# Joint Statement of Nordic Company Law Scholars on the European-Parliament's Proposed Amendments to the Proposal for a Directive on MVR Shares in SME's Seeking Admission on an SME-GM

3 November 2023

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**Executive resume:**

*This joint statement comments on the amendments adopted by the European-Parliament on 24 October 2023 to the proposal for a directive on multiple vote share structures in certain SME's. The aim of the joint statement is to clarify that, at least as Nordic company law is concerned, shareholder resolutions are binding on a company.*

## 1. Introduction

On 7 December 2022, the European Commission presented a package of legislative proposals, one of which was a proposal for a directive on multiple-vote share structures in companies that seek admission to trading of their shares on an SME growth market.[1]

On 24 October 2023, the European Parliament adopted a set of proposed amendments to the proposal that will now proceed into the trilogue negotiations.

It has come to our attention that there is some uncertainty regarding the question of whether shareholder resolutions are binding on the company and that this uncertainty may reflect on one of the amendments suggested.

This joint statement is made to explain that at least in respect of our native jurisdictions, Nordic company law, it is absolutely clear that any resolution adopted at the General Meeting of a company is binding on that company, including its members and directors, irrespectively of who tabled the motion, and consequently shareholder resolutions are binding as well.

## 2. The Governance Structure in Nordic Company Law

The governance structure in Nordic company law is hierarchical.[2] The shareholders in General Meeting appoint and dismiss directors to the board of directors and the board of directors in turn hires and fires the CEO and other executive officers. This capacity by the higher company organ to place and remove members of the lower rung of company organs ensures that decisions made by the shareholders at the General Meeting are observed and executed by the officers of the company. In this way, the General Meeting is the highest company authority,[3] and may decide on any matter regarding the company's affairs and how it should be governed and managed within the limits placed on the company by the law and the company's articles, which in respect of the latter the shareholders in General Meeting are also empowered to change albeit only with a qualified majority,

[1] Proposal for a 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, Brussels 7 December 2022.

[2] For at more in-depth analysis, see P. Lekvall, The Nordic Corporate Governance Model (2014), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2534331.

[3] This is explicitly stated in the Icelandic and Norwegian Companies Acts but is also apparent from the distribution of powers in the Companies Acts of the three other Nordic countries of Denmark, Finland, and Sweden.

whereas all other resolutions, irrespectively of their content, are adopted by a simple majority.

In Nordic Company Law, shareholders enjoy extensive rights and the company legislation affords equally extensive protection of the minority. The purpose is to ensure that the company is governed by the shareholders and that all shareholders are able to take part in the decision-making of the company at the General Meeting and that the minority is protected against abuse of control by the majority. Because multiple vote structures are traditionally well-known and ubiquitous in all companies, from SME's to blue chip listed companies, the rules on decision-making and minority protection have been designed to accommodate this aim of shareholder influence.

Thus, it is an *individual* right of every shareholder, regardless of that shareholder's capital or votes, including vote-less shares, to table motions for the agenda of the General Meeting. If such a request is presented by one or more shareholders, the board of directors, who are responsible for organising the General Meeting, are obliged to include the motion on the agenda in time for the agenda's distribution to all shareholders.

Equally, *every* shareholder is entitled to participate in the General Meeting, and to speak and put questions to the board of directors on any matter on the agenda, even if the shareholder only holds one share (and even if that share does not provide a vote).

Any decision made by the shareholders at the General Meeting is binding on the company, including its members and directors. The law does not differentiate between who tabled the motion, as *all* resolutions decided at the General Meeting are regarded as equal and as equally binding on the company.

## 3. The Amendment in Question

The question of whether shareholder resolutions are binding on the company, which as noted above is the case in Nordic company law and probably also in most other EU jurisdictions, has arisen in respect of the proposed amendments made by the European Parliament.

It appears to be connected to the amendment to Art 5 of the proposal which reads:

> *Member States shall ensure ~~fair and non-discriminatory treatment of shareholders, as well as~~* ***that companies that have adopted a multiple-vote share structure in accordance with this Directive have appropriate safeguards in place to provide for the*** *adequate protection of the interests of the shareholders who do not hold multiple-vote shares ~~and of the company through appropriate safeguards~~. To that effect, Member States shall~~, do all of the following~~:*[4]
>
> ***(ba) exclude the use of enhanced voting rights attached to multiple-vote shares at general meetings of shareholders during the votes on resolutions tabled by shareholders in accordance with Article 6(1) of Directive 2007/36/EU of the European Parliament and of the Council, in particular on matters related to the impact of the company's operations on human rights and the environment.***[5]

Considering that at present, all shareholder resolutions are binding on a company in the Nordics, this requirement (Ba) would comprise *all* motions tabled by one or more shareholders irrespectively of their content and would thus constitute a serious reduction of shareholder influence and consequently a serious intrusion on the Nordic corporate governance system shared by all five Nordic Member States of the EU and the EEA.

Even if it was limited to resolutions concerning 'the impact of the company's operations on human rights and the environment', as per the last sentence, which is not the case at present, it would comprise most if not all resolutions as any productive effort or other business operation undertaken by the company would have an 'impact' on the environment. The broad meaning of 'impact' would also create serious uncertainty as to the reach of this provision.

Moreover, it would seriously undermine a fundamental value of company law, namely to provide investors in companies with predictability as to their holdings and rights in the companies they invest in. Altering the composition of shareholder power and influence in companies by legislation would run the risk of making European companies less attractive to international investors.

[4] The amendments dated 24 October 2023 refers to the amendment thus: '(Rapporteur AM 19 rev, Polfjard et al. AM 99 rev, Grant et al. AM 100, Gruffat et al. AMs 101 rev)'. Bold marks changes to the text.

[5] The amendments dated 24 October 2023 refers to the amendment thus: '(Rapporteur AM 25 rev, Gruffat et al. AMs124 rev, Tang et al. AM 132 rev)'. Bold marks changes to the text.

Equally, it would also seriously reduce the foreseeability of any use of a multiple vote structure to a controlling shareholder of an SME considering to seek admission on an SME-GM, which was otherwise seen as the justification of introducing EU legislation into this area in the first place.

## 4. Conclusion

We can confirm that shareholder resolutions in the Nordics, like any other resolution legally adopted at the General Meeting, are binding on the company, including its members and directors.

We are concerned that there appears to be uncertainty about these fundamental tenets of national company law among the European legislators, especially since the suggested amendments would provide the directive proposal with a completely different scope and reach among well-established listed companies compared to the original proposal put forward by the European Commission and examined by the accompanying Impact Assessment.

The Parliament's proposal regarding multiple voting rights with regards to shareholder's propositions would therefore have a fundamental negative effect on Nordic corporate governance. Moreover, it would seriously undermine a fundamental value of company law, namely to provide investors in companies with predictability as to their holdings and rights in the companies they invest in. Altering the composition of shareholder power and influence in companies by legislation would run the risk of making European companies less attractive to international investors.

We call on the European legislators to observe the fundamental principles of good legislation and if necessary to seek further information before proceeding to adopt EU legislation in this area.