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The Multiple Voting Rights Directive (MVRD) – comeback of multiple voting rights with the Listing Act

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Abstract

A central element of the EU Listing Act is the Multiple Voting Rights Directive (MVRD), for which a provisionally agreed upon text is now available. This paper provides an overview of the background, the origins, and the essential contents of the MVRD and its significance especially from a German perspective.

Keywords: multiple voting rights, MVRD, Listing Act

This paper is a slightly updated and amended version of a German paper entitled „Die Mehrstimmrechte-RL (MVRD): Das Comeback der Mehrstimmrechte mit dem Listing Act“ published in the journal „Betriebs-Berater“ (BB 2024, 643) which is published by dfv Mediengruppe. It has been reprinted with their kind permission.

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The Multiple Voting Rights Directive (MVRD): the comeback of multi-voting rights with the Listing Act**

A central element of the EU Listing Act is the Multiple Voting Rights Directive (MVRD), for which a provisionally agreed upon text is now available. This paper provides an overview of the background, the origins, and the essential contents of the MVRD and its significance especially from a German perspective. 1

I. Background and current status of the legislative process

Multiple voting rights have always been very controversial, not only in Germany, but also on the European level. The main arguments against them are that they lead to a discrepancy between control and economic risk, promote the preservation of existing structures and pose risks to minority shareholders.[1] However, the flexibility they provide argues in favour of allowing multiple voting rights. Securing an influence beyond equity participation can be of particular interest to the founders of a company or to family businesses, especially – but not only – if the company is to be listed on the capital market; in addition, multiple voting rights can serve as protection against hostile takeovers.[2] Most major capital market jurisdictions (e.g. USA, UK, Japan, Hong Kong, Singapore, Switzerland) now allow multiple voting rights. Dual-class share structures were often used in the case of IPOs by so-called "unicorns" in the tech sector, e.g. in 2004 by *Google* (now *Alphabet*), in 2012 by *Facebook* (now *Meta*), or in 2019 by *Zoom*; yet *Berkshire Hathaway*, for example, has had a dual-class share structure since 1996.[3] 2

On the European level, the pendulum of legal policy initially swung clearly in favour of the principle of "one share, one vote" (OSOV): The drafts for a 5th directive on the structure of public limited companies of 1972, 1983, 1990 and 1991 explicitly provided that voting rights were to be proportionate to capital participation.[4] The drafts of the SE Regulation of 1970, 1975, 1989 and 1991 even explicitly stipulated that shares carrying multiple voting rights were prohibited.[5] After a fierce dispute over multiple voting rights[6] in the context of the legislative 3

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[1] For more on the contra arguments: SWD(2022) 762, p. 147 ff.; *Hopt/Kalss* ZGR 2024, 84, 108 ff.; *Kalss,* ZHR 187 (2023) 438, 465 ff. with further references.

[2] In more detail: SWD(2022) 762, p. 145 ff.; *Hopt/Kalss* ZGR 2024, 84, 108 ff.; *Kalss* ZHR 187 (2023) 438, 463 ff. with further references.

[3] Overview: <https://www.cii.org/files/FINAL%20format%20Dual%20Class%20List%203-16-20(1).pdf>.

[4] COM(72) 887; COM(83) 185; COM(90) 629; COM (91) 372; in each case Art. 33(1).

[5] COM(70) 600 (Art. 49(3)); COM(75) 570 (Art. 49(3)); COM(89) 268 (Art. 52(3)); COM(91) 174 (Art. 52(3)).

[6] Directive 2004/25/EC of the European Parliament and of the Council of 21 april 2004 on takeover bids, [2004] OJ L 142/12.

procedure for the Takeover Bids Directive (TBD),[7] the Commission announced in its 2003 Action Plan that it wanted to address the issue of "one share, one vote" in general[8]. However, following a study on the subject[9], it concluded in 2007 that there was no need for any legislative action at EU level.[10]

4 Member States have so far taken quite different approaches to multiple voting rights. Germany had eliminated the possibility of creating new multiple voting rights in 1998 through the KonTraG[11], but has allowed them again with the ZuFinG[12] as of 15 December 2023. Multiple-vote share structures are also permitted in 12 other Member States, they have a long tradition especially in the Nordic Member States.[13] Of the 14 Member States that do not yet allow multiple-vote share structures, three (France, Spain and Belgium) allow at least loyalty shares.[14]

5 Against this background, it is not surprising that the proposal for a Multiple Voting Rights Directive (MVRD) presented by the Commission on 7 December 2022 as part of the Listing Act[15] was very controversial from the outset. After it briefly looked as if the project might fail, it was finally possible to reach an agreement during the trilogue negotiations.[16] On 14 February 2024, the text of the MVRD agreed upon during trilogue negotiations[17] was confirmed by Coreper.[18] Although the MVRD still has to be officially adopted by the Council and the European Parliament, this is likely to be a mere "formality".

6 The aim of the MVRD is to facilitate access to capital markets: Especially in the case of start-ups and companies with long-term projects, shareholders should be able to use multiple voting rights to ensure that they can retain control of the company despite a listing on the capital market.[19] However, the elimination of competitive and locational disadvantages also plays an important role.[20]

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[7] See Lutter /*Bayer/J. Schmidt*, Europäisches Unternehmens- und Kapitalmarktrecht, 6th ed. 2018, 28.3, 28.76 with further references.
[8] COM(2003) 284, 3.1.2.
[9] *Shearman & Sterling LLP, ISS Europe, ECGI,* Report on the Proportionality Principle in the European Union (<https://ecgi.global/sites/default/files/final_report_en.pdf>).
[10] SEC(2007) 1705, p. 6.
[11] Gesetz zur Kontrolle und Transparenz im Unternehmensbereich (KonTraG) v. 27.4.1998, BGBl. I, 786.
[12] Gesetz zur Finanzierung von zukunftssichernden Investitionen (Zukunftsfinanzierungsgesetz – ZuFinG) v. 11.12.2023, BGBl. I Nr. 354.
[13] See SWD(2022) 762, p. 138 ff. (it speaks of a total of 12 Member States, because Germany did not yet allow multiple voting rights at that time). Specifically on the situation in the Nordic Member States see e.g. *Hansen* NTS 2023, Nr. 1, p. 6 ff.
[14] See SWD(2022) 762, p. 138 ff.
[15] Proposal for Directive 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, COM(2022) 761. See on this *Bonneau* Rev. soc. 2023, 135 ff.; *Gumpp* BKR 2023, 82, 88 f.; *Hansen* NTS 2023, Nr. 1, p. 1 ff.; *Hopt/Kalss* ZGR 2024, 84, 89 ff.; *Kumpan/Pauschinger* EuZW 2023, 446, 449 ff.; *Kuthe* ZIP 2023, 773, 777 f.; *Lecourt* Rev. soc. 2023, 124 ff.; *Müller* Rev. soc. 2023, 455 ff.; *Schlitt/Ries* NZG 2023, 145; *J. Schmidt* BB 2023, 1859, 1868 f.
[16] Council Press Release 60/24.
[17] ST 6524/24. In the course of the legal/linguistic review, there may still be editorial adjustments (in particular to the numbering of the provisions).
[18] See on this *J. Schmidt* ECCML-Blog of 15 February 2024 (<https://www.eccml.net/eulistingactadopted/>).
[19] Cf. recital 1-2 MVRD.
[20] See on this SWD(2022) 762, p. 140 ff.

II. Scope

The scope of application of the MVRD is linked to the objective of facilitating access to the capital market and is quite narrow. 7

Firstly, the MVRD only applies to multiple-vote shares, i.e. shares belonging to a specific and separate class that carry more voting rights per share than another class of shares with voting rights on matters to be decided by the general meeting (Art. 2(b) MVRD). A multiple-vote share structure within the meaning of the MVRD exists if the share structure of a company contains at least one class of multiple-vote shares (Art. 2(c) MVRD). The MVRD therefore addresses not only classic "dual-class share structures", but also share structures with several different categories of multiple voting rights. By contrast, loyalty shares and other control enhancing mechanisms (such as non-voting shares or shares with a veto right on certain decisions) were deliberately excluded from the scope of the MVRD.[21] 8

Secondly, the MVRD generally only applies[22] to multiple-vote share structures in companies that seek admission to trading of their shares on an MTF and that do not have shares already admitted to trading on an MTF or regulated market (cf. Art. 1(1), Art. 2(a), (fa) MVRD). The Commission's draft even wanted to cover only SME growth markets[23], whereas the European Parliament wanted to cover not only all MTF, but also regulated markets.[24] In the end, a compromise was reached to the effect that all MTF within the meaning of Art. 4(1) point (22) MiFID II[25] are covered (cf. Art. 2(fa) MVRD). 9

Whereas according to the Commission's draft, only companies within the meaning of Annex I CLD[26] would have been covered (i.e. only public limited companies)[27], the MVRD now covers all companies within the meaning of Annex II CLD which may under national law issue shares and seek admission to trading of their shares on an MTF (Art. 2(a) MVRD). This takes into account the fact that some Member States (e.g. the Netherlands[28], Belgium[29]) have for some time allowed shares of private limited companies to be traded on the capital markets.[30] In Germany, however, only AG and KGaA are covered, because GmbH shares cannot be traded on capital markets[31]. However, via the relevant references in the SE Regulation[32], the national provisions implementing the MVRD will also apply to SE. 10

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[21] Cf. recital 4-5 MVRD.
[22] An exemption is Art. 6(2) MVRD (identification of multiple-vote share structures, see V.2.c)).
[23] COM(2022) 761, Art. 1.
[24] JURI report, A9-0300/2023, Art. 1.
[25] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast); last amended by Directive (EU) 2024/790, OJ L 2024/790, 8.3.2024.
[26] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), [2017] OJ L 169/46; last amended by Regulation (EU) 2021/23, [2021] OJ L 22/1.
[27] COM (2022) 761, Art. 2(a).
[28] Article 2:195 of the Dutch Civil Code. See on this *Hirschfeld,* RIW 2021, 134, 136; *Vreeman,* (2012) 9 ECL 305, 306; *Van Delft/Renssen,* (2023) 20 ECJ 1, 5.
[29] Art. 5:2 of the Companies and Associations Code. See on this *Culot,* trv-rps 2019, 443 ff.; *Houben/Meeusen,* ZEuP 2020, 11, 17; *van der Elst,* (2020) 17 ECL 25, 32.
[30] See ST 8192/23, p. 3.
[31] See only: MüKoGmbHG/*Weller/Reichert,* 4th ed. 2022, § 15 para. 16 with further references.
[32] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), [2001] OJ L 294/1.

III. Adoption of new multiple-vote share structures

1. Adoption of multiple-vote share structures in the context of admission to trading on an MTF

11 In accordance with its narrow scope, the MVRD only requires Member States to allow multiple-vote share structures within a limited framework. The only mandatory requirement is that companies that do not have shares that are already admitted to trading on a regulated market or an MTF shall have the right to adopt a multiple-vote share structure or modify an existing multiple-vote share structure for the admission to trading of their shares on an MTF (Art. 4(1) subparagraph 1 sentence 1 and Art. 4(5) MVRD).

12 It must be possible to adopt a multiple-vote share structure prior to seeking admission to trading on an MTF (Art. 4(2) MVRD) and the operator of an MTF may not prevent the admission to trading because of the multiple-vote share structure (Art. 4(4) MVRD). However, Member States may make the exercise of the enhanced voting rights attached to the multiple-vote shares conditional upon the shares being actually admitted to trading on an MTF (Art. 4(3) MVRD) – and thus ensure that multiple voting rights are in fact used specifically to promote the admission to trading on an MTF[33]. On the other hand, it is expressly prohibited to make the adoption of multiple-vote share structures conditional upon the provision of enhanced economic rights for shares without enhanced voting rights (Art. 4(1) subparagraph 1 sentence 3 MVRD).

13 The MVRD does not explicitly address the question of whether multiple-vote share structures must be permitted in this context only in the case of registered shares or also in the case of bearer shares. On the one hand, this could be understood as meaning that where a Member State's legal system provides for both registered shares and bearer shares, this Member State must allow multiple-vote share structures within the framework specified by the MVRD for both types of shares. However, the overall design and genesis of the MVRD suggest that the MVRD ultimately only requires that companies can introduce multiple-vote share structures in order to seek admission to trading on an MTF – if a Member State permits this at least in case of registered shares, this possibility exists. This is also supported by the definition of the term "company" in Art. 2(a) MVRD, which refers to national law. In addition, in light of the fact that the new Anti-Money Laundering Directive (AMLD6), which has just been adopted[34] , restricts bearer shares quite significantly (see Art. 58(3)), it would be downright paradoxical if the MVRD were to prescribe the admission of bearer shares with multiple voting rights.

14 Conversely, as the MVRD requires to allow multiple-vote share structures only to the narrowly limited extent described above, it leaves Member States free to allow multiple-vote share structures to a greater extent, e.g. also for seeking admission to trading on a regulated market or, generally also for companies whose shares are not admitted to trading on a capital market (cf. recital 8 sentences 1-2 MVRD).

15 In Germany, the ZuFinG generally permits multiple voting rights for all AG, KGaA and SE – regardless of their listing on a capital market (cf. §§ 12 sentence 2, 135a(1) sentence 1 AktG[35]). It should be appreciated the German legislator goes beyond what the MVRD requires in this

[33] Cf. recital 9a sentence 5 MVRD.
[34] Text agreed upon in the trilogue: ST 6713/24.
[35] Aktiengesetz v. 6.9.1965, BGBl. I, 1089 (as amended); current version available at <https://www.gesetze-im-internet.de/aktg/BJNR010890965.html>.

respect, because multiple-vote share structures can also be very interesting as an instrument for companies whose shares are not admitted to trading on the capital markets, e.g. in the case of family businesses. As explained above, the fact that § 135a(1) sentence 1 AktG only permits multiple voting rights in the case of registered shares is in conformity with the MVRD. In this respect, the MVRD does therefore not require any amendments to German law.

2. Majority Requirements

Since the adoption of multiple-vote share structures normally requires an amendment of the articles of association and is also of considerable importance[36], the MVRD requires that both the initial adoption of new multiple-vote share structures and the modification of existing multiple-vote share structures require a resolution of the general meeting, which must be passed by at least a qualified majority as specified in national law (Art. 4(1) subparagraph 1 sentence 2, Art. 4(5) and Art. 5(1)(a) MVRD). In addition, if there are several classes of shares, the decision to adopt a multiple-vote share structure shall also be subject to a separate vote in each class of shares the rights of which are affected (Art. 4(1) subparagraph 2, Art. 4(5) and Art. 5(1)(a) MVRD). A class is considered to be "affected" if the decision has a negative impact on the rights of shareholders in that specific class of shares.[37] 16

On the one hand, this requirement of a (possibly "double") qualified majority ensures a high standard of protection for minority shareholders. On the other hand, the MVRD thus opens up at least a realistic chance of being able to introduce multiple-vote share structures in the context of a later amendment to the articles of association. However, as it is explicitly only a minimum standard, Member States may also impose stricter requirements. 17

Hence, the German requirement of the consent of all affected shareholders for the adoption of multiple voting rights (§ 135a(1) sentence 3 AktG) is in conformity with MVRD. However, at least in the case of large publicly held companies, this means that the adoption of multiple voting rights will in practice probably only be possible when the company is first incorporated; in most cases, it will hardly be possible to obtain the necessary consent of all affected shareholders in the context of a later amendment to the articles of association.[38] In this respect, the MVRD should give the German legislature reason to reconsider this point and to allow the adoption of multiple voting rights by a qualified majority *de lege ferenda*. 18

IV. Safeguards in favour of minority shareholders

In view of the dangers associated with multiple-vote share structures for minority shareholders, appropriate safeguards are required in this respect. As regards their design, the Commission, the Council, and the European Parliament had rather different ideas. In the end, they agreed on a minimum standard that allows Member States to choose between two different instruments to limit the impact of multiple-vote share structures on the decision-making process at the general meeting: (i) maximum voting ratio or (ii) special rules for qualified majority 19

[36] Cf. recital 9 MVRD.

[37] Cf. recital 11a sentence 3 MVRD.

[38] See critically also e.g., *Ceesay* Max Planck Private Law Research Paper No. 23/20, IV.2.a; *DAI,* opinion of 10.5.2023, 1.2.1; *Florstedt* NZG 2024, 139, 142; *Harnos* AG 2023, 348, 350; *Kalss* ZHR 187 (2023) 438, 492; *von der Linden/Schäfer,* DB 2023, 1077, 1078; Gebhard /*Herzog* ZIP 2023, 1161, 1164; *Hopt/Kalss* ZGR 2024, 84, 140; *Seidel* NZG 2023, 1205, 1211; see also *Wittig/Hummelmeier* WM 2024, 332, 335.

decisions (Art. 5(1)(b) MVRD, see IV.1). In addition, Member States are explicitly allowed to provide for additional safeguards (see IV.2).

1. Minimum standard

a) Alternative 1: maximum voting ratio

20 The first alternative is to set a maximum voting ratio (Art. 5(1)(b)(i) MVRD). The European Parliament had proposed to set specific targets in this regard (between 1:2 and 1:12).[39] However, the finally agreed upon version does not provide for this. The Member States are therefore completely free in setting the maximum voting ratio. Hence, theoretically, a Member State could, for example, set it at 1 to 1 million (although one could at least doubt whether this still ensures the *effet utile* of EU law).

b) Alternative 2: Special rules for qualified majority decisions

21 The second alternative is to lay down stricter requirements for the decisions of the general meeting subject to a qualified majority of the votes cast as specified in national law (Art. 5(1)(b)(ii) MVRD). In this respect, Member States again have a choice between two options: in addition to a qualified majority of the votes cast, they can require either (1) a qualified majority of the share capital represented at the meeting or of the number of shares represented at the meeting, or (2) a separate vote in each class of shares the rights of which are affected. The specific level of qualified majority is left to national law.

22 However, two types of decisions are expressly excluded: on the one hand, the appointment and dismissal of members of the administrative, management and supervisory bodies of the company and, on the other hand, operational decisions to be taken by such bodies which are submitted to the general meeting for approval. With respect to these two types of decisions, the Member States can therefore allow unrestricted use of multiple voting rights.

2. Optional: further safeguards

23 Art. 5(2) sentence 1 MVRD expressly permits Member States to provide for further safeguards to ensure adequate protection of the interests of shareholders who do not hold multiple-vote shares. Art. 5(2) sentence 2 MVRD lists three different types of sunset clauses as examples: transfer-based, time-based, and event-based sunset clauses. However, Member States may also provide for other safeguards, such as a restriction of multiple voting rights in case of certain decisions.

3. No mandatory ESG link

24 The Commission and the European Parliament had linked the safeguards with the general ESG agenda. In the Commission's draft, this was limited to specifying that Member States could provide for a requirement to ensure that the enhanced voting rights cannot be used to block the adoption of decisions by the general shareholders' meeting aiming at preventing, reducing or eliminating adverse impacts on human rights and the environment related to the company's operations.[40] The European Parliament wanted to go much further by requiring that the use of enhanced voting rights attached to multiple-vote shares be excluded in case of resolutions tabled by a minority of shareholders in particular on matters related to the impact of

[39] JURI report, A9-0300/2023, Art. 5(1)(a).
[40] COM (2022) 761, Art. 5(2)(d).

the company's operations on human rights and the environment.[41] Both proposals would have been very problematic because, in the end, there will not be any resolution that is not in some way related to the impact of company's activities on human rights and the environment.[42] Multiple voting rights would thus be significantly devalued.[43] Furthermore, this leads to the fundamental question of whether it makes sense at all to instrumentalise company law for the protection of human rights and the environment[44] – but that is a separate issue.

Fortunately, both proposals were not included in the text finally agreed upon. Yet, a relic of these efforts can still be found in recital 13c MVRD – though this is limited to a mere declaration of intent: It is important that enhanced voting rights attached to multiple-vote shares are not used to prevent the company's compliance with any applicable EU environmental or fundamental rights law. However, it should be a matter of course that companies must comply with the applicable legal requirements. 25

4. Significance from a German perspective

German law not only already meets the minimum standard established by the MVRD, but even goes far beyond it. 26

On the one hand, there is a maximum voting ratio of 1:10 (§ 135a(1) sentence 2 AktG); thus the first alternative of the minimum standard (Art. 5(1)(b)(i) MVRD) is fulfilled. 27

On the other hand, German law also fulfils the second alternative of the minimum standard (Art. 5(1)(b)(i) MVRD). All amendments to the articles of association as well as all fundamental decisions and structural decisions require not only a simple majority of votes (§ 133(1) AktG), but also a qualified majority of ¾ of the share capital represented (see §§ 179(2) sentence 1, 179a(1) sentence 1, 293(1) sentence 2 AktG; §§ 65(1) sentence 1, 240(1) sentence 1 UmwG); plus, where applicable, they also require a separate vote in each class of shares (§§ 179(2) sentence 1, 179(3), 179a(1) sentence 1, 293(1) sentence 2 AktG; §§ 65, 240(1) sentence 1 UmwG). The few cases in which German law only requires a qualified majority of the votes (§§ 103(1) sentence 2, 111(4) sentence 4 AktG) fall under the exception clause of the second alternative of the minimum standard. 28

In addition, German law provides for various other safeguards. Firstly, multiple voting rights do not confer enhanced voting rights in case of the appointment of auditors and special auditors (§ 135a(4) AktG); as these resolutions also serve to protect minority shareholders, it seems sensible to prevent shareholders from using multiple voting rights to block them[45]. 29

Secondly, sunset clauses apply with respect to multiple voting rights in listed companies and companies whose shares are traded on the "Freiverkehr" (open market). On the one hand, multiple voting rights expire in the event of a transfer of the share (§ 135a(2) sentence 1 AktG). This is based on the idea that the enhanced voting rights would then lose their justification.[46] If one sees multiple voting rights as a special privilege for founders and initiators, this argument may seem plausible at first glance. However, in the case of family businesses, this eliminates the possibility of transferring multiple voting rights to the next generation by way of 30

[41] JURI report, A9-0300/2023, Art. 5(1)(ba).
[42] Cf. *Joint Statement of Nordic Company Law Scholars*, N&ECL 24-01, p. 4; critial with regard to the ambiguities this raises *also ECLE,* OBLB 5.9.2023; *Handelsrechtsausschuss des DAV*, Opinion 11/2023, p. 21.
[43] See *Joint Statement of Nordic Company Law Scholars*, N&ECL 24-01, p. 4.
[44] Rightly critical in this respect also *Hansen,* NTS 2023, Nr. 1, 11 ff.; *Hopt/Kalss* ZGR 2024, 84, 91.
[45] See BegrRegE ZuFinG, BT-Drs. 20/8292, p. 114.
[46] BegrRegE ZuFinG, BT-Drs. 20/8292, p. 113.

inheritance or even *inter vivos*.[47] In addition, this transfer-based sunset clause also leads to numerous follow-up questions. For example, do the enhanced voting rights also expire if the shareholders of a legal entity that holds shares conferring multiple voting rights change?[48] What are the consequences of all this in the context of takeover law?[49]

31 On the other hand, multiple voting rights generally expire 10 years after listing on the stock exchange or admittance to the "Freiverkehr" (open market); however, an extension to a maximum of 20 years is possible (§ 135a(2) sentences 2-7 AktG). This is intended to ensure that asymmetric control through multiple voting rights does not continue forever; according to the legislator, 10 years is sufficient time for the founders to be able to implement their vision.[50] However, it may be the case that the founders have a longer-term vision that will not be fully implemented in 10 or even 20 years; moreover, this limit is also problematic for family businesses. It would have been sufficient to allow including a time-based sunset clause into the articles of association.[51]

32 The safeguards provided for in German law are therefore all in conformity with the Directive. Nevertheless, the German legislature should take the MVRD as an opportunity to reconsider its overall very restrictive set of safeguards. In light of the high standard of protection offered by the special majority requirements as well as the comprehensive transparency requirements (see V.) it would be preferable to leave setting the voting ratio[52] as well as the possibility to lay down sunset clauses[53] to the articles of association.

V. Transparency

33 In addition, the European legislator appropriately relies on protection through transparency.

1. Transparency requirements for multiple voting rights in the *acquis unionaire*

34 Due to their function as defence mechanisms against takeovers, knowledge of multiple voting rights structures is particularly important in connection with takeovers – both for the bidder and for the shareholders of the target company itself.[54] Since 2004, Art. 10(1)(a) and Art. 10(2) TBD have therefore required the disclosure of multiple voting rights in the (consolidated) management report. In German law, this is implemented in § 289a sentence 1 no. 1 and § 315a sentence 1 no. 1 HGB[55].

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[47] *Handelsrechtsausschuss des DAV,* Opinion 29/2023, para. 50; *Hopt/Kalss* ZGR 2024, 84, 137.

[48] See on this *Ceesay,* Max Planck Private Law Research Paper No. 23/20, V.2.a; *Gebhard/Herzog,* ZIP 2023, 1161, 1164.

[49] See *Ceesay,* Max Planck Private Law Research Paper No. 23/20, V.3; *Denninger/von Bülow* AG 2023, 417 ff.; *Gebhard/Herzog,* ZIP 2023, 1161, 1164; *Handelsrechtsausschuss des DAV,* Opinion 29/2023, para. 51; *Wittig/Hummelmeier*, WM 2024, 332, 338 f.

[50] BegrRegE ZuFinG, BT-Drs. 20/8292, p. 113.

[51] Likewise *DAI,* statement of 10.5.2023, p. 17; *Handelsrechtsausschuss des DAV,* Opinion 29/2023, para. 48; at least for non-listed companies: *Ceesay,* Max Planck Private Law Research Paper No. 23/20, V.3; *Gebhard/Herzog,* ZIP 2023, 1161, 1164.

[52] Likewise *Handelsrechtsausschuss des DAV,* Opinion 29/2023, para. 43.

[53] See also the references in footnotes 47 and 51 as well as *Florstedt*, NZG 2024, 139, 144.

[54] Cf. *Lutter/Bayer/J. Schmidt*, Europäisches Unternehmens- und Kapitalmarktrecht, 6th ed. 2018, 28.132 with further references.

[55] Handelsgesetzbuch v. 10.5.1897, RGBl. S. 219 (as amended); current version available at <https://www.gesetze-im-internet.de/hgb>.

With Art. 5(4)(b) SRD[56] (implemented in German law § 124a sentence 1 no. 4 AktG), the European legislator also ensured as early as 2007 that shareholders of listed companies receive up-to-date information on the existence and scope of multiple-vote share structures in advance of each annual general meeting so that they can assess the determining factors for upcoming resolutions. 35

All companies within the meaning of Annex I CLD (i.e. public limited companies) are also required to disclose the existence of multiple voting rights either in the articles of association or in a separate document (Art. 4(e) CLD). 36

In addition, the Prospectus Regulation requires[57] information on the rights associated with the securities – including multiple voting rights – in the prospectus.[58] 37

However, these disclosure obligations apply either only to companies whose shares are admitted to trading on a regulated market (TBD and SRD) or public limited companies (Art. 4(e) CLD) or where publication of a prospectus is required. 38

2. Additional transparency requirements pursuant to the MVRD

The MVRD therefore now establishes new disclosure obligations in the area of capital markets law, which are specifically tailored to the situations covered by the MVRD and also require more comprehensive information. This is intended to ensure that (potential) investors can make an informed investment decision about whether they want to become shareholders of a company with a multiple-vote share structure; this serves both investor protection and market efficiency.[59] 39

a) Disclosure prior to admission of shares to trading

Firstly, companies that have multiple-vote share structures and whose shares are to be traded or are traded on an MTF shall disclose certain information in the prospectus or admission document – depending on what the company uses, in the prospectus pursuant to Art. 6 Prospectus Regulation, in the (newly created) EU growth issuance prospectus pursuant to Art. 15a Prospectus Regulation, in the admission document pursuant to Art. 33(3)(c) MiFID II or in any admission document required by national law or by the rules of the relevant MTF (Art. 6(1), (1a) MVRD). 40

Among the items to be disclosed listed in Art. 6(1b) MVRD is first and foremost the company's share structure (Art. 6(1b)(a) MVRD). The different classes of shares (including those that are not admitted to trading), the respective rights and obligations, the percentage of total share capital or total number of shares and total number of votes that the shares represent shall be indicated. 41

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[56] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, [2007] OJ L 184/17; last amended by Directive (EU) 2023/2864, OJ L 2023/2864, 20.12.2023.

[57] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC [2017] OJ L 168/12; last amended by Regulation (EU) 2023/2869, OJ L, 2023/2869, 20.12.2023.

[58] See Art. 6(1)(b), Art. 7(7)(a)(iii), (12) subparagraph 3 (c) (iii), Art. 14(2)(b), Art. 14a(2)(b), Art. 15(2) subparagraph 5, annex III (IV)(E), annex V (III) EU Prospectus Regulation; in the future: Art. 6(1)(b), Art. 7(7)(a)(iii), (12b) subparagraph 3 (c)(iii), Art. 14b(2)(b), Art. 15a(2)(b) Prospectus Regulation (see ST 6249/24).

[59] Cf. recital 13 sentence 2 MVRD.

42 Furthermore, any restrictions on the transfer of shares and any restrictions on voting rights, including those resulting from shareholder agreements known to the company, must also be disclosed (Art. 6(1b)(b) and (c) MVRD). Restrictions on voting rights cover, for example, maximum voting rights, deadlines for exercising voting rights, or systems whereby financial rights to shares are separated from the holding of shares.[60]

43 In addition, information on the identity of shareholders holding multiple-vote shares is required. The Commission's draft had required this for all shareholders holding multiple-vote shares.[61] This was a particularly sensitive point in the legislative process and was viewed critically not only by the EDPS[62] but also by many Member States[63]. The disclosure requirement has therefore now been limited to shareholders of multiple-vote shares representing more than 5 % of the voting rights of all shares in the company and is also subject to the proviso that the identity of the respective shareholder is known to the company (Art. 6(1b)(e) MVRD). Like in the Commission's draft, the identity of the natural or legal person entitled to exercise voting rights on behalf of such shareholders, if applicable, must also be indicated. At least in the case of such larger holdings of multiple-vote shares, the European legislator considers such disclosure to be necessary in order to enable potential investors to make an informed investment decision and thus to increase confidence in functioning capital markets as a whole.[64] However, in accordance with the principle of data minimisation, only the name of natural persons must be provided (and not, for example, their address or date of birth).[65] Anyone who wants to secure control of a company through a large package of multiple-vote shares even after going public on an MTF will in the future be able to do so only at the price of disclosing their identity. This seems appropriate, considering that in the case of companies listed on a regulated market, shareholdings of 5 % or more of the voting rights have been subject to disclosure requirements for years (Art. 9 Transparency Directive[66]) and that the Member States can set even lower reporting thresholds (Art. 3(1a) subparagraph 4 (i) Transparency Directive)[67].

b) Disclosure in the annual financial report

44 In case of any changes to the information listed in Art. 6(1b) MVRD after admission to trading, companies must publish this information in the annual report pursuant to Art. 78(2)(g) Delegated Regulation (EU) 2017/565[68] (if their shares are traded on an SME growth market) or in any annual financial report required by national (if their shares are traded on an MTF) (Art. 6(1)(b), (1a)(b) MVRD)). This ensures that shareholders, investors, and the market are

[60] Cf. recital 13a sentence 2 MVRD.
[61] COM(2022) 761, Art. 6(1)(e).
[62] EDPS Opinion 4/2023.
[63] See ST 16047/23, paragraph 15.
[64] See recital 13a sentences 5-6 MVRD.
[65] See recital 13a sentence 4 MVRD; see also EDPS Opinion 4/2023, p. 6.
[66] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, [2004] OJ L 390/38; last amended by Directive (EU) 2023/2864, OJ L 2023/2864, 20.12.2023.
[67] § 33 (1) sentence 1 of the WpHG (Fn. 70) requires a notification even in case of 3 %.
[68] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, [2017] OJ L 87/1; last amended by Del. Regulation (EU) 2021/1254, [2021] OJ L 277/6.

also informed if there are any changes in relation to the information listed in Art. 6(1b) MVRD after admission to trading.

c) Identification of multiple-vote share structures ("marker")

In addition, shares in companies with multiple-vote share structures will be required to have a special "label" in order to be able to identify them clearly, quickly and unambiguously (Art. 6(2) MVRD).[69] In contrast to the rest of the MVRD, this applies not only to companies within the meaning of Annex II CLD that seek the admission of their shares to trading on an MTF, but also to all companies whose shares are already admitted to trading on an MTF (cf. Art. 1(2), Art. 2(a) MVRD). 45

This takes up a proposal by the European Parliament, which had suggested the designation "WVR" for "weighted voting rights". However, since it was apparently not possible to reach a consensus on this, Art. 6(2a) MVRD now provides that the details will be regulated by RTS to be drafted by ESMA. Yet, as recital 13b sentence 2 MVRD shows, it is still envisaged to include a marker in the stock name of the companies concerned. The MTF operators will be required to use this marker and the companies concerned must inform the MTF operators of any multiple-vote share structures (Art. 6(2) MVRD). 46

Provided that the details are regulated pragmatically, on principle, such a "multiple-vote share label" seems to be a good idea to ensure that all market participants can identify multiple-vote share structures quickly, easily, and reliably. Everyone can then decide for themselves whether they perceive this "multiple-vote share label" as a "warning signal" or as a "hallmark of excellence". 47

d) Significance from a German perspective

Although the ZuFinG has created additional disclosure obligations for multiple voting rights in § 41(1) sentence 1 and § 49(1) sentence 1 WpHG[70], German law does not yet provide for transparency requirements that comply with Art. 6 MVRD. Hence, it is necessary to amend German law in this respect. 48

VI. Summary and conclusions

1. The MVRD only requires Member States to allow multiple-vote share structures within a very limited scope: for companies seeking the admission of their shares to trading on an MTF for the first time. 49
2. As a minimum standard for the adoption of new or the modification of existing multiple-vote share structures, the European legislator requires a qualified majority and, where applicable, a special resolution in each class of shares the rights of which are affected. On the one hand, this ensures a high standard of protection, but on the other hand, the adoption of multiple-vote share structures remains feasible.

[69] See also recital 13b sentence 1 MVRD.

[70] Gesetz über den Wertpapierhandel (Wertpapierhandelsgesetz – WpHG) i.d.F.d. Bekanntmachung v. 9.9.1998, BGBl. I, 2708 (as amended); current version available at <https://www.gesetze-im-internet.de/wphg/BJNR174910994.html>.

3. With regard to safeguards for minority shareholders, the MVRD also only establishes a minimum standard, allowing Member States to choose between two instruments: a maximum voting ratio or special rules for qualified majority decisions.
4. At the same time, the European legislator appropriately relies on comprehensive transparency both in the context of admission to trading and in the case of subsequent changes; in addition, there will be a special marker in the stock name of the companies concerned.
5. Against the background of the quite different approaches in the Member States with regard to multiple-vote share structures, the MVRD overall only creates a basic harmonisation with a narrowly limited scope of application, which leaves Member States a great deal of room for manoeuvre. This may be seen as regrettable from the perspective of harmonisation. However, this approach has the advantage that, on the one hand, even Member States that have so far been sceptical will have to allow multiple-vote share structures at least within certain limits, and, on the other hand, Member States that want to (continue) to allow multiple-vote share structures to a larger extent will not be unduly restricted. In the end, regulatory competition will let the market decide what is best and this can then be incorporated into the review of the MVRD.
6. From a German perspective, the implementation of the MVRD will necessitate only new transparency requirements. However, the German legislator should take the generally very liberal framework of the MVRD as an opportunity to reconsider the restrictive legal framework created by the ZuFinG.
7. Multiple-vote share structures present many interesting options. The MVRD is a building block for making European capital markets more attractive; however, on its own, it is unlikely to trigger a “capital market boom”.