



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:
COMPARATIVE LEGAL STUDY**

SHEARMAN & STERLING^{LLP}

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Scope of the Study

This Study is part of the report on “*Proportionality between ownership and control in EU listed companies*” prepared for the European Commission¹. Its main objective is to provide a description of the regulatory framework governing “*deviations from the proportionality principle*” in various EU and non-EU jurisdictions.

Preliminary comments on terminology

The “*proportionality principle*”, also referred to as the “*one share – one vote*” principle, is defined by the Commission as the “*proportionate allocation between ownership and control*”. “*Ownership*”, in this context, is defined as “*cash flow rights*”. A more complete definition of this principle may be found in the Report of the High Level Group of Company Law Experts of 2002, which indicates that “*proportionality between ultimate economic risk and control means that share capital which has an unlimited right to participate in the profits of the company or in the residue on liquidation, and only such share capital, should normally carry control rights, in proportion to the risk carried.*”

The scope of this Study was provided by the call for tender and the terminology used in this Study follows the terminology proposed by the Commission.

As words are the very substance of law, whether it is established law or proposed legislation, it may be useful, as a preliminary comment, to clarify that the “*proportionality principle*” is not a principle in the descriptive meaning of that word. As we will see, it does not accurately describe the current state of the legal framework in any of the jurisdictions that have been reviewed, and, historically, this relatively new principle was never dominant either. The “*proportionality principle*” should thus be understood as a normative principle, in keeping with the Commission’s reflexions on proposed legislation on these issues. The issue of “*deviations*” from this principle should therefore not be understood as how legislations deviate from an established principle, but rather as how norms that may be potentially imposed differ from existing legal systems.

Regarding the term “*ownership*”, it should be noted that, in many jurisdictions, shareholders will not be viewed as “*owners*” from a legal standpoint. Companies, as separate legal entities, with their own assets, liabilities and corporate purposes, are the owners of their own assets. Shareholders, as other stakeholders, hold certain rights *vis-à-vis* the companies (in particular, the “*rights to the residual profits and assets of the company*”, as stated by the High Level Group of Company Experts), but such rights will not necessarily be categorized as “*ownership*” in all legal systems. However, addressing this issue would go beyond the scope of this study. For simplicity and consistency purposes, and subject to this caveat, the reference to “*ownership*” has been kept and this term will be used in this Study.

Finally, following the Commission’s position, the expression “*shareholder democracy*” will not be used in the Study, although it is often used in connection with the debate on the proportionality principle. The Commission’s position appears fully justified as, historically, the reference to “*shareholder democracy*” was linked to the “*one head – one vote*” principle, the “*one share – one vote*” principle pointing more accurately to shareholder plutocracy (to the extent comparisons between business organizations and political regimes is relevant).

Subject matter of the Study

The Study focuses on the following “*Control Enhancing Mechanisms*” (“**CEMs**”), as applied in listed companies: multiple voting rights shares, non-voting shares, non-voting preference shares, pyramid structures, priority shares, depository certificates, voting right ceilings, ownership ceilings, supermajority provisions, partnerships limited by shares, golden shares, cross-shareholdings and

¹ Open call for tender n° MARKT/2006/15/F.

shareholders agreements. Such CEMs have been reviewed on the basis of corporate and securities laws, stock exchange regulations, codes of corporate governance, and, where appropriate, general principles of civil or common law.

Based on the specifications of the call for tender, the scope of the Study is limited to the proportionality principle as influenced by the Control Enhancing Mechanisms described above. However, many other mechanisms may influence and especially limit control expected from ownership. In particular, it would be worth studying share lending, derivatives and related techniques, which are highly efficient ways to obtain a quick and very significant separation between ownership and control.

It should also be noted that this Study does not address other issues of interest in the context of a general assessment of shareholding structures in Member States, such as general competition law, regulation of foreign investments, and regulations applicable to specific industries (such as banking, insurance, media, etc.). Tax law, group law, related-party transactions or prevention of conflict of interest, which are outside of the scope of this Study, should also be reviewed in order to have a full picture of the issues at stake.

The legal Study provides however some information on rules regarding general meetings of shareholders and appointment and removal of directors. Such rules affect the balance of power between minority and majority shareholders and between shareholders and management. There are therefore relevant to the assessment of the notion of “control”, which is part of the balance between ownership and control.

Geographical scope of the Study

The Study covers 16 Member States (Belgium, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Spain, Sweden and the United Kingdom) and three other jurisdictions (Australia, Japan and the United States). This wide geographical scope has made it possible to compare a great variety of legal systems.

Organization of the Study

This legal Study is organized as follows:

- The developments below provide a general presentation of the main findings, which deliberately remains purely descriptive, in keeping with the purpose of this Study.
- Exhibit A provides a description of each CEM, glossaries and explanations on the methodology followed in connection with the studies provided by each jurisdiction and the CEM by CEM comparison.
- Exhibit B provides comparative tables on a CEM by CEM basis.² It includes maps showing the use of each CEM in all jurisdictions that we reviewed, as well as standardized definitions to facilitate meaningful comparisons. Numerous footnotes provide additional clarification. At the end of this exhibit, some summary information is provided, for each jurisdiction, on general meetings of shareholders and the appointment and dismissal of directors, to give a better understanding of the legal context in which the CEMs are implemented in each jurisdiction.
- Exhibit C consists of the actual legal reports for each jurisdiction. It is the primary source of all information presented in this report.

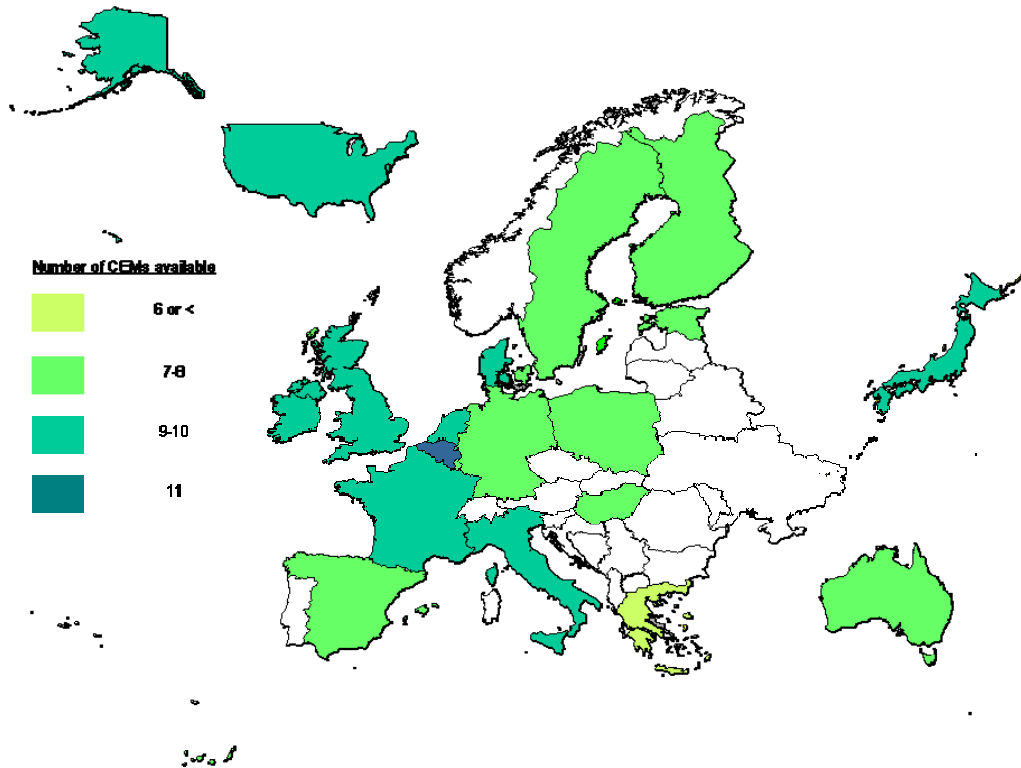
² These tables have been prepared for convenience purposes and are entirely qualified by the reports delivered by each jurisdiction.

I. GENERAL PRESENTATION

Although the legal systems of the jurisdictions we have reviewed are quite diverse, the CEMs always appear to be at the juncture of two principles: the comparatively new proportionality principle, or “one share, one vote” principle (“OSOV”), which tends to call for the suppression of CEMs, and the traditional freedom of contract principle, or “inherent right to self organization” principle (“IRSO”), which is based on the premise that, subject to certain precautionary measures, corporations should be left with the ability to organize themselves as they see fit.

The first and most obvious result of the Study is that no jurisdiction within the sample has opted for an all-OSOV or all-IRSO legal system. On the contrary, and quite remarkably, most jurisdictions tend to hold a middle-ground position. As evidenced on the map below, all countries have between five and eleven CEMs available and all of them (but one) have a majority of CEMs available.

Figure 1 Number of CEMs available in each jurisdiction

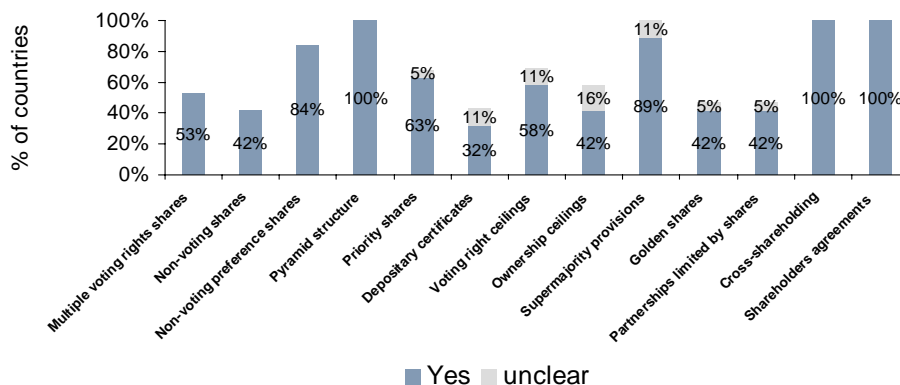


The legislation in the following countries has, to some extent, formally adopted the OSOV principle: Belgium, Germany, Estonia, Greece, Spain, Luxembourg and Poland. However, even these countries authorize various CEMs, such as voting right ceilings or ownership ceilings (Belgium, Spain and Poland) or non-voting preference shares, pyramid structures and shareholders’ agreements (all of the jurisdictions).

As a result, CEMs are widely available for use by companies in all of the reviewed countries, which tends to indicate that the IRSO principle is deeply rooted in all legal cultures. In some cases, such CEMs are specifically authorized or prohibited by law; in others, the law neither prohibits nor explicitly permits their use, in which case general principles applicable to the matter help make a determination on the availability of the CEM – it should be noted, however, that in some cases, the

availability of a specific CEM may remain unclear³. The chart below sets out a general overview of the availability of CEMs in all of the countries profiled in this Study:

Figure 2 Availability of CEMs (% of jurisdictions)



As may be seen in this chart, all CEMs but one are available in more than 40% of the jurisdictions and five of them are available in more than 80% of the countries.

In order to have a complete picture of the availability of CEMs, the table below shows the availability of CEMs in each of the jurisdictions:

Figure 3 Availability of CEMs

| Country | Mult. voting right shares | Non voting shares | Non voting pref. shares | Pyramid struct. | Priority shares | Dep. certif. | Voting right ceilings | Ownership ceilings | Supermajority provisions | Golden shares | Partnerships ltd by shares | Cross share-holdings | Shareholders agreements |
|---------|---------------------------|-------------------|-------------------------|-----------------|-----------------|--------------|-----------------------|--------------------|--------------------------|---------------|----------------------------|----------------------|-------------------------|
| BE | No | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| DK | Yes | No | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes | Yes |
| DE | No | No | Yes | Yes | Yes | No | No | No | Yes | No | Yes | Yes | Yes |
| EE | No | No | Yes | Yes | Yes | Yes | No | No | Yes | Yes | No | Yes | Yes |
| GR | No | No | Yes | Yes | No | No | No | No | Yes | No | No | Yes | Yes |
| SP | No | No | Yes | Yes | No | No | Yes | No | Yes | No | Yes | Yes | Yes |
| FR | Yes | Yes | Yes | Yes | Yes | No | Yes | No | Unclear | Yes | Yes | Yes | Yes |
| IE | Yes | Yes | Yes | Yes | Yes | Unclear | Yes | Yes | Unclear | No | Yes | Yes | Yes |
| IT | No | Yes | Yes | Yes | Unclear | No | No | Yes | Yes | Yes | Yes | Yes | Yes |
| LU | No | No | Yes | Yes | Unclear | Yes | Unclear | Unclear | Yes | Unclear | Yes | Yes | Yes |
| HU | Yes | No | Yes | Yes | No | No | Yes | Unclear | Yes | No | No | Yes | Yes |
| NL | Yes | No | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes | Yes |
| PL | No | No | Yes | Yes | No | No | Yes | Unclear | Yes | Yes | No | Yes | Yes |
| FI | Yes | Yes | Yes | Yes | No | No | Yes | No | Yes | No | No | Yes | Yes |
| \$W | Yes | No | No | Yes | Yes | Unclear | Yes | No | Yes | No | No | Yes | Yes |
| UK | Yes | Yes | Yes | Yes | Yes | No | Yes | Yes | Yes | No | No | Yes | Yes |
| USA | Yes | Yes | Yes | Yes | Yes | No | No | Yes | Yes | No | Yes | Yes | Yes |
| JP | Yes | Yes | Yes | Yes | Yes | No | Unclear | No | Yes | Yes | No | Yes | Yes |
| AU | No | Yes | Yes | Yes | Yes | Unclear | No | Yes | Yes | No | Unclear | Yes | Yes |

The second result of the Study, when read in conjunction with the study regarding the implementation of CEMs, is the following: while most of the countries in the sample provide companies with relative freedom to implement certain CEMs if they so desire, not all companies choose to exercise such

³ Please note that this summary should not be considered a full description of all laws and regulations applicable to CEMs in the jurisdictions that participated in this Study, but as a presentation of issues of interest in connection with CEMs. This summary is entirely subject to, and qualified by, the reports issued for each jurisdiction and attached as exhibits.

freedom. The availability of a CEM provided for in a country's legislation does not necessarily translate into the actual utilization of such CEM by companies. 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. The discrepancy between the availability of a CEM and its actual use by companies thus tends to indicate that market practice and market expectations play a role in the selection of the CEMs.

The chart below provides the availability and actual utilization rates of the CEMs in the countries profiled in this Study, as well as their ranking based on the availability⁴:

Figure 4 Ranking of CEMs in Europe - Summary

| Ranking | CEMs | Availability of CEMs | Actual use of CEMs |
|---------|--------------------------------|----------------------|--------------------|
| 1 | Pyramid Structure | 100% | 75% |
| 1 | Shareholders' Agreements | 100% | 69% |
| 1 | Cross-Shareholdings | 100% | 31% |
| 2 | Supermajority Provisions | 87% | NA |
| 3 | Non Voting Preference Shares | 81% | 44% |
| 4 | Voting Right Ceilings | 69% | 56% |
| 5 | Priority Shares | 56% | 12% |
| 6 | Multiple Voting Rights Shares | 50% | 44% |
| 7 | Golden Shares | 44% | 31% |
| 7 | Partnerships Limited by Shares | 44% | 0% |
| 7 | Depository Certificates | 44% | 6% |
| 8 | Ownership Ceilings | 37% | 25% |
| 9 | Non Voting Shares | 31% | 6% |

A third lesson of the Study is that, generally speaking, understanding the broader legal context in which CEMs are implemented is essential to a fair assessment of such mechanisms. Legal systems each have their own logic and a comparison based on a limited selection of items will almost always provide a misleading picture. Therefore, although the focus of the Study is limited to CEMs, some general background information has been gathered for each jurisdiction and is presented in the full legal review attached to this Study. This information covers the following issues: (i) election and dismissal of directors, (ii) rules applicable to shareholders' meetings, including the right for minority shareholders to have a shareholder meeting convened or to add an item to the agenda, and (iii) decisions requiring a vote from more than a simple majority of shareholders.⁵

For instance, some countries make it relatively easy for shareholders to add items to the agenda of the next shareholders' meeting (Denmark, Germany, France, Italy, Hungary, the Netherlands, Finland, Sweden, Japan and Australia each require shareholders to hold 5% or less of the capital to require such addition); others are more reluctant (for instance, in Belgium, Luxembourg, Poland and the United Kingdom, the threshold is set at 10% or more). It may also be noted that some countries are open to the right for minority shareholders to have a shareholder meeting convened (for instance, Germany, Spain, France, Hungary, Japan and Australia grant this right to shareholders holding 5% or

⁴ All percentages are computed on the basis of the 16 European jurisdictions.

⁵ This background information is not meant to be an in-depth study of all these topics; its purpose is only to open the door to a more comprehensive view of the context in which CEMs may, or may not, be authorized. It should also be noted that significant issues such as tax law, group law, related-party transactions or prevention of conflict of interest are outside the scope of this Study.

less of the company share capital), while some countries are more restrictive (such as Belgium and Greece) or have no specific rule applicable to this issue (the United States).

While most jurisdictions allow dismissal of directors without cause and without indemnity, others provide for indemnification (Germany, Ireland, Italy, the United Kingdom and the USA) and some allow mechanisms making such dismissals much more complex (for instance, in the USA, through the use of staggered boards). Where most countries provide for dismissal of directors by a simple majority of shareholders, some jurisdictions require a higher majority (for instance, a two-thirds majority in Estonia). While most jurisdictions allow dismissal of directors only if it is on the agenda, others do not impose this requirement (Germany, Spain, France, Luxembourg and Japan).

Australia is another good example of a jurisdiction where it is important to have a full view of the legal context in which CEMs operate. For instance, the takeover legislation in Australia that regulates investors' participation in a company provides that an investor cannot acquire more than 20% of voting power held in a company unless limited circumstances are satisfied. The circumstances that could permit exceeding the 20% limit include, in particular: (i) where a person makes a formal takeover offer in writing to shareholders, (ii) an on-market bid is made on behalf of a person by their stockbroker in the home exchange of the company, (iii) shareholder approval is obtained by a majority vote of disinterested shareholders. There are also various restrictions on the rights of non-residents to acquire shares in Australian companies. A prior notification to and approval from the Treasurer of the Australian Commonwealth Government is required in the following cases: (i) if a person is seeking to acquire an interest in the issued shares of an Australian corporation that would result in one foreign person alone or with associated persons controlling 15% or more of total voting power of issued shares, or (ii) when two or more non-associated foreign persons, or associated foreign persons, seek to acquire 40% or more of the total voting power of issued shares.

A fourth conclusion of the legal Study is that CEMs are subject to significant regulations in most countries where they are available. They are often subject to both specific restrictions (described in further details below) and general principles, such as compliance with laws, by-laws, equality principles, corporate interest or fiduciary duties.

In addition, the implementation of CEMs may almost always be challenged when it has been carried out in breach of basic principles of corporate law designed to protect shareholders' rights. The broad definition of such principles captures a wide range of situations, such as decisions (i) which are in the sole interest of the management or of the majority shareholders, (ii) against the corporate interest, (iii) conferring undue advantages to certain shareholders, (iv) oppressive to shareholders, (v) contrary to good business practice, (vi) harming or aimed at harming the interests of the company or certain shareholders, (vii) unduly favoring a shareholder or a third person to the detriment of the company or another shareholder, (viii) based on the participation of interested shareholders and leading to significantly unfair results or (ix) in breach of fiduciary duties. Although the manner in which such principles are expressed may differ, generally speaking they tend to strike a balance between the interests of majority shareholders, minority shareholders and the company, thus providing the parties an effective protection against abusive use of CEMs. This protection is at its highest point when the CEM is implemented through a decision by the legal representatives of the company, the board or the shareholders acting collectively (for instance, in general meetings): the involvement of the company and the collective nature of shareholders' decisions tend to provide strong grounds for judicial review. On the contrary, decisions involving only individual shareholders, with no assistance of the company, are subject to a more limited control, just as decisions to buy and sell shares are not usually subject to judicial review on the grounds listed above. Decisions whereby shareholders set up pyramid structures or enter into shareholders' agreements – two CEMs that are allowed in all jurisdictions – thus tend to be subject to a lesser degree of judicial review.

Transparency of CEMs is also an issue addressed in all jurisdictions that participated in this Study. CEMs are subject to a wide variety of disclosure obligations, including initial disclosure requirements and on-going disclosure requirements. Initial disclosure requirements include: (i) filing of the articles

of association, (ii) publication in a legal gazette regarding the amended articles of association, (iii) auditors' reports, (iv) specific filings (for example, filings with the local regulatory authorities seeking their approval), (v) specific notifications (specific information to employees or to other companies), (vi) information to shareholders, and (vii) admission documentation (prospectus, listing documentation, etc.). Ongoing disclosure requirements include: (i) annual reports, (ii) periodic reports, (iii) special reports (reports prepared to disclose a specific event), (iv) Article 10 report (report made compulsory under Article 10 of the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids ("Takeover Directive")), and (v) website disclosure (requirement to publish certain information on the company's website).

Disclosure requirements are generally strong for CEMs implying issuance of securities or amendments to the by-laws, such as multiple voting rights shares, non-voting shares (with or without preference), priority shares, depository certificates, voting right ceilings, ownership ceilings, supermajority provisions and partnerships limited by shares. Disclosure typically includes filing the Articles of Association with the commercial court (or an equivalent body), description of the relevant CEM in the admission prospectus (when securities are issued) and description of relevant provisions in the annual reports or similar documents. Generally speaking, disclosure issues have been addressed in the European Union by the Transparency Directive (Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2005), which should lead to a harmonization of rules applicable to CEMs. As many CEMs may lead to an acquisition of an interest in a company implementing a certain CEM, the disclosure requirements applicable to such acquisitions have been addressed in a specific annex. This annex essentially shows that European member states are converging towards the same disclosure requirements as a result of the gradual implementation of the Transparency Directive.

The final conclusion of this Study is that knowing who has the right to implement a CEM is of critical importance. For instance, when the CEM is based on the issuance of shares, the degree of control shareholders have is not the same in countries where companies are allowed to have an authorized capital (such as the US or Australia) and in countries where such decisions must always receive shareholder approval. In this latter case, it should also be checked whether the decision may be delegated by the shareholders to the board, and if this is the case, for how long. Implementation of the Takeover Directive has an additional impact: when Member States have implemented Article 9 of such directive, delegations to the board are suspended when there is a takeover bid.

The following table shows which body takes the decision to implement the CEM and, when shareholders’ meetings are involved, the required majority for the implementation of such decisions:

Figure 5 Shareholders Majority Summary⁶

| Country | Mult. voting right shares | Non voting shares | Non voting pref. shares | Priority shares | Dep. certif. | Voting right ceilings | Ownership ceilings | Supermajority provisions |
|-------------------|---------------------------|-------------------|-------------------------|-----------------|--------------|-----------------------|--------------------|--------------------------|
| BE | N/A | N/A | 3/4 | 3/4 | Board | 3/4 | 3/4 | 3/4 |
| DK | 2/3 | N/A | N/A | 2/3 | Board | 9/10 | 9/10 | 2/3 |
| DE | N/A | N/A | 3/4 | 3/4 | N/A | N/A | N/A | 3/4 |
| EE | N/A | N/A | 2/3 | 2/3 | N/A | N/A | N/A | 2/3 |
| GR | N/A | N/A | Board/ 2/3 | N/A | N/A | N/A | N/A | SM |
| SP ^[1] | N/A | N/A | 2/3 or SM | N/A | N/A | 2/3 or SM | N/A | 2/3 or SM |
| FR | 2/3 | 2/3 | 2/3 | 2/3 | N/A | 2/3 | N/A | N/A |
| EI | 3/4 | 3/4 | 3/4 | 3/4 | N/A | 3/4 | 3/4 | 3/4 |
| IT | N/A | 2/3 | 2/3 | 2/3 | N/A | N/A | 2/3 | 2/3 |
| LU | N/A | N/A | 2/3 | 2/3 | Board | N/A | N/A | 2/3 |
| HU | ESM | N/A | ESM | N/A | N/A | 3/4 | N/A | 3/4 |
| NL | SM | N/A | N/A | SM | Board/ SM | SM | AM | AM |
| PL | N/A | N/A | 3/4 | N/A | N/A | 3/4 | 3/4 | 3/4 |
| FI | 2/3 | 2/3 | 2/3 | N/A | N/A | Unanimity | N/A | 2/3 |
| SW | 2/3 | N/A | N/A | 2/3 | N/A | 2/3 | N/A | 2/3 |
| UK | 3/4 | SM | SM | 3/4 | N/A | 3/4 | N/A | AM |
| USA | Board/AM | Board/AM | Board/AM | Board/AM | N/A | N/A | Board | Board/AM |
| JP | Board/ 2/3 | Board/ 2/3 | Board/ 2/3 | Board/ 2/3 | N/A | Board/ 2/3 | N/A | 2/3 |
| AU | N/A | Board/ 3/4 | Board/ 3/4 | Board | N/A | N/A | 3/4 | 3/4 |

[1] If less than 50% is present, the majority is 2/3 and if more than 50% is present, the majority is Simple Majority.

II. REGULATORY FRAMEWORK BY CEM

The brief summary below focuses on two specific issues. First, the difference between the legal availability of CEMs in a jurisdiction and its effective use is considered, as this information may be seen as an indication that markets have the ability to operate a selection of CEMs. Second, specific restrictions to CEMs are listed, as these mechanisms are easily comparable – however, when reviewing them, one should always keep the big picture in mind⁷.

2.1 Multiple voting right shares

Availability. This CEM is legally available in 53% of all the countries that participated in this Study. It appears to be actually implemented in 50% of those countries.

Multiple voting rights shares may take the form of time-phased double voting right shares, also known as “loyalty shares” (France) that may only be attributed to shares that have been registered in the name of a shareholder for a specific duration of time set in the company’s bylaws (such duration

⁶ In the table, the applicable majority rules have been categorized as follows: (i) Simple Majority (“SM”): More shares voting “yes” than voting “no”, (ii) Enhanced Simple Majority (“ESM”): More shares voting “yes” than voting “no” when shares of shareholders present or represented at the meeting who do not vote on the resolution (abstentions) or vote neither yes or no (blank vote) are counted as voting “no”, (iii) Absolute Majority (“AM”): Half of all issued shares + 1.

⁷ In particular, it should be noted that the broader the rule described in the summary, the more likely it is that other jurisdictions may achieve the same results through different means, notwithstanding the fact that such rule may not be specified in these other jurisdictions.

may not be less than two years). Such shares do not constitute a specific class; the double-voting right is considered a reward for the long-term commitment of the shareholder. Other types of multiple voting rights shares typically constitute separate classes.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| DK | FR | EI | HU | NL | PL | FI | SW | UK |
|-----|-----|----|----|-----|-----|-----|-----|----|
| 25% | 55% | 0% | 5% | 42% | 20% | 40% | 80% | 5% |

This CEM is available in the majority of the countries in this Study; yet, its actual implementation rate greatly varies from country to country. In the United Kingdom only 5% of the analyzed companies actually implement the multiple voting rights shares, while in Sweden the percentage of the companies using multiple voting rights shares reaches 80%.

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance: (i) there is a limit to the number of votes per share with the same par value, for instance two (France), ten (Denmark, Hungary and Sweden) or 1,000 (Japan), (ii) the multiple voting rights shares are not allowed to represent more than a certain percentage of the share capital (50% in Hungary) or (iii) the multiple voting rights have only a limited impact on decisions by the general meetings of shareholders that require more than a simple majority (Denmark, Finland and Sweden).

2.2 Non-voting shares

Availability. The non-voting shares are legally available in 42% of the countries that participated in this Study. It appears to be actually implemented in 12% of these countries.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| DK | FR | EI | IT | FI | UK |
|----|----|----|----|----|----|
| 5% | 0% | 5% | 0% | 0% | 0% |

As demonstrated by the above chart, this CEM, although relatively widely available from the legal perspective, is very seldom used.

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance, the non-voting shares may not represent more than a certain percentage of the share capital (25% in France and 50% in Italy and Japan).

2.3 Non-voting preference shares

Availability. Non-voting preference shares are legally available in 84% of the countries that participated in this Study. This type of CEM is actually present in 44% of those countries.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| BE | DE | EE | GR | SP | FR | EI | IT | LU | HU | PL | FI | UK |
|----|-----|----|----|----|----|-----|-----|----|----|----|----|-----|
| 0% | 20% | 0% | 5% | 0% | 0% | 30% | 30% | 5% | 5% | 0% | 0% | 50% |

Even though widely available, this CEM is used relatively rarely in most countries. In Europe, non-voting preference shares appear to be most commonly present in the United Kingdom (50% of the analyzed companies use this CEM), Ireland (30% of the analyzed companies use this CEM) and Italy (30% of the analyzed companies use this CEM).

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance, (i) non-voting preference shares may not represent more than a certain percentage of the share capital (25% in France, 1/3 in Belgium and Estonia, 40% in Greece and 50% in Germany, Spain, Hungary, Japan, Italy and Luxembourg), (ii) such shares may vote on significant issues such as change of the company's purpose or form (Belgium and Luxembourg) or share buy-backs agreements (Australia), or (iii) if certain conditions are met, regarding the non payment of dividends, voting rights may be reinstated (Belgium, Germany, Estonia, Spain, Luxembourg, Hungary) or the holders may obtain the right to appoint at least two directors (United States).

2.4 Pyramid structures

Availability. This CEM is legally available in all of the countries that participated in this Study. 75% of all the countries participating in the survey use pyramid structures.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| BE | DK | DE | EE | GR | SP | FR | EI | IT | LU | HU | NL | PL | FI | SW | UK |
|-----|----|-----|----|-----|-----|-----|----|-----|-----|-----|-----|-----|----|-----|----|
| 40% | 0% | 15% | 8% | 15% | 20% | 25% | 0% | 45% | 26% | 35% | 11% | 10% | 0% | 65% | 0% |

The pyramid structure is one of the most widely available CEMs and also one of the most widely used. The only countries that do not use it despite its availability are Denmark, Ireland, Finland and the United Kingdom.

Restrictions. Although it is always available, this CEM may be subject to certain restrictions. For instance, in some cases, the use of pure holdings is prohibited or restricted (the United Kingdom and Italy).

Group law, rules on related-party transactions and on conflicts of interest, which have not been addressed in this Study, may also impose restrictions on the use of pyramid structures.

2.5 Priority shares

Availability. This CEM is legally available in 63 % of all the countries that participated in this Study. It appears to be actually implemented in 25% of those countries.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| BE | DK | DE | EE | FR | EI | LU | HU | NL | PL | SW |
|----|----|----|----|----|----|----|----|-----|----|----|
| 0% | 0% | 0% | 0% | 0% | 0% | 5% | 5% | 11% | 5% | 0% |

Priority shares are available in the majority of the countries in this Study; yet, this CEM is never used in the majority of the countries where it is available. It appears to be most commonly used in the Netherlands.

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance, priority shares (i) may not represent more than a certain percentage of the share capital (25 % in France, 33% in Estonia, 50% in Italy), (ii) shall not contravene the special powers of the general meeting of shareholders (Belgium, Denmark, the Netherlands), (iii) must comply with specific rules regarding designation of directors or supervisory board members (Denmark, Germany, Italy, Sweden, Japan) and (iv) may not grant veto rights to their holders (Belgium and Denmark). In the Netherlands, no more than 50 % of priority shares issued by a company may be held by its directors.

2.6 Depository certificates

Availability. Depository certificates are only legally available in 26 % of the countries that participated in this Study but are only significantly present in the Dutch companies surveyed.

Depository certificates are meant to prevent minority shareholders from controlling the decision-making process as a result of absenteeism at a general meeting of shareholders.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| BE | DK | EE | EI | LU | NL | SW |
|----|----|----|----|----|-----|----|
| 0% | 0% | 0% | 0% | 0% | 21% | 0% |

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance, (i) holders of depository certificates must have a right to convert depository certificates into shares (under certain circumstances, in Belgium, and, as a matter of principle, in the Netherlands) or, as a matter of principle, except in specified circumstances, must have the right to vote (the Netherlands), (ii) the trust holding depository certificates have to vote according to certain predefined criteria (the Netherlands), and (iii) the depository certificates may not be used as anti-takeover measures (Dutch Corporate Governance Code).

2.7 Voting right ceilings

Availability. This CEM is legally available in 58% of all the countries that participated in this Study. The voting right ceilings are actually implemented in 75% of those countries.

Voting right ceilings may be expressed as an absolute number (or percentage) or be proportional to the number of shares (or votes) present or represented during the shareholders meeting. They are meant to prevent minority shareholders from controlling the decision-making process as a result of absenteeism at a general meeting of shareholders.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| BE | DK | DE | SP | FR | EI | IT | LU | HU | NL | PL | FI | SW | UK |
|----|-----|----|-----|-----|----|-----|----|-----|----|-----|-----|----|-----|
| 0% | 10% | 5% | 35% | 20% | 5% | 10% | 0% | 20% | 0% | 20% | 10% | 5% | 10% |

Although available in many countries involved in this Study, the actual implementation of this CEM varies from country to country, with the highest level of implementation in Spain (35% of the analyzed companies use this CEM).

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance, voting right ceilings (i) may only be applicable to shareholders holding more than a specified percentage of the share capital of the company (20% in Poland), (ii) must be automatically suspended after a successful tender offer, pursuant to a breakthrough rule (France) and (iii) must apply equally to all shareholders or to all shareholders in a same class (Belgium, Denmark, Spain, France, Hungary, the Netherlands, Finland and Sweden).

2.8 Ownership ceilings

Availability. Ownership ceilings are among the most ancient mechanisms providing for the decoupling of ownership and control. Historically, they relate to the period when the “one head – one vote” principle was one of the strongest trends of corporate organization. Today, they are legally available in 42% of the countries that participated in this Study.

Ownership ceilings may be implemented in the by-laws or through the use of shareholders’ agreements. The latter case is addressed in the section relating to shareholders’ agreements.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| BE | DK | GR | SP | FR | EI | IT | LU | HU | NL | PL | UK |
|----|----|-----|----|-----|----|-----|----|----|----|----|-----|
| 0% | 5% | 20% | 5% | 10% | 5% | 30% | 0% | 0% | 0% | 0% | 10% |

This CEM is relatively widely available, but seldom used in most countries, with the highest implementation in Italy and Greece.

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance, (i) in Denmark, the CEM can only be implemented if certain significant voting requirements are satisfied (9/10 of the votes and the consent of the shareholders who are directly affected by the CEM is required) and dissenting shareholders may benefit from a redemption right (shareholders who at the general meeting object to the implementation of the ownership ceilings

can require the company to redeem their shares) and (ii) in Italy, a breakthrough rule is applicable to companies controlled by the State.

2.9 Supermajority provisions

Availability. Supermajority provisions are often seen as a mechanism protecting minority shareholders. All countries, except France and Ireland (where the situation is unclear) allow companies to introduce supermajority provisions in their by-laws⁸. It may also be noted that in all countries (except the United States) the law provides for supermajority provisions for some resolutions at extraordinary general meetings.

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance, (i) subjecting certain decisions to supermajority provisions may be restricted or prohibited: such decisions include, for instance, appointment of special auditors (Germany), amendments to the articles of association (Ireland), and election of directors (Sweden), (ii) the supermajority provisions may not apply to dismissal of directors (Belgium, Luxembourg, and Hungary) or supervisory board members (Germany), (iii) supermajority on certain decisions (such as approval of financial statements or designation or removal of directors) may not apply on second call (Italy) or (iv) supermajority cannot attain unanimity in certain countries (Greece, Spain, Italy and Poland) or exceed a special threshold (for instance, in the Netherlands, removal of managing directors may not require a qualified majority in excess of 2/3 of the votes cast representing more than ½ of the capital).

2.10 Golden shares

Availability. This CEM is legally available in 42% of all the countries that participated in this Study. It is actually implemented in only 6% of all the analyzed companies.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| BE | DK | EE | SP | FR | EI | IT | LU | HU | NL | PL |
|----|----|----|-----|----|----|-----|-----|-----|----|-----|
| 0% | 0% | 8% | 15% | 5% | 5% | 20% | 11% | 30% | 0% | 20% |

This CEM is relatively seldom used in most countries where it is available, with Hungary at the top of the list at 30% implementation rate.

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance, (i) implementation of the special rights granted to the State have to comply with specific principles, such as equal treatment of shareholders (Denmark and Poland), corporate interest (decisions “detrimental to the business of the company”, Estonia), public interest (Estonia, France, Italy: “vital interest of the State”), public order or public security (Poland), or (ii) golden shares have sunset provisions, providing for their automatic cancellation after a certain time (Spain).

⁸ In the Study, “supermajority provisions” always refer to provisions introduced in the by-laws of the companies and going beyond what is required by applicable laws. A table summarizing most supermajority rules imposed by applicable laws in each jurisdiction is provided at the end of Exhibit B.

2.11 Partnerships limited by shares

Availability. Partnerships limited by shares are one of the oldest forms of corporate organizations. They are legally available in 42% of all the countries that participated in this Study. However, none of the companies in this Study appeared to be organized as partnerships limited by shares.

When a company may be transformed into a partnership limited by shares, a recurrent principle is that the consent of the shareholders becoming unlimited partners is mandatory.

Restrictions. In the countries where the CEM can be implemented, it may be subject to certain restrictions. For instance, (i) partnerships limited by shares may be reserved to certain entities (Italy) or to certain types of partnerships limited by shares (Ireland: only investment limited partnerships), or (ii) transformation of a company into a partnership limited by shares may trigger an obligation on the part of the majority owners or future partners to launch a minority buy-out (France), or give dissenting shareholders the right to leave the company (Spain).

2.12 Cross-shareholdings

Availability. This CEM is legally available in 100% of all the countries that participated in this Study. It is actually implemented in only 31% of all those countries.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| BE | DK | DE | EE | GR | SP | FR | EI | IT | LU | HU | NL | PL | FI | SW | UK |
|----|----|-----|----|----|----|-----|----|----|----|----|-----|----|----|-----|----|
| 0% | 0% | 10% | 0% | 0% | 0% | 20% | 0% | 5% | 0% | 0% | 11% | 0% | 0% | 25% | 0% |

This CEM is available in a large majority of the countries involved in this Study; however, it is only used in the surveyed companies in Germany, France, Italy, the Netherlands and Sweden, with Sweden at the top of the list with the highest implementation rate (25%).

Restrictions. This CEM is subject to certain restrictions, for instance, (i) in all countries, when cross-shareholdings involve ownership by a subsidiary of shares of its direct (or, in some cases, indirect) parent company, strict rules regulating cross-shareholdings and suspension of voting rights have to be followed and (ii) the voting rights are suspended when a specified threshold is crossed: 2% in Italy, 10% in Belgium, Spain, France, Finland and 25% in Germany, Japan and Hungary.

2.13 Shareholders' agreements

Availability. Shareholders' agreements are generally considered to be at the core of the freedom of contract – IRISO principle. This CEM is thus legally available in 100% of all of the countries that participated in this Study. Shareholders' agreements are present in 69% of those countries, and are most common in Italy and Belgium.

The chart below illustrates the frequency of occurrence of this CEM in relation to its availability under the law in the European countries that participated in this Study:

| BE | DK | DE | EE | GR | SP | FR | EI | IT | LU | HU | NL | PL | FI | SW | UK |
|-----|----|----|----|----|----|-----|----|-----|----|----|----|----|----|----|----|
| 25% | 0% | 0% | 8% | 5% | 5% | 15% | 5% | 40% | 0% | 0% | 5% | 0% | 5% | 5% | 5% |

Despite being widely available in all of the countries that participated in this Study, shareholders' agreements do not appear to be utilized widely in all of the surveyed countries. In particular, companies surveyed in Denmark, Germany, Luxembourg, Hungary and Poland do not demonstrate any implementation of shareholders' agreements.

Restrictions. In some countries, shareholders' agreements may be subject to certain restrictions. For instance, (i) voting agreements may be severely restricted : they must not be contrary to the interest of the company (Belgium, Germany, Greece and Luxembourg), they may be void if the shareholder commits himself to vote in accordance with the instructions of the company (Belgium) or of a shareholder or a third party (the Netherlands) or if the agreement provides for a monetary incentive to vote (Estonia, Greece, France) (ii) shareholders' agreements may not infringe on the principle of directors' independence (Denmark, France, Ireland, Luxembourg, Hungary, Finland and the United Kingdom), (iii) shareholders' agreements may not contradict mandatory rules (Denmark) or lead to votes (Germany) or decisions (Greece) that are contrary to the interest of the company, or (iv) may not last longer than a certain period of time, if they are for a limited duration (3 years, Italy), or should be of limited duration (Luxembourg).