, except for Board elections. Also, granting superior voting powers by means of loyalty schemes allows controlling shareholders to maintain firms' control while progressively reducing their equity stake. This is associated with an increasing risk of entrenchment, especially when the control stake passes from the founder to his/her heirs.

Given the importance of the forum shopping motivation, one might expect the magnitude of the relocation phenomenon to increase with the level of strictness associated with the regulatory framework of the country of origin. In other words, firms operating in more restrictive jurisdictions should face a greater incentive to move abroad. However, even

[12] Villalonga, B., Amit, R., 2006. How do family ownership, control and management affect firm value? Journal of Financial Economics 80, 385-417; Pinheiro, R., Yung, C., 2015. CEOs in family firms: Does junior know what he's doing? Journal of Corporate Finance 33, 345-361.

[13] See, e.g., Bebchuk L.A., Kastiel, K., The Untenable Case for Perpetual Dual-Class Stock, Virginia Law Review, Vol. 103 (4), 2017, pp. 585-631.

in countries where the regulatory approach is similar or even more restrictive than in Italy, relocation frequency is lower than among Italian firms.[14]

The second contribution of this study adds to the debate on the alleged competitive disadvantage of the Italian stock exchange as a listing venue relative to other countries' exchanges. Our evidence alleviates this concern, as the loss of capital associated with such IPO outflow appears modest. While it is true that foreign IPOs have become increasingly common over the last few years, this may be at least partly explained by the broad globalization process and the increasing integration of international financial markets[15]. The Italian stock market is no exception in this regard; however, the outflow of Italian firms to foreign markets seems still limited in terms of both number of IPOs and capital raised.

2. Literature Review.

Globalization has allowed firms to choose where to operate their business across the world, and the progressive integration of financial markets has given firms more freedom to choose where to raise capital. This has encouraged an increasing number of firms to transfer their registered office to another country or to conduct an IPO abroad. The literature has investigated the motivations and implications of these two decisions, both theoretically and empirically.

2.1. Corporate relocations.

The theoretical literature on a firm's decision to relocate identifies three main explanations. First, a firm may relocate for strategic reasons, such as expanding the geographic boundaries of its business or growing by means of acquisitions of firms in the country of destination or elsewhere. Second, a firm may relocate to reduce its tax burden by moving to a country with a lower corporate tax rate. Third, a firm may relocate to a country with a more favorable jurisdiction toward specific corporate policies, a practice referred to as forum shopping.

Multinational corporations have historically been facing the decision to relocate overseas. Strategic considerations typically play a key role in the relocation trade-off.[16] For instance, firms may move to countries where they identify promising growth opportunities. This is consistent with the entrepreneurial role of headquarters, which are in charge of creating additional sources of value for the organization.[17] Such growth opportunities may be either new projects that are expected to generate value, such as the establishment of a new production plant, or acquisitions of firms at an international level.

Chow et al. find a positive association between state corporate tax rate changes and the likelihood of headquarters relocation, with firms strategically choosing their headquarter

[14] Like in Italy, the maximum number of votes per share for listed firms in France is equal to 2, subject to a 2-year loyalty period (Florange Act). The extra vote is lost in case the loyalty share is sold. In Germany, MVR shares are not permitted. Non-voting shares are allowed in both countries (Shearman & Sterling et al., 2016).
[15] Even unlikely candidates as the London Stock Exchange suffer from an increasing pressure from market competitors attracting issuers with higher liquidity (and higher share prices, in terms of market multiples) and superior associated services: see Asgari et al. (2023).
[16] Birkinshaw, J., Braunerhjelm, P., Holm, U. and Terjesen, S., Why do some multinational corporations relocate their headquarters overseas?, Strategic Management Journal, Vol. 27 (7), 2006, pp. 681-700.
[17] Chandler, A.D., The functions of the HQ unit in the multibusiness firm, Strategic Management Journal, Vol 12 (2), 1991, pp. 30-50.

locations to minimize taxes within the US.[18] More generally, there is evidence in the US that tax rates have an effect on the decision to move particular operations. Williams finds that there is a significant association between tax incentives and both the likelihood that a foreign country hosts offshored U.S. jobs and the number of U.S. jobs it hosts.[19] Evidence that a relationship exists between taxes and investment locations is found also in Bartik, who observes that high state taxes discourage the establishment of new manufacturing plants,[20] and in Papke, who finds that a high state marginal effective tax rate reduces the number of firm births for most industries.[21] Last, Chirinko and Wilson show that own-state capital formation is substantially increased by tax-induced reductions in the own-state price of capital and decreased by tax-induced reductions in the price of capital in competitive-states.[22]

There is also evidence that a looser regulatory framework for corporate policies influences firms' decisions. A crucial role in this regard is played by the possibility to introduce control-enhancing mechanisms. Multiple classes of shares with unequal voting rights represent one of the most controversial corporate governance mechanisms. From a theoretical point of view, the literature has highlighted both positive and negative implications.

The main arguments against the deviation from the one-share-one-vote principle refer to agency and entrenchment problems resulting in distortions in investment decisions,[23] inefficiencies in the market for corporate control,[24] and excessive perk consumption.[25] In the same vein, creating a wedge between financial interest and voting power may induce shareholders to undertake self-serving actions at the expense of firm value,[26] whereas single class share structures can increase firm value in the presence of significant private benefits of control.[27] Bebchuk and Kastiel warn that the combination of entrenchment via

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[18] Chow, T., Huang, S., Klassen, K. J. and Ng, J., The Influence of Corporate Income Taxes on Investment Location: Evidence from Corporate Headquarters Relocations, Management Science, Vol. 68 (2), 2022, pp. 1404-25.

[19] Williams, B.M., Multinational Tax Incentives and Offshored U.S. Jobs, The Accounting Review, Vol. 93 (5), 2018, pp. 293-324.

[20] Bartik, T.J., Business Location Decisions in the United States: Estimates of the Effects of Unionization, Taxes, and Other Characteristics of States, Journal of Business and Economic Statistics, Vol. 3 (1), 1985, pp. 14-22.

[21] Papke L.E., Interstate Business Tax Differentials and New Firm Location: Evidence from Panel Data, Journal of Public Economics, Vol. 45 (1), 1991, pp. 47-68.

[22] Chirinko, R.S., Wilson, D.J., State Investment Tax Incentives: A Zero-Sum Game? Journal of Public Economics, Vol. 92 (12), 2008, pp. 2362-2384.

[23] Bebchuk, L.A., Kraakman, R., Triantis, G.G., Stock Pyramids, Cross-Ownership, and Dual Class Equity, National Bureau of Economic Research, 2000, available at: https://www.nber.org/system/files/chapters/c9013/c9013.pdf.

[24] Grossman, S.J., Hart, O.D., One Share-One Vote and the Market for Corporate Control, Journal of Financial Economics, Vol. 20, 1988, pp. 175-202; Harris, M., Raviv, A., Corporate Governance: Voting Rights and Majority Rules, Journal of Financial Economics, Vol. 20, 1988, pp. 203-235.

[25] Yermack, D., Flights of Fancy: Corporate Jets, CEO Perquisites and Inferior Shareholder Returns, Journal of Financial Economics, Vol. 80 (1), 2006, pp. 211-242.

[26] Burkart, M., Lee, S., One Share-One Vote: the Theory, Review of Finance, Vol. 12 (1), 2008, pp. 1-49.

[27] Grossman, S.J., Hart, O.D., One Share-One Vote and the Market for Corporate Control, Journal of Financial Economics, Vol. 20, 1988, pp. 175-202.

concentrated voting control and diffuse equity holdings can result in a failure by the market for corporate control to discipline management.[28]

On the other hand, rigidly following the one-share one-vote principle may inhibit firm growth by deterring entrepreneurs from going public as they are reluctant to bear the risk of losing control. Also, tying votes to cash flow rights makes it more expensive to acquire or exercise control, exacerbating the free-rider problem in firms with dispersed ownership.[29] Choi argues that a moderate amount of private benefits of control, which can be easily extracted in presence of a dual class structure, may enhance long term value by inducing higher commitment and investment by the controlling shareholder.[30] Other studies point at stronger stakeholder relationships and enhanced managerial long-term orientation as possible further advantages.[31]

Most of the empirical literature that tried to test these implications has focused on MVR shares. A significant number of studies provide support to the fact that MVR shares are beneficial to shareholders when firms are young or in their growth phase.[32] Consistent with the recent upward trend in the presence of dual class share structures among technology IPOs, their adoption is found to facilitate innovation and is therefore best suited for innovative firms.[33] Aggarwal et al. and Field and Lowry observe that the increase in dual class IPOs is driven by founders' ability to dictate the governance of IPO firms.[34] The more outside opportunities the founders have and the less money they need to operate their business, the greater their bargaining power is when raising capital.[35]

However, a recent stream of literature has documented that the benefits of MVR shares are short-lived. Bebchuk and Kastiel show that benefits decline and costs rise in the long run; they document that controlling shareholders have perverse incentives to retain MVR shares even after they have become inefficient.[36] This result is confirmed by Cremers et al., who shows that dual class firms benefit from a valuation premium when they go public; however, this premium dissipates and turns negative due to agency problems becoming

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[28] Bebchuk L.A., Kastiel, K., The Untenable Case for Perpetual Dual-Class Stock, Virginia Law Review, Vol. 103 (4), 2017, pp. 585-631.
[29] Burkart, M., Lee, S., One Share-One Vote: the Theory, Review of Finance, Vol. 12 (1), 2008, pp. 1-49.
[30] Choi, A. H., Concentrated ownership and long-term shareholder value, Harvard Business Law Review, Vol. 8, 2018, pp. 53-99.
[31] Stein, J.C., Takeover Threats and Managerial Myopia, Journal of Political Economy, Vol. 96 (1), 1988; Chemmanur, T.J., Jiao, Y., Dual-Class IPOs: A Theoretical Analysis, Journal of Banking & Finance, Vol. 36 (1), 2012, pp. 305-319.
[32] Cremers, M., Lauterbach, B. and Pajuste, A., The Life-Cycle of Dual Class Firm Valuation, ECGI Finance Working Paper 550/2018, downloadable at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062895; Lehn, K., Netter, J., Poulsen, A., Consolidating Corporate Control: Dual-Class Recapitalizations Versus Leveraged Buyouts, Journal of Financial Economics, Vol. 27 (2), 1990, pp. 557-580.
[33] Lel, U., Netter, J.M., Poulsen, A.B., Qin, Z., Dual-Class Shares and Firm Valuation: Market-Wide Evidence from Regulatory Events, ECGI Finance Working Paper 807/2021, downloadable at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3729297.
[34] Aggarwal, D., Eldar, O., Hochberg, Y.V., Litov, L.P., The Rise of Dual-Class Stock IPOs, Journal of Financial Economics, Vol. 144 (1), 2022, pp. 122-153; Field, L.C., Lowry, M., Bucking the Trend: Why Do IPOs Choose Controversial Governance Structures and Why Do Investors Let Them?, Journal of Financial Economics, Vol. 146 (1), pp. 27-54.
[35] Ewens, M. and Farre-Mensa, J., The Deregulation of the Private Equity Markets nad the Decline in IPOs, Review of Financial Studies, Vol. 33 (12), 2020, pp. 5463-5509.
[36] Bebchuk L.A., Kastiel, K., The Untenable Case for Perpetual Dual-Class Stock, Virginia Law Review, Vol. 103 (4), 2017, pp. 585-631.

more severe with the gradual widening of the wedge over time.[37] Similarly, Kim and Michaely show that dual-class firms experience a decline in valuation and become less efficient than their single-class counterparts, and suggest the adoption of sunset provisions based on time since IPO.[38] Baran et al. show that MVR shares are associated with more innovation shortly after an IPO, but within six to ten years their costs outweigh the benefits.[39]

2.2. Foreign IPOs.

Like in any other corporate policy, a firm's decision to go public abroad depends on the advantages it expects to get from a foreign listing. While most capital raising occurs predominantly in domestic markets,[40] firms seeking to go public should take many factors into consideration when choosing the country where to list, such as the geographical link of their businesses with a particular market,[41] the cost of raising capital,[42] and the securities market regulation that best suits shareholders' needs.[43]

Familiarity with markets and investors is a relevant factor for firms to consider when choosing their listing venue, since investors may be reluctant to hold securities they are not familiar with.[44] Sarkissian and Schill employ the proximity of foreign stock exchanges, but also countries' culture and industrial structure to proxy for familiarity.[45] They provide evidence that the higher the geographical proximity of the home country to the potential listing country, the higher will be the probability of listing. Also, language and culture have a positive influence on the probability of listing in a country that is familiar with the issuing firm.[46] Moreover, the choice of listing overseas may be dictated by the willingness to expand firms' product and geographic scope, and/or to engage in mergers and acquisitions in the host country.[47]

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[37] Cremers, M., Lauterbach, B. and Pajuste, A., The Life-Cycle of Dual Class Firm Valuation, ECGI Finance Working Paper 550/2018, downloadable at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062895.

[38] Kim, H. and Michaely R.: Sticking around Too Long? Dynamics of the Benefits of Dual-Class Voting, ECGI Finance Working Paper 590/2018, downloadable at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3145209.

[39] Baran, L., Forst, A., Via M.T., Dual-class share structure and innovation, Journal of Financial Research, Vol. 46 (1), 2023, pp. 169-202.

[40] Kim, W., Weisbach, M.S., Motivations for Public Equity Offers: An International Perspective, Journal of Financial Economics, Vol. 87 (2), 2008, 281-307.

[41] Sarkissian, S., Schill, M.J., The Overseas Listing Decision: New Evidence of Proximity Preference, The Review of Financial Studies, Vol. 17 (3), 2004, pp. 769-809.

[42] Aggarwal, D., Rivoli, P., Evaluating the costs of raising capital through an initial public offering, Journal of Business Venturing, Vol. 6 (5), 1991, pp. 351-361; Roell, A., The decision to go public: an overview, European Economic Review, Vol. 40, 1996, pp. 1071-1081.

[43] Shi, C., Pukthuanthong, K., Walker, T., Does disclosure regulation work? Evidence from international IPO markets, Contemporary Accounting Research, Vol. 30 (1), 2013, pp. 356-387.

[44] Dahlquist, M., Robertsson, G., Direct foreign ownership, institutional investors, and firms characteristics, Journal of Financial Economics, Vol. 59, 2001, pp. 413-440.

[45] Sarkissian, S., Schill, M.J., The Overseas Listing Decision: New Evidence of Proximity Preference, The Review of Financial Studies, Vol. 17 (3), 2004, pp. 769-809.

[46] Coval, J.D., Moskowitz, T.J., Home bias at home: local equity preference in domestic portfolios, Journal of Finance, Vol. 54 (6), 1999, pp. 2045-2073; Portes, R., Rey, H., The determinants of cross-border equity flows: the geography of information, 2000, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=237904; Grinblatt, M., Keloharju, M., How distance, language, and culture influence stockholdings and trades, Journal of Finance, Vol. 56 (3), 2001, pp. 1053-1073.

[47] Peng, M.W., Su, W., Cross-listing and the scope of the firm, Journal of World Business, Vol. 49 (1), 2014, pp. 42-50.

As for the cost of raising capital, the literature shows that going public abroad may allow firms to raise capital at better terms.[48] Caglio et al. find that firms going public abroad, on average, raise a statistically significant 25% more in proceeds than similar domestic issuers.[49] Also, issuers can access better informed investors who may provide a higher valuation than in the home country.[50] Other benefits are associated with securing cheap equity capital for new investment, allowing controlling shareholders to divest on a liquid market, preparing for foreign acquisitions, or simply enhancing the company's reputation.

Another crucial determinant of the choice of the hosting country is the regulatory environment. La Porta et al. observe that countries with laws that mandate greater disclosure are associated with a stronger development of stock markets.[51] On top of countries' laws, Stulz highlights the role played by their enforcement.[52] Laws are only valuable to the extent that outside shareholders can act on them, without imposing excessive costs on firms. Therefore, in a world with free capital flows, differences in securities laws across countries can have a large impact on the choice of where to raise capital. Supporting evidence comes from Caglio et al., in that issuing firms are more likely to choose to list abroad when they originate from countries that have lower disclosure standards.[53] Interestingly, the European countries whose companies have been more eager to seek foreign listings and whose exchanges have been least able to attract or retain foreign listings are those with the highest trading costs and, with the exception of the United Kingdom, with the lowest accounting standards and worst shareholder protection.[54]

Other factors that can influence the decision to go public abroad are the recent trends in IPO activity, the extent of countries' financial globalization and the presence of global underwriters in the home country.[55] More specifically, the smaller the number of recent IPOs that went public in the same industry as the issuing firm and the greater the number of recent IPOs that went public outside the home country, the more likely a firm will raise capital abroad. Also, issuers that originate from countries with greater financial globalization are less likely to choose to raise capital outside their home country. Finally, the

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[48] No similar stream of literature is found for relocation decisions, for good reasons. On one hand, none of the reasons behind the recourse to a different, more efficient financial market applies to the mere relocation of a company's registered office. On the other hand, any possible "country-risk" factor should reasonably be connected to the country where the assets are located (which does not change in a relocation), instead of that where the firm has its registered office.

[49] Caglio, C., Hanley, K.W., Marietta-Westberg, J., Going Public Abroad, Journal of Corporate Finance, Vol. 41, 2016, pp.103-122.

[50] Chemmanur, T.J., Fulghieri, P., Competition and Cooperation Among Exchanges: A Theory of Cross-Listing and Endogenous Listing Standards, Journal of Financial Economics, Vol. 82 (2), 2006, pp. 455-489; Subrahmanyam, A., Titman, S., The Going-Public Decision and the Development of Financial Markets, Journal of Finance, Vol. 54 (3), 1999, pp. 1045-1082.

[51] La Porta, R., Lopez-De-Silanes, F., Shleifer, A., What Works in Securities Laws?, Journal of Finance, Vol. 61 (1), 2006, 1-32.

[52] Stulz, R.M., Securities Laws, Disclosure, and National Capital Markets in the Age of Financial Globalization, Journal of Accounting Research, Vol. 47 (2), 2009, pp. 349-390.

[53] Caglio, C., Hanley, K.W., Marietta-Westberg, J., Going Public Abroad, Journal of Corporate Finance, Vol. 41, 2016, pp.103-122.

[54] Pagano, M., Roell, A.A., Zechner, J., The Geography of Equity Listing: Why Do Companies List Abroad?, Journal of Finance, Vol. 57 (6), 2002, pp. 2651-2694.

[55] Caglio, C., Hanley, K.W., Marietta-Westberg, J., Going Public Abroad, Journal of Corporate Finance, Vol. 41, 2016, pp.103-122.

presence of global underwriters in the home country can provide advantages in capital raising that may mitigate the need to go public abroad.

3. Sample and data.

The empirical setting of this paper is based on two samples of Italian firms that undertook (1) a relocation and/or (2) a foreign IPO during the period 2000-2021. A relocation is defined as the transfer of the registered office from Italy to another European country, while a foreign IPO consists in an Initial Public Offering conducted in any foreign stock market.

We create our relocation sample by combining information from multiple sources. We first search news about corporate relocations in the LexisNexis database, in databases maintained by Italian economic newspapers and institutions (such as Il Sole 24 Ore and R&S by Mediobanca), and web searches. We then cross-check this information with the Refinitiv database, which includes data about firm characteristics and financials. We focus on transfers conducted by listed firms with a market capitalization of at least €1 bn as of the end of 2021. The final sample is composed of 15 relocations by Italian firms.[56] We then build a control sample of corporate relocations of European firms. We look for non-Italian, European companies that transferred their registered office over the same period to another European country and apply the same selection criteria (listed firms whose market capitalization exceeds €1 bn as of the end of 2021). In this way, we can use European firms to isolate the effects of the relocation, if any, and purge the analysis of possible confounding factors and trends that may be common to both Italian and other firms. We obtain a sample of 21 relocations by European firms.

As for foreign IPOs, our primary source of information is the equity issues section of the Refinitiv database. Starting from a population of 167 transactions, we exclude issuers of securities other than stock (such as depository certificates, trust units, rights, etc. - 74 observations), issuance of shares on OTC or grey markets (42 observations), and dual listings (14 observations). Differently from relocations, we do not set any minimum size threshold to be included in the sample. We find 37 Italian firms going public abroad during the period 2000-2021.

Table 1 shows the distribution of the two samples by year (Panel A) and country (Panel B). Panel A shows that both transactions have become increasingly common in the recent years. Out of 15 relocations and 37 foreign IPOs completed during the 2000-2021 period, 14 (93%) and 26 (70%) occurred after 2012. Panel B suggests that the preferred destination of Italian companies transferring their registered office is the Netherlands (9 firms, 60%), while the French stock exchange is the listing venue that attracts the largest number of IPOs (13, 35%).

[TABLE 1]

[56] We exclude two relocations by Italian firms whose market capitalization is below €1 bn.

Table 2 presents the corporate relocation matrix including both samples of Italian and European firms. Predictably, the three largest economies of Continental Europe, namely Germany, France, and Italy, account for the largest fraction of corporate relocations. The leading country in terms of relocating firms is by far Italy (15),[57] followed by Germany and France (6 and 5, respectively). Other European countries exhibit no more than two relocations each. The Netherlands are by far the preferred target country for relocations, attracting 22 firms moving abroad (61%), followed by the United Kingdom and Luxembourg with 4 firms each.

[TABLE 2]

4. Empirical analysis.

Our empirical analysis is divided in two parts. The first part focuses on corporate relocations and investigates the reasons for this decision. The second part focuses on foreign IPOs and aims at quantifying their incidence in terms of number of IPOs and amount of proceeds raised relative to the Italian IPO market over the considered period.

4.1. Why do Italian firms relocate?

In this part of the analysis, we first provide descriptive statistics of the Italian and European samples of firms transferring their registered office abroad. Then, we investigate three possible non-mutually exclusive motivations for firms to relocate: (1) strategic purposes, spanning from expanding the geographic boundaries of the business to undertaking acquisitions in the host country or elsewhere; (2) tax savings, namely the attempt to reduce the fiscal burden; (3) forum shopping, consisting in taking advantage of a country's favorable jurisdiction in terms of corporate governance standards.

4.1.1. Descriptive statistics.

Table 3 shows descriptive statistics about Italian and other firms as of year-end 2021. Panel A reports mean and median values of a number of financial variables, while panel B refers to ownership structure. Panel A shows that the two samples are comparable in size, while Italian firms are larger in terms of revenues (€16.3 vs. €6.3 bn) and total assets (€29.4 bn vs. €15.2 bn, on average). Italian firms are associated with lower capital expenditures, both in mean (2.5% vs. 4.4%) and median terms (2.2% vs. 3.4%). The average Italian firm is slightly more indebted than its European counterpart (28.6% vs. 24.3% leverage) and has a lower level of cash holdings (15.5% vs. 25.9%). Also, Italian firms look more profitable on average in terms of both ROA (4.7% vs. -10.6%) and ROE (14.1% vs. -19.7%), although the

[57] Four of the fifteen Italian firms relocating abroad (notably, they all moved to the Netherlands) belong to a single group controlled by the Agnelli family: CNH Industrial, Exor, Fiat Chrysler Automobiles (which then merged with Peugeot into Stellantis) and Ferrari (Exor is the company at the top of the control chain, holding equity stakes in the other three companies). Even if we considered these four firms as a single entity, Italy would still be the country with the largest number of relocating firms.

median values are almost equal. As for dividends, Italian firms seem to pay out larger amounts than European firms (3.4% vs. 2.8%, on average).

Panel B shows that the two samples look homogeneous in terms of ownership structure, as the majority of firms is controlled by either an individual or another entity such as another firm or a government. Specifically, 86.7% of Italian firms and 76.2% of other firms are controlled. This implies that the fraction of widely held firms is smaller in the Italian sample.

[TABLE 3]

4.1.2. Motivation 1: strategic purposes.

We now move on to investigate the possible motivations behind a firm's decision to transfer its registered office to another country. To understand whether firms relocate for strategic purposes, such as the willingness to expand the business internationally by investing abroad or acquiring firms in other countries, we focus on key financial variables and check whether they exhibit significant variation around the relocation event. These variables refer to investments (CAPEX), capital structure (leverage, cash holdings), profitability (ROA and ROE), dividend policy, and number of acquisitions. We compute their variation over two time intervals: [-1,+1] and [-2,+2], with 0 being the year when the relocation occurs, and test the statistical significance of the difference of such medium-term variations (3 and 5 years, respectively) from zero.

Table 4 reports the results for both the Italian (Panel A) and European (Panel B) samples. Panel A shows a modest decrease in CAPEX among Italian firms following the relocation, equal to -0.6% from the year before to the year after the relocation year, and -1% from year -2 to year +2. This decrease is different from zero, although with limited statistical significance (10% level). As for capital structure, there is a decrease of 6.2 percentage points in leverage over the period [-1,+1], which – however – is not statistically different from zero. The median value is indeed close to zero (-0.7). Over the longer time interval, the variation is small and mean and median values have opposite signs. Cash holdings increase on average by 3.9% from the year before to the year after the relocation, but then the sign flips over the [-2,+2] time interval producing a negative variation of 0.3%. None of the variations is statistically different from zero. Concerning profitability, ROA and ROE follow similar patterns as their variations over the [-1,+1] time interval are positive on average (4.5% and 28%) but the median values are close to zero (-0.3% and -0.5%). Then, the variation turns negative over the 5-year interval (-1.2% and -4.9% on average) but it is not statistically significant. Dividends, defined as cash dividends divided by the book value of equity, exhibit a modest increase (0.9 and 1.4 percentage points, respectively) over both time intervals. Acquisitions also increase but statistical significance (at the 10% level) is limited to the period spanning from the year before to the year after the relocation, as the average number of acquisitions per year increases by 0.4.

Panel B shows that CAPEX tends to decrease among European firms from the year before to the year after the relocation (-5.9% on average), although this variation tends to disappear over a longer time horizon (-0.6% mean, 0.2 median). Leverage exhibits a

conflicting pattern, as its variation is positive over the [-1,+1] interval while it turns negative over the [-2,+2] interval. None of the variations are, however, statistically different from zero. Cash is also associated with a modest decrease on average (-1.6%) over the longer time interval although the median variation over the same period has the opposite sign (1.5%). In terms of profitability, while ROA remains relatively stable (with the exception of an average 4.7 decrease over the 5-year interval, which is not – however – statistically significant), ROE exhibits a certain degree of volatility as it deteriorates from the year before to the year after the relocation (-15.3% mean, -12.7% median), while it improves if measured from year -2 to year +2 (23.6% mean, 5.1% median). Once again, none of these variations are statistically different from zero. Dividends look relatively stable, while acquisitions exhibit a statistically significant (at the 10% level) increase over the [-2,+2] interval. On average, firms conduct 1.1 more acquisitions two years after the relocation.

Overall, financial variables around the relocation year do not reveal any conclusive evidence. Apart from a modest decrease in CAPEX among Italian firms and a moderate increase in acquisition activity common to both Italian and European firms, we find no substantial variation in any corporate policy pointing to a specific motivation for firms transferring their registered office.

[TABLE 4]

4.1.3. Motivation 2: tax saving.

We now investigate whether tax saving plays a relevant role in a firm's decision to relocate. To address this question, we first look at whether firms transferred their tax domicile together with their registered office. Then, we analyze the variation in firms' effective tax rate, computed as the ratio between income taxes and pre-tax income, around the relocation year.

Our evidence is presented in Table 5. Panel A shows – for each country of origin – the country of destination of a firm's registered office as well as the country of destination of its tax domicile. Where country names are reported in bold, the firms actually moved their tax domicile: out of 36 firms transferring their registered office, only 16 (44.4%) transferred also their tax domicile. The other 20 firms kept the tax domicile in their country of origin. Of the 16 firms that transferred their tax domicile, 11 (68.8%) moved it to the same destination country as that of their registered transfer. Among the 5 firms who moved their tax domicile to a different country, the preferred destination is the UK (4 firms), which is consistent with its low statutory corporate income tax rate relative to other European countries. In the Italian sample, 6 out of 15 firms maintained their tax domicile in Italy.

In Panel B, we investigate whether relocation allows firms to benefit from a reduction in the effective tax rate. The panel reports the mean and median variation in the effective tax rate of firms over the [-1,+1] and [-2,+2] time windows centered on the relocation year. Italian firms do actually experience a decrease in the effective tax rate by 7.3 percentage points on average (1.7 in median) from the year before to the year after the relocation. This effect is, however, short-lived as the variation completely reverses over the [-2,+2] window,

when the effective tax rate increases by 6.1 percentage points on average (5.3 in median). Among European firms, the variation is – on average – positive over both time windows (9.8% and 13.2%), although median values are close to zero. Also, it is important to notice that none of the reported variations is statistically different from zero. Overall, our evidence does not support tax considerations being relevant determinants of the relocation decision for either Italian or European firms. In unreported tests, we replicate the analysis by distinguishing between firms that moved their tax domicile and firms that did not and find a modest decrease in the effective tax rate of both groups which is comparable in magnitude.[58]

[TABLE 5]

4.1.4. Motivation 3: forum shopping.

We now investigate whether firms choose to relocate in a specific destination country to benefit from a more favorable regulation towards certain corporate governance practices. Here, we focus on the possibility to introduce CEMs and restrict our analysis to the Netherlands as a destination country.[59] In fact, recent anecdotal evidence suggests that introducing CEMs is a primary motivation for firms to relocate. Actually, the Dutch legal system is characterized by a particularly permissive approach towards their introduction.[60] We therefore focus on the 9 Italian firms that relocated to the Netherlands and compare their CEM policy with that of the 13 European firms which moved to the same country and also of 41 native Dutch firms comparable in terms of market capitalization.

Table 6 describes the three samples used in this part of the analysis. Panel A reports descriptive statistics about firm characteristics and financials, while Panel B reports data about ownership structure. According to Panel A, European firms that relocated to the Netherlands are smaller across all size measures (€11.3 bn market cap, €6 bn revenues, and €15 bn total assets, on average). Dutch firms exhibit the largest values of market cap and total assets (€24.6 bn and €62.8 bn, on average), while Italian firms appear to be the largest in terms of revenues (€23.7 bn on average). As for CAPEX, European firms exhibit the

[58] The absence of significant effects on the effective tax rate can be partly explained by the tax treatment at the holding level. Since the typical relocation transaction occurs by means of a within-group restructuring that leads to the incorporation of a new holding company in the country of destination, the effective tax rate at the holding level mostly reflects the tax rates applicable in the countries where the operating subsidiaries are incorporated. Since the holding company – typically – does not carry out any operating activity, the effective tax rate is mainly determined by the consolidated figure of the tax expenses borne by each subsidiary. However, other tax considerations at the holding level might be relevant: for example, the relocation might affect the tax rate on dividends paid to shareholders of the holding company. An analysis of this point is beyond the scope of this paper and would require investigating the tax treatment of dividends paid to foreign shareholders, regulated by bilateral tax agreements which differ from country to country. This is left for future research.

[59] We also collected data on the introduction of CEMs by Italian firms relocating to countries other than the Netherlands; here, the evidence suggests that this was not a primary motivation for their relocation. For instance, only one out of six firms adopted a dual class share structure, with minimal differences in terms of voting rights per share across classes.

[60] Gurrea-Martínez, A., Theory, Evidence, and Policy on Dual-Class Shares: A Country-Specific Response to a Global Debate, European Business Organization Law Review, Vol. 22 (3), 2021, pp. 475-515.

largest values (4.3% mean, 3.4% median) and Dutch firms the lowest (2.3% mean, 1.3% median), with Italian firms being somewhere in between (3.2% mean, 2.9% median). Italian firms tend to be more levered, with financial debt accounting for 30% of their total liabilities, on average. European firms tend to be particularly cash-rich with an average cash holdings ratio of 34.9%, compared to 19.3% for Italian firms and 15.6% for Dutch firms. In terms of profitability, Italian and Dutch firms tend to be aligned, while European firms perform worse (-25.3% ROA and -47.8% ROE, on average). As for dividends, Dutch firms are associated with the largest amount paid (6% of their book value of equity, on average), followed by Italian firms (4.6%) and other European firms (0.7%). In general, however, the firms from our three samples are, by and large, comparable in terms of fundamentals.

The same is not true for ownership structure. In Panel B, a common ownership pattern stands out for Italian and other European firms, the vast majority of which has a controlling shareholder (88.9% and 92.3%, respectively). Dutch firms, on the other hand, are mostly widely held (63.4%).

[TABLE 6]

In line with Shearman & Sterling et al.,[61] we monitor the implementation of the following CEMs as their introduction generates a discrepancy between cash flow and voting rights, thereby providing a relevant shareholder with the possibility to increase his/her control without holding a proportional stake of equity:[62]

1. *Multiple voting rights (MVR) shares*: shares giving different voting rights for an investment of equal value. We collect data on both MVR shares that are authorized in the firm's Articles of Association and MVR shares that have already been issued. Loyalty-like MVR shares are MVR shares whose attribution is conditioned on holding the shares for a predetermined time period. Specifically, a shareholder who owns an ordinary share uninterruptedly for the required period receives a special voting share for each ordinary share held, which progressively increases its voting power to an extent that depends on which stage of the loyalty program is achieved. An important feature of the loyalty mechanism is that multiple voting rights are cancelled in case the ordinary share is sold.[63]
2. *Priority shares*: shares granting their holders specific powers irrespective of the proportion of their equity stake. These powers vary from firm to firm and span from

[61] Shearman & Sterling, ISS and ECGI, Report on the Proportionality Principle in the European Union, 2016, External Study Commissioned by the European Commission.

[62] We also collected data about preference shares and non-voting shares. We found that preference shares are always issued with the same voting rights as ordinary shares, while no firm issued non-voting shares. Thus, no discrepancy between cash flow and voting rights arises from these two mechanisms.

[63] An example of loyalty mechanism: an ordinary share held for an uninterrupted period of 2 years entitles the holder to receive a special voting share A granting 1 vote per share, increasing the shareholder's votes to 2. If the same ordinary share is held for another 3 years (uninterrupted period of 5 years), the special voting share A converts into a special voting share B granting 4 votes per share, increasing the shareholder's votes to 5 as the ordinary share remains in the hands of the shareholder. In case the ordinary share is sold, the voting rights connected to the special voting shares expire and the special voting shares are transferred back to the firm without payment of any consideration.

the entitlement to propose specific candidates to the board of directors, to the right to directly appoint board members or to veto a decision taken at the shareholders' GM.

3. *Depository certificates*: financial instruments representing the underlying shares in a firm which are held by a foundation. Sponsored certificates are issued with the cooperation of the firm and provide their holders with the possibility to exercise voting rights if they request a voting proxy from the foundation, while unsponsored certificates have no such option and therefore work as CEMs.[64]
4. *Ceilings*: we distinguish between voting right and ownership ceilings. Voting right ceilings prohibit shareholders from voting their shares above a certain percentage threshold, while ownership ceilings prohibit potential investors from purchasing an equity stake above a certain threshold.
5. *Supermajority*: a provision requiring a majority of shareholders larger than 50% + 1 vote to approve certain important corporate changes. We identify four main such circumstances:
    i. Director nomination: resolution to remove the binding character of a director nomination proposed by the board.
    ii. Director dismissal: resolution to suspend or remove a director (other than pursuant to a proposal by the board).
    iii. Amendment to Articles of Association: resolution to amend the firm's Articles of Association.
    iv. Company sale or dissolution: resolution to sell the firm to an acquirer or dissolve it.

Although not strictly categorizable as a CEM, we also monitor the presence of a protective foundation serving as a takeover defense, common among Dutch firms. The foundation is provided with specific powers that can be deployed in presence of a hostile takeover bid.[65]

4.2. CEMs adoption.

Table 7 shows the adoption rate of each CEM across the three samples. The adoption of MVR shares is predominant among Italian firms, with 8 out of 9 (88.9%) having authorized and 7 (77.8%) having already issued such shares. The issuance of MVR shares is much less frequent among other European (4 firms, 30.8%) and Dutch (3 firms, 7.3%) firms. For the majority of Italian firms which authorized and issued MVR shares (66.7% authorized, 55.6% issued), the increase in voting power occurs through a loyalty-like mechanism. This feature is peculiar to Italian firms: no firm in the other samples has adopted loyalty programs. Of the 6 Italian firms that authorized MVR shares subject to a loyalty program, 3 designed a mechanism allowing shareholders to double their voting rights after holding an ordinary share uninterruptedly for 3 years; two firms implemented a three-stage loyalty program that allows shareholders to increase the number of voting rights to 2 for each ordinary share held for 2 years, 5 for each ordinary share held for 5 years, and 10 for each ordinary share held

[64] See Article 2:118a of the Dutch Civil Code.
[65] A protective foundation typically holds a call option on a number of preference shares of the firm. It can call for the issuance of shares at its discretion and at nominal value. After exercising the option, the equity interest of all other shareholders is diluted to such extent that the foundation usually holds the majority of the voting rights.

for 10 years;[66] and one firm adopted a two-stage loyalty program that allows to increase the number of voting rights per share to 5 after a 5-year period and to 10 after a 10-year period. Only two firms implemented no loyalty scheme; however, they adopted a particularly aggressive dual class structure, where each MVR share carries 20 voting rights.

Priority shares are adopted in a minority of cases, ranging from 14.6% in Dutch to 30.8% in other European firms, with Italian firms being in between at 22.2%. Typically, priority shares allow their holders to either exercise veto right on a number of resolutions that are particularly relevant or propose binding director nominations.

Depository certificates are most frequent among Dutch firms (28, 68.3%), sensibly less common among other European (3, 23.1%), and non-existent among Italian firms. In the Dutch sample, depository certificates function as CEMs in 13 out of 28 cases where they are issued as unsponsored and the attached voting rights are administered by a protective foundation. In the remaining 15 firms, certificates are sponsored and provide holders with the possibility to vote at GMs. It is important to note that the actual separation between ownership and control associated with depository certificates may be stronger than it appears since sponsored certificate holders can vote only after receiving a voting proxy from the foundation which owns the underlying shares. If no voting proxy request is advanced by certificate holders, the foundation retains the voting rights. This mechanism has been created to prevent occasional minorities of shareholders from controlling the decision-making process as a result of absenteeism at GMs (see Shearman & Sterling report)[67].

As for ceilings, limitations based on a voting right threshold exist in 2 Italian firms (22.2%) and 4 other European firms (30.8%), while no Dutch firm has introduced this restriction. At the same time, ownership ceilings have been adopted by 2 European firms (15.4%) but are absent both in the Italian and the Dutch samples. Voting right ceilings are fixed, ranging from 10% to 31%, except for one Italian firm in which the ceiling is determined as a function of its share capital structure (e.g., number of shares issued for each class) at the time of the relevant GM of its shareholders.

Supermajority provisions are adopted by approximately one third of the Italian (33.3%) and Dutch (36.6%) firms and by more than three fourths (76.9%) of the other European firms. The resolutions more frequently subject to supermajority are associated with director nomination, namely the deprivation of the binding character of a director nomination proposed by the board, and director dismissal, i.e. the suspension or removal of a director. A fraction of Dutch and other European firms has introduced supermajority provisions also to amend the firm's Articles of Association and to approve the dissolution or sale of the firm. Finally, protective foundations are set up by more than half of our Dutch sample of firms (22 firms, 53.7%) but are almost absent in the other two groups (no Italian firm and one European firm).

Overall, our evidence suggests important differences in the CEM policy across the three samples, that can be summarized as follows. Italian firms tend to rely substantially on the introduction of MVR shares, the majority of which are issued according to a loyalty scheme.

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[66] One firm authorized shareholders having already achieved 10 votes per share to further double their voting power to 20 votes per share conditioned on issuing a formal request to the firm in two designated time windows.

[67] Shearman & Sterling, ISS and ECGI, Report on the Proportionality Principle in the European Union, 2016, External Study Commissioned by the European Commission.

Other European firms prefer supermajority provisions, most of which apply to resolutions on the appointment and removal of board members. Dutch firms tend to use depository certificates, which – however – lead to a separation between ownership and control rights only in about one third of the sample (unsponsored depository certificates) and to set up a protective foundation as a defense mechanism against a hostile bidder or shareholder aiming to seize control of the firm.

[TABLE 7]

4.3. The governance implications of MVR shares.

In this section, we take a closer look at the introduction of MVR shares by analyzing their relevance on the overall share capital and the resulting implications on firm ownership and control patterns. Table 8 reports some statistics about the characteristics of the MVR shares introduced, as reported in the Articles of Association of our sample firms. Panel A depicts the situation in terms of authorized share capital, while Panel B refers to the issued share capital. According to Panel A, there is no substantial difference in the number of share types authorized. Italian firms exhibit the largest mean value (2.6), but the median value (2.0) equals that of Dutch firms, while other European firms report somewhat smaller values (1.7 mean, 1 in median). On the other hand, there is a striking difference in the weight of MVR shares on the total number of shares outstanding. In the average Italian firm, MVR shares account for 41% of the total number of authorized shares, while this percentage falls to 5.2% and 1.6% among other European and Dutch firms, respectively. Furthermore, the average number of votes per shares is much higher (2.6) for Italian firms than among European and Dutch firms (1.2 and 1.1 votes per share, respectively). In terms of maximum voting ratio, the average value of 191.3 associated with Dutch firms is inflated by the presence of four firms that authorized MVR shares whose voting power is 800 (1 firm), 1,000 (2 firms), and 5,000 (1 firm) times than that of an ordinary share. These shares are functional to the activation of anti-takeover defenses and account for a negligible fraction of the total number of authorized shares (no more than 0.11%). Comparing the median values arguably provides a more meaningful picture, with Italian firms exhibiting a maximum voting ratio of 10 against 1 for both other European and Dutch firms.

Panel B reports the same set of statistics relative to the share capital already issued. Italian firms are associated with the largest mean (1.8) and median (2) values of the number of share types. Also, they exhibit by far the largest incidence of MVR shares, with an average of 26.2% (24.6% median) compared to 6.2% among other European firms and 0.5% among Dutch firms. The mean (3.3) and median (1.3) values of the number of votes per share are also highest in Italian firms. In terms of maximum voting ratio, Dutch firms exhibit the largest mean value, which is again inflated by a single outlier (a firm that issued a small number of MVR shares with an 800:1 voting ratio, entirely held by the protective foundation). The mean value of 9.5 associated with other European firms is also due to a single firm having issued one single share with a voting ratio of 100:1, again held by a protective foundation. Italian firms exhibit the lowest maximum voting ratio, equal to 5:1.

In terms of median values, which are not influenced by outliers, the situation flips as Italian firms are associated with a maximum voting ratio of 2:1, against 1 for the other two samples.

[TABLE 8]

We finally investigate the implications of the adoption of MVR shares on corporate control dynamics. In Table 9, Panel A shows descriptive statistics about the position of the main shareholder and the degree of separation between ownership and control as of year-end 2021. Panel B depicts the situation after assuming full accomplishment of the loyalty program on the main shareholder's equity stake at the same date, while keeping the position of other shareholders constant.[68] The latter statistics are indicative of the degree of control potentially achievable by the main shareholder by keeping its position as it is till the completion of the loyalty scheme.

Panel A shows that Italian firms in our sample are characterized by a concentrated ownership structure: the main shareholder holds 40.8% of the cash flow rights, on average, relative to 39.2% and 22.4% for other European and Dutch firms, respectively. Concentration becomes even more pronounced in terms of voting rights, with 55.3% of Italian firms' capital being in the hands of a main shareholder; this percentage decreases to 39.2% and 22.4% among other European and Dutch firms, respectively. As a result, the separation between ownership and control, measured by the voting-cash flow rights wedge associated with the position of the main shareholder, shows its peak among Italian firms, with an average difference of 14.5 percentage points (11.8 median) compared to 5.4 (0) among other European firms. In Dutch firms, there is virtually no difference between the fraction of voting and cash flow rights held by the main shareholder. Overall, both Italian and European firms are characterized by concentrated ownership and some ownership-control separation, while Dutch firms exhibit a more fragmented ownership and no wedge.

Panel B shows that a variation in the fraction of voting rights and the control-ownership wedge is bound to occur only among Italian firms since no loyalty program is present in the other two samples. Assuming full completion of the loyalty scheme boosts the main shareholder's control on the firm, which equals 64% of the voting rights, and widens the wedge up to 23.2 percentage points, on average. Such a pronounced separation between ownership and control makes it interesting to compute the ownership stake necessary to control two voting right thresholds that are often considered critical for corporate decision making, namely 50% and 33.3% of the votes,[69] based on the maximum voting ratio achieved in a firm's share capital at loyalty completion. In the average Italian firm relocating to the Netherlands, holding 20.8% of the ownership rights is sufficient to control half of the votes

[68] Keeping the position of other shareholders constant seems a reasonable assumption due to the liquidity concerns of institutional investors and asset managers, which make them unlikely to refrain from trading their shares for long time horizons. Besides, the concentrated ownership structure of Italian firms puts minority shareholders at a disadvantage relative to the controlling shareholder due to their sensibly lower equity stake, serving as a starting point for the loyalty scheme.

[69] The 50% threshold identifies situations where the main shareholder controls most decisions of the Shareholders' GM, while the 33.3% threshold corresponds to situations where he/she has the power to veto GM decisions requiring a 2/3 supermajority.

in the shareholders GM (the median value is 9.1%). In two firms, this figure is as low as 4.8%. In the other two samples, the fraction of ownership rights is much closer to the corresponding voting right threshold. Mean values are, indeed, only slightly below 50% for other European and Dutch firms, while the median values are exactly 50%. The same pattern holds for the fraction of ownership rights necessary to control one third of the votes. This is equal to 12.5% on average (4.8% in median) among Italian firms, while it is again close to the 33% threshold among other firms. This seems to happen by no chance: controlling shareholders have a simple alternative to increase their grip over the company GM, namely the loyalty shares mechanism provided by the Italian legislation allows to control half (one third) of the votes in the GM with one third (half) of ownership rights.[70] Consequently, only firms interested in *strongly* separating ownership from control have a true incentive to relocate. Our results are consistent with this interpretation.

Overall, our evidence indicates that forum shopping plays a relevant role in Italian firms' decision to relocate, as they exhibit not only the highest adoption rate of MVR shares, but also the largest impact of this CEM type on the share capital. In fact, the median values of number of share types, relevance of MVR shares, number of votes per share, and maximum voting ratio are persistently higher among Italian firms. Within the forum shopping motivation, the different patterns in CEMs adoption across the three samples unveil different strategies. Italian firms are different, in that they tend to select mechanisms that protect the position of the *controlling shareholder*, while other European and especially Dutch firms rely on instruments aimed at protecting the *board*. Divergence in ownership structure does not explain the above documented CEM policies, as they sensibly differ between Italian and European firms despite the fact that their ownership characteristics are similar.[71] In a nutshell, not all firms do so… (*così non fan tutte*). In a sense, Italian firms relocating to the Netherlands seem not interested in adopting the Dutch governance model (which attributes a central role to the board of directors) and prefer, instead, to exploit MVR shares to achieve a high degree of separation while, at the same time, keeping control solidly in the founding family's hands.

Actually, Italian firms' CEM policy has pervasive and long-lasting effects on the governance structure because MVR shares work differently from most other CEMs. First, they confer long-term shareholders a disproportionate power over *all* shareholder meeting decisions, from the approval of the remuneration policy to those concerning M&As and other extraordinary transactions. The implications of supermajority provisions, mainly used by other European firms, and protective foundations, prevalent among Dutch firms, are instead limited to *a small number* of key corporate decisions, such as the nomination or dismissal of board members, and defense against possible takeover threats. With these provisions in place, the board still needs to find a majority in the GM to get approval of its proposals on all other issues under a one-share-one-vote system; this is in stark contrast with firms

[70] On the opposite, Italian MVR shares do not represent – in this regard – an attractive solution for a company already listed, since they confer only three votes per share and, above all, their issuance would require a lengthy and costly process of de- and re-listing.

[71] Cash flow and voting rights are measured as of the end of 2021, i.e. after relocation. Since Italian firms exhibit a more aggressive adoption of CEMs than their European peers, their ownership structure before the relocation is likely to have been even closer to that of other European firms.

issuing MVR shares, where the main shareholder enjoys disproportionate control over *all* GM decisions.

Furthermore, MVR shares allow shareholders to tighten their level of control of the firm over time or, alternatively, to keep control unchanged while progressively reducing their equity stake, thereby – in both cases – potentially exacerbating agency conflicts. Not only is the wedge between ownership and control rights higher in Italian companies, but its size is bound to increase dramatically over time, as the loyalty scheme displays its effects. This is potentially problematic in light of the recent literature showing a growing risk of entrenchment in the long-run in companies deviating from the one-share-one-vote principle. Overall, loyalty schemes are at odds with cost-benefit analyses suggesting the adoption of time-based sunset provisions for MVRs.

[TABLE 9]

The evidence from Italian firms which have relocated to the Netherlands allows us to infer the most likely impact of possible reform proposals of the Italian legislation: in particular, the possible introduction of MVR shares conferring up to 10 votes per share for unlisted companies. Will this solution increase the attractiveness of the instrument for Italian firms, combat what is perceived as unfair competition by the Netherlands and succeed in "keeping Italian companies home"? The answer is: probably not. The reason differs for firms at the IPO stage and for companies already listed.

In the former case, the attractiveness of MVR shares depends crucially on the IPO price (of the ordinary shares, the only category to be listed): the deeper the discount investors require to buy these shares, the less will controlling shareholders be attracted by complex shareholding structures. History shows that, so far, MVR shares have not been very successful: only 6 companies (in 10 years) have issued such shares before going public.[72] It is legitimate to doubt that 10-vote shares will be more attractive than 3-vote shares, since the discount of ordinary shares would probably increase proportionally.

In the latter case, "enhanced" MVR shares would have little or no impact on the decision of listed companies to move abroad.[73] Actually, the recourse to such MVR shares would require a (lengthy and costly) process of de- and re-listing; relocation to a foreign country (notably, to the Netherlands) would therefore continue to represent a more attractive

[72] 65 Italian companies preferred introducing loyalty shares which – though accompanied by a smaller increase in voting power – often allowed controlling shareholders to reach critical thresholds in terms of control of the GM. The introduction of loyalty shares requires a mere approval by the GM (although generally with a supermajority vote) and may therefore easily have redistributive effects. On the other hand, 3 of the 6 firms which introduced MVR shares have chosen to go public not through the traditional IPO process but by merging with a Special Purpose Acquisition Company (SPAC), which shortens execution times and imposes lower disclosure requirements. Also, going public by merging with a SPAC avoids to explicitly quantify the discount at which shares are placed (namely underpricing).

[73] At least if MVR shares may be issued only by firms which are not yet listed. We ignore the alternative case (where MVR shares could be issued also by companies already listed), since it has not apparently been considered by the Italian government, and for good reasons: the issuance of MVR shares by listed firms could imply huge redistributive effects to the detriment of ordinary shareholders.

solution, implying only some transaction costs and the risk that some shareholders could exercise their withdrawal right.

4.4. Italian firms going public abroad.

In this section, we focus on foreign IPOs conducted by Italian firms with the aim of quantifying their incidence in terms of number of IPOs and amount of proceeds raised relative to the Italian IPO market. Table 10 reports our results. Panel A shows the annual number of foreign IPOs benchmarked against the annual number of IPOs taking place in Milan, while Panel B shows the annual proceeds raised by Italian firms going public abroad benchmarked against the amount raised by firms going public in Milan. Data on domestic IPO activity are obtained from Borsa Italiana and cross-checked with the Refinitiv database. We also distinguish between IPOs taking place on main markets from those taking place on second-tier, exchange-regulated markets, typically designed to provide small firms with an easier access to public equity markets by applying looser listing requirements (Bernstein et al.)[74]. Notable examples of second-tier market is the Alternative Investment Market of the London Stock Exchange and AIM-Italia in Milan (now Euronext Growth Market or EGM).

Panel A shows that foreign IPOs by Italian firms account for 9.8% of the 377 IPOs that took place in the Milan stock exchange during the period 2000-2021. Also, of the 37 IPOs conducted abroad, only 9 led to the listing of an Italian firm on a main market, while the remaining 28 occurred on second-tier markets. Panel B shows that Italian firms raised €4.69 bn by going public abroad, which corresponds to 8.61% of the domestic IPO market. Despite being smaller in number, IPOs on foreign main markets account for almost the entirety of the amount of capital raised, namely €4.17 bn. This is consistent with both firm and offer size being larger in main markets relative to second-tier markets.

Overall, our evidence about IPOs seems to alleviate concerns about the alleged decreased attractiveness of the Italian stock market relative to other countries, as the loss of capital associated with such IPO outflow appears modest. While it is true that foreign IPOs have become increasingly common over the last few years, this may be at least partly explained by the broad globalization process and the increasing integration of international financial markets. Most importantly, it does not seem to be a first-order motivation for the decline in the number of Italian listed firms. This downward trend is indeed common to developed western economies, where increasing delistings have not been matched by new listings (see OECD, 2021)[75]. If the Italian stock market had truly become less attractive than its foreign counterparts, then we should have observed more Italian firms going public abroad.

[TABLE 10]

[74] Bernstein, S., Dev, A. and Lerner, J., The creation and evolution of entrepreneurial public markets, Journal of Financial Economics, Vol. 136 (2), 2020, pp. 307-29.

[75] OECD, OECD Corporate Governance Factbook, 2021, downloadable at: https://www.oecd.org/corporate/corporategovernance-factbook.htm.

5. Conclusions.

This study aims at shedding light on two types of corporate transaction that have become increasingly common among Italian firms, namely the transfer of the registered office to a foreign country and the decision to go public abroad. Both phenomena have raised concerns at the academic, industrial, and political levels about an alleged competitive disadvantage of Italy vis-à-vis other countries in terms of regulatory framework for corporations as well as attractiveness of its financial market. We contribute to the debate by documenting the frequency and economic relevance of the two types of transaction. Also, we delve into the possible driving forces leading firms to relocate abroad, such as investment and acquisition opportunities, tax saving, and forum shopping.

Our empirical evidence allows to draw the following conclusions. Italian firms' decision to relocate abroad seems to be primarily driven by forum shopping considerations. Other motives behind relocations, such as strategic and fiscal reasons, seem to play, at best, a minor role. This is especially the case for firms moving to the Netherlands, as their degree of ownership-control separation becomes much higher than both that prevalent before relocation and that allowed by domestic legislation through MVR shares[76]. Furthermore, the degree of separation after moving to the Netherlands is way more pronounced than that of Italian firms moving elsewhere, of other European firms relocating to the Netherlands and also of native Dutch firms. Finally, Italy is the European country that exhibits the largest firm outflow, both in general and to the Netherlands, despite CEM regulation in other countries being sometimes equally or even more restrictive than the Italian one.

The CEM policy of Italian firms differs remarkably from that of their peers. They selectively introduce CEMs preserving or strengthening the voting power of the controlling shareholder, such as MVR shares. On the opposite, other European firms tend to introduce supermajority provisions, thereby conforming to the standard Dutch practice of protecting board stability, not shareholder power. This aim is reached by Dutch firms, typically widely held, mostly through a protective foundation serving as a takeover defense. In a nutshell, when going to the Netherlands, not all firms follow the same path (*così non fan tutte*). In particular, only Italian firms don't do as the Dutch do. The difference between Italian and European firms relocating to the Netherlands is apparently not explained by large differences in ownership structure.

The implications of MVR shares adopted by Italian firms differentiate from those of CEMs adopted by other firms, in that the former: a) separate ownership from control more aggressively, b) select mechanisms that protect the position of the controlling shareholder, while the latter aim at protecting the board, c) confer the main shareholder a disproportionate power over all GM decisions, while the latter still leave the board in need of a majority in the GM to get approval of its proposals, and d) imply a higher risk of entrenchment, especially in the long run. The increasing separation between ownership and control triggered by loyalty mechanisms is at odds with the evidence of recent studies which find that the benefits of MVR shares are short-lived and turn into significant costs in the long run. These costs can be exacerbated when a loyalty mechanism is in place. Contrary to

[76] A similar degree of separation would still be accessible in Italy through alternative CEMs, such as non-voting shares and/or pyramidal structures, which – however – have become increasingly unpopular among institutional investors and have therefore been substantially dismantled.

the case where MVR shares are a separate "class" of shares, freely tradeable by their owners, under a loyalty mechanism the superior voting power obtained by loyal shareholders is cancelled in case they decide to sell their shares. This weakens the incentive for controlling shareholders and especially their heirs to exit the business, should they receive a potential "good offer" (i.e., one at a price higher than the value of shares would have under the incumbent control shareholders)[77]. This may happen if they sell part of the original block of shares (a rational assumption, for diversification reasons) because in this case they would be unable to monetize the value of control while - at the same time - they would be insulated from the disciplinary role of the market for corporate control (i.e., a takeover would be extremely unlikely). Since prior literature has extensively documented that heirs rarely possess the same entrepreneurial skills of their predecessors, this may result in firms that are inefficiently managed and uncontestable at the same time.

As for the foreign IPOs phenomenon, we document that its economic relevance is limited, in terms of both the number of IPOs and the amount of capital raised in the domestic market. Also, most Italian firms conducting a foreign IPO actually go public on second-tier markets tailored to small firms, given their looser listing requirements compared to main markets. This evidence alleviates concerns about an alleged competitive disadvantage of the Italian stock market.

Transferring the company seat and/or going public abroad are complex phenomena. In this paper we showed the size of both and investigated the reasons behind the former. We showed that foreign IPOs of Italian firms are still limited in number and economic significance, that the decision to relocate abroad is driven mainly by forum shopping reasons and that Italian firms tend to replicate their home governance model while other European firms tend to conform to that of the country of destination. Still, we are left with a puzzle concerning the profound reasons why Italian firms apparently follow a different path from their foreign counterparts. The old story of Italian firms being accustomed to a system where investor protection is low and minority expropriation is high is both outdated[78] and unable to explain why they choose to move to allegedly superior legislatures. While the Netherlands clearly attract firms trying to escape rigid home legislation, the different pattern followed by Italian companies remains hard to explain. Further analysis of this point is left for future research.

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[77] An example can make this point clearer. Assume that the capital of a firm is represented by 100 shares attributing one vote each. The value of the firm is €100 (cash-flow rights, i.e. the expected value of future dividends) + €30 (value of corporate control, which is indivisible and may only be transferred with the control block) = €130 in total. The founder holds 50 shares worth 50+30=€80. Assume then that loyalty MVR shares are issued over time (say in 10 years), so that the founder (or her heirs) owns 500 votes, while the other shareholders (short-term institutional investors) hold the remaining 50 shares, giving them one vote each. The founder's heirs may sell 40 shares to diversify their holdings and still retain control of the firm by keeping 10 shares with 100 voting rights. In this case, their block would be worth 10+30=€40. However, no bidder would be willing to pay that price (unless she is able to multiply by four the value of cash-flow rights), since she would need another 10 years to gain full control (and enjoy the value associated with it) through the loyalty mechanism. The founder's heirs would then be locked-in, unless their management of the firm is so poor that the value of their block (cash-flow rights + control rights) decreases to the point that it becomes rational for them to accept the offer. Of course, the above numerical example is built on somewhat "extreme" hypotheses; however, the rationale behind it still holds for more reasonable assumptions.

[78] Belcredi, M. and Enriques, L., Institutional investor activism in a context of concentrated ownership and high private benefits of control: the case of Italy, in Thomas, R.S., and Hill, J.F., Research Handbook on Shareholder Power, Edward Elgar, Cheltenham (UK) and Northampton, MA, 2015, pp. 383-403.

6. Tables.

Table 1. Year and country distributions of relocations and foreign IPOs by Italian firms. Year and country distributions of the sample of 15 registered office transfers and 37 foreign IPOs by Italian firms during the period 2000-2021. For registered office transfers, country represents the country of destination; for foreign IPOs, the country of the stock exchange.

	Relocations		Foreign IPOs	
Panel A. Year	obs.	%	obs.	%
2000	0	0.0	1	2.7
2001	0	0.0	0	0.0
2002	0	0.0	0	0.0
2003	1	6.7	0	0.0
2004	0	0.0	2	5.4
2005	0	0.0	1	2.7
2006	0	0.0	3	8.1
2007	0	0.0	2	5.4
2008	0	0.0	0	0.0
2009	0	0.0	0	0.0
2010	0	0.0	0	0.0
2011	0	0.0	1	2.7
2012	0	0.0	1	2.7
2013	1	6.7	0	0.0
2014	2	13.3	4	10.8
2015	3	20.0	3	8.1
2016	1	6.7	2	5.4
2017	0	0.0	3	8.1
2018	2	13.3	2	5.4
2019	1	6.7	4	10.8
2020	1	6.7	2	5.4
2021	3	20.0	6	16.2
Panel B. Country				
Austria	0	0.0	6	16.2
France	2	13.3	13	35.1
Hong Kong	0	0.0	1	2.7
Luxembourg	2	13.3	0	0.0
Malta	0	0.0	1	2.7
Netherlands	9	60.0	0	0.0
Romania	0	0.0	1	2.7
Sweden	0	0.0	1	2.7
Switzerland	0	0.0	4	10.8
United Kingdom	2	13.3	6	16.2
United States	0	0.0	4	10.8
Total	15	100.0	37	100.0

Table 2. Origin-destination matrix of relocations. Number of registered office transfers for each pair of country of origin (rows) and destination (columns) occurring during the period 2000-2021 by firms with a market capitalization of at least €1 bn as of year-end 2021.

	Destination						
Origin	BE	FR	IE	LU	NL	UK	Total
Austria					1		1
France	1			1	3		5
Germany			1		5		6
Ireland					1	1	2
Italy		2		2	9	2	15
Russia					1		1
Spain					1		1
Switzerland			1				1
Ukraine				1		1	2
United Kingdom			1		1		2
Total	1	2	3	4	22	4	36

Table 3. Descriptive statistics on relocations. Descriptive statistics of the sample of 15 Italian firms and 21 non-Italian, European firms transferring their registered office to other European countries during the period 2000-2021 with a market capitalization of at least €1 bn as of year-end 2021. The nationality of Italian and other (European, non-Italian) firms is identified based on their country of origin, i.e. where their office was registered before the transfer. All variables are measured as of year-end 2021. In Panel A, CAPEX is capital expenditures divided by total assets. Leverage is total financial debt divided by total assets. Cash is cash and equivalents divided by total assets. ROA (ROE) is return on assets (equity). Dividends is the amount of cash dividends paid divided by equity. In Panel B, controlled are firms having at least one shareholder holding 20% or more of the voting rights. Widely held are firms in which no single shareholder owns 20% or more of the voting rights.

	Italian firms (15 obs.)		Other EU firms (21 obs.)	
Panel A. Financials	mean	median	mean	median
Market cap (€bn)	18.0	6.8	17.5	2.5
Revenues (€bn)	16.3	2.9	6.3	2.6
Total Assets (€bn)	29.4	6.7	15.2	3.5
CAPEX (%)	2.5	2.2	4.4	3.4
Leverage (%)	28.6	22.8	24.3	19.2
Cash (%)	15.5	11.9	25.9	16.3
ROA (%)	4.7	5.6	-10.6	3.5
ROE (%)	14.1	11.5	-19.7	8.2
Dividends (%)	3.4	2.6	2.8	0.0
Panel B. Ownership structure	no.	%	no.	%
Controlled	13	86.7	16	76.2
Widely held	2	13.3	5	23.8
Total	15	100.0	21	100.0

Table 4. Variations in financial variables around the relocation year. Changes in variables of the sample of 15 Italian firms and 21 non-Italian, European firms transferring their registered office abroad during the period 2000-2021 with a market capitalization of at least €1 bn as of year-end 2021. The variation of each variable is computed over the [-1,+1] and [-2,+2] year time intervals, with 0 being the year of the transfer. CAPEX is capital expenditures divided by total assets. Leverage is total financial debt divided by total assets. Cash is cash and equivalents divided by total assets. ROA (ROE) is return on assets (equity). Dividends is the amount of cash dividends paid divided by equity. Acquisitions is the number of acquisitions completed by the firm in the year. ***, **, and * indicate statistical significance at the 1%, 5%, and 10% levels, respectively, of the t-test (means) and Wilcoxon rank-sum test (medians) of the difference from zero.

	Variation [-1,+1] (12 obs.)		Variation [-2,+2] (11 obs.)	
Panel A. Italian firms	mean	median	mean	median
CAPEX (%)	-0.6*	-0.5*	-1.0*	-1.0*
Leverage (%)	-6.2	-0.7	-0.9	1.3
Cash (%)	3.9	1.4	-0.3	-4.1
ROA (%)	4.5	-0.3	-1.2	-1.5
ROE (%)	28.0	-0.5	-4.9	-4.1
Dividends (%)	0.9	0.2	1.4	0.5
Acquisitions (no.)	0.4*	0.0	0.2	0.0
	Variation [-1,+1] (16 obs.)		Variation [-2,+2] (14 obs.)	
Panel B. Other EU firms	mean	median	mean	median
CAPEX (%)	-5.9	-0.2	-0.6	0.2
Leverage (%)	6.1	2.2	-2.8	-0.8
Cash (%)	-4.3	-1.0	-1.6	1.5
ROA (%)	0.4	-0.8	-4.7	1.7
ROE (%)	-15.3	-12.7	23.6	5.1
Dividends (%)	-2.5	0.0	-1.7	0.7
Acquisitions (no.)	0.2	0.0	1.1*	0.0

Table 5. Tax saving motive for relocations. Panel A shows the tax domicile of the sample of 15 Italian firms and 21 non-Italian, European firms transferring their registered office abroad during the period 2000-2021. The panel shows the country of origin, the country where the registered office is transferred (destination), and the country where the firm is tax domiciled after the transfer. Countries in bold indicate firms actually transferring their tax domicile. Panel B reports the variation in the effective tax rate computed over the [-1,+1] and [-2,+2] year time intervals, with 0 being the year of the transfer. Effective tax rate is the ratio between income taxes and pre-tax income.

Panel A. Transfer of tax domicile

Origin	Reg.office destination	no.	Tax domicile destination	no.
Austria	Netherlands	1	Austria	1
France	Belgium	1	France	1
	Netherlands	3	France	3
	Luxembourg	1	**Luxembourg**	**1**
Germany	Netherlands	5	Germany	4
			Netherlands	**1**
	Ireland	1	**United Kingdom**	**1**
Ireland	Netherlands	1	Ireland	1
	United Kingdom	1	Ireland	1
Italy	France	2	**France**	**2**
	Luxembourg	2	**Luxembourg**	**2**
	Netherlands	9	Italy	6
			Netherlands	**1**
			United Kingdom	**2**
	United Kingdom	2	**United Kingdom**	**2**
Russia	Netherlands	1	Russia	1
Spain	Netherlands	1	Spain	1
Switzerland	Ireland	1	**United Kingdom**	**1**
Ukraine	Luxembourg	1	**Luxembourg**	**1**
	United Kingdom	1	**Switzerland**	**1**
United Kingdom	Netherlands	1	United Kingdom	1
	Ireland	1	**Ireland**	**1**

Panel B. Effective tax rate variation

	Variation [-1,+1]			Variation [-2,+2]		
	mean	median	n	mean	median	n
Italian firms	-7.3	-1.7	12	6.1	5.3	11
Other EU firms	9.8	1.8	16	13.2	-2.1	14

Table 6. Relocations to the Netherlands: comparative statistics. Descriptive statistics of the samples of (1) 9 Italian firms transferring their registered office to the Netherlands, (2) 13 non-Italian, European firms transferring their registered office to the Netherlands, and (3) 41 Dutch firms with registered office in the Netherlands. Transfers occurred during the period 2000-2021. All firms have a market capitalization of at least €1 bn as of year-end 2021. All variables are measured as of year-end 2021. In Panel A, CAPEX is capital expenditures divided by total assets. Leverage is total financial debt divided by total assets. Cash is cash and equivalents divided by total assets. ROA (ROE) is return on assets (equity). Dividends is the amount of cash dividends paid divided by equity. In Panel B, controlled are firms having at least one shareholder holding 20% or more of the voting rights. Widely held are firms in which no single shareholder owns 20% or more of the voting rights.

	Italian firms (9 obs.)		Other EU firms (13 obs.)		Dutch firms (41 obs.)	
Panel A. Financials	mean	median	mean	median	mean	median
Market cap (€bn)	17.6	14.9	11.3	2.4	24.6	9.3
Revenues (€bn)	23.7	2.9	6.0	2.2	9.4	4.5
Total Assets (€bn)	36.4	5.2	15.0	1.2	62.8	9.7
CAPEX (%)	3.2	2.9	4.3	3.4	2.3	1.3
Leverage (%)	30.0	30.4	25.6	20.3	25.8	22.6
Cash (%)	19.3	16.0	34.9	21.0	15.6	8.6
ROA (%)	5.7	6.4	-25.3	-2.6	7.0	7.5
ROE (%)	16.3	14.0	-47.8	-9.3	18.3	16.9
Dividends (%)	4.6	2.7	0.7	0.0	6.0	3.3
Panel B. Ownership	no.	%	no.	%	no.	%
Controlled	8	88.9	12	92.3	15	36.6
Widely held	1	11.1	1	7.7	26	63.4
Total	9	100.0	13	100.0	41	100.0

Table 7. Relocations to the Netherlands: CEMs adoption. Number of firms using Control-Enhancing Mechanisms (CEMs) in the samples of (1) 9 Italian firms transferring their registered office to the Netherlands, (2) 13 non-Italian, European firms transferring their registered office to the Netherlands, and (3) 41 Dutch firms with registered office in the Netherlands. Transfers occurred during the period 2000-2021. All firms have a market capitalization of at least €1 bn as of year-end 2021. Multiple voting right shares are shares giving different voting rights based on an investment of equal value. Loyalty-like are multiple voting right shares whose attribution is conditioned on holding the shares for a predetermined time period. Authorized and issued refers to shares authorized in the firm's Articles of Association and shares that have already been issued. Priority shares grant their holders specific powers irrespective of the proportion of their equity stake. Depository certificates are financial instruments representing the underlying shares in a firm which are held by a foundation; holders of unsponsored certificates have no voting rights. Voting right ceiling prohibits shareholders from voting above a certain threshold irrespective of the number of voting shares they hold. Ownership ceiling prohibits potential investors from purchasing an equity stake above a certain threshold. Supermajority is a provision requiring a majority of shareholders larger than 50% + 1 vote to approve certain important corporate changes, applying to: a) director nomination: if the board nominates a candidate director for each vacant seat and this nomination is binding, the general meeting of shareholders can deprive the nomination's binding character; b) director dismissal: resolution to suspend or remove a director (other than pursuant to a proposal by the board); c) amendment to Articles of Association; d) company sale or dissolution. Protective foundation is a foundation acting as a takeover defense with specific powers that can be deployed in presence of a hostile takeover threat.

	Italian firms (9 obs.)		Other EU firms (13 obs.)		Dutch firms (41 obs.)	
	no.	%	no.	%	no.	%
Multiple voting right shares						
Authorized	8	88.9	4	30.8	7	17.1
Authorized, loyalty-like	6	66.7	0	0.0	0	0.0
Issued	7	77.8	4	30.8	3	7.3
Issued, loyalty-like	5	55.6	0	0.0	0	0.0
Priority shares	2	22.2	4	30.8	6	14.6
Depository certificates	0	0.0	3	23.1	28	68.3
Unsponsored	0	0.0	2	15.4	13	31.7
Ceiling						
Voting right ceiling	2	22.2	4	30.8	0	0.0
Ownership ceiling	0	0.0	2	15.4	0	0.0
Supermajority	3	33.3	10	76.9	15	36.6
Director nomination	2	22.2	6	46.2	8	19.5
Director dismissal	3	33.3	8	61.5	9	22.0
Amendment art.of association	0	0.0	4	30.8	7	17.1
Company sale/dissolution	0	0.0	3	23.1	8	19.5
Protective foundation	0	0.0	1	7.7	22	53.7

Table 8. Relocations to the Netherlands: focus on MVR shares. Comparative statistics on multiple voting right shares for the samples of (1) 9 Italian firms transferring their registered office to the Netherlands, (2) 13 non-Italian, European firms transferring their registered office to the Netherlands, and (3) 41 Dutch firms with registered office in the Netherlands. Transfers occurred during the period 2000-2021. All firms have a market capitalization of at least €1 bn as of year-end 2021. Panel A refers to shares authorized in the Articles of Association, and Panel B refers to shares that have already been issued. No. share types is the number of existing share types, including preference shares. MVR shares weight is the number of multiple voting rights shares divided by the total number of shares. Votes per share is the weighted average of the number of votes per share, with the weights being the number of shares of each type. Maximum voting ratio is the number of votes attached to the share having the maximum voting power, divided by the number of votes attached to each ordinary share.

	Italian firms (9 obs.)		Other EU firms (13 obs.)		Dutch firms (41 obs.)	
Panel A. Authorized capital	mean	median	mean	median	mean	median
No. Share types (incl. Pref.)	2.6	2.0	1.7	1.0	2.0	2.0
MVR shares weight (%)	41.0	42.0	5.2	0.0	1.6	0.0
Votes per share (no.)	2.6	1.4	1.2	1.0	1.1	1.0
Maximum voting ratio	8.6	10.0	9.5	1.0	191.3	1.0
Panel B. Issued capital						
No. Share types (incl. Pref.)	1.8	2.0	1.3	1.0	1.2	1.0
MVR shares weight (%)	26.2	24.6	6.2	0.0	0.5	0.0
Votes per share (no.)	3.3	1.3	1.2	1.0	1.0	1.0
Maximum voting ratio	5.0	2.0	9.5	1.0	20.6	1.0

Table 9. Relocations to the Netherlands: ownership and control implications. Comparative statistics on Control-Enhancing Mechanisms (CEMs) for the samples of (1) 9 Italian firms transferring their registered office to the Netherlands, (2) 13 non-Italian, European firms transferring their registered office to the Netherlands, and (3) 41 Dutch firms with registered office in the Netherlands. Transfers occurred during the period 2000-2021. All firms have a market capitalization of at least €1 bn as of year-end 2021. Panel A describes the situation as of year-end 2021. Panel B assumes full accomplishment of the loyalty program on the main shareholder's current equity stake. Ownership (voting) rights is the amount of ownership (voting) rights held by the main shareholder. VR-OR wedge is the difference between the main shareholder's voting and ownership rights. In Panel B, OR to control 1/2 (1/3) of VRs is the fraction of ownership rights necessary to control half (one third) of the total voting rights based on the maximum voting ratio of issued shares.

	Italian firms (9 obs.)		Other EU firms (13 obs.)		Dutch firms (41 obs.)	
Panel A. Current situation	mean	median	mean	median	mean	median
Ownership rights (%)	40.8	49.3	33.8	26.4	22.4	13.3
Voting rights (%)	55.3	61.8	39.2	45.3	22.4	13.3
VR-OR wedge (%)	14.5	11.8	5.4	0.0	0.0	0.0
Panel B. At loyalty completion						
Voting rights (%)	64.0	65.9	39.2	45.3	22.4	13.3
VR-OR wedge (%)	23.2	15.4	5.4	0.0	0.0	0.0
OR to control 1/2 of VRs (%)	20.8	9.1	39.9	50.0	47.3	50.0
OR to control 1/3 of VRs (%)	12.5	4.8	26.1	33.3	31.4	33.3

Table 10. Italian firms going public abroad. Domestic and foreign IPOs by Italian firms in terms of number of transactions (Panel A) and proceeds raised (Panel B). Domestic IPOs refer to IPOs completed in the Italian stock exchange. Foreign IPOs are 37 transactions by Italian firms in foreign stock exchanges during the period 2000-2021. The 'Main market' column refers to IPOs taking place on official regulated markets.

Panel A. No. IPOs	Domestic	Foreign IPOs		
Year	IPOs	Total	% Total	Main market
2000	39	1	2.6	0
2001	17	0	0.0	0
2002	7	0	0.0	0
2003	4	0	0.0	0
2004	10	2	20.0	0
2005	16	1	6.3	0
2006	22	3	13.6	2
2007	31	2	6.5	1
2008	6	0	0.0	0
2009	4	0	0.0	0
2010	5	0	0.0	0
2011	4	1	25.0	1
2012	2	1	50.0	0
2013	6	0	0.0	0
2014	13	4	30.8	0
2015	27	3	11.1	2
2016	12	2	16.7	0
2017	31	3	9.7	0
2018	23	2	8.7	0
2019	35	4	11.4	0
2020	21	2	9.5	0
2021	42	6	14.3	3
Total	377	37	9.8	9

Panel B. Proceeds (€bn)	Domestic	Foreign IPOs		
Year	IPOs	Total	% Total	Main market
2000	6.10	0.01	0.17	0.00
2001	3.84	0.00	0.00	0.00
2002	1.22	0.00	0.00	0.00
2003	0.53	0.00	0.00	0.00
2004	3.16	0.02	0.75	0.00
2005	2.98	0.01	0.44	0.00
2006	5.33	0.13	2.39	0.12
2007	4.27	0.18	4.16	0.03
2008	0.13	0.00	0.00	0.00
2009	0.14	0.00	0.00	0.00
2010	2.57	0.00	0.00	0.00
2011	0.59	1.70	290.27	1.70
2012	0.18	0.00	2.43	0.00
2013	1.23	0.00	0.00	0.00
2014	2.62	0.04	1.40	0.00
2015	5.51	1.05	19.11	1.05
2016	1.44	0.01	0.81	0.00
2017	5.37	0.07	1.31	0.00
2018	1.74	0.04	2.41	0.00
2019	2.54	0.04	1.63	0.00
2020	0.70	0.05	6.93	0.00
2021	2.26	1.33	58.80	1.27
Total	54.47	4.69	8.61	4.17

MVS DIRECTIVE: CHOICES OF EU LEGISLATION, PRINCIPLE OF SUBSIDIARITY AND THE CMU

JAVIER GUIBERT SUAREZ

SUMMARY: 1. Introduction. – 2. Position of the Commission on dual-class shares structures. – 3. Changes in the ecosystem. – 4. Drafting process. – 5. Negotiations. – 6. Final text and future perspectives.

1. Introduction.

My contribution will be a bit of a story that will explain how the Commission decided to legislate in this area, how our thought process went through, how we wrote the proposal, and then the subsequent negotiation with co-legislators.

2. Position of the Commission on dual-class shares structures.

So in actuality, our latest position on dual-class share, multi-vote shares, has been different. In the past, the Commission was actually against these types of structures: both in the draft proposal for the Fifth Company Law Directive in 1972 and more recently in an attempt of a Commission recommendation, the EU saw two kinds of support for the one share-one vote rule throughout the EU. So in 2007, the Irish commissioner Charlie McCreevy decided to just commission a study to prepare for a Commission recommendation that would kind of push the use of one share-one vote structures throughout the EU: they commissioned the study, but this study didn't actually support what they wanted to do. The study said in fact that there was no material differences in corporate governance and economic performance of companies that had multiple vote shares structures or other controlling enhancing mechanisms, and those that didn't. Furthermore, it also kind of established that the one share-one vote principle was not really a principle applied throughout the EU. Most Member States had a wide variety of mechanisms that departed from that rule, which included non-voting shares, loyalty shares, multiple vote shares structures, pyramid structures, and shareholder agreements. So they already understood that this principle is not being applied and we should retire the recommendation. Seventeen years later, with the multiple voting shares Directive, we swing completely in the opposite direction, and it was not just because of the results of that study.

3. Changes in the ecosystem.

Several things have changed since then, some have been covered already in Petroboni's presentation on regulatory competition, but first - before regulatory competition - I'm going to talk about the rise of founder-driven companies.

We all know about Alibaba, we know about Facebook, these are companies that have all listed in the last 10 years with multiple voting shares structures. These are tech companies with strong founder-driven strategies, that without the control in the hands of that founder, the company would not work the same way. And this is not just seen with the big names rather, if you look at the numbers, for example, in 2021 – a record year for IPOs in the EU - we had something like 64 IPOs in Germany, Spain and France put together (a very, very

good number), but that compares with 101 IPOs in the US using multiple vote shares structures, which is around 46% percent of the tech IPOs in the US. So basically these 101 companies would not have been able to list in Europe, and I say this because there were several European companies among those: there was Wallbox, a Spanish startup, Lilium, Sono Motors, German startups. These companies would not have been able to list in their home Member State. So this is clearly a new phenomenon and it's only growing. Tech companies are largely using these structures, but it's also going beyond.

The other reason, which was argued by Petroboni in his presentation is the regulatory competition among exchanges to attract companies. IPOs have been a global affair. The changes in Asia have mainly been driven because they missed out on companies, so Hong Kong changed their rules because they missed out on Alibaba, Singapore changed the rules because they missed out on Manchester United and that kind of made a trickle-down effect where also India, mainland China, the UK, all changed their rules. So we saw this phenomenon happening and we also understand we can't be behind, we can't wait for us to lose even more companies to change our rules. We need to act now. And then furthermore another recommendation, and that was influencing on our decision to change our position, was the report made by the technical expert stakeholders group on SMEs, who also supported us and recommended us to allow multiple vote shares in EU law.

4. Drafting process.

With all this feedback and this change in the ecosystem, we set out to analyze the topic and to include it into the broader Listing Act, which is an omnibus legislative proposal to make listing rules easier for companies and to make it more attractive for EU companies to list in the EU. The way we set out the Listing Act was the following: we wanted to attack three different areas in the listing process, so that's the pre-IPO, process when companies decide to list, the IPO process itself, and then post-IPO. Multiple vote shares fit in the pre-IPO step, when a company decides that wants to list.

So the main reason companies do not decide to list - or at least one of the main ones - that we found in studies and through stakeholder consultations is that companies don't want to lose their control. The main reason they don't want to list is because they're not calling the shots anymore, rather, they now have to defer to investors, rightly so as this is how capital markets work. But perhaps for them, that makes it not worthwhile to grow, to raise capital, because they're afraid that by losing control, they lose vision in the direction of their company.

Therefore, we decided that the best way to address this issue would be to support multiple-vote shares and to include them into a proposed legislation that would allow them through the EU. However, when looking into control-enhancing mechanisms, we also came into another one that's been greatly discussed in this conference, which are loyalty shares.

We have in this volume an explanation on how loyalty shares work in Italy, and how they've worked in the Netherlands as well. We actually decided not to include them at all in the proposal because of several factors. The first one is that loyalty shares are not even designed to bring companies to the capital market rather, they're designed to foster long-term shareholders. They're designed to foster stability in the shareholding of a company, which is a different objective than ours. We want to bring companies to the market. And

then furthermore, we found empirical evidence that loyalty shares are not even used by institutional shareholders as much, rather than generally used by controlling shareholders to entrench their power. We found this through a study in France, that said the average holding period in companies with loyalty shares was the same as those without, and also empirical evidence in Italy where it was generally controlling shareholders that just reinforced their control in the company. So basically, in the end, we found that loyalty shares are not designed to bring companies to the market, they're designed to foster long-term shareholders, but apparently they're not as effective in that either. So, we ultimately decided to exclude them from the scope of the negotiation of the proposal.

So then, once we started drafting, first we had to go through an impact assessment to kind of explain the rationale for EU action in this area, for the need and the positive effect multiple vote chairs could have in attracting companies to the market: what we argued is that without our intervention several Members States would not go forward, thus depriving companies in those Member States from being able to list in their home Member States with these structures. For example, if an Austrian start-up wants to list on the Austrian Stock exchange using these share structures, they would not be able to do so, whereas a Dutch startup or a Swedish startup would be able to do so, which creates problems. Of course, if that startup is large enough to move outside of Austria, they could go to the Netherlands, they could go to Sweden. Although we also thought that if they can go to the Netherlands or Sweden from Austria, they might as likely go to the US, so we think it would have been preferable if that company could list in their home Member State.

So then, after the impact assessment and successfully defending our position, the need to act and the positive effect these structures could have for European companies, we started drafting the legislation. The first decision we had to take was the decision which would also end up being one of the more controversial ones, which is the scope of the proposal. So we immediately decided that we would only approach companies that are not listed and are seeking to list – which makes sense with the narrative of the whole Listing Package – so we want to bring companies to the market. Therefore, we only regulate companies that are about to list and we excluded the allowance of issuing multiple vote shares for companies that are already listed. That's allowed in Italy I believe, however, it's prohibited, for example, in the US, and other jurisdictions. And then, the second decision we took in terms of scope is limiting only to SME growth markets. This decision came after very deep and internal discussions, we found out people can have very, very strong opinions on Multiple vote shares and the one share-one vote principle – not a topic I thought people were passionate about, but, there's people for everything – and we wanted to play it safe, let's say. A lot of Member States were completely against this, and harmonizing corporate law at the EU level is very difficult due to the nature of the corporate law tradition of all different Member States. So we wanted to take a small but steady step forward in these structures in order to convince Member States of the beneficial effects of allowing these and allowing companies to use these structures. So we ultimately decided we wanted to keep this scope small to SME growth markets, but we left it open. So, on the one hand, Member States can always go beyond, and on the second, if Member States decided to go forward in subsequent negotiations with Parliament, we would adopt a neutral stance in terms of how the scope could end up.

After the scope, the other controversial topic we had was the safeguards. So, of course, multiple vote shares mean that the shareholder that has less control is a bit potentially at the mercy of the controlling shareholder, and thus it's usually necessary to include safeguards to protect the rights of these shareholders. Here we saw there were two approaches, so there was the approach that's being done in Asia, which is more of an ex-ante approach to safeguards, where you apply ratios, you apply sunset clauses, transfer clauses, event-based sunset clauses to protect the shareholders before the structure is enacted. And then we saw in other countries that have a long tradition, they have more ex-post safeguards, where you protect shareholders by making conditions in terms of the decisions that can be taken with the multiple vote shares. This, for example, is the tradition taken in Sweden or Denmark, where they put limitations on the votes cast, for example, in decisions taking in general shareholder meetings with qualified majority.

So there what we decided to do, or what we ultimately added, was:

i) a safeguard for the adoption of multiple vote shares that require a qualified majority, and then

ii) a decision between a maximum weighted voting ratio and a restriction on the exercise of these shares.

We didn't include a specific voting ratio. In hindsight, we probably could have. We didn't do this in our initial proposal because, again, we saw there were very different traditions in Member States: some had three, like Italy, Portugal had five, Denmark had none, Finland had twenty, so we thought it would have been very difficult to establish which one would have been the correct number. So we ultimately left it open. There is no harmonized ratio, but there would be a requirement for a ratio. And of course, we always allow to be a possibility for Member States to take more safeguards to further protect the shareholders. However, we believe the ones we included in our proposal were the baseline that were really necessary to ensure the protection of minority shareholder interests.

And then following safeguards we included is the transparency requirement, which in my opinion is just as important as safeguard for these structures. So with transparency, an investor can properly understand what company he's investing in, how the structure works, and how the decisions are going to be made in the company. So there we wanted to make it perfectly clear that all investors that decide to invest in such a company know how the structure works, who has the voting control, the actual name of the person that has the votes, and other restrictions on the transfer of security and on the rights included in the shares.

5. Negotiations.

So this is basically the guess of our initial proposal which was made in April of last year. From then, once we had our proposal, it was time to negotiate. So first we spoke with Council, and then we would also speak with the Parliament. On the Council side, it was led by then by the Swedish presidency, whose negotiating team was led by professor Rolf Skog of the University of Gothenburg, who is quite an eminence in the topic, so we were quite lucky there. Discussions with Member States on the Council counterproposal was very fluid. They were largely in line with our proposal. Perhaps let's say edging out the safeguards at making clear some more transparency requirements.

And then we had the Parliament, who are always a bit of a maverick in negotiations with co-legislators. So the negotiations here were led by Alfred Sant, that was the prime Minister of Malta for several years. He established a negotiation, so he was from the social Democrats, and he would negotiate with the different teams within the European Parliament. And, well, you had a great variety of interpretations and additions to our proposal. You had certain political groups that wanted to include a wide variety of safeguards, linking their use to the Paris Agreement and the ESG requirements, and then you also had ideas on much stricter safeguards, more typical ones, so ratios, sunset clauses etc.

Ultimately, the Parliament managed to have not such a radical proposal where they ultimately had two major factors. So one was they were more ambitious, they wanted to extend it to regulated markets, so to incorporate all the EU companies, but at the same time, they were also including much more stringent safeguards on the decisions the company took, on the sunset clauses, etcetera.

Personally, I have to say I didn't really understand the rationale between extending it to regulated markets while at the same time introducing more stringent safeguards. You could see an argument that, well, these are larger companies, so it's more dangerous, right? Yes, they're larger companies that are uncontrolled by safeguards, but on the other hand, companies in regulated markets are much more heavily regulated than companies in SME growth markets. They have to already comply with a lot larger set of regulatory requirements. So it's a bit counterintuitive, but the Members of the European Parliament stuck to their guns.

Then we began the Trilogue, so the negotiations between the three institutions and here Council put their foot on the ground and did not budge and would not budge until the end. They were completely against any more safeguards other than those in their text, which were quite similar to ours and under no circumstances would they have regulated markets included in the proposal. And it was quite interesting because there were actually two incredibly different camps within the European Council on why the scope should not be extended. So on the one hand, you had these Member States that had very well-functioning markets, a long tradition of using these structures, and they simply just did not want the EU to regulate those structures at a regulated market level: they say “ours is working fine, don't touch it, please”. And then, on the other camp, you had Member States that had no tradition at all about these structures. They never used them before, they're completely foreign to them, and they were completely afraid of them actually. They saw these as a great danger to the corporate governance of their companies, potentially they could have also been lobbied by certain stakeholder groups, but they would not want this to be on regulated markets, also due to the fact that some of these Member States, they didn't even have SME growth markets. So it went from having a Directive that wouldn't apply to them at all, to actually having an impact on them.

So, after a long back and forth on these two topics, ultimately, as I feel tends to be the case, the Council beat the Parliament, and the scope was only partially extended to other MTFs beyond SME growth markets, which did increase the scope of companies that actually were included in the scope, but obviously did not reach out to the vast majority of companies that are listed in regulated markets.

The safeguards also remained very similar to the ones the Council text had and the ones we had, and in terms of transparency we retained it similar to our wording, although there was an important caveat that we didn't know at the time and is that we called for, in our proposal, to have the names of all those that hold multiple vote shares, thinking that these were always privately held by founders and controlling shareholders, so it would only be let's say a couple of people. We then found out that some companies actually have their multiple vote shares listed on exchanges such as Ericsson, the Swedish company, or Berkshire Hathaway, and that that would entail companies would have to give the names of thousands of people who they don't actually know if they have shares or not. So, on the transparency requirement, we actually opted for at least a 5% controlling share of the company, similar to what's in the transparency directive, for example.

6. Final text and future perspectives.

So once again, after negotiations we were quite happy with the outcome: there could have been better outcomes, there could have been definitely worse outcomes, but we believe it was largely in line with our initial proposal and so now, just like the rest of the Listing Act, it was published in the OBJ actually quite recently.

It will take effect in twenty days and then Member States will have two years to transpose this directive into national laws. And then, four years down the line, we will have a review of the Directive specifically on the scope to see if it makes sense to extend it or not. Much of that will depend on how the Member States transpose this: they have full freedom to transpose this, so they can go beyond if they desire, or they can keep it strictly to what is in the Directive. Depending on the views of Member States and how they decide to apply it, the review will take one shape or another, so until then we'll be waiting to see how it turns out.

THE MVS DIRECTIVE: EU REGULATORY EVOLUTION AND POLICY TRADE-OFFS

VALERIO NOVEMBRE[1]

SUMMARY: 1. Introduction. – 2. MVSs and the European Policy Landscape. – 3. Goals and Tools of the Directive. – 4. Broader Policy Coherence: CMU and the Twin Transitions. – 5. Corporate governance reforms in Europe and perspectives for the Next Legislative Cycle. – 6. Conclusion. – 7. References.

1. Introduction.

The governance of corporations within the European Union (EU) is undergoing significant transformation, particularly concerning the use of control-enhancing mechanisms (CEMs) such as Multiple-Vote Share Structures (MVSs). Traditionally viewed with skepticism due to their potential to concentrate control, CEMs are increasingly seen as tools to promote long-term value creation and strategic stability.

This contribution reflects on the EU's recent intervention via an ad hoc directive on MVSs under the so-called Listing Act. The directive arrives at a time of significant fragmentation and renewed regulatory competition within the Union, and aims—at least officially—to facilitate listings. However, its implicit policy goals and the likely effects of its minimum harmonisation model require closer scrutiny. In particular, the directive's compatibility with the broader Capital Markets Union (CMU) agenda and the EU's sustainable finance objectives remains uncertain.

This presentation will first review the role of MVSs within the EU evolving regulatory framework, highlighting the policy rationale and the relevant trade-offs. Second, it will evaluate the consistency and implications of the recent directive under the Capital Markets Union (CMU) and the Sustainable Finance agendas, critically assessing the implications for corporate governance, market integration, and cross-border investments. Third, it concludes with policy recommendations for a legislative review.

2. MVSs and the European Policy Landscape.

CEMs, and specifically MVS, have a long-standing history, dating back to Roman times and resurfacing at various moments in corporate governance across Europe and the globe. Although they fell out of favor during periods that prioritized shareholder equality, in recent years, the taboo against MVSs has faded, as evidenced by growing acceptance across jurisdictions. The OECD's Corporate Governance Factbook confirms a trend toward increased legal openness to MVSs. This trend reflects a broader re-evaluation of the benefits and drawbacks of these mechanisms. Even if you look at the changes over the last few years,

[1] This article summarises a presentation delivered at the Conference "Multiple voting strictures: regulatory competition and Capital Markets Union", held in Turin on 4 November 2024. It is based on joint reflections with Federica Agostini, which led to the publication of the following paper: Agostini, F. and V. Novembre, La Direttiva in tema di azioni a voto plurimo nell'era della Capital Markets Union: cui prodest?, Rivista delle Societa', 4 – 2024.

there have been five or six jurisdictions especially from Europe changing the policy stance. Notably, MVSs—unlike pyramids or shareholder agreements—are relatively transparent. Pyramids, for example, can be more complex and obscure, and potentially more worrisome for market functioning. The policy trade-off of MVSs is also clear: on one hand, they can insulate founders and insiders to pursue long-term value creation; on the other, they pose familiar risks, including entrenchment, agency costs, and distortions to the market of corporate control. In this context, tunneling transactions can be particularly problematic.

Yet economic theory and empirical literature suggest a nuanced, context-dependent approach is best, based especially on the ownership structure. In addition, the literature stresses the importance of distinguishing between pre-IPO and post-IPO adoption considering that – for the former - the price internalizes the risks at the time of the IPO.

The European landscape for CEMs is notably fragmented. Nordic countries have traditionally supported MVS, while Southern Europe and France have shown more resistance. Recent reforms in countries such as Belgium, Italy, Spain, and France reflect a broader willingness to embrace flexibility. Others like Germany have adopted cautious, layered safeguards. These changes are often interpreted as strategic responses to regulatory arbitrage and listing shopping, where firms relocate or choose listing venues based on governance rules, as shown by Massimo Belcredi in his presentation. Such dynamics underscore the competitive tensions within the EU's internal market, highlighting the necessity for harmonized regulatory responses.

3. Goals and Tools of the Directive.

The EU directive addressing MVS seeks to reconcile several competing objectives. The explicit goal is to facilitate public listings and enhance market participation, especially for innovative and growth-oriented companies, as clearly illustrated by Javier Guibert Suarez in his intervention. Implicitly, the directive aims to curtail regulatory arbitrage and reinforce the EU's competitive stance globally.

However, this balancing act presents challenges. In addition, the legislative technique chosen — a minimum harmonisation directive with multiple national options — risks undermining some of these goals. While some safeguards such as the adoption by qualified majority are mandatory — due to the role of the European Parliament during trialogue — most (including sunset clauses) are left to national discretion and operate almost as menu rules, potentially resulting in a regulatory patchwork, complicating cross-border investment and diluting the directive's effectiveness.

The likely outcome is continued divergence: some Member States may do little, claiming full implementation of the directive, while others may introduce complex or restrictive regimes that, in practice, discourage the use of MVSs. This uneven transposition risks perpetuating listing shopping and failing to deliver a coherent EU-wide framework. This is a risk already seen with past directives like the Takeover Directive, which ultimately failed to produce convergence despite the efforts taken in terms of enhanced coordination among National Competent Authorities.

4. Broader Policy Coherence: CMU and the Twin Transitions.

The directive must be viewed within the broader ambitions of the CMU agenda. Regardless of substantial political efforts and two action plans, in 2015 and 2020, Europe has so far been unable to foster growth and integration of its capital markets. Admittedly, the 2020 Action Plan has been more concrete than the 2015 one, trying to reinforce both the demand and supply of capital with landmark initiatives such as the ESAP or the CTP or the same Listing Act. However, these actions appear insufficient to make the necessary quantum leap.

Recent renewed efforts in the direction of building a CMU reflect the ambitions stated both in the Draghi and Letta report. The intended goal is to mobilise private capital toward strategic priorities, including digitalization and sustainability. The EU's green and digital transitions are estimated by the Commission to require up to €800 billion annually, a figure that public and bank finance cannot cover alone. Achieving these goals requires deep, liquid, and integrated capital markets that attract institutional investors —often foreign—to channel capital toward key objectives. In particular, as an integral component of the EU Green Deal, the whole Sustainable Finance agenda relies on the idea that capital could be channeled effectively towards sustainable finance investments and this in turn would support the transition.

Yet MVSs remain unpopular among investors. In particular, institutional investors and governance advocates remain cautious, viewing MVS as mechanisms that can entrench management and erode shareholder rights, particularly when adopted post-IPO or without strict safeguards. As such, the directive risks discouraging the very capital the CMU and Sustainable Finance agendas aim to attract. Its coherence with these broader goals is thus questionable.

5. Corporate governance reforms in Europe and perspectives for the next legislative cycle.

The latest comprehensive reading of the corporate governance regulatory frameworks at EU level dates back to 2012, when the Corporate Governance Action Plan was published. This led to the approval of the 2017 revised Shareholder Rights Directive (SRD II) on long-term institutional investors' engagement as well as the Recommendation on comply or explain, approved simultaneously and implementing some of the actions foreseen in 2012. Following that, the Directive on Gender balance in corporate boards, together with the one on MVSs, entered into application only in 2024. Several of the actions foreseen in 2012 have not been implemented to date. Overall, corporate governance remains a controversial area where reforms are often hampered by Member States' fear of legislating in an area that is closely intertwined with national laws and legal traditions.

Looking ahead, the next legislative cycle provides an opportunity to make progress. Plans to review the SRD II have initially been delayed, however the Commission has recently committed in the EU Competitive Compass to make a proposal by the end of 2026. This may be the right occasion to review MVSs and anchor them more systematically in the general CMU and corporate governance context. A recent letter from the International Corporate Governance Network to the European Institutions shows institutional investors' call for

reform, opining the way MVSs are regulated by the Directive and making several suggestions for reform.

In the context of a reform, one policy option that should be considered is to shift from member state discretion toward company-level flexibility, mirroring the regulatory approach already observable in the Netherlands. This would empower firms to calibrate their governance models based on ownership structures, as suggested by the economic literature. Such a system would on the one hand foster firms' ability to make efficient long-term investments while at the same time retaining attractiveness to external capitals. In fact, institutional investors are aware that one size does not fit all and there are specific circumstances in which (certain) CEMs can be value-increasing and as such can be accepted by minority shareholders. And in any case, a more flexible approach could also contemplate a few core mandatory safeguards at statutory level—such as sunset clauses, supermajorities or pre-listing adoption—to ensure investor protection and the legal certainty and uniformity necessary for a functioning internal market.

Overall, a regulatory strategy that provides flexibility at firm level, rather than at Member State level, may therefore in reality simplify the regime for international investors, improve comparability, and promote a more genuine level playing field across the EU. Policymakers should weigh the trade-offs between flexibility, simplicity, and investor confidence to design a regime that supports EU market integration and competitiveness.

6. Conclusion.

The debate over MVS and CEMs reflects broader tensions in EU financial markets: between flexibility and uniformity, capital demand and supply, national autonomy and market integration. While the current directive represents a step toward addressing a longstanding taboo, its reliance on minimum harmonization risks perpetuating fragmentation. In addition, a critical consideration is how MVSs frameworks impact the EU's attractiveness to global investors.

A clearer, more coherent framework—aligned with CMU goals and investor expectations—would be key to mobilize the capital needed for Europe's future. Alignment between corporate governance reforms and overarching EU policy objectives is essential and the inherent trade-off between facilitating founder control and attracting institutional investment should be addressed. In this context, providing more flexibility to companies may be an effective way forward. Revisiting the directive in conjunction with the SRD II review may offer a timely opportunity to align corporate governance tools with Europe's strategic economic and sustainability priorities.

7. References.

- OECD (2023), Corporate Governance Factbook, 2023 Edition.
- Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on corporate sustainability reporting.
- Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (Takeover Directive).
- Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (Shareholder Rights Directive II).
- Directive (EU) 2024/2810 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

- Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures

- Draghi, M. (2024), Report on the Future of EU Competitiveness, European Commission.

- European Commission (2015), Action Plan on building a Capital Markets Union.

- European Commission (2018), Sustainable Finance Action Plan.

European Commission (2019), The European Green Deal.

- European Commission (2020), A Capital Markets Union for people and businesses – New Action Plan.

- European Commission (2025), An EU Compass to regain competitiveness and secure sustainable prosperity.

- High-Level Forum on the Capital Markets Union (2020), Final Report.

- ICGN (2024), Open Letter on Multiple Voting Shares to European Institutions.

- Letta, E. (2024), Much more than a market, European Commission

Section III

Regulatory competition, CMU and SMEs: a multi-perspective debate

REGULATORY COMPETITION, CMU AND SMES: A MULTI-PERSPECTIVE DEBATE

CHAIR: Marco Ventoruzzo

PARTICIPANTS: Valentina Allotti, Marcello Magro, Fabrizio Sudiero, Andrea Vismara

MARCO VENTORUZZO: The previous contributions have raised a number of interesting things that I think would be also covered here in our discussion.

Without truly any delay, let's dive right into the many topics that we have to cover. And I would start with Valentina Allotti from Assonime, because obviously you do have a somewhat privileged point of view and a wealth of data, and we already have some interesting data in the contribution of Professor Belcredi. So, from your standpoint, can you tell us a little bit more about the dimension of the MVS phenomenon in Italy? How pervasive is it? What kind of shapes does it actually take in our markets?

Valentina Allotti[1]: We can first start with MVSS structures in Italy and some insights from practice.

1. An outline on the introduction of MVSS in Italy.

Multiple voting shares structures (MVSS), in the form of increased voting rights (so-called loyalty shares) and multiple voting rights, were first introduced in Italy in 2014, by decree law 91/2014.

These innovations were set against a backdrop of simplification measures designed to encourage the listing of companies. In the report to the decree law 91/2014, it was stated that "the fear of losing control because of listing represents one of the main factors that discourage Italian family businesses from entering the stock market. Greater flexibility in capital structure as an exception to the "one share-one vote" principle can make it possible to increase the size of the free float in public offerings aimed at listing (IPO) and, consequently, the liquidity of the shares of companies listed, without resulting in dilution at the shareholders' meeting for the shareholders of reference".

However, as pointed out by several critics, one of the weaknesses of the Italian framework was the excessive limitation of the multiplication factor (respectively 1:2 in the increased voting rights and 1:3 in the multiple voting rights), which did not appear sufficient to incentivize companies with strong ownership concentration to place a significant portion of their share capital among the public and, therefore, to support their growth.

This competitive disadvantage of the Italian system emerged in connection with the phenomenon of "migration" of major Italian industrial entities that have decided to move their registered offices abroad, using the wider margins of statutory autonomy ensured by those jurisdictions to the enhancement of voting, which in some cases do not provide a limit to the multiplication factor.

This phenomenon began to develop from 2013 and has now taken on dimensions very significant: at the end of 2023, there were 13 foreign-regulated companies listed on the

[1] The answers are based on joint reflections with Margherita Bianchini, Vice-Director General, Head of Company Law, Assonime.

regulated Italian market, weighing 24 percent of the entire market; the relevance of foreign companies grows if we consider the companies in the FTSE MIB, where foreign weigh 26 percent of the index. Most of the recent moves of the registered office abroad (to the Netherlands) has also been accompanied by the choice to take advantage of the greater flexibility in the discipline of multiple voting; in these cases, the same documentation published by the company in preparation for the transfer indicated among the reasons precisely the opportunity to take advantage of this specific aspect of Dutch corporate law.

The Legge Capitali of 2024 (Law 21/2024) intervened on the existing legislation on loyalty shares and multiple voting rights shares, with the purpose of allowing statutory autonomy to strengthen the factor of multiplying the right to vote.

Thus, for unlisted companies, the new law enhances the original multiple voting rights mechanism, where the original voting ratio 1:3 could be increased up to a maximum of 10 votes per share. For listed companies, the Legge Capitali introduced the possibility to enhance the existing loyalty shares mechanism, which originally offers the possibility to entrust loyalty shares with a 1:2 maximum voting ratio for shareholders owning their share for at least 24 months, enabling companies to increase the voting premium up to a maximum of 10 votes per share, where each additional voting right could be granted after a minimum holding of an additional year (so-called enhanced loyalty shares). As the increase is particularly significant, the introduction of the enhanced loyalty shares in listed companies is coupled with the right of withdrawal for dissenting shareholders.

This reform followed a lively debate, at the national and at the European level, on the issue of voting structures and the attractiveness of capital markets.

At national level, the Green Paper published by the Minister of Economy and Finance in 2022[2] clearly stated that "the issue of the competitiveness of the legal and regulatory framework is particularly relevant not only for listed companies but also for large already listed Italian companies, since the increased flexibility of foreign jurisdictions appears to be one of the elements underlying the proposed transfer of the headquarters corporate headquarters." Based on these considerations, according to the Green Paper, it is to be carried out "an adequate analysis of the possible profiles of competitive disadvantages of our system, considering that, despite the introduction of multiple voting and increased voting already also present in our legal system as of 2014, in recent years some groups Italians have moved their registered offices to another member state (almost always the Netherlands).

At the European level, the recently adopted directive (EU) 2024/2010 establishes common rules on multiple voting share structures in companies seeking admission of their shares to trading on multilateral trading facilities (MTFs), including SME growth markets, with the aim of facilitating market access for smaller companies. The Directive is part of a broader Listing Act Package[3] and its proposal was preceded by a series of studies and

[2] MEF, Libro Verde su 'La competitività dei mercati finanziari italiani a supporto della crescita", Marzo 2022; the MEF Green Paper was backed by a study from OECD on the Italian Market: OECD, Capital Market Review of Italy 2020 "Creating Growth Opportunities for Italian Companies and Savers".

[3] Which includes also Regulation UE 20224/2809, amending current regulations on market abuse and prospectus, and Directive UE 2024/2811, amending Mifid II.

preliminary reports[4], all concluding that one of the main barriers to market access for SMEs was the fear of founders and families of losing control of the company once it was listed, assuming that the dilution of ownership resulting from listing would reduce their power to control important investments and operational decisions of the company.

2. The use of MVSS by Italian listed companies: a focus on loyalty shares.

As to the use of MVSS by Italian listed companies, our analysis will focus on three key aspects: (i) the number and type of companies that adopted loyalty shares, either ordinary or enhanced according to the Legge Capitali; (ii) the flexibility allowed by legislation in shaping the loyalty share structure; and (iii) how companies have used this flexibility. We will then draw some conclusions.

According to the data published in the Assonime-Emittenti Titoli 2024 Report on Corporate Governance in Italy, at the end of 2024, 86 listed companies had adopted MVSS, amounting to 41% of all listed companies and representing 17% of market capitalization of Italian companies listed on the EXM (Euronext Milan). This includes 6 companies (2,9%) with multiple voting right shares introduced during pre-listing phase and 80 companies (38,5%) with loyalty shares either ordinary or enhanced.

The use of these mechanisms appears to be slightly influenced by company size (48% of large vs 39% of small firms) and more significantly by the company's ownership structure (51% in concentrated vs. 23% in non-concentred firms) and is very significant among large and concentrated companies (74%).

Focusing the attention on listed companies that introduced loyalty shares while being already public, there was a significant rise in 2024. In particular, 17 companies proposed the introduction of loyalty shares and/or enhanced loyalty shares to their shareholders' meetings in 2024 and among these, 15 companies successfully implemented the introduction. Among the successful by-laws' amendments, it is to be noted that 10 companies introduced enhanced loyalty shares: in 8 cases exploiting the maximum ratio of 1:10 votes per share, in the other 2 cases enhancing the mechanism up to 1:3 votes per share.

As a first conclusion, it emerges that since 2015, the number of companies adopting these schemes has steadily increased over the years, showing a strong interest from companies, and that, despite their relevant number (around 1/3 of the total number of listed companies), they represent a limited percentage of the total market value (roughly 1/5), due the type of companies using these schemes. Also, it emerges clearly that loyalty share scheme is at large the most used instrument compared to multiple voting rights shares.

A key issue to analyse is the extent of flexibility that Italian legislation allows companies in shaping this structure and whether this flexibility has been exercised. Here we will focus on loyalty shares.

Since legislation only provides the essential framework for loyalty share structures, it leaves companies sufficient room to tailor loyalty shares in a way that address both the reasons behind their introduction and investors' concerns. For instance, companies can define the voting ratio respecting the maximum fixed by the law or they can also establish a

[4] Oxera Consulting LLP, Final Report, Primary and secondary equity markets in the EU, Novembre 2020; Final Report of the High-Level Forum on Capital Markets Union, A new vision for Europe's capital markets, June 2020; Final Report of the Techincal Expert Stakeholder Group (TESG) on SMEs – Empowering EU capital markets – Making listing cool again, May 2021.

different holding period, which may be longer than the one prescribed by the law. Also, the bylaws may define the cases in which the transfer of share does not affect the retention of increased voting rights; for example, in the case of a merger where the company may acknowledge the (substantial) continuity in the holding of ownership even if there is a formal transfer of shares. More, there is no prohibition in sunset clauses, either based on time or specific events. And again, the application of increased voting rights could be limited depending on the nature of the agenda item.

However, these degrees of flexibility have largely not been exercised by companies. A review of company bylaws shows that they tend to replicate existing legal provisions rather than diverge from them. Some flexibility has been applied in defining, by interpretation, additional cases in which the transfer of shares does not impact voting rights, such as intra-group transactions.

So, the question to be asked is: how and under which circumstances can these loyalty shares schemes be shaped, presented and explained to the market clearly and smoothly approved by investors? This is an area where further investigation is crucial. Improving the use of such flexibility could indeed help companies in structuring voting shares to align with their strategic motivations and address investors' main concerns.

MARCO VENTORUZZO: Let's now shift to the perspective of a lawyer who has actually contributed to bring some Italian issuers in fact to the Netherlands. And so Marcello, you have seen truly the inner workings of these tools, and we have other contributions in this volume with a quite analytical analysis of how they are structured in the Dutch system, but probably it's not the same story to illustrate it from the perspective of an Italian corporation and to see what are the difficulties, but also what is attractive in particular in loyalty shares let's say "Dutch style". So I'm asking you if you can give us a sort of overview of your very concrete experience in this area.

Marcello Magro: The re-domiciliation of Italian companies in the Netherlands must be analyzed in the context of the historical and regulatory landscape at the time of these moves. For example: (i) the re-domiciliation (re-dom) of CNHI (2013) and FCA (2014) to the Netherlands was completed at a time when Italy's corporate laws did not permit the use of multiple voting share structures (e.g., loyalty shares and dual-class shares). This restriction was lifted with the 2014 amendment to Italy's Consolidated Law on Finance, allowing for these mechanism; or (ii) transactions carried out before 2020 also addressed the broader concerns about Italy's economic and political stability, including fears of an Italian exit from the Euro Area, heightened political instability, and the risk of enforced financial withdrawals, such as the potential imposition of a wealth tax (e.g., "*patrimoniale*").

Setting aside historical reasons, which, while significant, are ultimately contingent, the rationale behind the re-domiciliation trends can essentially be categorized into two main areas:

a. *strategic reasons*: companies seek flexible capital structures and corporate governance frameworks, along with mechanisms that enhance control for founder-entrepreneurs. These mechanisms should not hinder their growth ambitions through external avenues and simultaneously provide additional tools—such as increasing the company's M&A firepower through equity-currency transactions. A

straightforward yet often overlooked observation is that, in the absence of dilution, there would be no incentive to adopt Control Enhancing Mechanisms (CEMs). It is important to note that dilution can also result from a sell-down, which may be part of a de-risking strategy deployed by founding shareholders, thereby creating space for such sell-downs. However, in the marketplace, such a strategy could prove value-destructive. From our perspective, the primary concern for those exploring advanced CEMs has been growth-oriented, aimed at allowing them to maintain control—or at least bolster their position as influential shareholders—even in the context of transformational M&A transactions;

b. *systemic reasons*: the stability of the destination country's system and the reduced unpredictability of potential legislative changes or reforms.

Choosing a re-domiciliation jurisdiction is the result of comprehensive comparative analysis, requiring multi-jurisdictional evaluation. These assessments weigh the technical aspects of re-domiciliation structuring within the European Economic Area, which provides a streamlined process compared to jurisdictions like the U.S. or Switzerland. Equally, such analyses consider the optimal equity and governance structures suited to support strategic objectives effectively.

For companies listed of a certain size the starting points of such an analysis are:

a. the *market reaction* upon announcement of re-doms has generally been neutral to slightly negative, with specific performance typically driven by the peculiarities of the re-domiciling company;
b. the *performance* of re-domiciliation precedents including CEM has been generally aligned with those without CEM features, and also companies which have solely introduced new low voting shares classes (without re-domiciling) have reported a neutral performance on average;
c. in the context a "re-domiciliation including CEM", *there is no anticipated restriction of the investors' pool for the company*, although the corporate governance analysts are expected to express a negative view;
d. the *"equity story" of the company's* drives much of the market reaction as in most cases the re-dom was consummated to expand the company's capacity to do M&A using also stock as acquisition currency.

From a legal perspective, the Netherlands presented material advantages that should be evaluated within the broader context of various European jurisdictions. From a strictly legal standpoint the Netherlands appeared to contribute a non-negligible amount of benefits in terms of:

a. *Flexibility*: in general terms, the Dutch legal system includes several elements of flexibility (*e.g.*, no limits on maximum Hi-Lo voting ratio, straightforward convertibility between share classes, multiple voting rights applicable for all matters, buy-back programs up to 50% of issued share capital and, most importantly, binding nomination of the BoD for the directors' appointment and flexibility to implement specific shareholders' rights in the by-laws, including in a NV/joint stock company);
b. *EU legal framework*: being the Netherlands in the EU, after the re-dom the Company continues to be subject to the European legislation, ensuring continuity

with the previous legal framework. Additionally, taking into account that the Company may continue to be listed on an Italian stock exchange, issues regarding applicable laws would be regulated at EU level and the relevant legal framework would be clearer (e.g., MTO, VTO, mergers, demergers, etc.);

c. *MTO rules*: in the Netherlands tender offers would be governed by Dutch rules (with residual application of Italian law as regards MTO procedure and price, assuming the Company is (still) listed on an Italian stock exchange);
d. *Tested mechanism*: several Italian listed companies have successfully re-domiciled in the Netherlands through cross-border mergers or transfer of legal seat. This kind of transaction would therefore benefit from the advantages of a tested mechanism (streamlined process and predictable legal framework).

It seems to me that market insights suggest that regulatory flexibility, and a prudent reliance on market forces, could serve as a guiding light for future policy decisions:

a. the market has the capacity to reward high-performing companies and "penalize" underperforming ones. Market mechanisms often prove more effective than strict regulations: in Italy, we debate about the right of withdrawal—a rule I see as fundamentally sound, albeit outdated and in need of reform—while the market itself already provides an option for discontented investors to exit by selling shares of "undesirable" companies immediately. It's worth noting that the Netherlands lacks a comparable withdrawal right (with one limited exception), yet shareholders are far from being "hostages" of their companies!
b. Another example: in the United States, there is no mandatory tender offer requirement, as changes in control are managed by rules that apply to board members (i.e., fiduciary duties, duty of care, and duty to monitor). When extraordinary transactions occur, oversight of board members and managers is achieved not through rigid laws and regulations but through the threat of shareholder class actions or litigation from those "harmed" by the transaction. Recently, in a delisting from the Italian market and relisting exclusively on the NYSE, the company demonstrated to Borsa Italiana (as required by regulations) that there would be no circumvention of the core principles of control premium sharing in cases of change in control, nor of shareholder protections in cases of delisting. Can we really say that the U.S. market is "less protective" for investors?
c. Similarly, can we really say that hyper-detailed regulation (in a civil law style) and constant regime changes, along with the associated uncertainties, are beneficial? For example, are we certain that the new Italian rules regarding board lists will encourage companies to enter and stay on the Italian market? I won't delve into the specifics or compare it to the Netherlands, where the opposite principle of binding nomination applies (which requires the general meeting to follow the recommendations from the Board or even a specific shareholder). I will simply point out that, regardless of the impact on the few Italian companies listed in Italy with a broad shareholder base, the complexities of these new rules do not promote the attraction of new companies of this type to Italy.
d. On the topic of contestability and governance, it was recently highlighted during the 50th anniversary conference of Consob that a significant deterrent for medium

to large companies—more so than for smaller ones—in accessing the stock market isn't the costs or excessive compliance requirements, but rather the protection that the Italian legal framework offers to minority shareholders. This can be seen as "discouraging" because owners, often from entrepreneurial families, fear the entry of a "competitor" into their capital structure. Similarly, the role of independent directors has gained prominence in listed companies like never before in any other European country. In short, perhaps it's no longer hostile takeovers that are worrisome, but rather the maneuvering through regulatory loopholes in governance.

e. Another significant example of the rigidity of the Italian system lies in the limitations on market exit, which are both unnecessary and counterproductive. If the regulator were to favor such mechanisms, the outcome would be disruptive, as barriers to issuer exit would almost paradoxically deter issuers from entering the market out of fear of becoming entangled in the very complexities of the market itself.

What is the objective of the CMU? To ensure that European savings are increasingly directed into the real economy and that companies benefit from a larger investment pool (equity and debt alike) with a reduced cost of capital. If this is the goal, it seems natural that our clients seek to identify the most effective tools to achieve their growth and development objectives. For large corporations, it is fairly irrelevant whether these tools are Italian, French, German, or Dutch, although there is some regret in seeing certain Italian entrepreneurs moving away from the Italian market (and, notably, its regulations). Ultimately, the aim remains to deliver growth returns to investors. Thus, if growth requires access to a different regulatory system, it is the company's duty to consider such options. The issue remains unresolved, however, for SMEs, which often face prohibitive transaction costs associated with re-domiciliation and must "make do" with what the Italian system offers.

It is essential to recognize that shareholder-savers/investors have different goals from shareholder-entrepreneurs (or controlling shareholders): both seek growth and development for their companies and effective value incorporation into the market price of shares. However, controlling shareholders also seek to be in a position to govern the growth. If CEMs and a flexible governance structure (while ensuring key protections for minority shareholders, e.g., in cases of MTOs) facilitate achieving this goal, then it is necessary to acknowledge this reality. Likewise, we must acknowledge that potential limitations on available tools (or worse, restrictions and bans on mobility) in Italy will continue to be weighed against more accessible options elsewhere.

In summary, the core issue with re-domiciliation lies in the competitive advantages of the destination country and the limitations of the country of origin. For companies that can absorb the transaction costs of re-domiciliation (i.e., large corporations), questions on "how" to re-domicile (whether via transfer of the legal seat, merger with a NewCo, or re-domiciliation of the holding company or operating entity) or "when" to re-domicile (pre- or post-IPO) are of less importance.

MARCO VENTORUZZO: Now we go to Andrea Vismara, and Andrea has at least three identities that interplay on this table. One is the one of being the CEO of a listed corporation,

a listed bank. The other one is the fact that his area is investment banking, so he has at different levels seen the use of similar tools both at the IPO stage and throughout the life of the listed corporation. And last but not least, he has worked extensively also in different capacities to suggest, propose, and articulate, some of the changes both at the European level and at the national level that we are discussing today. But I will ask you Andrea to take one particular perspective, which is the one of investors. How do investors see both loyalty shares and multiple voting shares? Are they really concerned? Do they only judge on a case-by-case basis? What's the reality?

Andrea Vismara: Investors don't like multiple voting shares or loyalty shares. The principle of one share-one vote as we know has been the basic principle of capital markets for many years. But having said that, we have to look at the reality of life and the reality is that: number one, there is a regulatory arbitrage within a number of jurisdictions, particularly in Europe, and so companies will look at the best regulatory context and then choose. And number two, in many very well-developed countries like the US, multiple voting shares have been there for a very long time, and they've been one of the reasons why they managed to innovate and create great companies. The fantastic thing about institutional investors is that they keep complaining about multiple voting shares, but they do invest in all of those companies, particularly the US ones like the "magnificent seven" which all have some sort of controlling mechanism. So the fact of the matter is that multiple voting shares are a fact of life.

The other thing that must be said is that when we look at the Italian example, we've had loyalty shares and multiple voting shares for a few years and one-third of the companies on the regulated market adopted loyalty shares. My firm is one of those. And investors, institutional investors didn't really mind. They stayed there. They didn't make any difference. They were certainly pleased that those initiatives were somewhat counterbalanced by stronger governance, a strategy, a view about the future, and they didn't leave.

We looked in detail, a few years after 2015-2016, at what had happened to many of the companies that had adopted loyalty shares, particularly on the STAR segment: nothing had happened. But again, I will also say something which may not sound very profound: two is very different from ten. So one thing is having two votes, as we have. One thing is having ten votes and voting to get to that ten votes, with the majority of votes that you have, because you already have two votes: that is in my view a horror and should be somewhat addressed by the Italian legislator first of all, and possibly also addressed at European level. You cannot have the entrepreneur using the double vote to then get ten votes, that's really horrible. So, bottom line: in our case, for instance, we are a partnership and it's a people's business, so investors want us to run the firm. Some long-term investors were happy to apply for loyalty shares as well, and they have double votes as we have. But in general, it was seen as something pretty good. And there is one other thing that I would underline, because I don't think that this is very well known: there's a fundamental difference in self-perception for an entrepreneur between multiple voting shares and loyalty shares, which is very simple. If you have multiple voting shares, when you look at your market capitalization on Bloomberg or on any data info provider, you will only get the market cap of the listed shares. So if you have, for instance, in your capital half of the shares which are multiple voting shares and half of

the shares are just ordinary shares, your ego will be affected by the fact that you only see a market cap which is half of the value of your company. That doesn't happen with loyalty shares. So everybody loves loyalty shares because you get the benefit of multiple votes without losing the perception about the value of your company. I think that should be addressed somehow at European level, because I believe that one of the obsessions of entrepreneurs beyond control, is size, so you have to give reassurance about control, but you also have to address this technical thing about size.

I will just conclude by saying that, as mentioned by Marcello Magro, it all depends on the equity story of the individual company. Investors will look at how credible is the strategy of the company. Is this entrepreneur really likely to dilute himself, to execute some great acquisition? That's super rare. Is it really going to go through a major capital increase to purchase some great intellectual property that will help the growth of his or her company? Again, very rare. So if voting for enhanced voting mechanism only means entrenching the control of that single entrepreneur, that's not a good idea. If that entrepreneur really has a credible strategy and track record, I think investors would like it. And obviously they will also look at other things. They will look at the governance, they will look at how many independent directors are on the boards, they will look at the voluntary safeguards that the entrepreneur will recommend in the bylaws of the company at the same time as adopting multiple votes. So a number of things will have to be considered by investors. I don't think there's a single rule.

But the one thing that I will say as a conclusion is that moving from two to ten votes in the Italian context, I think it will be dangerous if there are no safeguards, we'll talk about it later, and I think that's something that we should all be aware of.

MARCO VENTORUZZO: Let's go back for a second again to Marcello. You already kind of hinted at some of the different possible motivations for deciding to reincorporate or to move abroad. But from a slightly more theoretical perspective, regulatory competition is in fact a multi-faceted animal. I mean, there are a lot of different types. Now, once there was – originally, at least – a kind of competition that had more to do with SMEs that were looking for lower capital and more flexible rules on capital, the one we are discussing here today is a more sophisticated form of regulatory arbitrage. There was – and there still is, in many ways – a type of competition for companies that are in distress that might be looking for jurisdictions that are more amicable from a bankruptcy perspective. So, once again, in your experience, what different types of regulatory competition, what different markets for rules have you encountered?

Marcello Magro: I believe that regulatory competition is a complex and multilevel issue, which cannot be reduced to an "evil of our time," but must be investigated starting from its rationale and the understanding of the limitations that characterize our domestic market reducing its attractiveness.

In other words, regulatory competition should be read as an opportunity to accelerate the reforms initiated in the Italian and European context, aimed at reducing the attractiveness gap with certain non-European markets.

From this perspective, both the path initiated by the Italian lawmaker toward greater simplification and flexibility and the broader path initiated by the European lawmaker

toward a true capital markets union should be welcomed, albeit they are still incomplete and their pace is not compatible with the timing necessitated by the market.

From my "practical" observatory, we happen to move through different types of regulatory competition.

I leave aside the tax matter, that is outside my expertise, subject to one clarification: the driver of the re-doms was not "the taxes" as the resulting corporate tax regime remained unchanged in almost all of the cases.

We have already discussed about "Corporate" regulatory competition. In my view, it is nothing more than the pursuit by companies and financial players of the best regulatory ecosystem balancing the goal of achieving specific corporate benefits (including benefits for the shareholders) and the associated transaction costs.

However, this is only a fractional part of the overall spectrum of phenomena around this matter. Partly unconsciously and in a "mechanical" way, depending on the areas of activity, we find ourselves coexisting with other types of regulatory competition such as those related to the choice of the place for approval of capital market transactions and those related to the choice of listing markets (of course always considering the micro-set of the corporate and financial sector).

(i) Choice of the place for approval of capital market transactions.

If corporate regulatory competition lies in the constitutive rules of corporations, and the associated rigidities are manifold, in the area of CM transaction, mobility suffers much lower limitations. Competition among corporate law systems starts from the comparison of different legal regimes (so called, level 1 regulations); on the other hand, the race among different places for approval of CM transactions finds its roots in the level 2 and level 3 rules, the customs and habits and the predicted efficiency, flexibility and "openness" of the regulatory Authorities entrusted with supervision and enforcement. In this area, the level 1 regulations are, in fact, fully harmonized at European level.

Two examples: the Irish Authority (Central Bank of Ireland) and the Luxembourg Authority (CSSF). Over the past decade, their expertise and the speed and flexibility of their prospectus approval processes have enabled these two countries to become attractive "hubs" for the European debt and investment funds market, to the detriment of most other Eurozone countries.

Come to think of it, both in the case of equity (Dutch AFM) and in the case of debt (Central Bank of Ireland or CSSF), the key element of the "success" of these markets is to be found in the "predictability" (i.e., *peace of mind* for the company and management) and "programmability" (i.e., procedures conducted expeditiously and on the basis of *ex ante* communicated timelines).

This matter has been thoroughly discussed among practitioners in the last few years and now I can testify that some changes are being put in place. Recently, just few weeks ago, for example, CONSOB launched a consultation on some proposed amendments to the Issuers' Regulations regarding prospectus for "non-equity" securities in order to ensure faster authorization processes for this type of transactions.

The competition among "systems" is also exacerbated by the presence of *multiple Supervisory Authorities* in case of cross-border transactions determining inefficiencies in

terms of potential overlaps of competences and requiring efforts (and costs) in terms of coordination among National Competent Authorities (NCAs).

If this concern is now well addressed in the context of transactions aimed at raising equity or debt resources, there's space for improvement in the tender offer regulations where a "juggle" between competing Authorities still exists. Think, for example, to a voluntary takeover bid on the shares of a company incorporated under Luxembourg law but listed and traded in Italy where (i) the CSSF is competent on certain fundamental qualifying aspects of the transaction (e.g., on the nature of the parties involved as "parties in concert" and on the relevant thresholds for the purpose of qualifying the takeover bid as voluntary or mandatory and for the purpose of identifying the applicable provisions of Luxembourg law) and, on the other hand, (ii) CONSOB which is competent in particular on the approval of the Offer Document and, in general, on the procedural aspects of the transaction, on the obligations to provide information to the market and, last but not least, on the consideration for the bid. With regard to the latter aspect, after CONSOB's positive assessments on the offer price (at the inception of the transaction), based on the opinions of independent experts, the same assessment may be also required by the CSSF in the event of a sell-out as at the outcome of the takeover bid.

Such an overlap of competences, as well as more generally the differences in practices found among the different NCAs, suggest the urgency of considering a centralization of certain NCAs' competences within ESMA, or at least a direct coordinating role for ESMA.

(ii) Competition between stock markets.

"*Race to the top*" toward the best corporate governance model and centralization of the NCAs' competencies under ESMA, while positive elements, nevertheless do not resolve a third level of regulatory competition, namely that relating to *competition between European stock markets* with their non-European counterparts (in particular, American).

The process of improving rules is only a mean, not the final goal: without overcoming the problem of dwarfism and the lack of dynamism in European markets, reforms by themselves risk to result in just legal "engineering".

The size of the phenomenon in the past (at least for equity capital market) is not material. However, my concern is that a prolonged period of drying IPOs in the Italian market may push companies and entrepreneurs to more aggressively weigh the proximity advantages given by an Italian listing against the potential higher returns from a foreign IPO.

In fact, the provocative question to ask is, "why list in Europe if you can list in a different market, like the US or HK?" Indeed, it's natural that people are going to look to where the greatest success has been experienced: compared with that of other markets, the European context appears complex, fragmented and undersized.

As confirmed by recordable market *trends* (see, for example, the listing of Birkenstock, a "German" company controlled by French giant - LVMH - which chose the NYSE for its own IPO), the US markets remain the main pole of attraction for European companies that *are* big or *dream* big enough.

Comparison with the United States, for example, shows that the stars and stripes markets are characterized by greater simplicity of structure in the face of significantly higher numbers, in several respects: the U.S. trading venues are fewer in number, but they soar in

market value, number of trades, international attractiveness, number of IPOs/year… and even trading hours! It's recent news that the NYSE announced plans to extend trading hours for equities to 22 hours on weekdays, in an effort to meet global demand for buying and selling US-listed assets around the clock.

European market structure is complex, especially compared with the US: in the US there are 3 listing exchanges, 16 trading exchanges and 1 central clearing house. In Europe we have 35 listing exchanges, 41 trading exchanges and 18 clearing houses. Almost every European country has its own listing venue, which politicians often consider a source of national pride. Stock trading and post-trade activities take place through different markets and systems, which splits up liquidity and make settlement processes intricate.

In order to cope with the potential lack of competitiveness of EU markets and not to succumb to the "alluring features" of non-European markets (especially the US), the integration of national capital markets into a truly "centralized" single capital market at the European level, which is the goal of the CMU, can be certainly an important response, first and foremost for "large" companies, which could be "retained" in the Union context through the creation of a better channel for access to capital than that represented by today's domestic markets.

"Small-medium" companies would also benefit from such a prospect, as they, unlike "large" companies, do not have the resources to access the more competitive and costly non-European markets, resulting in a "stark" alternative: either European markets or no market at all. The push toward greater attractiveness of European markets to retain the "big ones" therefore benefits the "small-medium ones" as well.

While waiting for the completion of the path that, sooner or later, will lead to the realization of the CMU, it is desirable as of now to start reflecting on how to anticipate – at least in part – the outcomes of the CMU, through the enhancement of the genetic heritage of Western commercial law, which has always anticipated through private instruments what public authorities cannot (or do not want to) implement through public instruments.

In the case at hand, the absence of a centrally regulated pan-European exchange coupled with a truly harmonized tax regime could perhaps be buffered by the establishment by an already established player at a broad European level (*e.g.*, Euronext) of both a market intended for "large" companies (which would otherwise turn to the American, Hong Kong, Singaporean, and Australian marketplaces) and a growth market intended for "medium-to-small" companies, which would otherwise be relegated to their original home market.

Economic research shows a clear correlation between the size of a market and its depth, level of IPO and liquidity: a unique showcase in which to expose the excellence of the European market, both to European and non-European investors, could reasonably elevate not only the size of the market, but also its liquidity.

We need more competition between stock exchanges where it really matters and less competition where it doesn't.

MARCO VENTORUZZO: Still taking a somehow practical perspective Valentina, I'm coming back to you. We have discussed on many occasions what might be some of the conditions under which both loyalty shares and multiple voting shares might make more sense, might be more attractive, might be more easily understood by the market, for example the case of the charismatic entrepreneur that Andrea Vismara was mentioning before – that

a lot obviously depends on the overall plan. But once again, being somehow in a perspective of looking at a lot of different stories of Italian and not only Italian issuers, what do you think is the most effective way to communicate to investors about the structures? What is the importance of the structures in terms of disclosure and in terms of engagement with investors?

Valentina Allotti: There are two fundamental aspects to consider: on one hand, ensuring transparency in the process of adopting the proposal for the introduction of loyalty shares; on the other hand, strengthening investor engagement in the formulation of proposals.

Regarding the former aspect, the Corporate Governance Code includes a specific recommendation, advising the board to explain to shareholders the rationale behind the choice to adopt loyalty shares scheme by providing information on the expected effects on the company's ownership and control structure, as well as its future strategies[5]. It also suggests that the board should communicate the decision-making process followed in defining the proposal, including any dissenting opinions eventually expressed within the board.

Since the new Code's recommendation was introduced in 2020 and find first application in 2021, the analysis carried out for the Assonime-Emittenti Titoli 2024 Report on Corporate Governance, focused on the 31 listed companies that meet the following criteria: (a) they were already listed when they introduced this instrument; (b) they adhere to the Code; (c) they implemented loyalty shares during the specified period (from 2020 to 2024). The analysis is not based only on Corporate Governance Reports, but it is extended to the relevant documentation provided by the board before the AGM called to express shareholders' vote on the introduction of loyalty shares.

The analysis of the information provided by the board in the 31 companies that have proposed the introduction of loyalty shares during this time span (2020-2024) demonstrates that the board provided information regarding the expected effects on the company's ownership and control structure and future strategies respectively in 78% and 60% of cases (compared to 56% and 37%, respectively, in the period 2020-2023). Ownership structure seems to have an influence considering that more detailed disclosure about both expected effects on company's ownership and control structure and future strategies is provided by companies with a concentrated ownership (respectively, 21 and 16 companies out of 25). About half of reports ensure the disclosure of both information regarding the rationale behind the choice of introducing loyalty shares, i.e. effects on the company's ownership and control structure, on the one side, and on the future strategies, on the other side.

Regarding the disclosure of the decision-making process followed, including the decision-making process and any dissenting opinion from the board members, it emerges that that 75% (vs 56% in the period 2020-2023) of companies provided information, almost always reporting that the board proposal has been supported by the whole board with unanimity. In the remaining 25% (8 cases), no information was provided on the decision-making process.

[5] Corporate governance code, Recommendation 2, Art.1.

Thus, despite the improvement over the years, there is still room for increasing transparency in the process of adoption of loyalty shares scheme.

The most significant room for improvement is probably in investors engagement, the second aspect of our consideration. Engaging with investors may actually play a role since the very beginning in shaping the most appropriate loyalty shares scheme, to accommodate both company's and investors' need. The Corporate Governance Code indicates the way, since it recommends corporate boards to promote dialogue with shareholders and other stakeholders which are relevant to the company in the most appropriate way[6].

MARCO VENTORUZZO: To sum up a little bit the corporate law perspective on this, and then we will shift to a different point of view, I'm coming back to you Andrea. At the end of the day, my question is: do we now have the perfect rules? You've already partially answered before when, if I understood correctly, you expressed some doubts on the fact that the holders of loyalty shares with double vote should be allowed to use the double vote to further multiply their power. So you seem to suggest that some mitigations are desirable, either in the bylaws or in the statutes. But, more generally, I'm asking your take on the provisions as they are written in Legge Capitali: would you be in favor of indicating in the statute itself sunset provisions, or situations where the multiple voting is suspended such as for example for defensive measures in takeover context... In brief, what would be your suggestions?

Andrea Vismara: I think as they're written now, they are too broad, and they give way too much freedom to companies to manage things in a way that can be detrimental to minority investors. I'm not a great fan of sunset clauses, I don't think they really make sense when it comes to loyalty shares because you have votes going up and then coming down. Again, if I go back to what I said before, if I buy the shares of a company because there's an entrepreneur who has multiple voting shares, I want that entrepreneur to be able to execute M&A, to execute large capital raisings if necessary, to dilute himself or herself. So, if I buy, you know, Elon Musk or if I buy Mark Zuckerberg, that's what I buy. If I don't like what they're doing, I can sell. So I think sunset clauses should be something that companies can include in their bylaws, but it should not be made mandatory both at European and Italian level.

Whereas I think that some certain safeguards must be made mandatory at a European level. Earlier I gave the example of using your double vote to then get ten votes, but I can give other examples: for instance, if control of the company is transferred through the sale of multiple voting shares to an external investor, well, we must make sure that all investors will get the same price. And that's not what will happen under the current Italian law.

Also, the point that these control enhancing mechanisms should be made available only before listing. I think it makes sense, and again, I think that's the rule in most Anglo-Saxon markets: loyalty shares are something that is quite rare. They exist in the Netherlands, in France and Italy, and that's pretty much it to my knowledge, whereas multiple voting shares are something that is well defined and clearly understandable by investors.

So I think these are a number of safeguards that could be included and should be included. I think certainly at European level, we should see something that is more

[6] Corporate Governance Code, Principle IV, Art. 1.

ambitious with that regard and at the Italian level, I think the corporate governance code could do much more. I mean, there should be a set of rules that clearly say what the right market practice is for companies to adapt themselves to, in terms of other governance mechanisms, in terms of what they can or cannot do, whether this is specifically forbidden by the law or not.

MARCO VENTORUZZO: That's it's a good idea, also because the corporate governance codes are almost always looking for a new identity, because very often the provisions themselves get stolen away by the legislature and so that might be an interesting task for the code.

Now, last but definitely not least, we open up now to a different perspective, which in fact has not been truly analysed so far but that is, I would say not only important and relevant, but also surprisingly intriguing. So, Fabrizio Sudiero will try to give us his sense, both from a substantive perspective and from a procedural perspective, of these tools – multiple voting shares specifically, but maybe not only – in the context of turnarounds, insolvency procedures, crises. Can they be useful? Can they be dangerous?

Fabrizio Sudiero: It is certainly not easy to answer the question, but the topic is very important, especially in the context of a discussion that intends to deal, at the same time, with competitiveness between legal systems and the need for harmonization between corporate disciplines in the European context, aspects which in fact are not necessarily consistent with each other.

1. The relevance of the crisis law for the shareholders and creditors in the UE.

The typical tension between harmonization within the single market and competitiveness between legal systems is strongly felt in the other fundamental branch of company law, the one that deals with the pathology of its object, i.e. business crisis. It is no coincidence, in fact, that crisis law has been and is at the centre of the European debate as demonstrated for some time, for example, by EU Recommendation 2014/135, Regulation 2015/343 and, most recently, Directive 2019/1023 (so-called Insolvency).

Indeed, taking into account the relevance of corporate crises for the economy of the Single Market, this last Directive aims to «contribute to the proper functioning of the internal market and remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures concerning preventive restructuring, insolvency, discharge of debt, and disqualifications. Without affecting workers' fundamental rights and freedoms, this Directive aims to remove such obstacles by ensuring that: viable enterprises and entrepreneurs that are in financial difficulties have access to effective national preventive restructuring frameworks which enable them to continue operating; honest insolvent or over-indebted entrepreneurs can benefit from a full discharge of debt after a reasonable period of time, thereby allowing them a second chance; and that the effectiveness of procedures concerning restructuring, insolvency and discharge of debt is improved, in particular with a view to shortening their length» (recital n. 1).

No sector, in fact, affects the four fundamental aspects of the corporate phenomenon like that of the business crisis: the entity as debtor, the shareholder-owners, the creditors

and the third stakeholders in general (starting from the workers, the environment and the economic system) and, therefore, the four fundamental dimensions of today's private law, such as the debtor, the creditor, property rights and sustainability.

Not only that, today's crisis law seems to introduce a clear hierarchy between the aforementioned values, in term, first of all, of targets, placing at the top:

(i) going-concern, as a value that allows, at the same time, to pursue the interests of all the aforementioned actors, as demonstrated by the numerous instruments and numerous regulatory benefits for instruments that favor business continuity, even being able to sacrifice the rights of creditors, of the debtor himself and of the owners, but, as will be seen, within the limits of a best interest test (indeed not only of the creditors but also of the owners) (think, for example, of the composition with creditors in business continuity which, unlike of the liquidation one, does not require, for the purposes of admissibility, the contribution of external finance and a minimum satisfaction percentage of the creditors; or, again, to the restructuring agreements which can become as "extended efficacy" and, therefore, a cram down, for creditors dissenting even if not financial intermediaries); in this sense, the recital no. 49 of the Insolvency Directive expressly states that «[t]he going-concern value is, as a rule, higher than the liquidation value because it is based on the assumption that the business continues its activity with the minimum of disruption, has the confidence of financial creditors, shareholders and clients, continues to generate revenues, and limits the impact on workers».

(ii) the debtor whose second chance (and, therefore, discharge of debt), can equally sacrifice the creditors as demonstrated, in any case, by the same institution of debt discharge but also by the numerous instruments of a liquidation nature which under certain conditions can force a cram down; in this sense, the aforementioned recital no. 1 «[w]ithout affecting workers' fundamental rights and freedoms, this Directive aims to remove such obstacles by ensuring that [...] honest insolvent or over-indebted entrepreneurs can benefit from a full discharge of debt after a reasonable period of time, thereby allowing them a second chance».

(iii) the creditor, that are the – objective – cause of the rules and to whose satisfaction the provision are finalized;

(iv) in the background, however, remains the profit and economic interests of the shareholders who, not only find, as residual claimants, already in corporate law a lower asset protection than that of the creditors - as demonstrated by the institution of the subordination loan as per art. 2467 Italian Civil Code and the non-compensation for the so called "reflected damages" as per art. 2395 Italian Civil Code - but in crisis law they know the so-called shift of the fiduciary duties of directors as well as, in the law of today's crisis, the suspension of the general principle of the neutrality of the crisis procedure on the company organizational rules and, therefore, the sacrifice of their own corporate prerogatives.

However, two minimum protection barriers emerge from the regulatory fabric for the more purely proprietary interests of both, namely: (i) of the shareholders, to their contractual position in the company, and (ii) of the creditors in the protection of their credit rights. In this sense, the same recital no. 49: «Member States should ensure that a judicial or administrative authority is able to reject a plan where it has been established that it

reduces the rights of dissenting creditors or equity holders either to a level below what they could reasonably expect to receive in the event of the liquidation of the debtor's business, whether by piecemeal liquidation or by a sale as a going concern, depending on the particular circumstances of each debtor, or to a level below what they could reasonably expect in the event of the next-best-alternative scenario where the restructuring plan is not confirmed. However, where the plan is confirmed through a cross-class cram-down, reference should be made to the protection mechanism used in such scenario. Where Member States opt to carry out a valuation of the debtor as a going concern, the going-concern value should take into account the debtor's business in the longer term, as opposed to the liquidation value».

For creditors the matter appears - conceptually - relatively simple and is not the subject of this contribution. Therefore, just one word is worth mentioning. For them, as anticipated, it is in any case provided, for the purposes of approval and any cram down, passing the so-called "best interest of creditor test", confined, today, to the absence of prejudice compared to the alternative bankruptcy scenario and no longer as it was in the past (at least generally, with some exceptions) to the best satisfaction of creditors.

Instead, it is the position of the shareholders that requires particular attention here.

In particular, not so much the so-called "value monetary nature" of the share (confined, as seen, to the background and to the fact that the members are residual claimants), but the "contractual or participatory" one more intimately connected to their rights deriving from being owners of the shares, i.e. the prerogatives starting from the voting rights and, therefore, also to the possible right to multiple votes.

2. *The articles 120*-bis *and ff. of the Italian Crisis and Insolvency Code ("CCII").*

Not only that, in fact, all shareholders rights could be compressed as demonstrated by the art. 120-bis CCII, with therefore a clear and full possible substantial expropriation, but the very admissibility of this possibility is linked to a mechanism that largely sterilizes private autonomy or, better yet, reduces administrative shareholders prerogatives to a minimum.

I'm referring in particular to articles 120-bis and 120-ter of CCII whereby, in the context of an instrument for regulating business crises and insolvency (for example, composition with creditors, agreement restructuring plan, restructuring plan subject to approval), it is possible to envisage modifications (also to the article of association) capable of directly impacting the participation rights of the members. In such cases the shareholders must necessarily be placed in one or more specific classes and, in each of these, they vote in proportion to the share of legal capital held prior to the application.

Thus, providing with an evidently mandatory rule (also because it is not clear how it could be derogated from it) the sterilization of mechanisms for different vote attribution starting from multiple voting.

Similarly, the shareholders themselves have the right to influence the path by formulating competing proposals to resolve the crisis: even in this case, however, the sterilization of mechanisms for different vote attribution emerges, since legitimation is calculated on the percentage of the legal capital.

The choice of the Italian lawmaker would appear, at first glance (and it does not appear that to date the scholars have specifically dealt with the topic), in line with the European

indications from the two perspectives of crisis and corporate law. In this sense the Insolvency Directive itself.

Thus, at recital no. 47, admits that «requisite majorities should be established by national law to ensure that a minority of affected parties [among which there are also shareholders, defined as "equity holders"] in each class cannot obstruct the adoption of a restructuring plan which does not unfairly reduce their rights and interests. Without a majority rule binding dissenting secured creditors, early restructuring would not be possible in many cases, for example where a financial restructuring is needed but the business is otherwise viable. To ensure that parties have a say on the adoption of restructuring plans proportionate to the stakes they have in the business, the required majority should be based on the amount of the creditors' claims or equity holders' interests in any given class».

Recital 57 further specify that: «While shareholders' or other equity holders' legitimate interests should be protected, Member States should ensure that they cannot unreasonably prevent the adoption of restructuring plans that would bring the debtor back to viability. Member States should be able to use different means to achieve that goal, for example by not giving equity holders the right to vote on a restructuring plan and by not making the adoption of a restructuring plan conditional on the agreement of equity holders that, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied [...] Another possible means of ensuring that equity holders do not unreasonably prevent the adoption of restructuring plans would be to ensure that restructuring measures that directly affect equity holders' rights, and that need to be approved by a general meeting of shareholders under company law, are not subject to unreasonably high majority requirements and that equity holders have no competence in terms of restructuring measures that do not directly affect their rights».

Finally, recital 96 expressly seems to envisage a principle of prevalence of crisis law over corporate law: «[t]he effectiveness of the process of adoption and implementation of the restructuring plan should not be jeopardized by company law»: «[t]herefore, Member States should be able to derogate from the requirements laid down in Directive (EU) 2017/1132 of the European Parliament and of the Council concerning the obligations to convene a general meeting and to offer on a pre-emptive basis shares to existing shareholders, to the extent and for the period necessary to ensure that shareholders do not frustrate restructuring efforts by abusing their rights under that Directive [...] Member States should enjoy a margin of appreciation in assessing which derogations are needed in the context of national company law in order to effectively implement this Directive, and should also be able to provide for similar exemptions from Directive (EU) 2017/1132 in the case of insolvency proceedings not covered by this Directive but which allow for restructuring measures to be taken».

Article 12 (Equity Holders) and article 32 [Amendment of Directive (EU) 2017/1132] of the Insolvency Directive move in this sense.

However, it cannot be omitted to consider that the Insolvency Directive, as seen, not only provides for an express derogation from Directive 2017/1132 alone but is also prior to the upcoming Directive on Multiple voting rights. This seems to provide a minimum principle of protection in the matter, in art. 5, which however seems to be dictated more than

anything for the minority and for the introduction of multiple voting which should therefore not be relevant for the case discussed here of its sterilization in the context of the crisis.

3. *Conclusion. From the re-emergence of the one share-one vote right to the best interest of "contractual shareholder value" – test.*

Given this, therefore, it would seem possible to draw a couple of conclusions or rather final questions that are perhaps useful in this moment of regulatory turmoil and from a *de iure condendo* perspective.

We must wonder, in fact, whether we are faced with the evident and definitive decline of the principle of one share-one vote and with it the property right or whether, rather, precisely in cases in which the essence of participation/share rights and, therefore, the property right is threatened, it re-emerges.

In this way, we should wonder whether we are actually faced with a new pyramidally hierarchical conception of values in crisis law, in which at the top we find going concern and the debtor, then the creditors and the *par condicio* and, finally, the owners, as it would seem at first reading.

In my opinion, the answer does not seem so obvious given that going concern would seem to be achievable, at the cost of predicting a cram down, only, ultimately, passing the best interest of creditor test in terms of non-deteriorating treatment.

Furthermore, it is not clear if that property rights are so recessive. The law does not clarify what happens in the event of a contrary vote by shareholders affected in the non-economic rights (the above mentioned "contractual rights"), because art. 120-quinquies CCII seems to provide for their right to oppose the approval to assert the prejudice suffered with respect to the bankruptcy alternative, but whatever the possible solutions envisaged, what appears evident is that the property right (to be understood on share and, therefore, the so-called "contractual or participatory value") does not appear expendable on the altar of neither creditor rights nor going concern (and therefore, third parties' rights).

In fact, if the best interest of creditor - test (even in terms of non-deteriorating treatment) could make the creditors' position prevail over those of going concern (and therefore, third parties' rights), the best interest of "contractual shareholder value" - test could make their position prevail over that of creditors.

So, it would seem possible to conclude, but the research is necessarily open, that, today, the hierarchical scale of the values of crisis law sees the debtor at the top (and, therefore, the need for constitutional freedom connected to the second chance) and, in the law of corporate crisis, the proprietary rights of shareholders (and, therefore, property), followed by the rights of creditors and, finally, of going concern (and, therefore, sustainability, work, environment, economic system and third parties) that, hence, from a target it ultimately becomes a value, however, in the event of tension with others, expendable. Hence, a possibile order as the following: Freedom, Property (in the double sense related to administrative shareholders right and creditors rights) and Sustainability (Work, Environment, Economic System and third parties in general).

The "reasonable" equilibrium point of the various needs and interests seems to have been found in the one share - one vote principle... To conclude: are we really certain that we

will see on the horizon, where the future of company law lies, the effective sunset of the one share-one vote principle and with it of the ownership in company law?

Perhaps it sets during the brightness of corporate law, but it rises again in the darkness of the crisis.

The Centro Studi d'Impresa – RES is committed to fostering research at the intersection of law and markets, with particular attention to the promotion of a business ethics that is not solely profit-driven but responsive to broader societal interests. Rather than limiting its focus to the current regulatory framework, the Centre encourages a wider perspective that incorporates historical and economic dimensions. This publication series offers a platform for multidisciplinary studies, featuring contributions from academics invited by the Centre to engage with specific, issues.

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