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Once Bitten, Twice Shy –
Multiple Voting Shares in Continental Europe

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Abstract

Over the last decade, several jurisdictions in continental Europe have somewhat lifted regulatory restrictions on multiple voting shares (MVS), in the form of dual-class share structures and/or loyalty shares. Though more heterogenous than coherent, all such reforms have been overly conservative and fall short of allowing the legal freedom of jurisdictions such as the United States and United Kingdom. In a globalized environment of regulatory and stock-exchange competition, this approach may be difficult to understand. This paper explores the reasons for the common conservative approach, which appear to lie mostly in early 20th century experiences of multiple voting rights in countries such as France, Germany, and Italy. For comparative purposes, the paper also investigates the completely different experience of the United Kingdom, where a liberal MVS framework produced distinct outcomes.

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1. Introduction

Strict prohibitions on multiple voting shares (MVS) have been somewhat relaxed in continental Europe over the last decade, with regulations allowing dual-class share structures and/or loyalty shares. Relevant legislation includes, *inter alia,* Law n.º 116 of 2014 in Italy *(Decreto Competitività)*; Law n.° 2014-384 of March 29, 2014, in France *(Loi Florange)*;[1] the new Belgian Code of Companies and Associations, approved in 2019; Law 5/2021, of April 12, introducing the new article 527 *ter* to the Spanish *Ley de Sociedades de Capital*; and Law n.º 99-A/2021, of December 31, which revised Portugal's Securities Code *(Código de Valores Mobiliários)*.[2]

In September 2022, the European Commission published its second action plan on the Capital Markets Union.[3] One proposed legislative initiative, which followed in December 2022, is a directive on MVS structures in companies that seek admission to trading of their shares on a small and medium-sized enterprise (SME) growth market.[4] As the explanatory memorandum reasons, minimum harmonization is needed because exclusive regulation of MVS structures at national level creates an uneven playing field for companies in different Member States:

> Entrepreneurs and companies from Member States, that prohibit multiple-vote share structures, are at a comparative disadvantage with companies from Member States that permit multiple-vote share structures. Entrepreneurs and

[1] Loyalty shares were already authorized in France before the *Loi Florange*, which changed the default voting system for listed companies to tenure voting.

[2] Other countries such as Sweden, Finland, and Denmark have a long tradition of dual-class structures. According to the 2007 *Report on the proportionality principle in the European Union,* the majority of listed companies in Sweden issue listed ordinary Series B shares with one vote each and Series A shares with ten votes each; in Finland and Denmark, companies also issue A shares and B shares with different voting rights, and it is only mandatory to list the B shares. Shearman & Sterling, ECGI et al., *Report on the proportionality principle in the European Union* (2007)., 27.

[3] Nicolas Véron and Guntram B Wolff, "Capital Markets Union: a vision for the long term", *Journal of Financial Regulation*, no. 1 (2016); Teemu Juutilainen, "The EMU Rationale for Capital Markets Union", *European Papers-A Journal on Law and Integration* 2021, no. 3 (2022).

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0761. Article 2 of the proposed directive defines a "multiple-vote share structure" as a company share structure containing at least one class of shares belonging to a separate class and carrying higher voting rights at the shareholders meeting compared to another class of shares with voting rights.

companies looking to introduce multiple-vote share structures and benefit from the flexibility are faced with a choice of remaining private or moving to another Member State (or a non-EU country), thus restricting their choice of funding and increasing their cost of capital.

This seemingly coordinated regulatory movement is far from coincidental and is the consequence of a combination of common causes.

First, it is the result of regulatory competition between European jurisdictions since the European Court of Justice ruled that the real seat theory is incompatible with freedom of establishment rules.[5] A notable example of the effects of this regulatory competition is the Chrysler–Fiat merger in 2014, particularly the shocking decision to transfer the registered office of an iconic Italian company to the Netherlands.[6] In February 2020, Campari (Davide Campari-Milano S.p.A) announced that it had also decided to transfer its registered office to the Netherlands.[7] These are just two of many similar examples of delocalization by European companies caused, at least partly, by regulatory reasons (including tax).

The second, and related, explanation is the fierce competition between stock exchanges striving to attract company listings, at a time when peripheral markets have

[5] *Centros* (1999 - Case C-212/97) and *Überseering* (2002 - Case C 208/00) decisions. Simon Deakin, "Legal diversity and regulatory competition: which model for Europe?", *European Law Journal* 12, no. 4 (2006); Klaus Heine and Wolfgang Kerber, "European corporate laws, regulatory competition and path dependence", *European Journal of Law and Economics* 13, no. 1 (2002); Daniel C Esty and Damien Geradin, *Regulatory competition and economic integration: comparative perspectives* (Oxford University Press, 2001).

[6] The close relation between the Chrysler–Fiat merger and the approval of the *Decreto Competitità* is undisputed. Marco Ventoruzzo, "The disappearing taboo of multiple voting shares: regulatory responses to the migration of Chrysler-Fiat", *Bocconi Legal Studies Research Paper*, no. 2574236 (2015); Emiliano Marchisio, "La maggiorazione del voto", in *I Diritti degli Azionisti nelle Società Quotate* (G. Giappichelli Editore, 2015), 222–223; Damiano di Vittorio, *Le azioni a voto potenziato: dinamiche societarie e analisi d'impatto della maggiorazione del voto sui corsi azionari di società quotate*, LUISS, (2018), 37–38; Umberto Tombari, "Le azioni a voto plurimo", *Rivista del diritto commerciale e del diritto generale delle obbligazioni* (2016), 583–584; Chiara Mosca, "Should Shareholders Be Rewarded for Loyalty: European Experiments on the Wedge between Tenured Voting and Takeover Law", *Mich. Bus. & Entrepreneurial L. Rev.* 8 (2018), 9–10; Piergaetano Marchetti, "Osservazioni e materiali sul voto maggiorato", *RivSoc* (2015), 448–449; Paolo Montalenti, "Il diritto societario europeo tra armonizzazione e concorrenza regolatoria", *Imprese, società di capitali, mercati finanziari* (2016).

[7] https://www.camparigroup.com/en/pressrelease/2020-05-29/clarifications-certain-rumour-concerning-camparis-redomiciliation.

become increasingly peripheral and large stock exchanges ever more central.[8] It seems undisputed that stock-exchange competition puts pressure on the regulatory framework.[9]

The third explanation is the rapid perspective shift regarding MVS by most continental European governments and the European Commission. In the context of the 2003 Action Plan on Company Law and Corporate Governance, EU Member States considered implementing a hard version of the *one share, one vote* principle. In 2005, European Commissioner Charlie McCreevy called on economic agents to "eliminate discriminatory treatment of shareholders" by adopting one-vote-per-share voting rules.[10] Less than ten years later, the Commission switched priority to combating *short-termism* and became more open to the (non-)proportionality of cash flow and voting rights. This shift was manifested in, *inter alia*, the 2012 Action Plan (European Company Law and Corporate Governance – a modern legal framework for more engaged shareholders and sustainable companies), the 2013 Green Paper on Long-term Financing of the EU, the 2017 Shareholders Directive, and the 2022 proposal for a directive on MVS structures.

However, below this external veil, the regulatory movement toward acceptance of MVS is more heterogeneous and chaotic than coordinated and coherent. Each jurisdiction has adopted a different formula, creating a very puzzling situation: some countries have only regulated loyalty shares, with variation over the default regime; meanwhile, other countries have only regulated dual-class structures, with variation

[8] This competition became especially fierce over the last decade with the declining number of initial public offerings (IPOs), particularly in non-Asian markets, and the exponential availability of *private* funds. Xiaohui Gao, Jay R Ritter et al., "Where have all the IPOs gone?", *Journal of Financial and Quantitative Analysis* 48, no. 6 (2013); Elisabeth De Fontenay, "The deregulation of private capital and the decline of the public company", *Hastings LJ* 68 (2016); Craig Doidge, Kathleen M Kahle et al., "Eclipse of the public corporation or eclipse of the public markets?", *JoACF* 30, no. 1 (2018). This competition goes far beyond the European region. A good example of this regulatory pressure is Singapore's review of the Companies Act after missing out on Manchester United PLC's IPO in 2012.

[9] Marco Pagano, Ailsa A Röell et al., "The geography of equity listing: why do companies list abroad?", *Journal of Finance* 57, no. 6 (2002); Khaled Amira and Mark L Muzere, "Competition among stock exchanges for equity", *Journal of Banking & Finance* 35, no. 9 (2011); Carmine Di Noia, "Competition and integration among stock exchanges in Europe: Network effects, implicit mergers and remote access", *European Financial Management*, no. 1 (2001).

[10] Tobias Buck, EU Seeks to End Bias Among Investors-Commission Wants 'One Share, One Vote' Principle, *Financial Times*, October 17, 2005.

as to whether only listed companies or (pre-IPO) non-listed companies can use these structures.

The Italian *Decreto Competitività* allows dual-class structures only for closely held corporations and with a maximum of three votes per share. In listed companies, only loyalty shares are accepted (subject to amending the articles of association), granting a maximum of two votes per share after no less than two consecutive years.[11] In France, loyalty shares have been permitted since the 1996 reform. However, the *Loi Florange* altered the default voting system for listed companies to loyalty shares and gave companies two years to opt out if they preferred to keep the *one share-one vote* rule; in other words, France's opt-in/opt-out regime is the exact opposite of Italy's. A further complication is that French corporate law does not accept dual-class share structures. Spanish law is even more conservative, particularly in the procedural requirements for deviating from *one share, one vote.* Only loyalty shares are allowed, with a maximum of two votes per share and a minimum holding period of two years. The adoption of a new voting system based on loyalty shares requires a majority *quorum* of at least 60% or 75%, whereas the rule can be revoked by absolute majority or a two-thirds majority (in both cases, the required proportion depends on the attendance quorum). Moreover, shareholders are required to vote on whether to continue with the system five years after its adoption. Portuguese regulation is also overly conservative and applies completely opposite solutions to those of France and Italy as regards MVS and listing status: dual-class voting shares are only accepted for listed companies and limited to five votes per share, while there is no express reference to loyalty shares.[12]

This chaotic landscape could not have been intentionally designed. Intriguingly, though, all continental European reforms have been quite conservative and cautious in the MVS solutions adopted. Consequently, the freedom granted to MVS in the

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[11] Recently, the Italian Government approved Decree n.º 34 of May 19, 2020 *(Decreto Rilancio)*, with measures fighting the effects of the epidemiological emergency of COVID-19. Article 45.º of the draft Decree proposed to introduce dual-class share structures for listed companies. However, when approved a few days later, the final text had abandoned that provision.

[12] There are different interpretations of whether loyalty shares are, nonetheless, permitted. Jorge Brito Pereira, *O Voto Plural na Sociedade Anónima* (Almedina, 2022), 483–491.

United States[13] and United Kingdom is still unparalleled in continental Europe. Therefore, while an Italian, French, Spanish, Belgian, or Portuguese company may now be slightly more inclined to incorporate and list locally, the regulatory regimes in continental Europe lag far behind in the freedom allowed for designing MVS.

This paper dives into the reasons for this generalized conservative approach and finds its primary roots in the troubled history of MVS during the early 20th century in influential countries such as Germany, France, and Italy. After the First World War, much of Europe experienced similar problems – the need to protect national industries from foreign investors; a very challenging macroeconomic environment amid hyperinflation and currency devaluation; the urgency to recapitalize companies in very difficult conditions for attracting investment. In this context, MVS appeared the perfect solution for controlling incumbent shareholders, and in a short time period, recourse to MVS grew exponentially in continental Europe. However, the principal outcome was generalized abuse, in which a central role was played by incumbent shareholders with privileged status, who led the process for MVS adoption. This paper describes how, unlike in the United Kingdom, investors in the capital markets of continental Europe lacked sufficient power to overcome the strong incentives for abusing MVS structures.

The rest of the paper is structured as follows. Section 2 describes the two MVS structures generally adopted in Europe: dual-class share structures and loyalty shares. Although these have much in common, since both confer voting power disproportionate to equity shareholdings, they also have many differences. Section 3 details the most important historical chapters of MVS in continental Europe during the early 20th century, explaining how the massive popularization of MVS in countries such as Germany, France, and Italy led to many clear abuses by incumbent shareholders, including banks, families, and even the government. Section 4 describes the unfolding of the generalized prohibition of MVS in continental Europe from the 1930s to 1960s, as national legal systems sought an efficient response to a common problem. Section 5 analyses the (very different) experience of MVS in the United Kingdom and explains the underlying reasons. Finally, Section 6 concludes.

[13] A parallel example of such a regulatory gap is the mandatory takeover bid rule. Jorge Brito Pereira, "An Ocean Apart: The Mandatory Takeover Rule in Brazil and in Europe", *Emory Corporate Governance and Accountability Review*, no. 1 (2022), 68–69.

2. Dual-class shares and loyalty shares

In a dual-class voting structure, the company's articles of association establish different classes of shares with differentiated voting rights, whereby at least one class of shares has superior voting rights while at least one other class has inferior voting rights.[14] A significant number of US-listed companies, including Facebook/Meta, Visa, CBS, Ford, Berkshire Hathaway, Alphabet/Google, and Nike—have dual-class structures, and these structures have been increasingly adopted since the 2004 IPO of Google.[15] Conversely, loyalty shares (or tenured voting rights) do not affect the company's capital architecture because all shares are fungible and equal; instead, they confer an individual advantage under company bylaws to long-term shareholders, who are rewarded with enhanced voting rights for continuously holding the shares for a pre-established period. There are some variations on these typical features, subject to local regulatory conditions. Although permitted under Delaware law, and already validated by Delaware Courts, loyalty shares are quite uncommon in the United States[16] but are becoming increasingly popular in Europe, especially in France.[17]

Dual-class shares and loyalty shares are both deviations from the *one share, one vote* rule, resulting in voting power disproportionate to equity shareholdings. However, the many differences between them make it overly simplistic to regard loyalty shares as "dual-class shares in disguise."[18]

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[14] Google/Alphabet is a good example of a dual-class voting structure. When Google went public in 2004, the company listed class A shares (GOOGL) with one vote per share, while the founders retained class B shares with ten votes per share. In 2014, Google announced a stock split, with class A and B shareholders receiving a new non-voting C share (GOOG) for every share previously held. https://www.sec.gov/Archives/edgar/data/1652044/000165204420000008/googexhibit414.htm.

[15] Lucian A Bebchuk and Kobi Kastiel, "The untenable case for perpetual dual-class stock", *Virginia Law Review* (2017), 594; Jill Fisch and Steven Davidoff Solomon, "The problem of sunsets", *BUL Rev.* 99 (2019), 1060.

[16] Mark J Roe and Federico Cenzi Venezze, "Will Loyalty Shares Do Much for Corporate Short-Termism?", *Revue Trimestrielle de Droit Financier* (2021), 486–499; P Alexander Quimby, "Addressing Corporate Short-Termism Through Loyalty Shares", *Fla. St. UL Rev* 40 (2012), 403.

[17] Christoph Van der Elst, "Do loyalty shares affect the engagement of shareholders? A study of the French CAC-40 companies", *Revue Internationale des Services Financiers*, no. 2 (2017); Jill Fisch and Steven Davidoff Solomon, "The problem of sunsets", 1077.

[18] Alessio M Pacces, "Exit, voice and loyalty from the perspective of hedge funds activism in corporate governance", *Erasmus L. Rev.* 9 (2016), 214.

First, there are differences in the transferability of enhanced voting rights. Superior voting rights attached to special class shares are not lost on transfer. This is the basis for one fundamental criticism of dual-class shares – they allow entrenchment by insulating controlling shareholders from the discipline of the market for corporate control.[19] By contrast, loyalty shares confer rights connected with the relevant shareholder's position and their relationship with the shares; it is generally understood that a transferee acquiring loyalty shares must hold them for the prescribed time period before becoming entitled to enhanced voting rights.[20] It seems undisputed that dual-class structures insulate controlling shareholders from the disciplinary force of the market for corporate control.[21] However, this does not mean that loyalty shares incentivize the market for corporate control: since enhanced voting rights are lost on the sale of loyalty shares, the loyal shareholder cannot monetize the control premium, and is thus locked into the firm.[22]

Second, there are relevant differences regarding equal treatment of shareholders.[23] Dual-class share structures privilege the holders of shares carrying enhanced voting rights – typically insiders such as founders, initial investors, and board members. This may be the result of one of three scenarios. Most commonly, it is a consequence of dual-class shares issuance before the IPO, in which case the public can access only ordinary shares (or, in any case, shares with fewer votes).[24] Second, it may follow from

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[19] Lucian Arye Bebchuk and Kobi Kastiel, "The untenable case for perpetual dual-class stock", *Virginia LR* 103 (2017), 602–603.

[20] There are exceptions. In Italy, art. 127º-*quinquies*-3 establishes that, unless provided otherwise by the bylaws, loyalty voting rights may be transferred in the case of merger, spin-off, and *mortis causa* succession. It is argued that other transfers of shares should receive the same legal treatment, such as transfers to a trust with the same beneficial owners or between companies of the same group. Damiano di Vittorio, *Le azioni a voto potenziato: dinamiche societarie e analisi d'impatto della maggiorazione del voto sui corsi azionari di società quotate*, 83–86. In France, article L225-124 of the *Code de Commerce* allows the transfer of voting rights in *mortis causa* succession, liquidation of assets following a divorce, donation of shares, mergers, and spin-offs.

[21] Lucian A Bebchuk and Kobi Kastiel, "The untenable case for perpetual dual-class stock", 602.

[22] Mark J Roe and Federico Cenzi Venezze, "Will Loyalty Shares Do Much for Corporate Short-Termism?", 478; Jorge Brito Pereira, *O Voto Plural na Sociedade Anónima*, 64–67.

[23] David J Berger, Steven Davidoff Solomon et al., "Tenure voting and the US public company", *The Business Lawyer* 72, no. 2 (2017).

[24] This is increasingly common for IPOs in the United States, especially in technology companies. Luca Enriques, Ronald J Gilson et al., "The case for an unbiased takeover law (with an application to the

ordinary shares and superior voting shares having different liquidity conditions – or even from the latter shares not being listed – thus incentivizing investors to convert their superior voting shares into ordinary shares to sell them in the market. After a certain period, the superior voting shares will be concentrated in the hands of insiders with medium and long-term goals.[25] The final scenario is unequal conditions for issuing dual-class shares, although this is generally not allowed and tends to provoke litigation from activist shareholders.[26] Loyalty shares, by contrast, grant the same rights to all shareholders who meet the required holding period. As alternatives to the *one share, one vote* rule, a dual-class share structure evidently gives rise to far more problems than a loyalty share structure; this is one main reason why some jurisdictions have favored loyalty shares for listed companies over the last decade.[27]

Third, there are differences regarding share value. As superior voting rights in dual-class structures are transferrable to a third party, such shares are intuitively more valuable than shares with lower voting rights *(rebus sic standibus)*. There is value in enhanced voting rights. This value varies across countries and depends on several variables, such as the probability of a takeover, block-holding costs, and liquidity

European Union)", *Harv. Bus. L. Rev.* 4 (2014); Lucian A Bebchuk and Kobi Kastiel, "The untenable case for perpetual dual-class stock", 594–596.

[25] This solution – dual-class recapitalizations – was very popular following the 1986 decision of the New York Stock Exchange (NYSE) to abandon the 1926 rule on dual-class voting shares. Gregg A Jarrell and Annette B Poulsen, "Dual-class recapitalizations as antitakeover mechanisms: The recent evidence", *Journal of Financial Economics* 20 (1988); Valentin Dimitrov and Prem C Jain, "Recapitalization of one class of common stock into dual-class: Growth and long-run stock returns", *Journal of Corporate Finance* 12, no. 2 (2006); Jason W Howell, "The survival of the US dual class share structure", *Journal of Corporate Finance* 44 (2017).

[26] Of the many notorious cases, the two most famous are the Facebook dual-class recapitalization of 2016 (aborted in 2017 after complex litigation) and the Google 2014 recapitalization. See Paul Lee, "Protecting Public Shareholders: The Case of Google's Recapitalization", *HBLR* (2015); Mark J Roe and Federico Cenzi Venezze, "Will Loyalty Shares Do Much for Corporate Short-Termism?", 497.

[27] The adoption of a loyalty share regime is not neutral with respect to the balance of power between shareholders. Loyalty shares are uninteresting to some shareholders but precious to others. Thus, the equal treatment supposedly granted by loyalty shares may be somewhat superficial. Alessio M Pacces, "Exit, voice and loyalty from the perspective of hedge funds activism in corporate governance", 214.

differences. Therefore, the extra value of enhanced voting shares will also vary.[28] On the contrary, loyalty shares will have a similar value – even amid a battle for control.[29]

Fourth, there are functional differences. Dual-class share structures serve to allow a group of shareholders to gain or maintain enhanced influence over the conduct of a company's business. Such influence is disproportionate to their shareholding and most often operates as an entrenchment device for the board, controlling shareholders, or other insiders. It is no coincidence that dual-class structures are most commonly used in tech companies whose founders are recognized by the investors as instrumental to the company's success, and whose rapid growth necessitated a number of funding rounds before an IPO. By contrast, loyalty shares are intended to counter short-termism by aligning the company's and shareholders' medium and long-term interests via enhanced voting power over time.[30] Interestingly, there are some functional overlaps in practice – where liquidity is only accessible by converting superior voting shares to listed ordinary shares, dual-class shares have a loyalty effect and strongly incentivize the shareholder to hold their shares, thus aligning their interests with the company's in the medium to long term; meanwhile, loyalty shares can disrupt the balance of power among shareholders. This explains why loyalty shares are interesting to some shareholders but not others.

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[28] Tatiana Nenova, "The value of corporate voting rights and control: A cross-country analysis", *Journal of Financial Economics* 68, no. 3 (2003); Aswath Damodaran, "The value of control: implications for control premiums, minority discounts and voting share differentials", *NYUJL & Bus.* 8 (2011); Paul Hanouna, Atulya Sarin et al., "Value of corporate control: some international evidence", *Journal of investment management* (2001); Luigi Zingales, "The value of the voting right: A study of the Milan stock exchange experience", *The Review of Financial Studies* 7, no. 1 (1994).

[29] A different problem is the market capitalization of dual-class firms. Most empirical literature concludes that dual-class firms trade at lower prices than single-class firms and that firm value decreases as the divergence between voting and cash flow rights increases. For this reason, when dual-class firms unify share classes, their market capitalization statistically increases. Scott B Smart, Ramabhadran S Thirumalai et al., "What's in a vote? The short-and long-run impact of dual-class equity on IPO firm values", *Journal of Accounting and Economics* 45, no. 1 (2008); Beni Lauterbach and Anete Pajuste, "The long-term valuation effects of voluntary dual class share unifications", *Journal of Corporate Finance* 31 (2015); Jill Fisch and Steven Davidoff Solomon, "The problem of sunsets", 1071; Karl V Lins, "Equity ownership and firm value in emerging markets", *Journal of Financial and Quantitative Analysis* 38, no. 1 (2003), 181.

[30] Patrick Bolton and Frédéric Samama, "Loyalty-shares: Rewarding long-term investors", *Journal of Applied Corporate Finance*, no. 3 (2013); P Alexander Quimby, "Addressing Corporate Short-Termism Through Loyalty Shares", 400.

Fifth, there are several differences concerning issuance procedures. A precondition for either multiple voting variant is an authorizing provision in the articles of association (or, in special circumstances, a legal provision). For loyalty shares, that provision suffices to allow increased voting on the conditions laid down, with no requirement for any subsequent issuance or conversion action. Ordinary shares that accrue increased voting rights when held for a specified period are not special class shares. By contrast, a dual-class status structure necessarily entails special class shares; beyond the relevant provision in the company bylaws, an issuance or conversion act is always required to issue special class shares.[31]

Finally, there are different effects on liquidity. Special class shares under a dual-class structure grant the privilege of gaining and maintaining control of the company with fewer shares. Insiders may thus sell more shares with little or no dilution of their controlling position. Under normal circumstances, the effect will be to increase the free float. The effect of loyalty shares is intuitively different since their intention is to incentivize longer retention and the alignment of medium- to long-term interests between the company and shareholders.[32] However, this conclusion is far from unequivocal. First, because the voting-enhancement premium of loyalty shares is not transferable, it has no economic value to some shareholders and so cannot always disincentivize short-termist strategies; this is most typically the case for small shareholders with no effective power. Second, to effectively influence voting in the short or medium term, an activist investor will be forced to buy and hold a larger shareholding to overcome the diluted voting power of non-enhanced shares, leading to a decrease in the free flow. Third, the controlling shareholder will normally be unwilling to dispose of part of its shares because the voting privilege would be lost by

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[31] That was the case for the so-called dual-class recapitalizations that were very popular in the United States in the 1980s, and is also necessary for companies that want to move from a dual-class structure to a single-class structure. Valentin Dimitrov and Prem C Jain, "Recapitalization of one class of common stock into dual-class: Growth and long-run stock returns"; Gregg A Jarrell and Annette B Poulsen, "Dual-class recapitalizations as antitakeover mechanisms: The recent evidence".

[32] The effect of loyalty shares on liquidity remains unclear, although some empirical evidence indicates a negative impact, which may seem intuitive. Other effects have also been indicated, particularly an increase in volatility. See, for example, Patrick Bolton and Frédéric Samama, "Loyalty-shares: Rewarding long-term investors", *JoACF* 25, no. 3 (2013); Mark J Roe and Federico Cenzi Venezze, "Will Loyalty Shares Do Much for Corporate Short-Termism?", 472; François Belot, Edith Ginglinger et al., "Encouraging long-term shareholders: The effects of loyalty shares with double voting rights", *Université Paris-Dauphine* no. 3475429 (2019), 3–4.

transferring the position of control – the control premium would become a non-appropriable, non-monetizable value.

3. MVS in continental Europe in the early 20th century

Preferred shares were first issued in Germany in the mid-19th century. Known as *Prioriäts-Aktien,* these shares were more akin to bonds than preferred stock *proprio sensu*: they were fixed-income securities paying interest and giving the right to capital repayment after maturity, while granting no residual right to company earnings nor any right to vote in general meetings.[33] The 1897 *Handelsgesetzbuch* regulated this matter, allowing the issuance of preferred shares and of MVS. However, their popularity was quite limited until the 20th century.[34]

The massive popularization of enhanced voting shares *(Massenhafte Eifürung von Mehrstimmrechtaktien)* in Germany after the First World War is explained by similar factors to those encountered in other jurisdictions – national protectionism against foreign investors, a very difficult macroeconomic environment combining hyperinflation with currency devaluation, and the urgency to recapitalize companies in very difficult conditions for attracting investment.[35] Dual-class voting structures increased exponentially after the end of the war (albeit slowing with the 1923/24 monetary reforms). In 1925, 842 of the 1,595 companies listed in the *Berliner Börse* used MVS (almost 40% of the votes of the *Statistischen Reichsamts* sample were held by

[33] Tilman Bezzenberger, "Vorzugsaktien ohne stimmrecht", *Aktiengesetz* (1991), 5–7.

[34] Some scholars even reference the *Berliner Börse* opposing the listing of shares with multiple voting rights in 1912, in a set of events somewhat similar to a later occurrence in the NYSE. Richard Passow, *Die Aktiengesellschaft: Eine Wirtschaftswissenschaftliche Studie*, vol. 5 (G. Fischer, 1922), 244.

[35] Arguably, some of these grounds worked more as *pretexts* than genuine reasons, mainly when multiple voting shares began being abused, and when family groups and banks subscribed to privileged shares with super-enhanced votes (mostly on credit) and subsequently sold ordinary shares to general investors. Tilman Bezzenberger, "Vorzugsaktien ohne stimmrecht", 8; Navid Anderson, *Stimmrechtsproportionalität im Aktienrecht* (Dr. Kovac, 2016), 69–72; Julian Franks, Colin Mayer et al., "The origins of the German corporation–finance, ownership and control", *Review of Finance* 10, no. 4 (2006), 6.

shareholders holding 2.4% of the share capital).[36] To put this impressive number in perspective, in 1935 only 332 of the 888 companies with listed shares had MVS.[37]

With no limits on the number of votes that could be granted per share, insiders were able to perpetrate abuses to control the architecture of the company's equity. Such insiders included board members, families controlling the company, their friends or professionally related persons, banks, and even the state. There are records of companies granting thousands or even tens of thousands of votes per share, resulting in unimaginable levels of distortion.[38]

In France, the Law of November 16, 1903, regulated privileged shares – *actions de priorité*.[39] These were originally designed as preferred shares, representing ownership in a corporation and conferring a priority claim on the company's assets and earnings: *actions de priorité* granted enhanced cash flow rights. The legal regime even allowed privileged shares with an interest rate, a legal structure again very close to bonds but with some interesting differences (they did not qualify as debt and dividend payments were contingent on distributable profit).[40]

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[36] Arno Aron, *Die Kapitalveränderungen deutscher Aktiengesellschaften nach dem Kriege* (Berlin: Spaeth & Linde, 1927); Felix Selgert, "Börsenzulassungsstellen, Reichsregierung und die (Selbst-) Regulierung der Mehrstimmrechtsaktie, 1919-1937", *Jahrbuch für Wirtschaftsgeschichte/Economic History Yearbook* 59, no. 1 (2018), 83–84.

[37] Tilman Bezzenberger, "Vorzugsaktien ohne stimmrecht", 8–9.

[38] Karsten Heider, "Kommentierung des §12, Rn.1-5", in *Münchener Kommentar zum Aktiengesetz* (München: 2019); Navid Anderson, *Stimmrechtsproportionalität im Aktienrecht*, 72; Felix Selgert, "Börsenzulassungsstellen, Reichsregierung und die (Selbst-) Regulierung der Mehrstimmrechtsaktie, 1919-1937", 84–85.

[39] The Law of July 9, 1902, already regulated privileged shares. However, questions were raised as to whether the 1902 Law could be applied to companies already incorporated, given the principle of equal treatment of shareholders (particularly where this was expressly set out in the bylaws). The pertinence of such doubts led to approval of the Law of November 16, 1903, which was expressly applicable to companies yet to be incorporated and to companies already incorporated. Georges Ripert and René Roblot, *Traité de droit commercial: Commerçants, actes de commerce* (LGDJ, 1989), 850. It is also worth mentioning that the 1903 Law was approved in special circumstances with the intention of attracting investment in the *Compagnie des Messageries Maritimes*, whose delicate financial situation necessitated urgent capitalization.

[40] On fixed dividend/interest rate shares, see Paul Pic, Emile Bouvier et al., *Des sociétés commerciales* (Rousseau & cie, 1925), 165–168; Charles Léon Lyon-Caen and Louis Renault, *Manuel de droit commercial* (LGDJ, 1928), 174–175; Henri Decugis, *Traité pratique des sociétés par actions* (Société du Recueil Sirey, 1919), 76–78.

Over time, the flexibility of the 1903 Law took its spirit much further than was initially intended. Article 34.º defined *actions de priorité* as granting certain benefits in relation to the other shares, or granting preferred rights in relation to dividends, liquidation, or both *("jouissant de certains avantages sur les autres actions, ou conférant des droits d'antériorité, soit sur les bénéfices, soit sur l'actif social, soit sur les deux")*. Consequently, there were no express constraints on the nature of the special rights embedded in these shares, whether economic rights, rights to be appointed to the board of directors, or, more importantly, multiple voting rights. This lack of restrictions on *actions de priorité* led a few French companies to begin issuing MVS. The first recorded case involved *Société Centrale des Banques de Province* in 1911 and gave rise to some controversy.[41] However, MVS became popular only after the end of the First World War and especially in the second half of the 1920s. In 1922, four years after the war ended, forty French companies with MVS were registered; the number was already significant. By 1931, the number had increased to over one thousand.[42] Essentially, after the second half of the 1920s, *actions de priorité* meant MVS.

The massive popularization of MVS in France also brought associated abuse in the form of disproportionate votes (although not as disproportionate as in Germany) – in the most extreme cases, privileged shares granted twenty or twenty-five more votes than ordinary shares.[43] With no legislative limits on multiple voting and with the need to recapitalize companies and create new ways to attract investors, distortions became generalized. As early as 1928, Lyon-Caen was already calling for a legislative intervention to prohibit or at least limit MVS.[44]

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[41] Dominique Plihon, *Crises et batailles boursières en France aux XX e et XXI e siècles* (JSTOR, 2018), 143.

[42] Georges Danos, *Les actions à vote plural* (Sirey, 1922), 14–16). (Georges Lanusse, "Statistique des actions à vote plural", *Journal de la société française de statistique* 72 (1931), 217–218).

[43] Georges Lanusse, "Statistique des actions à vote plural", 218–219; Muriel Petit-Konczyk, "Big Changes in Ownership Structures-Multiple Voting Shares in Interwar in France", *Available at SSRN 944808* (2006); Emmanuel Malecot, *Du vote plural dans les sociétés par actions* (Université de Poitiers, 1923); Adrien Massonaud, *Les actions à vote privilégié en France et a'l'étranger: Les avantages de leur réglementation* (Librairie Arthur Rousseau, 1930); Guido Sadar, *Les privilèges de vote dans les sociétés anonymes* (JSTOR, 1930); Paul Pic, Emile Bouvier et al., *Des sociétés commerciales*, 168–172; Georges Ripert and René Roblot, *Traité de droit commercial: Commerçants, actes de commerce* 854–855; Pierre Millet, *Les Avantages particuliers dans les sociétés par actions.* (Rousseau, 1931); Georges Ripert, *Aspects Juridiques du Capitalisme Moderne* (LGDJ, 1951), 99–101.

[44] Charles Léon Lyon-Caen and Louis Renault, *Manuel de droit commercial*, 175.

There are clear similarities between the course taken by Italian law and what happened in France. Article 164.º of the 1882 *Codice Commerciale* determined that all shares were granted equivalent rights unless the articles of association provided otherwise (*"le azioni conferiscono ai loro possessori uguali diritti se non è stabilito diversamente nell'atto costitutivo").* Article 157 also established that each shareholder was entitled to one vote per share (as a rough interpretation of the rule) for up to five shares; shareholders with between six and one hundred shares were entitled to one more vote for each additional five shares; and shareholders with over one hundred shares were entitled to one more vote for each additional twenty-five shares. This rule distributed voting rights on the assumption that each shareholder should have proportionately less power than risk.[45] However, the final part of article 157 expressly set out that the rule was derogable (*"nell' atto constitutivo e nello statuto"*).

From the early years, there was no consensus on whether multiple voting rights were compatible with the capitalist rule of majority formation, nor on whether article 164 only targeted special cash flow rights and thus excluded special voting rights.[46] However, the general opinion was that article 164 should be read openly, such that voting rights fell within its scope.[47]

Similar to developments in Germany and France following the First World War, the popularity of MVS increased exponentially in Italy, also bringing abusive cases of disproportionate voting rights. As early as 1924, this problem was a core concern for the commission appointed to reform the *Codice Commerciale*. This commission ultimately advocated a compromise solution, accepting MVS (*azioni a voto plurimo)* but limiting the overall number of votes corresponding to such shares to below the number of votes of all outstanding shares; however, this proposal was refused by the working group.[48] Several Italian companies established multiple voting in their bylaws – the number of votes per privileged share ranged between two and one

[45] Nicolò Elena, *Le Azioni con voto plurimo o con voto altrimenti privilegiato nelle società commerciali italiane* (Bocca, 1927), 28–32; Damiano di Vittorio, *Le azioni a voto potenziato: dinamiche societarie e analisi d'impatto della maggiorazione del voto sui corsi azionari di società quotate*, 16; Mario Campobasso, Pietro Abbadessa et al., *Le società per azioni: Codice civile e norme complementari*, vol. 1 (Giuffrè, 2016), 580–581; Michele Leone, *Il voto plurimo nel mercato finanziario* (Brescia Morra, 2015), 24–25; Marta Russo, *Le azioni a voto plurimo* (Tese de doutoramento, Università degli Studi di Napoli Federico II, 2017), 43–45.

[46] Renzo Ravà and Giuseppe Valeri, *Il voto plurimo nelle società per azioni* (Zanichelli, 1929), 46.

[47] Nicolò Elena, *Le Azioni con voto plurimo o con voto altrimenti privilegiato nelle società commerciali italiane*, 24–27.

[48] Renzo Ravà and Giuseppe Valeri, *Il voto plurimo nelle società per azioni*, 20–21.

hundred but was generally either five or ten.[49] Such shares were mainly reserved for company founders or entities close to them. Just as in France, privileged shares became a popular device for preventing or limiting the acquisition of control by foreign investors.[50] Thus, it became common for bylaw provisions to allow only Italian citizens or companies to own privileged shares, a rule that led to several complex court cases.[51]

4. Reactions to abusive use of MVS

During most of the 19th century, a dominant principle was that shareholders' capitalist power should be limited; majority voting in the general meeting should reflect the collective will of several shareholders, rather than an imposition of the voting power of one shareholder (regardless of how much the latter had invested). In *Taylor v. Griswold* (1834),[52] the New Jersey Supreme Court criticized the popularization of rules in bylaws that attributed one vote per share (at least in the absence of specific legislation):

> the tendency, at least, the apparent tendency, of the by-law in question, is to encourage speculation and monopoly, to lessen the rights of the smaller stockholders, depreciate the value of their shares, and throw the whole property and government of the company, into the hands of a few capitalists; and it may be, to the utter neglect or disregard of the public convenience and interest.[53]

This principle was usually regulated using one of two legal formulas – either scaled voting provisions that distributed voting rights such that each shareholder had

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[49] For a list of all these cases, see Renzo Ravà and Giuseppe Valeri, *Il voto plurimo nelle società per azioni*, 14. It must be stressed that the Code's flexibility led to several types of multiple voting, with very little systematic unity. Damiano di Vittorio, *Le azioni a voto potenziato: dinamiche societarie e analisi d'impatto della maggiorazione del voto sui corsi azionari di società quotate*, 17–18.

[50] Mario Campobasso, Pietro Abbadessa et al., *Le società per azioni: Codice civile e norme complementari*, 1, 580; Michele Leone, *Il voto plurimo nel mercato finanziario*, 29–31.

[51] Damiano di Vittorio, *Le azioni a voto potenziato: dinamiche societarie e analisi d'impatto della maggiorazione del voto sui corsi azionari di società quotate*, 20–23; Umberto Tombari, "Le azioni a voto plurimo", 586–588.

[52] https://cite.case.law/njl/14/222/

[53] David L Ratner, "Government of business corporations critical reflections on the rule of one share one vote", *Cornell L. Rev.* 56 (1970), 10; Colleen A Dunlavy, "Social conceptions of the corporation: Insights from the history of shareholder voting rights", *Wash. & Lee L. Rev.* (2006), 1368.

proportionately less power than risk, or legal voting caps that prevented any shareholder from voting with more than a certain percentage of shares (typically 10% to 20%).[54] One of the few exceptions was the *Allgemeines Deutsches Handelsgesetzbuch* (ADHGB) in Germany, which in 1861 authorized direct proportion between the numbers of votes and shares, with no mandatory voting cap.

In some countries, this limitation of voting power lasted until the late 20th century. One example is Portugal, where the combination of MVS (Decree no. 1.645 of 15 June 1915) with mandatory voting caps (article 183.º of the Commercial Code of 1888) effectively prevented abuses by the controlling shareholder.

Other legal systems that did not impose mandatory voting caps or scaled voting provisions were more open to abuse and, consequently, started limiting or even prohibiting MVS. In France, for instance, the Law of April 26, 1930, banned new issuances of privileged voting shares,[55] while the Law of November 13, 1933, suppressed existing MVS by imposing the proportionality rule as a principle of public order, as well as maintaining two main exceptions (concession-holding companies outside metropolitan France and mixed-economy companies).[56]

Italy followed a similar course with the approval of a new Civil Code in 1942, which underwent several changes after the fall of the Mussolini regime, notably in matters of corporate law.[57] Voting was made subject to the proportionality principle, with derogation allowed only for non-listed companies (and in the very exceptional case of

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[54] Giulio Sandrelli and Marco Ventoruzzo, "Classes of shares and voting rights in the history of Italian corporate law", in *Research Handbook on the History of Corporate and Company Law* (Edward Elgar, 2018), 4–5; Pedro Maia, *Voto e corporate governance*, Um novo paradigma para a Sociedade Anónima, (Coimbra: Almedina, 2020), 236–241; Colleen A Dunlavy, "Social conceptions of the corporation: Insights from the history of shareholder voting rights", 1358.

[55] Caroline Coupet, *L'attribution du droit de vote dans les sociétés* (LGDC, 2012); Michel de Juglart and Benjamin Ippolito, *Cours de droit commercial* (Montchrestien, 1968), 459; Adrien Massonaud, *Les actions à vote privilégié en France et a'l'étranger: Les avantages de leur réglementation*, 20.

[56] Such exceptions were subsequently preserved, notably by the 1966 reform. Georges Ripert and René Roblot, *Traité de droit commercial: Commerçants, actes de commerce*, 854 ; Henry Solus, *La réforme du droit des sociétés par les décrets-lois de 1935 et 1937: Constitution. Publicité. Nullités. Administration et contrôle. Bilans et comptes. Actionnaires. Obligataires* (Sirey, 1938), 276–277; Jean Escarra, Edouard Escarra et al., *Traité théorique et pratique de droit commercial*, vol. 2 (Sirey, 1951), 173.

[57] For an outlook on the so-called *defascization* of the Italian Civil Code, see Mario Campobasso, Pietro Abbadessa et al., *Le società per azioni: Codice civile e norme complementari*, 1, 32; Giulio Sandrelli and Marco Ventoruzzo, "Classes of shares and voting rights in the history of Italian corporate law", 6.

limited voting shares). Even preferential non-voting shares were banned,[58] and article 2351.3 expressly prohibited MVS (*"non possono emettersi azioni a voto plurimo"*).

In Germany, after several cases of abuse, the 1937 reform agenda faced strong pressure to ban MVS. Legislators ultimately adopted a compromise solution: §12 of the 1937 *Aktiengesetz* (AktG) prohibited MVS but reserved discretion for the government to authorize MVS upon a company's request if justified as in that company's best interests *("Wohl der Gesellschaft")*.[59] In a similar course of events, the preliminary draft of the 1965 AktG proposed to completely ban MVS but various pressures led to the final version again allowing an exception, albeit subject to even stricter conditions.[60] In 1998, with the KonTraG *(Gesetz zur Kontrolle und Transparenz im Unternehmensbereich*), Germany finally prohibited MVS under all circumstances.[61] This prohibition still stands.

Finally, reference should be made to Spain, where MVS were never as popular as in other jurisdictions.[62] The distortion problems caused by MVS never became as severe in Spain as in other jurisdictions. Nonetheless, the 1951 *Ley de Sociedades Anónimas*

[58] Mario Campobasso, Pietro Abbadessa et al., *Le società per azioni: Codice civile e norme complementari*, 1, 556; Alessandro Graziani, *Diritto delle società* (A. Morano, 1963), 245–248. Damiano di Vittorio, *Le azioni a voto potenziato: dinamiche societarie e analisi d'impatto della maggiorazione del voto sui corsi azionari di società quotate*, 23–24.

[59] Navid Anderson, *Stimmrechtsproportionalität im Aktienrecht*, 76–78.

[60] After the 1965 reform, MVS were authorized in fewer than two-dozen cases. Karsten Heider, "Kommentierung des §12, Rn.1-5".

[61] Tim Drygala, Marco Staake et al., *Kapitalgesellschaftsrecht: mit Grundzügen des Konzern und Umwandlungsrechts* (Leipzig: Springer, 2012), 495; Thomas Raiser and Rüdiger Veil, *Recht der Kapitalgesellschaften* (Verlag München, 2015), 76; Navid Anderson, *Stimmrechtsproportionalität im Aktienrecht*, 80–86; Rüdiger Von Rosen, "Corporate governance in Germany", *Journal of Financial Regulation and Compliance* (2007), 36.

[62] Antonio Pedrol Rius, "Defensa de las acciones de voto plural", *Revista de derecho mercantil*, no. 15 (1948); Aníbal Sánchez Andrés, "La Acción y los Derechos de los Accionistas", in *Comentario al Régimen Legal de las Sociedades Mercantiles* (Civitas, 1994), 329–334; Isabel Fernández Torres, *Las Loyalty shares: cortoplacismo contra activismo accionarial* (Marcial Pons, 2017), 40–41.

expressly prohibited MVS,[63] following the general European trend. This prohibition was maintained in the 1989 Law and in the *Ley de Sociedades de Capital* of 2010.[64]

5. The United Kingdom's experience with MVS

The UK regulatory environment is, and has been, among the most liberal legal frameworks on the rights and obligations inherent to shares, particularly concerning MVS.[65]

The share capital of a company may consist of more than one class of shares. Under section 629, Companies Act 2006, a type of share forms a separate class if the rights attached to it are uniform and differ from those attached to other shares in the company:

> (1) For the purposes of the Companies Acts shares are of one class if the rights attached to them are in all respects uniform.

[63] Angel Velasco Alonso, *La ley de sociedades anónimas: anotaciones y concordancias* (Editorial de Derecho Financiero, 1974) 183–184. José Miguel Embid Irujo, "El voto plural de la sociedad anónima," *La Ley* 2 (1991). Benito Arruñada, "Un análisis económico de la regulación de la sociedad anónima en España", *Anales de estudios económicos y empresariales* (1988) 207–210.

[64] There were other examples of jurisdictions prohibiting MVS around this time. The Brazilian case offers an interesting parallel to what was happening in Europe: Decree no. 21.536 of June 15, 1932, banned multiple voting (§ 4 of article 1) around the same time as the introduction of preference shares in a very open manner. This prohibition was maintained even after Law no. 6.404 of 1976 extended the regime for issuing preference shares and introduced the so-called *regime de responsabilização do acionista controlador.* On the evolution of the Brazilian regime, see Daniela Mussolini Llorca Sanchez Andrei, "A vedação ao voto plural no Brasil", *RDSVM* (2019), 63–67; Osmar Brina Correa Lima, "Voto múltiplo na sociedade anonima: Acertos e desacertos", *Revista da Faculdade Direito Universidade Federal Minas Gerais* 30 (1987).

[65] In 1962, the Jenkins Committee on Company Law contemplated recommending the prohibition of MVS but ultimately concluded that this would constitute a non-acceptable intervention in the freedom of investors. The committee's report concludes thus: "some said that risk-bearing shares should carry votes proportionate to their interest; others that freedom of contract could not be interfered with and that there was a price for everything, including non-voting shares. The Committee had given no opinion upon the merits of those arguments. The majority were against legislation but recommended additional rights for shareholders" (https://www.jstor.org/stable/41139654). Paul Davies, "Shareholders in the United Kingdom", in *Research handbook on shareholder power* (Edward Elgar Publishing, 2015), 9.

(2) For this purpose the rights attached to shares are not regarded as different from those attached to other shares by reason only that they do not carry the same rights to dividends in the twelve months immediately following their allotment.

The most common classes of shares include ordinary, preference, and deferred shares.[66] Ordinary shares (or common stock) are entitled to residual cash flow rights – dividend rights subordinated to the rights of preferred shareholders. If a company has a single class of shares, they will usually be classified as ordinary shares. Under part 17, chapter 3 of the Companies Act, these are "shares other than shares that as respects dividends and capital carry a right to participate only up to a specified amount in a distribution." Ordinary shares usually grant homogenous voting rights – one vote per share, or one vote per higher number of shares – but nothing prevents the existence of different classes of ordinary shareholders with different voting rights.[67] Thus, under English law, voting strictly depends on the rules set out in the bylaws; in the absence of a relevant provision, one vote is granted to each shareholding with a nominal value of £10 (sections 284(1) and (3), Companies Act 2006).[68]

Interestingly, this freedom is mainly used in the establishment of financial dividend rights, especially by listed companies. In practice, the issuance of shares with

[66] Shareholders' rights contained in the bylaws are not necessarily attached to a class of shares. That may be the case, but the bylaws may also confer rights on a shareholder in their capacity as a company shareholder. *Cumbrian Newspapers Group Ltd v. Cumberland and Westmorland Herald Co Ltd* is the reference case. Brenda M. Hannigan, *Company Law* (Oxford UP, 2018), 395–396; Geoffrey Morse and Sarah Worthington, *Palmer's company law: annotated guide to the Companies Act 2006* (Sweet & Maxwell, 2009), 497; Eilís Ferran and Look Chan Ho, *Principles of corporate finance law* (Oxford UP, 2014), 143–144.

[67] Depending on the bylaws, it is even possible (although unusual) to issue ordinary shares with no voting rights. Pennington's classic paper describes such shares as follows: "even more of a misshapen monster is the voteless ordinary share, usually labelled as a Class 'A' ordinary share to distinguish it from the real ordinary shares which do carry votes." Robert R. Pennington, *The Investor and the Law* (MacGibbon & Kee, 1968), 422. See also Robert R Pennington, *Company law* (Butterworths, 1990), 204; Eilís Ferran and Look Chan Ho, *Principles of corporate finance law*, 46; Brenda M. Hannigan, *Company Law*, 395.

[68] This rule was already included in the 1985 Companies Act (art. 370(6)). In practice, however, the bylaws almost always regulate the attribution of voting rights. Roberts Kosmin Leslie, *Company Meetings and Resolutions: Law, Practice, and Procedure* (Oxford UP, 2020), 183; Derek French, Christopher L Ryan et al., *Mayson, French & Ryan on company law* (Oxford UP, 2019), 384; Brian R Cheffins, *Corporate ownership and control: British business transformed* (Oxford Scholarship, 2008), 30.

enhanced voting rights is quite unusual.[69] One of the few exceptions is private equity transactions: investors may subscribe for preference shares that confer (a) enhanced voting rights in specific circumstances, such as the company being in material breach of certain agreements, or (b) weighted voting rights if the company fails to achieve certain performance targets, enabling investors to cast sufficient votes to pass or block any resolution to wind up the company or to appoint or remove directors. These step-in rights give investors the means to obtain control of the company should the management team not perform as expected.

Preference shares usually confer a preferential right compared to other classes of shares.[70] The nature of such preferential rights are not clearly established but usually relate to priority payment of dividends and/or a priority repayment of capital on the winding up of the company. Preference shares commonly rank ahead of ordinary shares as to dividends/capital on a winding up event, being fixed-income (and fixed-capital) shares. If voting rights are not specifically excluded or restricted, the holders of preference shares are deemed to have equal voting rights, but that is unusual. Preference shares are typically non-voting shares or confer only limited voting rights.

However, this liberal legal environment concerning MVS did not create a landscape in which many companies adopted such provisions. On the contrary, the 2007 *Report on the proportionality principle in the European Union* makes the following important observation:

> BP (Oil & Gas) is the only company in the sample featuring multiple voting rights, having issued 8% Cumulative First Preference Shares and 9% Cumulative Second Preference Share[s] alongside the ordinary shares. Ordinary share[s] are about 99.7% of the total outstanding capital. The distortion of the one share – one vote principle is extremely limited as the multiple voting shares represent less than 0.06% of outstanding share capital and each of these preference shares actually has less voting rights than the ordinary share.

[69] *Eilís Ferran and Look Chan Ho, Principles of corporate finance law,* 130;. Paul Davies and Sarah Worthington, *Gower's Principles of Modern Company Law* (London: Sweet & Maxwell, 2016), 794–795.
[70] Eilís Ferran and Look Chan Ho, *Principles of corporate finance law*, 136; C Alan Dignam and John Lowry, *Company Law* (Oxford UP, 2020), 176; Brenda M. Hannigan, *Company Law*, 399; Derek French, Christopher L Ryan et al., *Mayson, French & Ryan on company law*, 152–153.

Similarly, the freedom to use other control enhancement mechanisms (CEMs) scarcely distorts the *one share, one vote* principle. The same report states:

> In the United Kingdom, for example, most of the CEMs discussed in this Study are not prohibited by the local legislation (in fact, ten out of the thirteen CEMs discussed in this Study are available for use by British companies). Nevertheless, market practice and market expectations do not encourage the use of many of the available CEMs. Out of the twenty recently listed United Kingdom companies surveyed for the purposes of this Study, none have introduced CEMs. Out of the twenty large United Kingdom companies, only one featured the use of multiple voting rights shares and none of these companies introduced non-voting shares (without preference), pyramid structures, or cross-shareholdings, although these CEMs are permitted under the United Kingdom legislation.

As noted by the report, several forces in the United Kingdom created a legal system that is extremely liberal regarding CEMs and a market in which listed companies are not encouraged to use them.

In particular, there is concurrent historical market pressure from the "superpowers" of institutional investors[71] and the weight of operating traditions on regulated markets. Institutional investors have mostly exercised influence through trade associations such as the Association of British Insurers and the National Association of Pension Funds. The strength of their influence is clearly implied by the many years of self-regulation by the City or by City-based statutory agencies.[72] This leads some scholars to conclude that listed companies being discouraged from using MVS (and other CEMs) is primarily market driven, with only some limited impact from regulatory options.[73] Until very recently there was no regulatory limitation on the listing of shares with unequal voting rights. This only changed in 2014 with amendments to the UK Listing Rules for admission to the main market – the so-called premium market. Under Premium Listing Principle 4,

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[71] Flora Huang, "Dual Class Shares Around the Top Global Financial Centres", *Journal of Business Law* (2017), 11.

[72] Paul Davies, "Shareholders in the United Kingdom", 7.

[73] *Paul Davies and Sarah Worthington, Gower's Principles of Modern Company Law,* 791; Paul Davies, "Shareholders in the United Kingdom", 9.

> where a listed company has more than one class of securities admitted to premium listing, the aggregate voting rights of the securities in each class should be broadly proportionate to the relative interests of those classes in the equity of the listed company.[74]

Whether this regulation is construed as a prohibition with exceptions or as a set of admissibility criteria,[75] it does not preclude MVS being admitted to the London Stock Exchange main market.[76] There is also no regulatory limitation on admission to trading on the Alternative Investment Market. However, this market has special characteristics designed to attract SMEs with growth potential, and thus applies less burdensome and heavy rules, comparable to those of Alternext (Euronext Growth); it cannot viably allow the British market to compete with the NYSE and Nasdaq in attracting large companies. The standard tier of the London Stock Exchange's secondary market is generally considered a second-best option; issuers and investors are naturally more attracted to the higher liquidity of the main market.

Listing requirements were a controversial matter for a long period. On March 3, 2021, the proposals of Lord Hill's UK Listing Review were finally published.[77] One main recommendation is to "allow companies with dual-class share structures to list in the premium listing segment but maintain high corporate governance standards by applying certain conditions." These would include: a maximum duration for enhanced rights of five years from the IPO; superior voting shares converting to ordinary shares on transfer, with limited exceptions for estate planning and charitable

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[74] LR 7.2.4. G states: "In assessing whether the voting rights attaching to different classes of premium listed securities are proportionate for the purposes of Premium Listing Principle 4, the FCA will have regard to the following non-exhaustive list of factors: (1) the extent to which the rights of the classes differ other than their voting rights, for example with regard to dividend rights or entitlement to any surplus capital on winding up; (2) the extent of dispersion and relative liquidity of the classes; and/or (3) the commercial rationale for the difference in the rights." https://www.handbook.fca.org.uk/ Flora Huang, "Dual Class Shares Around the Top Global Financial Centres", 10–12; Bobby V Reddy, "Finding the British Google: relaxing the prohibition of dual-class stock from the premium-tier of the London Stock Exchange", *The Cambridge Law Journal* 79, no. 2 (2020), 9–16.

[75] Nuno Serrão Faria, "Dual-class shares: a governance battle between stock exchanges/The case of the UK", *RDS* (2019), 501. In truth, the 2014 amendments did not significantly change the outlook on companies with different classes of shares being admitted to official listings in the UK.

[76] Bobby V Reddy, "Finding the British Google: relaxing the prohibition of dual-class stock from the premium-tier of the London Stock Exchange", 13–16.

[77] https://www.fca.org.uk/news/statements/fca-welcomes-lord-hills-listing-review-report.

purposes; weighted shares being held only by directors of the listed company; and weighted voting permitted only for ensuring holders of the shares remain as directors and blocking unwelcome takeover bids. The listing rule for the premium listing segment was finally amended in December 2021, enabling an easier listing process for MVS in the main market.[78]

6. Conclusion

Over the past decade, several continental European countries have reinstated MVS in the form of dual-class share structures and/or loyalty shares. Both voting structures are deviations from the *one share, one vote* rule, resulting in voting power disproportionate to equity shareholdings. However, there are many material differences between the two forms. In a dual-class voting structure, the company's articles of association establish different classes of shares with differentiated voting rights, which are superior for at least one class and inferior for at least one other. Conversely, loyalty shares do not affect the company's capital architecture (as all shares are and remain fungible and equal) and confer an individual advantage to long-term shareholders under the company's bylaws: the reward of increased voting rights for continuously holding shares for a pre-established period.

The reinstatement of MVS has so far occurred in Italy, France, Belgium, Spain, and Portugal. The European Commission also recently announced a proposed directive on MVS structures in companies that seek listing on an SME growth market.

Various factors may explain this seemingly coordinated regulatory movement, such as regulatory competition, stock exchanges competing to attract listings, and the rapid shift in political perspective on the *one share, one vote* principle. However, the common movement toward easing limitations on MVS is more heterogeneous than coherent, with each jurisdiction adopting a different formula. There is, though, one common feature: all continental European reforms have been quite conservative and cautious in the MVS solutions adopted.

[78] Erik Lidman and Rolf Skog, "London Allowing dual class Premium listings: A Swedish comment", *Journal of Corporate Law Studies* (2021); Vincent Deluard, "A Costly Mistake for Investors, US Capital Markets, and Growth: Evidence from the Exclusion of Dual-Class Stocks from Popular Indices", *Available at SSRN: https://ssrn.com/abstract=4060296* (2022), 12.

This paper contends that the most important explanation for this conservative approach is the common history of MVS in continental Europe. In countries like Germany, France, and Italy, MVS became especially popular following the end of the First World War. The reasons for this massive popularization are intuitive – national protectionism, a very difficult macroeconomic environment characterized by hyperinflation and currency devaluation, and the urgency to recapitalize companies in generally poor conditions for attracting investment. With no effective limits on the number of votes that could be granted per share, abuses of MVS were often perpetrated by company insiders, including board members, families controlling the company, their friends or professionally related persons, banks, and even the state. Eventually, the only way to oppose this abusive environment was to ban the issuance of privileged voting shares. Relevant prohibitions were introduced by France in 1933, Germany in 1937, Italy in 1942, and Spain in 1951.

The UK companies law framework reflects a completely different historical experience and is among the most liberal legal frameworks on MVS. However, this freedom is mainly used in the establishment of financial and/or dividend rights, whereas shares with enhanced voting rights are rarely issued. This is the result of market pressure from institutional investors and the weight of operating traditions on regulated markets. It is, therefore, a market-driven outcome.

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