June 2023

Prepared by the Confederation of Swedish Enterprise in collaboration with the Swedish Corporate Governance Institute

SVENSKT NÄRINGSLIV
SWEDISH ENTERPRISE

The EU Listing Act
Proposed EU Directive on multiple-vote share structures

As part of the Listing Act, in December 2022, the European Commission made public a proposal on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market. In April 2023, the Council adopted its position, which accommodates differences in national practices and ensures that safeguards protect shareholders with lower voting rights.

The Confederation of Swedish Enterprise (Sw. *Svenskt Näringsliv*) welcomed the proposed Directive. Sweden has allowed perpetual dual class structures with a voting ratio of 1:10 for some 100 years, and there is no doubt that it has been an important mechanism for supporting long-term and active shareholders and through them a strong domestic equity supply. Over many decades of legal development, these structures have been balanced with a carefully crafted and strong minority protection system, ensuring that the legal framework supports active, well-informed and long-term owners, while at the same time addressing the possible conflicts of interest between majority and minority shareholders. In studies carried out, it has time again been proved that this structure is efficient.[1] Furthermore, Sweden's equity market is the only growing market within the EU. Today there are over one thousand listed companies in Sweden, with a steady stream of SME listings. The dual class system with all that it entails is believed to be one of the key factors behind the vibrant Swedish equity market. We have briefly summarised why dual class share structures with differentiated voting rights is and has been an important and valuable feature of the Swedish stock market here.

Based on our national experience, while the proposal would not change the Swedish structures, we thus warmly welcomed the proposed Directive as a step towards strengthening the European equity markets and to contribute to a stronger listing climate, in particular with regards to SMEs, which is the aim of the Listing Act. In a time when public equity markets are declining, particularly in the EU, such initiatives are needed.

All of the positive sides of the proposed Directive are now in jeopardy, however. The European Parliament is currently defining its position and mandate, and far-reaching mandatory restrictions are discussed, such as maximum voting ratios of 1:2 – 1:5, mandatory sunset clauses, and voting rules that do not belong in the Proposal.

If we could learn anything from Sweden in this matter, it is that **it is of paramount importance that these restrictions are not included in the Directive**. In particular, harmonised mandatory maximum voting ratios and mandatory sunset clauses are entirely uncalled for, and would cause irreparable damage to existing dual class structures. The entire rationale for a dual class system is that it allows shareholders to acquire significant control of a company in terms of voting rights, without having to invest the proportionate capital. As shareholder engagement is costly and concentrated ownership is associated with severe opportunity costs (for instance due to the lack of diversification and liquidity), it is key that dual class structures allow for a significant leverage between capital and voting rights. The appropriate ratio depends on the national corporate governance landscape. For

[1] Nenova (2002), Dyck & Zingales

Sweden, 1:10 has been deemed an appropriate ratio. But this is not a one-size fits all model, and is not suitable for harmonization. Another key point of dual class shares is that it contributes to long-term, stable ownership. Time-based sunset clauses obviously means that dual class structures no longer can contribute to such ownership, and also risks creating problematic short-term incentives for majority shareholders. Should these restrictions be included in the Directive, the proposal would go from an act that may contribute to a stronger listing climate in the EU, to instead stand in **direct conflict** with the aim of the Listing Act to strengthen the listing climate. **A successful minimum level of harmonization must accommodate differences in national practices.**

Against this background, the Confederation of Swedish Enterprise **strongly opposes the introduction of a Directive with extensive mandatory restrictions. This type of harmonization would ruin existing well-functioning systems. Such a Directive would be one of the most serious threats towards the Swedish equity market to date, which we oppose vehemently. Such rules are neither in the interest of Sweden nor the EU. Should the Parliament choose to go down this path, we would have to oppose the adoption of the proposed Directive as a whole.**