Should Shareholders Be Rewarded for Loyalty? European Experiments on the Wedge Between Tenured Voting and Takeover Law

by Chiara Mosca

Abstract—*Corporate law reveals its democratic background when it comes to the general meetings of shareholders, finding, on both sides of the Atlantic, its most tangible expression in the 'one share, one vote' principle. While in the political landscape, the 'one person, one vote' standard is absolute dogma and weighting votes according to people's preferences and interests has never proved feasible, in the corporate scenario the 'one share, one vote' principle is constantly challenged by the incentives of companies and their shareholders to shape corporate rights according to specific needs. In this respect, some legislators (specifically in France and Italy) have provided for mechanisms that allow more loyal shareholders to increase their voting power. Tenured voting (or time-phased voting rights) should be analysed in light of the modern corporate governance debate, which calls for a stronger role for long-term investors. However, the other side of the coin should be considered: the increase in voting rights broadens the range of control-enhancing mechanisms, although specific sunset clauses (whether provided for by law or voluntarily opted in by companies) may restore the 'one share, one vote' rule. The analysis suggests that the mechanism based on tenured voting is more transparent and potentially less stable than other common control-enhancing mechanisms and deserves to be considered in the debate. At the EU level, the possibility left to the Member States of weighting shareholders' voting power according to their long-term interests, leads to legislative fragmentation across Europe. Specifically, in Italy, the adoption of tenured voting coupled with a tradition of ownership concentration sharply empowers controlling shareholders. At the same time, European takeover regulation plays an exogenous role in indirectly selecting the companies that adopt time-phased voting rights. The final result is completely mistrusted, as tenured voting rights disappoint their expectations and are rarely used to meet a true need of long-termism. The paper describes the paradox that emerges when tenured voting rights interact with the core principles of the EU financial market law system, and it offers various ways to alleviate this difficult coexistence.*

Table of Contents

*** ***

I. LOYAL SHAREHOLDERS AND LONG TERMISM

1. *Introduction*

In the financial literature developed primarily after the financial crisis of 2007–2009, loyal shareholders emerge as a possible instrument to hinder the growing tendency toward the short termism of company directors. In the most pessimistic view, management decisions influenced by such a short horizon were sometimes considered highly destructive, due to the excessive focus of directors of listed companies on quarterly earnings and share prices as performance benchmarks. Beyond the debate on the dichotomy of short and long termism, and the scepticism that the long term can be regarded dryly as the sum of several short terms,[1] it is widely recognised that while stock markets, strengthened by developments in information technology and the higher frequency of stock trading, place short-term pressure on corporate executives, firms should not miss investment opportunities, innovation, and long-term planning.[2]

Excessive attention on short termism is unrelated to how efficiently companies are governed.[3] Efficient corporate governance is not inconsistent with positive short-term results, especially if directors respond to the short-term attitude of shareholders themselves. Conversely, loyal shareholders are hypothetical shareholders who are more concerned with the firm's long-term fundamental value than with share prices. It is often assumed that loyal shareholders are 'buy-and-hold' investors who generally—but not necessarily—engage with the management of the company; their loyalty corresponds to the attitude of holding shares for a prolonged period of time, even when market prices deviate from the firm's long-term fundamental value.

If we consider shareholders' investment duration as the most immediate measure of their loyalty, two types of mechanisms reinforce the tendency of shareholders to maintain their shares longer. The first involves a financial advantage for loyal shareholders, the second leverages the extra power that can be granted to shareholders in terms of increased voting rights. Although in theory a wide range of solutions is available, and the two loyalty privileges can be combined in the same financial instrument, their different natures suggest a separate analysis.

In this regard, the array of financial benefits for loyal shareholders can be structured in several ways, such as equity warrants or loyalty shares (the latter, in this context, meaning shares allotted as a benefit to long-term investors), or a richer distribution of dividends. Increased dividends, in particular, are neutral from the point of view of companies' capital structure; they involve the inclusion in the company's articles of association of an opt-in clause for a surplus in the distribution of dividends to shareholders who

[1] Mark J. Roe, Stock Market Short-Termism's Impact. ECGI Law Working Paper N° 426/2018, (November 12 2018), available at ecgi.global/working-paper/stock-market-short-termism's-impact and ssrn.com/abstract=3171090, 1-44, 37; Michael J. Mauboussin, Dan Callahan, *A Long Look at Short-Termism: Questioning the Premise*, 27 J. APP. CORP. FIN., 70-82 (2015); Klaus J. Hopt, *Corporate Governance in Europe: a Critical Review of the European Commission's Initiative on Corporate Law and Corporate Governance*, 12 N.Y.U. J. L. & BUS. 139-213, 173 (2015); George Dent, *The Essential Unity of Shareholders and The Myth of Investors Short-termism*, 35 DELAWARE L. J., 97-150, 123 (2010); Jeroen Delvoie & Carl Clottens, *Accountability and short-termism: some notes on loyalty shares*, 9 LAW & FIN. MARKETS REV. L., 19-28, 20 (2005).

[2] Patrick Bolton & Frédéric Samama, *Loyalty-Shares: Rewarding Long-term Investors*, 25 J. APP. CORP. FIN., 89, 38-49, (2013); P. Alexander Quinby, *Addressing Corporate Short-Termism Through Loyalty Shares*, 40 FLA. ST. U. L. REV. 2, 389-413, 396 (2013).

[3] Bolton & Samama, *supra* note 2, 38.

maintain their shares for a defined period of time.[4] However, despite being adopted by various jurisdictions—in France in 1994 and in Italy in 2010—this *dividend majoré* has rarely been used by companies. Beyond the many ambiguities in the country-specific provisions, especially with regard to the conditions that shareholders have to fulfil in order to receive additional dividends,[5] its low overall adoption[6] seems to indicate that long termism cannot be easily achieved by promising a long-term financial advantage when short-term trading opportunities are much more attractive for investors.[7]

The article will focus on the second loyalty tool—an additional privilege to increase the power of long-term shareholders. The freedom of companies to implement this mechanism varies widely from one legal system to another, due to different approaches to dual-class shares that entitle shareholders to exercise multiple voting rights; it also depends on the extent to which national jurisdictions allow deviations from the 'one share, one vote' principle. The economic literature has traditionally mistrusted any excessive disproportion of cash flows and control rights that exacerbates the incentives for controlling shareholders to extract private benefits from the company, to the detriment of other shareholders.[8]

Tenured voting rights—in particular, those which give the owner the right to mature time-phased voting rights—belong to this strand of reasoning, and their specific characteristics will ground this discussion. They are based on a mechanism that rewards

---

[4] M.L. Lennarts & M.S. Koppert-van Breek, *Loyalty Dividend and the EC Principle of Equal Treatment of Shareholders*, 5 EUR. COMP. L., 173-180, 173, 174 (2008).

[5] According to Article 127-*quater* of the Italian Consolidated Law on Finance (the so-called Testo Unico della Finanza, hereinafter the Italian Consolidated Law on Finance), only 'minority' shareholders—namely, those who cannot exercise any significant influence over the company's management (a situation that is not always easy to ascertain)—and shareholders who do not confer their shares to a shareholders' agreement—are entitled to receive additional loyalty dividends, corresponding to a 10 surplus if they retain their shares for a period of not less than one year, when the articles of association so provide. Moreover, the shares that can be entitled to the loyalty dividend cannot exceed 0.5% of the share capital for the shareholder entitled to the extra dividend. This limitation, which is provided also by Article L. 232-14 of the French *Code de Commerce*, reflects the lawmaker's concern for a too-extensive derogation of the equality principle of shareholders, but it also implies a potential reverse effect on long termism, since shareholders may decide to disinvest their holding exceeding the 0.5% that cannot receive the increased dividends (Richard Routier, *Primes de fidélité: le revers de la médaille?*, BJS 1996, 23 § 3 and § 15).

[6] Delvoie & Clottens, *supra* note 1, 20, Mario Stella Richter *jr*, *I troppi problemi del dividendo maggiorato*, RIVISTA DIR. COMM. I, 89-106 (2011).

[7] Lennarts & Koppert-van Breek, *supra* note 4, 175 and 179.

[8] Ronald J. Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, 119 HARV. L. REV. 1641-1680, 1648 (2006).

long-term shareholders with increased voting rights if the condition of prolonged and uninterrupted holding of the shares is fulfilled.

In several jurisdictions, time-phased voting rights are not fantasy. Under US state law they are generally considered permissible if they are clearly spelled out in companies' charters, and despite the Securities and Exchange Commission's traditional resistance towards multiple-voting structures, they are a reality for several public companies.[9] For non-public companies and companies about to go public, multiple voting securities and tenured voting are viable tools in the United States,while the NYSE listing requirements prohibit listed companies from adopting these mechanisms once the company has issued stock with a certain package of voting rights. Moreover, the NYSE, in its interpretive documents, has allowed some exceptions that may impact stockholder voting rights if the Exchange finds that these actions have a 'reasonable business justification.'[10]

In Italy and France, tenured voting rights have been adopted at the legislative level, as regulatory tools to invite listed companies to find a contractual solution in the search for long termism. Unlike the United States, where there is no limit to the time-weighing multiplier of the increase in voting rights, legislative reforms in Europe, including the recent review of Belgian company law, reward loyal shareholders of listed companies with no more than double voting rights. Such privilege takes the form of an individual advantage granted to long-term shareholders, in the absence of any alteration in the capital structure of the company.

The focus on long termism, as the ultimate goal pursued in both Italy and France, should not overshadow the fact that these rights represent control-enhancing

---

[9] Statistics on the use of dual-class structure in the United State are provided by the Council of Institutional Investors Council of Institutional Investors, DUAL-CLASS IPO SNAPSHOT: 2017–2018 STATISTICS, March 4 2018, available at www.cii.org/dualclass_stock; and, for analysis of a sample of companies with tenured voting in the United States: Lynne L. Dallas & Jordan Barry, *Long-Term Shareholders and Time-Phased Voting*, 40 DELAWARE J. CORP. LAW, 541-646, 548, 552 (2016).

[10] On the historical reconstruction of the SEC's failed attempt to render a multiple-voting structure unsuitable for publicly traded companies, *see* Stephen M. Bainbridge, *The Short Life and Resurrection of SEC Rule 19c-4*, 69 WASH. UNIV. L. Q., 565-634 (1991); Grant M. Hayden & Matthew T. Bodie, *One Share, One Vote and the False Promise of Shareholder Homogeneity*, 30 CARDOZO L. REV. 445-471, 481 (2008); Edward B. Rock, *Shareholder Eugenics in the Public Corporation*, 97 CORNELL L. REV. 849-906, 903 (2012); Tamara C. Belinfanti, *Shareholder Cultivation and New Governance*, 38 DELAWARE J. CORP. L., 789-872, 833 (2014); Jesse M. Fried, *The Uneasy Case for Favoring Long-Term Shareholders*, 124 YALE L. J., 1554-1627, 1572 (2015); David J. Berger, Steven Davidoff Solomon & Aaron Benjamin, *Tenure Voting in the US Public Companies*, 72 BUSINESS LAWYER, 295-324, 304 (2017); Paul H. Edelman, Wei Jiang & Randall S. Thomas, *Will Tenure Voting Give Corporate Managers Lifetime Tenure?*, ECGI Law Working Paper No. 348/2018, available at ssrn.com/abstract=3107225, 1-51, 11 (2018).

mechanisms (CEMs). Like dual-class shares, in fact, these mechanisms grant extra voting power to the controlling shareholder. However, different from dual-class shares, the increase in voting rights dissolves if corporate control changes. Loyalty, in other words, is still a personal characteristic of the shareholder, and the voting rights that have increased accordingly cannot be passed on to less-loyal third parties.

The analysis of this loyalty-enhancing tool is divided into three parts. Part I describes the legislative choices made in Italy, France and Belgium, and elaborates the theoretical debate on the pros and cons of time-phased voting rights. Part II provides evidence of empirical analysis. It helps to classify the Italian listed companies that have adopted the provision allowing long-term shareholders to obtain additional voting rights, and to verify the distribution of ownership and voting rights after maturity. The empirical exercise analysed directors' pre-general meeting proposals, the articles of association of Italian companies, and the publicly available sections of the company's registers in which tenured voting rights are recorded. It underlines common traits in the decision-making process to adopt tenured voting rights, and the typology of shareholders who welcomed the introduction of this loyalty-enhancing mechanism. Part III highlights the interference between this loyalty-enhancing mechanism and the takeover law. The mandatory offer—a special feature of European law that has no equivalent in the United States—operates as an exogenous constraint that represents the only concrete hindrance to disproportionate cash flows and voting rights. The current choice made by Italy to extend the existing mandatory offer rule to tenured voting is inconsistent with the premise that loyalty voting rights should increase shareholders' participation in the life of the company. The conclusion will draw attention to the urgent need to rethink the relationship between takeover law and tenure voting, moving towards less fragmentation across Europe. More reflection is needed at the European level, on specific rules applicable when, within the framework of the Takeover Directive,[11] the reaction to a large increase in voting rights is in the mandatory offer obligation.

2. *How Tenured Voting Impacts the Principles of Equal Treatment of Shareholders and 'One Share, One Vote'*

Although it is a dominant principle in several jurisdictions, 'one share, one vote' is not an entrenched rule. Not only are various approaches available for companies to alter the proportionality between ownership and control (such as pyramid structures, cross-shareholdings, shareholders' agreements, and voting-right ceilings), but in many

[11] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (hereinafter the Directive on Takeover Bids or Takeover Directive).

Member States different classes of shares are permitted, thus allowing companies to issue shares with limited or no voting rights.[12]

It is therefore surprising that, even where such dual-class shares have historically been used, there has been much more discussion on the limits and the eligibility of shares with multiple voting rights. A possible explanation for this strong opposition lies in the observation—which seems to be contrary to any form of shareholder democracy[13]—that multiple voting rights shift the decision-making power within the (voting) shareholder group to a restricted fraction of powerful shareholders.

Quite often multiple voting securities are tightly linked to maintaining control through reducing the equity invested in the company. Agency costs, normally borne by shareholders to monitor managers, are amplified by the fact that placing multiple voting shares in the hands of few powerful shareholders reduces transparency and increases the complexity of the principal-agent relationship. Minority shareholders have fewer instruments and bear a greater cost in monitoring those controlling shareholders who act as managers' allies.[14] Moreover, the ideal separation between active shareholders, who opt for high-voting shares, and passive ones, who settle for low-voting shares, is always highly theoretical, and does not reflect the real choices of investors.[15]

This last concern apparently dissolves when loyalty-enhancing mechanisms, as adopted in Italy and France, are considered. The reference to such instruments as 'loyalty shares', despite its common use, is slightly misleading. It is not necessary, in fact, to issue a new class of shares; rather, double voting rights can be equally granted to all shareholders as a premium for their long-term entitlement, and irrespective of the number of shares owned. In light of this, gaining additional voting rights is entirely forward-looking. Shareholders start with the 'standard set' of rights, as spelled out in the

---

[12] The complete array of control-enhancing mechanisms is listed in the internal study commissioned by the European Commission, 'Report on the Proportionality Principle in the European Union', 2006, available at ec.europa.eu/internal_market/company/docs/shareholders/study/final_report_en.pdf; Simone Alvaro, Angela Ciavarella, Doina D'Eramo & Nadia Linciano, LA DEVIAZIONE DAL PRINCIPIO "UN'AZIONE-UN VOTO" E LE AZIONI A VOTO MULTIPLO. Quaderni giuridici, 30, 47 (January 2014), available at www.consob.it/web/area-pubblica/quaderni-giuridici.

[13] On shareholders' democracy, extensively, *see* Arman Khachaturyan, *Trapped in Delusion: Democracy, Fairness and the One-Share-One-Vote Rule in the European Union*, 8 EUR. BUS. ORG. L. REV., 335-367, 337 ff.; David L. Ratner, *The Government of Business Corporation: Critical Reflections on the Rule of "One Share, One Vote"*, 56 CORNELL L. REV. 1, 1-56, 23 (1970).

[14] Gilson, *supra* note, 8, 1651; Lucian A. Bebchuk & Michael S. Weisbach, *The State of Corporate Governance Research*, 23 REV. FIN. ST. 939-961, 948 (2010); John Armour, Henry Hansmann & Reiner Kraakman, 'Agency Problems and Legal Strategies', *in* THE ANATOMY OF CORPORATE LAW (Kraakman et al. eds.), 2 ed. 2009, 36.

[15] Rock, *supra* note 10, 899, 901.

company's articles of association, and only those who hold their shares for the period of maturity (or 'loyalty period') end up subject to an initial registration with double rights. Since these rights are not cemented into a specific class of securities,[16] it is preferable to make reference to 'tenured voting', or 'time-phased voting', instead of to 'loyalty shares'.

The potential availability of the loyalty reward to all shareholders should exclude any alleged breach of the principle of equal treatment.[17] In this regard, the principle laid out in Article 42 of the Second Council Directive[18] requires that shareholders in equal circumstances be treated equally. The legislative reform in Italy allows companies to opt in for a reward mechanism that ultimately renders all shareholders eligible for bonus voting rights; conversely, in France listed companies can opt out of the default provision that enables all shareholders to mature similar bonus rights.[19] Hence, all shareholders are potentially treated the same, whereas the duration of individual share ownership justifies unequal treatment in light of the decision to pursue long termism as a specific company's interest.[20]

A different conclusion should be reached with regard to the principle of 'one share, one vote'. In the hypothetical situation in which all companies' shareholders maintain their investment for the loyalty period, all of them will be rewarded with double voting rights; this will result in a neutral situation in terms of the company's power distribution. However, this scenario is unrealistic. Listed companies always need a liquid market for their securities, which are traded daily. It is therefore impossible for all shareholders to

---

[16] Michel Germain & Veronique Magnier, 'Les sociétés commerciales', Tome 2, *in* TRAITE DE DROIT DES AFFAIRES de G. Ripert and R. Roblot sous la direction de Michel Germain, Lextenso éditions, 377 (2017); in France, however, after the maturity of double voting rights, the related shares are sometimes considered a separate class of shares—*see* Charles Goyet, Nicolas Rontchevsky & Michel Stork, *L'impact de la loi Florange sur le droit des offres publiques d'acquisition et les sociétés cotées Françaises*, REVUE TRIMESTRELLE DE DROIT COMMERCIAL ET DE DROIT ECONOMIQUE, 363-394, 367 (2014).

[17] Berger, Davidoff Solomon, & Benjamin, *supra* note 10, 309, 311, Marco Lamandini, *Voto plurimo, tutela delle minoranze e offerte pubbliche di acquisto*, GIURISPRUDENZA COMMERCIALE, 2016, I, 491-511, 505.

[18] The Second Council Directive of 13 December 1976 (77/91/EEC) has been repealed by Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 (*see* Article 46 for the principle of equal treatment), and recently replaced by the codification made by the Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (*see* Article 85 for the 'Equal treatment of all shareholders who are in the same position').

[19] Germain, Magnier, *supra* note 16, 377.

[20] Andrea Sacco Ginevri, *The Rise of Long-Term Minority Shareholders' Rights in Publicly Held Corporations and its Effect on Corporate Governance*, 12 EUR. BUS. ORG. L. REV., 587-618, 591, 615 (2011).

mature extra voting rights at the same time. Consistently, the loyalty-enhancing mechanism should be considered as a deviation from the principle of 'one share, one vote'. Given the potential on-going variability of the total voting rights of companies that have opted for these provisions, the concrete effect of the divergence in decision-making power and cash flows varies accordingly.[21]

In the European scenario, Italy and France have gone well beyond what was foreseen by the initiatives at the EU level. Belgium is currently following a similar path. Official documents date the Commission's interest in enhancing shareholder long termism back to 2011, when the Reflection Group on the Future of EU Company Law recommended a clear framework for companies wishing to provide for preferential treatment for long-term shareholders that expressly considered increased voting rights or dividends. However, the documents that followed,[22] including the 2015 Shareholder Rights Directive, never met such expectations and, in line with the conclusion reached in the literature,[23] loyalty shares or similar loyalty-enhancing mechanisms have been left to Member States or companies themselves.

3. *Tenured Voting in Italy*

In Italy, where the ownership structure is traditionally concentrated, shares with limited voting rights have been historically allowed (within the limit of no more than half of the corporate capital), while shares with multiple voting rights were banned by a provision that specifically required that each share bears no more than one vote. Nevertheless, this taboo suddenly disappeared in 2014 when Italy radically changed its approach toward multiple voting shares[24] as an immediate political reaction to the migration of Chrysler-Fiat from Italy to the Netherlands. The company, in fact, cited

[21] Part III(3).

[22] European Commission. Internal Market and Services, 'Report of the Reflection Group on the Future of EU Company Law', 46, 47, 5 April 2011; the proposal made by the reflection group was not put forward the following year by the European Commission, 'Action Plan: European company law and corporate governance—a modern legal framework for more engaged shareholders and sustainable companies', 2012; neither was it in the 'European Commission's Green Paper Long-term Financing of the European Economy' 2013; finally, loyalty-enhancing mechanisms have not been addressed by the Shareholders Rights Directive II (or SHRDII: Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement).

[23] Delvoie, Clottens, *supra* note 1, 24

[24] Marco Ventoruzzo, THE DISAPPEARING TABOO OF MULTIPLE VOTING SHARES: REGULATORY RESPONSE TO THE MIGRATION OF CHRYSLER-FIAT. ECGI Law Working Paper No. 288/2015, *available at* ssrn.com/abstract_id=2574236, 1-17 (2015).

the availability of multiple voting shares in the Netherlands as one of the key factors behind the decision.

The Italian Government invoked regulatory competition to avoid a trend of Italian companies moving abroad. Nonetheless, it is unlikely that the national adoption of multiple voting rights will also serve to attract foreign companies to reincorporate in Italy. Significant barriers still exist in Europe that minimize regulatory competition among jurisdictions and among stock exchanges.[25]

Despite the friction with the traditional adherence to the 'one share, one vote' principle, the need to participate in this regulatory competition[26] determined the unexpected withdrawal of the prohibition to issue shares with more than one voting right, leaving room for the adoption of a twofold approach with respect to multiple voting securities in unlisted and listed companies. Unlisted companies are now allowed to issue a specific class of shares that entails the exercise of up to three voting rights (and to maintain those shares in case of listing), while time-phased voting rights have been specifically designed for companies whose securities are listed on a regulated market. Coexistence of the two mechanisms in listed companies is never permitted.[27]

The additional voting rights, granted as a premium for shareholder loyalty, are subject to a compulsory sunset clause that provides for their dissolution after the sale or donation of the underlying securities. Tenured voting rights always dissolve when the underlying shares are directly transferred within the group.[28] Italian law contains a strict provision, absent in France, that nullifies additional voting rights also in case of an indirect change in control of a shareholder who is entitled of double voting rights over a relevant threshold.[29]

Conversely, the transfer of shares in the event of succession is excluded from this clause (so tenured voting rights are normally transmissible to the descendants of loyal

[25] Augusto Santoro, Ciro Di Palma, Paolo Guarneri & Alessandro Capogrosso, *Deviation from the "one share—one vote" principle in Italy: recent developments—multiple voting rights shares and loyalty shares*, BOCCONI LEGAL PAPERS (2015) 141-169, 142; Delvoie & Clottens, *supra* note 1, 19; for the historical perspective on multiple voting shares in Italy: Giulio Sandrelli e 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, Cheltenham-Northampton, 2018, 269-297, available at : papers.ssrn.com/sol3/papers.cfm?abstract_id=2875724 .

[26] Piergaetano Marchetti, *Osservazioni e materiali sul voto maggiorato*, RIVISTA DELLE SOCIETÀ 2-3, 448-475, 449 (2015); Ventoruzzo, *supra* note 24, 3.

[27] Article 127-*sexies*(2)(3) Consolidated Law on Finance.

[28] Marchetti, *supra* note 26, 456.

[29] Article 127-*quinquies*(3), of the Consolidated Law on Finance; the 'relevant thresholds' correspond to the percentage of shares stipulated for mandatory ownership disclosure, that currently corresponds to 3%, or 5% if the company is a small or medium enterprises (SME) (*infra* note 111).

shareholders) unless the company voluntarily opts in. This exception—which, by default, allows the heirs of the company's founder to keep the extra voting rights—represents a missed opportunity for the Italian legislator. A better solution would have been to exploit the main benefit of tenured voting rights—granting stability to the visionary founder and to the company's management, particularly after the initial public offering (IPO),[30] leaving shares with single voting rights in the hands of her successors. One may argue that the possibility of registering inherited shares to restart the maturity period would lead to the same result, in the long run, in terms of shareholders' power distribution. On a deeper level, however, the preservation of double voting rights protects against an incursion of the mandatory offer obligation if the relevant threshold is newly raised at the maturity date.[31]

In this respect, the introduction of tenured voting required significant amendments to the rules on the mandatory offer obligation within the framework of the Takeover Directive. Consistent with the European system of thresholds triggering the mandatory offer, tenured voting rights should be counted, like any newly acquired shares, in the overall power available to the shareholder (or group of shareholders acting in concert) that incurs in the takeover obligation. Such a conclusion may seem revolutionary since, in the absence of any payment of a premium for corporate control and any impact on the number of tradable shares on the market, the maturity of increased voting rights may trigger the obligation to launch a public offer. A substantially similar approach has likewise been adopted in France.

4. *The* Loi Florange *in France*

The traditional French approach to double voting rights is somewhat cryptic. Multiple voting securities were banned in 1930[32] to reduce their use as a defence against hostile takeovers, thus subjecting national companies and their management to the monitoring effects of the market for corporate control. Shortly after, however, Article L. 225-123 of the *Code de Commerce* was amended to allow both listed and unlisted companies to reward certain shareholders with double voting rights.[33] At this early stage,

[30] Berger, Davidoff Solomon, & Benjamin, *supra* note 10, 303; Santoro, Di Palma, Guarneri & Capogrosso, *supra* note 25, 142 (*see* note 5) and 148.

[31] Part III.

[32] Precisely, the law of 26 April 1930 prohibited French companies from issuing new multiple voting securities, while the law of 13 November 1933 suppressed existing multiple voting rights securities (Germain & Magnier, *supra* note 16, 374).

[33] The law of 13 November 1933 provided that investors who have held their shares for at least two years can be given a double voting right: Pierre-Henry Conac, *The New French Preferred Shares:*

a protectionist approach prevailed and tenured voting rights were only granted to shareholders of French nationality.[34] Bearing in mind that this right was granted to shareholders identified in a company's register for an extended and continuous period of at least two years, it is clear that the French legislation has more recently been a source of inspiration for Italy.

The literature reports that until early 2014, of the 104 largest French companies by market capitalization listed in the SBF120 Index, the majority of them (57 per cent) used the loyalty double voting system; moreover, among newly listed companies, the use of tenured voting rights was widespread, due to the possibility to retroactively consider the holding period prior to the IPO.[35]

When Italy aligned its tenured voting rights to the long-standing French legislation, France was implementing a fundamental revolution to the described mechanism. On 29 March 2014, the French government promulgated the *Loi Florange*,[36] which reversed the way in which increased voting rights are assigned to loyal shareholders of listed companies.[37] This statute provides that, starting from 3 April 2014, all shares may potentially increase voting rights after a period of at least two years of uninterrupted ownership,[38] unless with a two-thirds majority approval, the company can decide to opt out. In other words, in France tenured voting rights have become the default rule (attributed to investors who registered their shares as a condition of mature additional rights), and listed companies that want to adhere to the 'one share, one vote' principle need to opt out from this default loyalty-enhancing mechanism.[39] At the same time, the *Loi Florange* has removed the nationality requirement that previously allowed only French shareholders to be rewarded with double voting rights.

Moving towards a More Liberal Approach, 2 EUR. COMP. FIN. L. REV. 487-511, 498 (2005); Germain & Magnier, *supra* note 16, 375.

[34] Article 225-123, alinéa 3, of the *Code de Commerce*, before the *Loi Florange*.

[35] Marco Becht, Yuliya Kamisarenka & Anete Pajuste, *Loyalty Shares with Tenure Voting—A Coasian Bargain? Evidence from the Loi Florange Experiment*. ECGI Law Working Paper No. 398/2018, April 2018, *available at* ssrn.com/abstract_id=3166494, 1-52, 3, 4; empirical evidence from 2015, after the adoption of the *Loi Florange*, is also provided by Yu-Hsin Lin, *Controlling Controlling-Minority Shareholders: Corporate Governance and Leveraged Corporate Control*, 2017 COLUM. BUS. L. REV. 453-469 (2017).

[36] Law n° 2014-384 du 29 mars 2014 *visant à reconquérir l'économie réelle* (hereinafter the *Loi Florange*).

[37] Paul Le Cannu & Bruno Dondero, DROIT DES SOCIETES[6] (Le Cannu, Dondero eds.), 625 (2015).

[38] Article L225-123 of the *Code de Commerce.*

[39] Maurice Cozian, Alain Viandier & Florence Deboissy, DROIT DES SOCIETES[30] (Cozian, Viandier & Deboissy), 2017, 413.

On 29 March 2014, before the *Loi Florange* entered into force, the articles of association of 45 companies within the aforementioned sample of 104 French companies did not contain the tenured voting rights clause. Among these, in 31 cases, the shareholders approved the proposals to opt out of the new default rule, thus confirming their preference for the 'one share, one vote' rule. The remaining 14 companies then inevitably switched to the new default system. In seven of those cases, a blocking minority did not allow the shareholders' general meeting to revert to the 'one share, one vote" rule; in the other seven companies, the directors simply refrained from calling the shareholders' meeting, aware that the necessary two-thirds majority was not attainable.[40]

Also in France political interference played a role in the outcome of the tenured voting rights legislation by contending that this loyalty-enhancing mechanisms can protect national enterprises against hostile acquisitions of corporate control.[41] In line with this goal, in 2015, the French government, in a highly criticized move, increased its 15 per cent stake in Renault by an additional 4.5 per cent, so as to prevent shareholders from opting out of the default rule that rewarded loyal shareholders with double voting rights.[42] A similar move was undertaken with Air France-KLM, where the holding of the state was raised to 17.6 per cent to be able to hinder the 'one share, one vote' proposal.[43]

With provisions that were replicated in Italy, bonus voting rights laps in the event of share transfers, and any provision to the contrary is null or void.[44] However, these rights do not dissolve in cases of merger or demerger of the shareholder entitled to double voting, nor in cases of inheritance or donation to certain family members.[45] While the maturity interval is fixed in most cases at two years, it sometimes varies in length, in one case for a duration of ten years.[46]

With regard to the mandatory offer, the French approach is similar to the Italian one: insofar that tenured voting rights could allow to achieve or consolidate corporate control, they are included in the triggering threshold of the mandatory offer. Beyond

---

[40] Becht, Kamisarenka & Pajuste, *supra* note 35, 13.

[41] Mariana Pargendler, THE GRIP OF NATIONALISM ON CORPORATE GOVERNANCE, 11, 56 (March 20, 2018), available at ssrn.com/abstract=3144451; Stéphane Torck, *L'attribution automatique du droit de vote double*, 65 DROIT DES SOCIÉTÉS, 18-21, 18 (2014).

[42] Renaud Mortier, *Coup double pour l'État!,* DROIT DES SOCIETES n°6, Juin 2015, repère 6.

[43] Becht, Kamisarenka & Pajuste, *supra* note 35, 11,12.

[44] Germain & Magnier, *supra* note 16, 376.

[45] Article 225-124 of the *Code de Commerce*; Cannu & Dondero, *supra* note 37, 626.

[46] Becht, Kamisarenka & Pajuste, *supra* note 35, Table 1 at 33.

this general rule in force, the *Loi Florange*, fine-tuned by the *Loi Macron*,[47] has waived the obligation to announce a mandatory offer, applicable when the increase in voting rights is offset by a decrease in the overall amount of the underlying shares held.[48] Specifically, shareholders who on 2 April 2014 owned an interest greater than 30 per cent of the share capital or voting rights are exempted from the mandatory offer obligation if they exceed the relevant threshold (30 per cent or a further increase of 1 per cent if the holding is greater than 30 per cent but less than 50 per cent)[49] due to the attribution of additional voting rights,[50] if the total amount of voting rights held in the period from 3 April 2014 to 31 December 2018 has stayed lower or equal to the percentage of voting rights on 2 April 2014. The goal pursued by French law, which has no equivalent in Italy, is to allow major shareholders to disinvest, thereby increasing liquidity, while keeping their power by virtue of the double voting rights.

5. *The New Belgian Companies and Associations Code*

The bill to reform Belgian company law—presented to the Parliament on 4 June 2018 and approved by the Parliamentary Committee on Commercial and Business Law on 23 October 2018—documents the trend in Europe to move toward loyalty plans through legislation, based on tenured or multiple voting rights. Long-term shareholder bonuses are not applicable in Belgium yet, but will probably enter into force on 1 May 2019 for companies incorporated on or after that date, and on 1 January 2020 for existing companies.

The Belgian proposal departs from the traditional prohibition on issuing securities with multiple voting rights and allotting more than one vote per share. Unlisted companies will be able to issue dual-class shares without a limit on the number of multiple voting rights. Listed companies will dispose of an optional double loyalty voting right, as introduced by the new Companies Code, which mirrors the French regime. However, closer to the more cautious Italian model, tenured voting can be adopted by companies with a two-thirds majority, or with a simple majority if the decision is adopted within the

---

[47] Loi n° 2015-990 of 6 August 2015 *pour la croissance, l'activité et l'égalité des chances economiques* (hereinafter: the *Loi Macron*). On the impact of the *Loi Macron* on the takeover waiver provided by the *Loi Florange*, *see* Mayer Brown, LOI FLORANGE ET DROITS DE VOTE DOUBLE AUTOMATIQUE—NOUVELLES DISPOSITIONS TRANSITOIRES, *available at* www.mayerbrown.com/files/uploads/Documents/Paris/bloc-notes-7_2016.pdf.

[48] Alain Pietrancosta, *The latest reform of French takeover law: the "Florange act" of March 20, 2014*, REVUE TRIMESTRELLE DE DROIT FINANCIER, 42-51, 47 (2014); Goyet, Rontchevsky & Stork, *supra* note 16, 366.

[49] Article L433-3(1) of the *Code monétaire et financier*; Torck, *supra* note 41, 21.

[50] Article L. 194 of the *Loi Macron*.

first year of the law's entry into force. The holding loyalty period is fixed at twenty-four uninterrupted months,[51] but, contrary to Italy and France, registration may precede the tenured-voting shareholders' resolution.

Tenured voting rights are lost in the event of a transfer of shares, except for donations, inheritances, mergers without changes in final control, or for the cancellation of loyalty voting rights. As in Italy, and unlike France, Belgian law focuses on avoiding the circumvention of the mandatory sunset clause, which states that additional voting rights should dissolve during a transfer of underlying shares. It is provided that loyalty voting rights likewise lapse in case of a change of the shareholder entitled to the bonus rights.[52]

6. *Pros and Cons of Rewarding Shareholders' Loyalty Through a Bigger Say*

Deviations from the 'one share, one vote' principle have found, over time, several arguments in favour and against. The purpose of this section is to provide a brief overview, and to assess whether the loyalty-enhancing mechanism adopted in Italy and France for listed companies could alleviate some of the most controversial criticisms raised regarding dual-class shares with multiple voting rights.

6.1. *The IPO Argument*

It is widely accepted that the dual-class structure is efficient at the time of the IPO, when the talented founder, who is the fittest leader to run the company, goes public only if she can retain control of the company.[53] In light of this, multiple voting securities facilitate the transition of companies from the private to the public dimension. The literature in the United States supports the view that controlling shareholders of newly listed companies do not necessarily extract private benefits from their control; they rather pursue a strategy that the market would otherwise not let them achieve. The

---

[51] Article 7:53 of the New Companies and Association Code.

[52] Tom Vos, ARE LOYALTY VOTING RIGHTS EFFECTIVE? SOME REFLECTIONS ON THE BELGIAN PROPOSALS, 13 July 2018, available at https://corporatefinancelab.org/2018/07/13/are-loyalty-voting-rights-efficient/

[53] Joseph A. McCarey, Erik P.M. Vermeulen & Masato Hisatake, *The present and Future of Corporate Governance: Re-Examinig the Role of the Board of Directors and Investor Relation in Listed Companies*, 10 EUR. COMP. FIN. REV., 117-163, 122, 127 (2013); Renée Adams & Daniel Ferreira, ONE SHARE, ONE VOTE: THE EMPIRICAL EVIDENCE. ECGI Finance Working Paper No. 177/2007, available at ssrn.com/abstract_id=987488, 1-60, 11 (2007); Guido Ferrarini, ONE SHARE – ONE VOTE: A EUROPEAN RULE?. ECGI Law Working Paper No. 58/2006, available at ssrn.com/abstract_id=878664, 1-27, 13 (2006).

founders' role in companies such as Google, Facebook, and Snapchat reflects this idiosyncratic vision of corporate control.[54]

The easy counterargument is, however, that this view does not take into account the danger 'of providing founders with perpetual or even lifetime control' when, years after the IPO, she (or her heir) 'might eventually became an inferior leader due to aging or changes in the business environment'.[55] To reduce the risk of excessive power in the hands of the founder's family, a possible solution is to link multiple voting classes of securities to sunset clauses that interrupt, after a certain period, the perpetual dual-class structure.[56] This solution is somewhat similar to the French and Italian ones, which, in certain circumstances, remove the additional right to vote obtained as a loyalty bonus, even though the legislative intervention in both countries has not gone so far as to require that loyalty voting rights lapse in cases of succession. It is instead an opt-in decision that is left to companies.

A similar situation has been observed in the United States: in companies with dual-class securities, it is sometimes provided that high-vote shares automatically convert to low-vote ones upon transfer to a third party. The fact that, in the majority of these cases, the transfer of shares to the controller's family members or trust is exempted from the conversion mechanism demonstrates that, without legislative intervention, controlling shareholders will not spontaneously abdicate the privilege attributed to the company's founder.[57] Recently, on October 24, 2018, the Council of Institutional Investors ('CII') submitted a petition to both the New York Stock Exchange and Nasdaq, asking them to agree not to list dual class shares with different voting rights in IPOs, unless a mandatory sunset clause makes all voting rights equal seven years after listing.[58] Such a solution would also hinder the alleged perpetual benefit of the company's founder.

---

[54] Gilson, *supra* note 8, 1669; Kirby Smith, *The Agency Costs of Equal Treatment Clauses*, YALE L. J.—Forum, 543-569, 550, 4 December (2017).

[55] Lucian A. Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 VA. L. REV., 585-631, 590, 592 (2017). The costs related to the idiosyncratic vision (*see* note 52) are represented by the 'controller's overvaluation of her strategy or execution of the strategy': Smith, *supra* note 53, 551.

[56] Bebchuk & Kastiel, *supra* note 55, 590.

[57] Lucian A. Bebchuk & Kobi Kastiel, *The Perils of Small-Minority Controllers*, GEO. L. J., 2018, forthcoming, at 24 of the manuscript, available at ssrn.com/abstract=3128375.

[58] John C. Coffee Jr., DUAL CLASS STOCK: THE SHADES OF SUNSET, November 19, 2018 available at http://clsbluesky.law.columbia.edu/2018/11/19/dual-class-stock-the-shades-of-sunset/. The need for sunset provisions is also emphasized in COMMONSENSE PRINCIPLES OF CORPORATE GOVERNANCE 2.0, October 2018, at 7, available at https://millstein.law.columbia.edu/sites/default/files/content/images/Commonsense%20Principles/CommonsensePrinciples2.0.pdf. For earlier highlights on the document, *see* Aabha Sharma & Howard

6.2. *Enhancing Shareholder Engagement*

Recent developments in the traditional theory of agency costs support the favouring of shares with multiple voting rights to leverage the blockholder's power, thereby reducing managerial dictatorship[59] and improving the shareholders' ability to monitor and intervene on behalf of all shareholders.[60] They posit that, in publicly held companies, increased voting power can reduce shareholder monitoring cost, in search of a balance that may minimize the control costs of corporate governance.[61]

This view aligns with the latest global trend in corporate governance that calls for increased investor engagement in the company,[62] and is upheld specifically in relation to the loyalty-enhancing mechanisms adopted in France and Italy.[63] As long as the bonus of increased voting rights cannot be monetized (since they always dissolve at the time of sale), a tangible reason shareholders would accrue this benefit lies in their actual interest in attending the general meeting of shareholders. The last decade has seen European countries doing their utmost to revitalise the shareholders' general meeting as a constructive discussion forum. An example of this effort is the unique Spanish solution based on a special reward for shareholders, consisting of a monetary bonus granted for attending the general assembly.[64]

In this regard, tenured voting may also facilitate the communication between companies and their shareholders. Thanks to the registration process—a necessary condition to accrue tenured voting—directors can easily reach out to the company's shareholders,

---

Dicker, COMMONSENSE PRINCIPLES 2.0: A BLUEPRINT FOR U.S. CORPORATE GOVERNANCE?, October 30, 2018, available at https://corpgov.law.harvard.edu/2018/10/30/commonsense-principles-2-0-a-blueprint-for-u-s-corporate-governance/.

[59] Lucian A. Bebchuk, *The Myth That Insulating Boards Serves Long-Term Value*, 113 COLUM. L. REV., 1637-1687 (2013); Rock, *supra* note 11, 900; Dent, *supra* note 1, 142, 150.

[60] Mike Burkart & Samuel Lee, *One share—One Vote: The Theory*, 12 REV. FIN., 1-4 (2008); Ronald J. Gilson, *Evaluating Dual Class Common Stock: The Relevance of Substitutes*, 73 VA. L. REV., 807-844, 810 (1987).

[61] Zohar Goshen & Richard Squire, *Principal Costs: A New Theory for Corporate Law and Governance*, 117 COLUM. L. REV., 767-830, 769, 774, 815, 826 (2017), Gilson, *supra* note 8, 1651 f.

[62] McCarey, Vermeulen & Hisatake, *supra* note 53, 163; Cristoph van der Elst & Erik Vermeulen, EUROPE'S CORPORATE GOVERNANCE GREEN PAPER: DO INSTITUTIONAL INVESTORS MATTER? Tilburg Law School Legal Studies Research Paper Series No. 014/2011 *available at* ssrn.com/abstract=1860144, 1-16, 9f.

[63] Quinby, *supra* note 2, 403.

[64] Hopt *supra* note 1, 174, 177.

knowing their personal identity, in order to send them relevant company information to attend and actively participate to the shareholders' general meeting.[65]

Moreover, tenured voting rights strengthen shareholders' voice to be listed by directors, both at the occurrence of the general meeting and outside and before the formalities of this appointment.[66] Directors will be more inclined to engage in constructive and ongoing relations with their long-term shareholders, without limiting dialogue to the formalities of the general shareholders' meeting. At the same time, retail investors or large passive shareholders have less incentive to gain double voting rights.

Even if shareholders who keep their shares for a longer period of time are not necessarily those who strive for long-term shareholder value creation,[67] this loyalty-enhancing mechanism should nevertheless be seen as a reasonable approximation of such behaviour—which, by giving more rights to shareholders who appear to be more concerned in the long-term prospects of the company, essentially weights voting rights on the basis of their interest.[68] When managers overlap with long-term controlling shareholders, tenured voting rights can effectively reinforce, from inside the firm, the long-term view of the former. From this perspective, tenured voting rights represent the experimental shifting of corporate democracy from the foundational principle of 'one-share, one vote' to a system that more finely calibrates voting rights. It allows a move from the proportional discrimination among shareholders to an attempt to weight the voting rights according to shareholders' long-standing interest in the company.[69]

One reasonable criticism here is that since granting additional voting rights takes a fairly long time—two years after shareholder registration—this discourages active investors who react quickly when they disagree with management strategy. However, in thoroughly examining the mechanism, shareholder registration may impact the strategic plans of the company. The knowledge of the voting rights' future distribution that emerges from the register available to directors allows them to identify the presence of stable investors who are interested in the long-term profitability of the company, and whose voice will

---

[65] Lennarts & Koppert-van Breek, *supra* note 4, 173; also, on the benefits of shareholders' identification: Therese Strand, *Short-Termism in the European Union*, 22 COLUM. J. EUR. L. 15-60, 56 f (2015).

[66] Joseph A. McCahery, Zacharias Sautner & Laura T. Starks, *Behind the Scenes: The Corporate Preference of Institutional Investors*, 71 J. FIN. 6, 2905-2932, 2912 (2016).

[67] Lennarts & Koppert-van Breek, *supra* note 4, 175.

[68] McCahery, Sautner & Starks, *supra* note 66, 2914, 2924; Florian Moslein, Karsten Engsig Sorensen, *Nudging for Corporate Long-Termism and Sustainability: Regulatory Instruments from a Comparative and Functional Perspective*, 24 COLUM. J. EUR. L. 391-454, 426 (2017).

[69] Collen A. Dunlavy, *Social Conceptions of the Corporation: Insights from the History of Shareholder Voting Rights*, 63 WASH. & LEE L. REV., 1347-1388, 1366 f. (2006).

prospectively be stronger in the future. It is assumed that long-term shareholders behave like residual claimants, on the basis of their interest in sustainably maximising the profitability of the corporation.

Although less developed in the debate, it is worth mentioning the opinion that granting tenured voting rights to individual shareholders reduces insider trading.[70] More precisely, insiders (namely, shareholders that receive private information by virtue of their relationship with management) cannot sell and repurchase shares without losing the additional voting rights received as a reward for their loyalty. This view draws attention, in discussions of contractual mechanisms to increase shareholders' power, to the interrelation between corporate law and securities regulation: from this standpoint, 'a powerful class of shareholders who have management's ear and attention' could induce management to give undue credence to them; at the same time, shareholders' long-term engagement—one of the supposed benefits of tenured voting—is discouraged by 'imposing fiduciary duties on shareholder stewards and treating them as covered by insider trading rules'.[71]

6.3. *Immunity From Takeover and Agency Costs*

Looking at the drawbacks of multiple voting structures, one of the most frequently cited concerns regarding multiple voting shares as control-enhancing mechanisms is the consequent immunity from hostile takeover. This is coupled with the belief that a concentrated ownership structure makes it difficult for directors to exercise their legal duty to act in the best interest of all shareholders.[72]

On the first point, tenured voting rights seem preferable to dual-class shares since they lead to a weaker form of corporate control, associated with a lower degree of immunity to hostile takeovers.[73] Through time-phased voting, in fact, all shareholders may mature additional rights on an ongoing basis, thus reducing the percentage of rights available only to majority shareholders. At the same time, investors can benefit from a high degree of secondary market liquidity that is not affected by the increase in shareholders' voting power (such increase, in fact, does not require any further acquisition of shares).[74] However, an issue that has not yet been sufficiently analysed by the economic literature

---

[70] Edith Ginglinger & Jacques Hamon, *Ownership, Control and Market Liquidity*, 33 FIN. 61-99 (2012), also available at ssrn.com/abstract_id=2097795, 4.

[71] Belinfanti, *supra* note 10, 868 f.; Mark Roe, *A Political Theory of American Corporate Finance*, 10 COLUM. L. REV. 10-67, 27 (1991).

[72] Johan Erik Eklund & Thomas Poulsen, *One share-one vote: evidence from Europe*, 24 APP. FIN. ECON., 453 (2014).

[73] Becht, Kamisarenka & Pajuste, *supra* note 35, 7.

[74] Becht, Kamisarenka & Pajuste, *supra* note 35, 4.

is the extent to which tenured voting might have negative effects on the liquidity of trading markets, due to the reducing in the trading volume of loyal shareholders who are encouraged to keep their shares for longer.[75]

In addition, tenured voting rights may contribute to increase liquidity. Shareholders that gain control through these loyalty rewards can reduce their investment by retaining their original voting rights.[76] Consequently, if dispersion increases, the defensive shield from takeovers lightens. From a political standpoint, both the Italian and French[77] governments saw in the adoption of tenured voting rights an opportunity to make cash by disinvesting from national enterprises without losing State ability to exercise control. It is also asserted that the market would not register a discount for 'low-vote' shares as long as tenured voting rights are never attached to the company's shares, and any transaction restores the 'one share, one vote' rule.[78]

On the second point, despite extensive analysis in the literature on the cost of corporate control (such as distortions in investment decisions, tunnelling, and failure of the market for corporate control), there is still a certain ambivalence of views. The fact that disproportionate cash flows and voting rights may display a negative effect on the final value of the firm does not prove that such unevenness leads to a less efficient use of resources. The explanation for this mixed effect lies in the delicate balance between better monitoring, on one side, and the persistent incentive to divert resources, on the other. In other words, the benefits of disproportionate ownership are seen in the less efforts wasted by the controlling shareholder in constant negotiations with minority shareholders; but this positive effect is counterbalanced by the risk that the former dilutes resources to the detriment of the latter.[79] In this respect, the political choice in favour of or against disproportionate cash flows and voting rights should consider that the entrenched problem of concentrating corporate control decreases in countries with greater investor protection, where owners divert fewer resources.[80] Tenured voting rights seems to better serve this purpose than a dual-class structure where the risk of insulating

[75] Edelman, Jiang & Thomas, *supra* note 10, 49.

[76] Ginglinger & Hamon, *supra* note 70, 27; Gilson, *supra* note 60, 812; François Belot, Edith Ginglinger & Laura T. Starks, ENCOURAGING LONG-TERM SHAREHOLDERS: THE EFFECTS OF LOYALTY SHARES WITH DOUBLE VOTING RIGHTS, 1-25, 15 of the manuscript, *available at* sites.google.com/view/edithginglinger/working-papers.

[77] Becht, Kamisarenka & Pajuste, *supra* note 35, 11, Pietrancosta, *supra* note 48, 47.

[78] Gilson, *supra* note 60, 836.

[79] Morten Bennedsen & Kasper Meisner Nielsen, *Incentive and entrenchment effects in European ownership,* 34 J. BANK. & FIN. 2212-2229, 2213 (2010).

[80] Bobby V. Reddy, *The Fat Controller: Slimming Down the Excesses of Controlling Shareholders in UK Listed Companies*, 38 Oxford J. Leg. St., 733-763, 740 (2018); Bennedsen & Nielsen, *supra* note 79, 2220; Ferrarini, *supra* note 52, 12.

the controlling shareholder from market disciplinary is higher, and the stake owned may be small enough that the controlling shareholder lacks powerful ownership-based incentives.[81]

6.4. *Increased Transparency*

As a final but important remark, loyalty-enhancing mechanisms based on time-phased voting can improve transparency if used as an alternative to other CEMs. Dual-class shares and pyramidal structures do not generally allow for immediate knowledge of the distribution of cash flow and voting rights, unless insights about the layers of corporate ownership, cross-ownership, and the distribution of shares within different classes are available. The same concern regards shareholders' agreements, often lacking transparency due to the uncertainties that, at the European level, surround the notion of shareholders' agreements and their legal form.[82] Instead, as will be analysed, the main characteristic of tenured voting is, thanks to the registration process, a higher degree of transparency.[83] It is theoretically possible that the diffusion of tenured voting will provide a valuable substitute to the use of shareholders' agreements in continental Europe.

Within this theoretical framework, the empirical analysis presented in Part II aims to assess whether, in Italy, the double voting rights awarded to long-term shareholders reflect some of the positive outcomes expected. The role of loyalty-enhancing mechanisms, as an attempt to achieve a healthier balance between long- and short-term investment and governance, will be analysed in practise.

II. EMPIRICAL EVIDENCE

1. *From the Directors' Proposal to the Shareholders' Opt-In Resolution for Tenured Voting*

Since the reform that allowed tenured voting for Italian listed companies, 39 out of 256 issuers listed on the Italian stock exchange at the end of June 2018 have introduced

[81] Bebchuk & Kastiel, *supra* note 57, 9 of the manuscript.

[82] Belot, Ginglinger & Starks, *supra* note 76, 19; Bennedsen & Nielsen, *supra* note 79, 2216.

[83] Vincenzo Cariello, *Azioni a voto potenziato, "voti plurimi senza azioni" e tutela dei soci estranei al controllo*, RIV. SOC. 164-203, 184 (2015); Part II(4).

a clause in their articles of association that awards loyal shareholders.[84] These companies represent 8.32 per cent of all capitalised assets.[85]

Where additional voting rights for loyalty are not the default rule—as in France after the *Loi Florange*—their adoption into articles of association is subject to shareholder approval. Some interesting considerations can be drawn from the decision-making process, beginning with the proposal, advanced by the board of directors to the general meeting of shareholders, for the introduction of a tenured voting clause in the company's articles of association. An analysis of the reports submitted by directors and published on their companies' websites prior to shareholders' general meetings[86] reveals that in almost all cases, the proposal is justified with reference to the achievement of long-term objectives.[87] More precisely, a close link is established between the satisfaction of the company's interest and the adoption of tenured voting, as a device that encourages shareholders to keep their shares in the company for the long term; in some cases, the directors' reports also mention the aim of enhancing shareholders' loyalty. In other words, directors advised their shareholders to adopt a statutory mechanism capable of increasing the holding period of the investment, so as to place the board in a better position to plan and implement long-term strategies and consequently to relieve directors from the pressure to deliver short-term results (in the proposals analysed, reference to long-term strategies is, where not explicitly stated, always implied).

---

[84] Article 127-*quinquies* of the Consolidated Law on Finance establishes that only companies whose shares are listed in a regulated market can introduce tenured voting. The lack of consideration for companies with shares traded in multilateral trading facilities (so-called 'alternative trading venues') is reflected in the fact that, currently, none of the companies of AIM Italia provide for tenured voting. Conversely, in some cases, AIM's companies have issued dual-class shares with multiple voting rights; in other cases, their articles of association contain the tenured voting clause that will become applicable in case of listing at a future date.

[85] Data from company capitalisation dates back to 29 June 2018 (*cf.* BORSA ITALIANA, LISTED COMPANIES CAPITALISATION IN JUNE 2018, *available at* www.borsaitaliana.it/borsaitaliana/statistiche/statistiche-storiche/capitalizzazioni/2018/201803/capitalizzazionesep.en_pdf.htm). At that date, the average capitalisation of Italian listed companies was 2.447,06 (in Euro M), and 1.321.82 (in Euro M) for companies with tenured voting. These figures exclude foreign companies listed in Italy; moreover, they exclude one company whose shares were suspended from trading by Borsa Italiana (in Table A, row 39). The capitalisation of Fiat Chrysler on 29 October 2014, when the company decided to reincorporate to benefit from the Netherlands' more permissible legislation on multiple voting securities, was US$19.7 billion.

[86] Article 5(4)(d) of Directive 2007/36/CE of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (hereinafter Shareholder Rights Directive, or SHRD).

[87] Column '*Statements*' of Table A.

It is worth noting that in the 30 companies out of 39, the proposal presented to the general meeting of shareholders clarifies that it received the approval of all board members, and that the presence, in seven cases, of at least one independent director appointed by minority shareholders did not interfere with the unanimity of views on tenured voting.[88]

In Italy, the introduction of tenured voting is subject to the approval of the extraordinary meeting of shareholders with a two-thirds majority.[89] In such a system, where controlling shareholders are often in a position to influence the resolution, it would have been appropriate to provide for the so-called 'whitewash' procedure (the additional requirement that the resolution receives the favourable votes of the majority of minority shareholders). Even if already known and used in Italy, this mechanism is not imposed as a necessary condition for approving tenured voting resolutions. Looking at the outcomes of the general meetings where tenured rights were proposed and approved, the resistance of the dissenting or abstaining shareholders emerges, in some cases despite them not succeeding in blocking the final approval.[90] Instead, in France, as already noted, the results of the general shareholders' meetings varied, since in a few cases they failed to revert from the default tenured voting provision to the 'one share, one vote' rule.[91]

The empirical evidence confirms that the majority rule with no correction, leads to a sort of natural selection of the types of companies that allow shareholders to mature additional voting rights. It is intuitively easier for firms with a strong controlling shareholder (lacking a 'blocking' minority) to approve such a clause, particularly in the absence of significant stakes owned by institutional investors (or asset managers), who traditionally tend to disregard directors' proposals for tenured voting and to vote against its adoption.[92] In Italy, the asset managers' association has expressly supported the recommendation of leading proxy advisors for their clients to vote against the

[88] Columns '*Independent Directors/Minority*' and '*Board Unanimity*' of Table A.

[89] Specifically, Article 2368 (2) of the Italian Civil Code requires a two-thirds majority of the voting share capital represented in the extraordinary meeting of shareholders, and the shareholders' meeting is regularly convened with the presence of the majority of the share-voting capital. However, in the period after the entry into force of the Law No. 116/2014 and until the end of December 2015, the adoption of the tenured voting rights clause was eased by reducing to a simplified majority the percentage of voting rights required to approve directors' proposals. By exploiting this provision, only three companies adopted tenured voting rights: see column '*General Meetings*' of Table A.

[90] Table A, Column '*Quorum*'.

[91] Part I(4).

[92] Belot, Ginglinger & Starks, *supra* note 76, 5, 20.

introduction of loyalty voting.[93] In France, the position of proxy advisors is quite similar, as they support the proposals to opt out of the default rule that implemented tenured voting in all listed companies.[94] These considerations seem consistent with the finding that family firms are the most likely (and almost only) users of the new CEMs, and where the existence of a dominant shareholders' group makes it difficult for other shareholders to resist the transaction.[95]

2. *Failure of the Voluntary Adoption of Sunset Clauses*

A close examination of the sample companies' articles of association reveals substantial homogeneity in corporate choices. Specifically, in all cases the vesting period for double voting is two years and always consists of a drastic doubling of the voting right;[96] thus, companies neither used the freedom to extend the vesting period of maturity (as has been observed in French companies)[97] nor provided for a gradual enhancement of voting rights over time.[98]

The option of inserting the most significant sunset clause—the revocation of increased voting rights in the event of heredity—has also been ignored, and under no circumstances will additional voting rights dissolve in case of succession by virtue of an opted-in provision. When double voting rights are granted as a reward to the company's founder, this benefit can easily and permanently pass to heirs.[99] It is then clear that the advantages claimed by the supporters of tenured voting (allegedly enhancing the benefit of non-permanent and non-transmissible CEMs) remain theoretical in this debate.

---

[93] Assogestioni, NOTA TECNICA SUL VOTO MAGGIORATO IN ITALIA E ALL'ESTERO, 23 December 2014, *available at* www.assogestioni.it/index.cfm/6,1,0,49,html?criteria=voto+maggiorato&x=0&y=0, also for the links to major proxy advisors' recommendations.

[94] Goyet, Rontchevsky & Stork, *supra* note 16, 367.

[95] Ettore Croci, CONTROLLING-ENHANCING MECHANISM: LOYALTY SHARES AND MULTIPLE-VOTING SHARES IN ITALY, June 2018 *available at* www.ecgi.global/sites/default/files/6._controlling-enhancing_mechanisms-_loyalty_shares_and_multiple-voting_shares_in_italy.pdf, 1.

[96] Columns '*Multiplier*' and '*Loyalty*' of Table A.

[97] Part. I(4).

[98] In two cases, the articles of association state that the right to double voting is not generally applicable; but it only concerns specific resolutions identified in the articles of association (Table A, rows 4 and 8).

[99] Article 127-*quinquies*(3)(a) Consolidated Law on Finance. Some of the companies' articles of association allow the preservation of bonus voting rights in cases of donation to the heirs or constitution of a trust, whose beneficiaries are the shareholder's heirs; others preserve these rights when the holding is transferred from one fund to another, if both are managed by the same investment management company.

With regard to the other opt-in and opt-out choices, the range of possible solutions is wide, even if no significant differences result from the observations of the companies' articles of association. There is a notable absence of opting-out cases from the provisions allowing double voting rights to be maintained in case of a merger or demerger of the shareholder entitled to double voting,[100] as well as a free share capital increase.[101] Conversely, all companies opted in, as permitted by law, to allow a proportional extension of the double voting right in the event of a capital increase by payment.[102]

Tenured voting rights were adopted in four cases, in connection with the IPO of the company. The opportunity, available to companies that go public, to date back the maturity period of additional voting rights before the listing, was exploited in three cases.[103] With regard to the other incentives for companies to go public, multiple voting rights as a specific class of securities do not seem to boost this limited trend. Although shares carrying multiple voting rights can be maintained after the listing process, only two newly listed companies have dual-class shares and, because of this choice, will not be entitled to introduce tenured voting in the future.[104]

3. *Power Distribution Before Maturity: Identikit of the Registered Shareholders*

At the end of 2016, the average percentage owned by controlling shareholders of Italian companies was 46.9 per cent, which is in line with the country's traditionally concentrated ownership structure.[105]

This data is reflected in the companies with tenured voting rights that are classified in Table B into four groups in descending order of controlling power. Group *a)* represents the companies that, at the starting date of the maturity period, were controlled by a

---

[100] Article 127-*quinquies*(3)(a) Consolidated Law on Finance. The default provision—that additional voting rights do not dissolve in case of merger or demerger of the entitled shareholder—provides fertile ground for elusion (Ventoruzzo, *supra* note 24, 14). Mergers or demergers may result in a substantial change of ownership for the shareholder, who can keep their double voting rights unless the company has opted out. However, in this respect, the clauses of the articles of association should be carefully examined; in fact, in some cases (Table A, rows 1, 4, 31, and 36), the clause excludes that double voting rights can be maintained when, as result of the merger or demerger, a change of control occurs. One single complete opt-out has been registered (Table A, row 38).

[101] Article 127-*quinquies*(3)(b) Consolidated Law on Finance.

[102] Article 127-*quinquies*(4) Consolidated Law on Finance.

[103] Article 127-*quinquies*(7) Consolidated Law on Finance.

[104] Article 127-*sexies*(2)(3) Consolidated Law on Finance.

[105] Consob, REPORT ON CORPORATE GOVERNANCE OF ITALIAN LISTED COMPANIES, September 2017; the weighted mean decreases to 34%, data does not include cooperatives.

single shareholder with statutory control—i.e., who held more than 50 per cent of the voting rights (in most cases this shareholder was the first—often the only—one who asked for registration); Group *b)* is made up of companies in which the '*Registered shareholder*' held an ownership interest in the company of between 45 and 50 per cent of the voting rights. Group c) is characterized by the presence of a shareholder holding between 30 and 45 per cent of the voting rights; and Group d) consists of companies in which no shareholder owns more than 30 per cent.[106] This analysis shows that Group a) is unequivocally the largest, since it includes 22 companies; seven companies are then included in Group b), four companies in Group c); and, finally, in only five companies does the first shareholder hold an interest of less than 30 per cent, as classified in Group d) (although in one of these cases this shareholder participates in a controlling shareholders' agreement; in another is the member of the controlling family). Three of the four newly listed companies belong to Group a).

As discussed, directors' reports always advise shareholders to adopt tenured voting on the basis of the need to enhance shareholders' long termism and, implicitly, long-term strategies. At the same time, the clear dominance of strong, controlling shareholders in the ownership of companies with tenured voting seems to contradict this urgency. Such an ownership structure, in other words, already gives a clear indication of the presence of stable and long-term shareholders,[107] and the effectiveness of introducing tenured voting for retaining shareholders over the long term is questionable. Given the close proximity of the controlling shareholder to the board of directors, the latter is typically reassured by the former before engaging in any long-term strategies; likewise, directors' proposals to shareholders' meetings (including the proposal to adopt tenured voting) already reflect the *ex ante* approval received from the controlling shareholders. From this viewpoint, the Italian legislation seems to do little to encourage long-term

[106] This division into groups, reflecting different levels of concentration in the ownership structure, is derived from the mandatory offer regulation. Although adopted in Europe with degrees of variability, the most typical takeover bid threshold is 30% (and it has been the only one in Italy until 2014), presumptively considered a clear indication of strong corporate control (Christoph var der Elst, *The influence of shareholder rights on shareholder behaviour*, REVUE TRIMESTRIELLE DE DROIT FINANCIER, 52-62, 54 (2010)). Italy has also introduced a threshold for 'creeping acquisitions', which imposes a mandatory offer when, over a 12-months period of time, a certain percentage of shares is purchased (or matured) by a shareholder owing more than 30% but less than 50% of the company's voting rights; as a consequence, a shareholder owing more than 45 per cent can increase her holding without incurring the obligation of mandatory offer.

[107] Sacco Ginevri, *supra* note 20, 595, 608, 617.

shareholders—it rather allows companies to empower existing long-term shareholders.[108] The findings presented in Part II(5) are consistent with this logic.

4. *Potential (and Unpredictable) Variation in the Total Number of Voting Rights, and the Limits of Transparency*

The empirical evidence presented in Table B predicts the distribution of voting rights among shareholders in each company with tenured voting rights. As of the observation date (June 2018), in some cases, double voting rights had already matured in relation to all or part of the shares registered, while in other cases the maturity period was still due. For this reason, the overview provided should be considered with some warnings. First, given certain circumstances (the number of shares issued and the own shares held by the company), the number of voting rights can evolve over time because other shareholders (as distinct from the '*Registered shareholder*') may have applied or may apply for registration to mature their voting rights at different times, while others may lose the benefit of double voting, or lose the right to mature this benefit, if they transfer their shares. In addition, shareholders are always allowed, by a clause provided in all companies' articles of association, to renounce all or part of the additional voting rights attributed to them, or they can withdraw their registration to interrupt the maturity period.[109]

In this scenario, transparency is enhanced by requiring companies with tenured voting to disclose the total number of rights on the fifth day of each calendar month after the monthly period in which the total stock of voting rights has increased or decreased.[110] This information is necessary for shareholders to assess the percentage of voting rights

---

[108] There is some evidence of the assessment undertaken by Italian companies with dispersed ownership structures, on the introduction of tenured voting, also involving in a dialogue with major shareholders. It was the case, in particular, of Generali. The financial press reported that a 'survey' on the opportunity to introduce voting rights was carried out in 2015, in response to pressure from a number of significant non-financial shareholders, while the main institutional investors opposed the amendment of the articles of association in this respect (http://www.intermediachannel.it/generali-per-blackrock-il-voto-multiplo-e-problematico/). In the end, the company did not adopt tenured voting.

[109] According to Article 127-*quinquies*(1) of the Consolidated Law on Finance, the withdraw is definitive, but the shareholder can always apply for a new registration that corresponds with the starting date of a new maturity period. Renouncing (both before and after the attribution of additional voting rights) is a useful tool when, by virtue of the reward for loyalty consisting of additional voting rights, the shareholder may incur the obligation to announce a mandatory offer: *see* Part III(2).

[110] Article 143-*quarter*(5) of Consob regulation (No. 11971 of 14 May 1999 and subsequent amendments, hereinafter Consob Regulation).

held (which fluctuate alongside decreases or increases in total voting rights), and to comply with the transparency regulation of mandatory ownership disclosure.[111]

The mechanism relies upon the companies to keep a special register, with the support of intermediaries acting as depositaries on behalf of shareholders. Following the shareholders' registration, the depositary will provide the company with the certificate of ownership and inform the company of any transfer interrupting the maturity period. The register is a key tool for transparency. The right to access the register allows directors and shareholders to predict the most likely future distribution of voting power at each maturity date.[112]

Such transparency cannot, however, be considered complete, as the entire content of the register is not technically public—it is available only to directors and shareholders by request. Disclosure on company websites is limited to the identity of the relevant registered shareholders.[113] Hence, the market can predict how voting rights will vary over time, with a degree of error given that non-relevant shareholders might also have registered their shares to gain bonus rights.

This system impacts the present empirical analysis. The ability to understand the long-term intentions of the registered shareholders suffers a certain degree of inaccuracy from the fact that not all registrations are publicly available before their maturity date. However, even considering this warning, tenured voting rights are presented with a high degree of transparency. The public availability of the company's register can be considered a good proxy of relevant shareholder intentions regarding tenured voting.[114] An equivalent level of transparency is not found in other common CEMs.[115]

4. *Voting Distribution After Maturity: The Achievement of a Supermajority*

[111] Article 9 of Directive 2004/109/EC, amended by Directive 2013/50/EU of 22 October 2013 on the harmonisation of transparency requirements (hereinafter Transparency Directive), is currently transposed by requiring the shareholders of the Italian companies to disclose their holdings when they pass, because of acquisition or because of tenured voting, the 3% threshold (it was 2% until the end of 2016), or the 5% threshold for small and medium enterprises (SME)—Article 120(2) of the Consolidated Law on Finance (the so called mandatory ownership disclosure). Hereinafter 'Relevant shareholders' are those shareholders whose holding is above these relevant percentages. As will be analysed in Part III, knowledge of the total amount of voting rights is also necessary for shareholders to assess the implications arising from the mandatory offer obligation.

[112] Article 143-*quarter*(4) of Consob Regulation.

[113] *Supra* note 110.

[114] Table B, Column '*Dilution Post-Empowerment*'.

[115] Part I(6) and *supra* note 82.

The entry date of Table B shows that in 20 cases at least one shareholder had, by June 2018, already earned the reward of decoupling the voting rights related to their registered shares. Thanks to the transparency requirements, the voting rights owned by each 'Registered Shareholder are publicly available on the Consob website.[116] Moreover, since companies must disclose monthly variations in the total amount of their voting rights, it was possible to identify if other registered shareholders have matured additional voting rights. As a consequence, the information in the column '*Empowerment*' includes this dilutive effect. Looking at the company register, it was also possible to discern the registration of other relevant shareholders—in the column '*Dilution Post-Empowerment*'— who will, in the near future, mature new additional voting rights.

When the maturity period is 'still due', the picture of the future distribution of power is instead taken from the directors' report (prepared for the general meeting of shareholders), which contains information about the most predictable effect on the company's voting structure after rewarding the majority shareholder with additional bonus rights.[117] When this information is not available, or other relevant shareholders have simultaneously registered their shares, the voting distribution is a projection of its level at these registrations' date of maturity.[118] As explained, this result may underestimate the dilutive effect of the voting rights to be attributed to non-relevant shareholders, whose registration is not public.

Despite these warnings, which are due to the potential ongoing variability of voting rights, the findings show a sharp increase in the voting power of shareholders who matured (or prospectively will mature) tenured voting rights. In several cases, the achievement of double voting rights enables the controlling shareholder to exercise decisive influence over the extraordinary general meeting, empowering this shareholder to the point that amendments to the company's articles of association, or mergers and acquisitions where the shareholders' voice is required, only depends upon her vote.

In Italy, any decision of the extraordinary meeting of shareholders is taken with a two-thirds majority of the share capital represented at the meeting. It emerges that in 18 of 39 cases, thanks to the maturity of additional voting rights, the decision of the controlling shareholder will necessarily correspond to the final outcome of the extraordinary shareholders' meeting.[119] In 12 other cases, it is likewise reasonable that the controlling

[116] Official Source: [OS] in the column 'Empowerment" of Table B.

[117] Directors' pre-general meeting report: [D] in the column 'Empowerment" of Table B.

[118] Forecast generated by calculating all the voting rights attributed to the first shareholder/the amount of the company's voting rights: [F] in the column 'Empowerment" of Table B.

[119] Table B, 'Absolute Dominance' in the column 'Empowerment'.

shareholder's vote will be the determinant in the assembly. The conclusion can be inferred by considering that 70 per cent is the average capital represented at the shareholders' meetings of Italian listed companies;[120] consequently, all shareholders with voting rights above two-thirds of this percentage impose their vote in shareholders' meetings.[121] In these cases, a double check was made: upon maturity, the empowered shareholder also disposes of two-thirds of the voting rights of the presence quorum at the general shareholders' meeting that introduced the tenured voting (in some cases, such presence was higher than the above-mentioned 70 per cent).

As shown in Table B, the dilutive effect of such pronounced empowerment is marginal. Controlling shareholders did not take the opportunity presented by the increase in voting rights as a chance to reduce their stake in the company while maintaining control. This is not surprising: as the literature predicted for family-owned companies, this finding is consistent with the use of tenured voting by shareholders as a means of empowering existing long-terms shareholders, rather than encouraging new long-term shareholders.[122] In other words, strong shareholders used their tenured voting rights to become highly dominant in all corporate decisions. In this context, the dilution effect also appears to be overall marginal because of the registration of other shareholders. This might hypothetically change in the subsequent months if other shareholders will be awarded with double voting rights.

The lack of institutional investors and asset managers among the relevant beneficiaries of time-phased voting[123] is consistent with the traditional view alleging their indifference toward the opportunity to increase their power in the general meeting of shareholders; this is due to their short-term perspective, based on the need of institutional investors to constantly show their beneficiaries successful investment strategies and positive returns.[124] This observation supports those sceptical opinions that advocate against tenured voting as a solution to a perceived short termism problem.[125] Indeed, it seems that these investors have no incentive to apply to register their shares, lacking any interest in demonstrating, either publicly or to the company's directors, their long-term view. In light of this, contrary to some intuitive expectations, time-phased voting rights have not been shown to improve visible forms of engagement or activism by shareholders. Many believe that the preferred form of activism for professional investors takes place outside the general meeting. These investors are likely to be much

[120] Consob, *supra* note 83, 4.
[121] Table B, 'Dominance' in the column 'Empowerment'.
[122] Dallas & Barry, *supra* note 9, 548, 552.
[123] Dallas & Barry, *supra* note 9, 620.
[124] Quinby, *supra* note 2, 391, 397; Sacco Ginevri, *supra* note 20, 601.
[125] Fried, *supra* note 10, 1574.

more interested in engaging in informal dialogue with directors, raising concerns that they often 'operate outside the limits of shareholder power defined by regulation', and that they try 'to circumvent the existing legal devices regulating shareholder voice'.[126]

III. EXPLAINING WHY TAKEOVER LAW IS INVOLVED

1. *Tenured Voting and European Takeover Law*

The mandatory offer, a burdensome obligation for anyone wishing to acquire corporate control of a European listed company, does not find an equivalent rule in US corporate law and securities regulation. Among the few compulsory rules, the Takeover Bids Directive[127] requires Member States to adopt the mandatory offer provision—namely, the obligation to announce a public offer in the case of controlling acquisitions.

This piece of legislation, dating back to 2004, provides for only a minimum level of harmonization, thus allowing for a wide margin of flexibility at the Member State level.[128] However, it established two main pillars that national legislators should consider when developing more technical rules. Under the first pillar, the acquisition by a shareholder (or group of parties acting in concert) of a percentage of the voting rights conferring control requires the announcement of a mandatory offer, in the form of a total offer to other shareholders with voting rights.[129] The second pillar consists of the adoption of a straightforward definition of corporate control—based on a specific percentage of voting rights settled by the Member States—for the purposes of takeover bids,[130] in response to the uncertainties that may arise from the use of an indefinite notion of control. When it was enacted at the EU level, this solution was not revolutionary, but rather replicated the long-standing and successful experience of the UK City Code on Takeovers and Mergers, where the threshold level was set at 30 per cent of voting rights by a rule still in force.[131] This solution has been adopted in many Member States,[132] including Italy,

[126] Var der Elst & Vermeulen, *supra* note 62, 4, 7, and 13; McCahery, Sautner & Starks, *supra* note 66, 2912.
[127] *Supra* note 13.
[128] Pargendler, *supra* note 41.
[129] Article 5(1) Takeover Directive.
[130] Article 5(3) Takeover Directive.
[131] Panel on Takeovers and Mergers, the Takeover Code, Rule 9.1; Mathias Habersack, *Non-frustration Rule and Mandatory Bid Rule – Cornerstones of European Takeover Law*, 15 EUR. COMP. FIN. L. REV. 1-40, 29 (2018).
[132] Klaus J. Hopt, *European Takeover Reform of 2012/2013—Time to Re-examine the Mandatory Bid*, 15 EUR. BUS. ORG. L. REV. (2014), 143-190, 173.

where the 30 per cent threshold still applies in certain circumstances (particularly if it is exceeded by a shareholder entitled, after maturity, to loyalty voting rights).

The mandatory offer is a powerful tool for the protection of minority shareholders, consisting of a special right of withdrawal, which operates in case of a change of corporate control, coupled with the right to receive part of the premium paid by the offeror.[133] Regarding the first point, the mandatory offer regulation embodies the implicit promise to shareholders that, in case of a change in the ownership structure of the company, they will get the opportunity to disinvest.[134] In other words, minority shareholders are granted a special exit right when the controlling threshold is exceeded as a result of a private transaction involving corporate control or market shares acquisitions. This is a *particularly market-oriented solution*[135] that gives each individual shareholder the possibility to decide whether or not to remain in the company. Moreover, the provision that the offer be announced at 'the highest price paid for the same securities'[136] by the offeror deploys a redistributive effect in favor of minority shareholders, who will get the same premium paid (if a premium had been paid) for acquiring control of the company.

In this context, the entry into force of tenured voting rights in Italy was followed, a few months later, by a complex revision of the system of thresholds that identify when the obligation to announce a mandatory offer arises. Even if a decisive boost to the reform was also driven by the widespread belief that a lower threshold—lower than the 30 per cent traditionally adopted in the country—was a necessary tool to reinforce investor protection,[137] the sudden appearance of tenured voting rights in corporate law imposed a significant redrafting of the rules on mandatory offers.

---

[133] Hopt, *supra* note 1, 197; Nuria Alcade & Inés Pérez-Soba, *Has the EU Takeover Directive Improved Minority Shareholder Protection? The Spanish Evidence*, 17 EUR. BUS. ORG. L. REV. 261-283, 263 (2016).

[134] Jennifer Payne, *Minority Shareholder protection in takeovers: A UK perspective*, 8 EUR. COMP. FIN. L. REV. 145-173, 150 (2011); Jonathan Mukwiri, *Takeovers and Incidental Protection of Minority Shareholders*, 10 EUR. COMP. FIN. L. REV., 432-460, 442 (2013).

[135] Hopt, *supra* note 132, 169 f.; Georgios Psaroudakis, *The Mandatory Bid and Company Law in Europe*, 10 EUR. COMP. FIN. L. REV. 550-584, 553 (2010); Habersack, *supra* note 131, 32 f.

[136] Article 5(4) Takeover Directive.

[137] The 1998 Italian takeover regulation was modified in 2014, when a complex system of thresholds replaced the single one fixed at 30%, still in force for tenured rights. The result achieved by the reform was, in most cases, to lower the relevant threshold to 25% in companies that are not classified as SME (small medium enterprises); while the applicable threshold is 30% in the (rare) case of an existing controlling shareholder already owing more than 25% and less than 50%. At the same time, SME were granted the freedom to provide in their articles of association for a different threshold, not lower than 25% and not higher than 40%: Article 106(1)(1-*bis*)(1-*ter*) of the Consolidated Law on Finance. As the

It is questionable to what extent tenured voting rights should be included in calculating the relevant threshold. This choice, made by the Italian legislator (and by the French one), imposes the obligation to launch a bid when the 30 per cent threshold is exceeded as a result of increased voting rights.[138] Despite the obvious consideration that voting rights similarly affect the corporate decision on whether or not the shareholder owns the same percentage of shares, the two situations cannot be considered equivalent for several reasons. First, increasing voting rights as a reward for shareholder loyalty is less stable than disposing of the same percentage as property rights in a company without tenured voting. Second, the maturity of tenured voting rights does not alter the number of shares on the market available to shareholders interested in acquiring a relevant stake in the company (in other words: with tenured voting the contestability of corporate control changes less than in the case of share acquisition). Finally, since the tenured voting rights are cost-free, there is no premium for corporate control—thus, minority shareholders are not entitled to any price distribution. However, the latter is a weak argument, as it is now fairly established that the mandatory offer consists of a special exit right for minority shareholders, whereas the redistribution of corporate control occurs only eventually.[139]

The TBD explicitly provides that the mandatory offer threshold be exceeded in the event of an *acquisition* of shares by a single shareholder or by a group of shareholders acting in concert. In line with this, shareholders' agreements, whose impact on corporate control is undeniable, are not explicitly included in the directive as events triggering the mandatory offer obligation.[140] In Italy, while such agreements are commonly considered a stable means of exercising corporate control, they do not necessarily require the announcement of a mandatory offer obligation unless

literature points out, the discussion on the optimal level of threshold is not simple. When a certain threshold is settled, control packages below this percentage may be transferred without involving the obligation to launch an offer. In Italy in 2014, the proposal to lower the takeover threshold found fertile ground, thus increasing the costs of corporate acquisition in line with the view that considers mandatory offers the most effective takeover defence: Johannes W. Fedderke & Marco Ventoruzzo, THE BIASES OF AN 'UNBIASED' OPTIONAL TAKEOVERS REGIME: THE MANDATORY BID THRESHOLD AS A REVERSE DRAWBRIDGE. ECGI Law Working Paper No. 304/2016, *available at* http://ssrn.com/abstract=2706602 (2015), 4 and 12; Luca Enriques & Matteo Gatti, CREEPING ACQUISITIONS IN EUROPE: ENABLING COMPANIES TO BE BETTER SAFE THAN SORRY. ECGI Law Working Paper No. 264/2014, *available at* ssrn.com/abstract_id=2492158 (2014), 30 f.; Payne, *supra* note 134, 151.

[138] Article 106(1) Consolidated Law on Finance.

[139] Psaroudakis, *supra* note 135, 554, 557.

[140] Hopt, *supra* note 132, 180; Psaroudakis, *supra* note 135, 556; Martin Winner, *Active Shareholders and European Takeover Regulation*, 11 EUR. COMP. FIN. L. REV., 364–392, 369, (2014).

acquisitions occurred in the 12 months preceding the agreement.[141] The approach is clearly different when it comes to tenured voting rights: in Italy and in France, the maturity of the additional voting rights, even without any further share acquisitions, is not free of charge for the faithful shareholder if the mandatory offer is triggered.

The results of the empirical analysis outlined in Part III, Section 1 support some general conclusion about this setting. The optimum takeover threshold is a complex political choice left by the directive to the Member States; the adoption of tenured voting has made the taxonomy even more intricate. The issue has become, then, not only whether a greater degree of uniformity across Europe is needed,[142] but also whether the case of tenure voting rights should not be treated differently.

2. *Mandatory Offer and Tenured Voting: Obligations and Exemptions*

The Italian system is calibrated in a complex balance between obligations and waivers. On one hand, it imposes a mandatory offer if one shareholder (or a group acting in concert) matures voting rights above the relevant threshold, despite the fact that, in terms of share capital, the same threshold has not been exceeded. Conversely, the acquisition of a holding corresponding to the relevant threshold does not necessarily imply the obligation to announce a mandatory offer if, due to the dilution effect caused by other loyal shareholders, the acquirer does not have voting rights exceeding the relevant threshold.[143]

[141] Articles 101-*bis*(4), 109 and 123 of the Consolidated Law on Finance; the maximum duration for shareholder agreement settlement is three years, but renewal is always possible; Winner, *supra* note 135, 370.

[142] Marco Lamandini & David Ramos Muñoz, EU FINANCIAL LAW. AN INTRODUCTION, 344, (2016).

[143] The two situations can be better represented through numerical examples. In a first case, a shareholder owing 18% of the share capital, if awarded with double voting rights (where no other shareholder mature double voting), will have the right to exercise 30.05% of the total voting rights; thus triggering the mandatory offer. In the second example, the acquisition of 30% of the voting share capital (assuming this is as a relevant takeover threshold) allows the exercise of 27% of the voting rights if a pre-existing shareholder—owning, for example, 10% of the share capital—has doubled her voting rights. According to the Consob regulation, the mandatory offer will trigger only if the majority shareholder will accrue—due to a decrease in the number of the company' voting rights—her percentage above the relevant threshold, an event that may never occur or occurs long after the acquisition (Article 44-*bis*.1 and Article 49(1)*d-bis*) of Consob Regulation. Such regulatory solution is questionable as the realignment of the share capital with voting rights and the voting rights can take place considerably after the acquisition of the relevant shareholding.

The creeping acquisition—namely, the 'surreptitious building of a stake large enough to secure control'[144]—may also require the announcement of a mandatory offer. Such a provision, which is not common to all Member States,[145] is present in Italy, France and UK; it operates when, from a weaker level of corporate control, the majority shareholder approaches statutory control in a limited period of time. Specifically, in Italy, it occurs if a shareholder who holds more than 30 per cent but less than the statutory control acquires (or matures) more than 5 per cent of voting shares or of voting rights in 12 months (the equivalent rule in France provides that the increase must not exceed 1 per cent).[146]

Such a rigorous system, which broadened takeover regulation in the case of tenured voting rights, upholds strong investor protection as the main goal of the European financial market framework. It involves the expectation that minority shareholders will withdraw their investment in case of significant change (or consolidation) in the company shareholding (and power) structure.[147] Such change or consolidation can occur after share acquisition or because of the maturity of tenured voting. Therefore, it is also consistent with the two main exemptions to the obligation to announce a mandatory offer, which apply when increased voting rights cause only temporary changes in the distribution of voting powers among shareholders.

The first exemption is based on the fact that the threshold is exceeded only temporarily—precisely when the shareholder decides not to exercise the voting rights above the relevant percentage and to instead sell or reduce them within 12 months. Such a reduction may also be due to an expected dilution of voting rights, which can be predicted through access to the company's register or by the shareholder's decision to waive, even partially, the additional matured voting rights. The functioning of this exemption clearly explains why all the Italian companies allowed their shareholders to renounce the additional matured rights. The second exemption applies if the relevant mandatory offer threshold is unintentionally exceeded by a loyal shareholder, due to a decrease in the total amount of the company's voting rights, depending on other shareholders' behavior (as in the case of transfer of the underlying shares).[148]

---

[144] Enriques & Gatti *supra* note 137, 3

[145] Hopt, *supra* note 133, 161.

[146] Article 106(3), b) of the Consolidated Law on Finance and Article 46 of the Consob Regulation; for France, Article L433-3(1) of the *Code monétaire et financier*, and Rule 9.1 of the UK Takeover Code.

[147] Psaroudakis, *supra* note 135, 559.

[148] In this situation more than one shareholder is entitled of additional voting rights but, when some of them suddenly dissolve one of the loyal shareholders may see her voting power rise above the relevant threshold. The exemption requires that two conditions are met: the increase in the voting

What is crystal clear, however, is that no exemption reduces the powerful deterrent effect that the mandatory offer has on the adoption of loyalty-enhancing mechanism based on a voting power reward. Within the system of European takeover law there is no reasonable expectation that companies without a highly concentrated ownership structure will adopt tenured voting; as a matter of fact, their shareholder would not be interested in tenured voting insofar as they would be affected by the mandatory offer. Takeover regulation, as an exogenous factor, hinders the goal of empowering long-term shareholder. The situation radically changes, though, for existing controlling shareholders, to whom the described mechanism of takeover thresholds does not apply. The empirical evidence supports this conclusion.

3. *How Takeover Regulation Shapes (and Should Shape) the Selection of Companies with Tenured Voting*

Takeover regulation demonstrates the strong relationship between securities regulation and corporate law, and the mandatory offer obligation becomes a decisive exogenous factor that interferes with the choices of companies to reward their shareholders with tenured voting.

On one hand, the obligation to launch an offer makes the achievement of double voting rights no longer cost-free above the relevant threshold. It *de facto* curbs the maturity of additional voting rights, hindering shareholders from exploiting this benefit when the threshold will be exceeded. They are unlikely to accept the high cost of the mandatory offer to achieve voting rights without market value due to the sunset clause providing that these rights lapse in the event of a transfer of underlying shares. It is not by chance that, in Italy, no cases of mandatory offers occurred after tenured voting rights matured, and this trend is not likely to change.

The implications of such interference are illustrated in Table B. Given the ownership structure, all shareholders with holding greater than 30 per cent can reach a position of absolute centrality in all corporate decisions without incurring the obligation of mandatory bidding. Not even the creeping acquisition rule can hinder the power of controlling shareholders. Since additional voting rights require 24 months to mature, and while by definition creeping acquisition is intended to capture the rapid increases in voting rights (occurring in under 12 months), it is theoretically impossible for the shareholders of Group *a)*, *b)* and *c)* of Table B to trigger the mandatory offer obligation

---

power was involuntarily and shareholder—who has voting rights above 30%—does not dispose of voting shares above this same percentage; Article 49(1), *d-bis* and c) of Consob Regulation.

solely by the attribution of increased voting rights, without share acquisition. In addition, such shareholders tend to keep their holdings above the relevant takeover thresholds, thus limiting the alleged positive impact of tenured voting rights on the liquidity of the company's shares.

A partially different result has been observed in France, where the state maintained the same degree of control due to the role of tenured voting rights but reduced its capital stakes.[149] In Italy, on the contrary, '*Registered shareholders*' are always private owners or entities. Moreover, in France, takeover regulation provided, for the four years following the *Loi Florange*, for a special derogation from the mandatory offer obligation, applicable when the maturity of the additional voting rights was offset by a reduction in the stake owned. In Italy, absent a similar provision, a comparable dilution was not observed.

The selective effect determined by takeover regulation is clear and depends on the ownership structure of the individual company. Shareholders with less than 30 per cent of the voting rights would bear the cost of the mandatory offer if, by maturing their time-phased voting rights, they exceed this relevant percentage. In this case, they will not pressure the board of directors to consider and propose the adoption of tenured voting rights.

The issue arises as to whether a different fine-tuning of takeover bid thresholds would be more appropriate. One possible course of action entails setting variable thresholds depending on whether the triggering event involves the purchase of shares or the maturity of tenured voting rights. This solution is currently being used in Italy, where a 25 per cent threshold is applied in the majority of cases if exceeded because of acquisition, while a 30 per cent threshold applies to tenured voting. But, as the empirical evidence has shown, 30 per cent—despite being the most widespread percentage assumed, in several Member States, to indicate corporate control—is not the most suitable threshold in cases of tenured voting rights. A different and higher threshold would capture situations in which the controlling shareholder, upon the award of bonus voting rights, achieves a sharp increase in voting power.

As shown in Table B, 31 shareholders achieved the majority necessary to dominate (or nearly dominate) in their general shareholders' meetings without incurring the mandatory offer obligation.[150] By contrast, the 30 per cent threshold discourages the shareholders with shares below this level from pushing for the adoption this loyalty-

[149] Becht, Kamisarenka & Pajuste, *supra* note 35, 27.

[150] In Table B, 18 cases of 'Absolute dominance', 12 of 'Dominance', 1 of 'Near dominance' out of 39 observations.

enhancing mechanism. The final result is against the original expectation. In order for tenured voting rights to benefit corporate governance, they must offer a genuine incentive for relevant (although non-controlling) shareholders to increase their engagement and participation in the company's life. They are, instead, those more affected by the mandatory offer obligation, thus not interest in a reward for their loyalty, in terms of voting power.

In search of more uniformity among Member States, the proposal of raising the takeover threshold for tenured voting rights deserves to be considered at the European level. It serves a valid political purpose—to limit controlling shareholders from exploiting tenured voting to gain indisputable and absolute power over all corporate decisions. Such an option would credibly revitalize corporate democracy, specifically addressing the fact that, in highly concentrated ownership structure, tenured voting can completely mute the voice of minority shareholders. At the same time, when the ownership structure is less concentrated, a more balanced system of exemptions from the mandatory offer obligation (or simply a higher takeover threshold) would not inhibit the adoption of tenured voting to encourage shareholders' active involvement in the company's life.

IV. CONCLUSIONS

Even more than in politics, where the 'one person one vote' principle dominates the landscape,[151] corporate law has offered several solutions for shaping shareholders' voting rights according to their preferences, and the question of the persistent primacy of the 'one-share one-vote principle has shifted to theoretical debate.[152] Companies have been allowed, even with varying degrees of freedom in each jurisdiction, to select and shape their optimal shareholder base within the boundaries of corporate law's default rules.[153]

In the age of empowered shareholders, 'shareholders cultivation'[154] has found fertile ground, and the pressure toward short termism, highly debated over the last decade, has prompted companies to view the crafting of the optimal shareholder base as a strategic decision. In this scenario, tenured voting rights, although unanimously listed in the literature on CEMs, have been considered a more flexible and suitable tool than dual-class shares to rewrite the terms and dynamics of shareholders' engagement and

[151] Hayden & Bodie, *supra* note 10, 445-446, 456.
[152] Hayden & Bodie, *supra* note 10, 472.
[153] Rock, *supra* note 10, 903.
[154] Belinfanti *supra* note 10, 872.

ownership. Looking at these loyalty-enhancing mechanisms and at the way in which they reward long-term shareholders, tenured voting rights empower insiders to a lesser extent than dual-class stocks, and treat all shareholders equally by granting all the same option to mature additional voting rights.

Tenured voting rights are likely to be at the heart of the discussion on voting rights for a long time. Not only are they a default rule in France and can be voluntarily adopted by Italian companies (and soon by Belgian companies), but recently, in the US, a group of technology entrepreneurs requested regulatory approval to set up the Long-Term Stock Exchange (LTSE), which would only list shares with tenured voting.[155] However, the empirical evidence has shown that in Continental Europe, the importance of tenured voting as a necessary tool to improve the long-term position of shareholders should not be overestimated, particularly in companies with pre-existing long-term (controlling) shareholders. In Italy, 'long termism' was the most-used slogan cited by the board of directors to propose the adoption of tenured voting, but upon a closer look they rather pursued the goal of empowering the controlling shareholders, placing them in a position to dominate the general shareholder meetings. A similar result has been achieved in the US—although in a smaller sample of companies with time-phased voting rights, where long-term shareholders (considered as a group, not individually) can guarantee the outcome of any shareholder vote, due to factors that markedly multiply voting rights by more than the double vote awarded by the EU Member States.[156]

Assessing the pros and cons of tenured voting rights is particularly complex. They occupy an intermediate step on a spectrum between 'one share, one vote' and dual class stock; likewise, on both sides of the Atlantic, tenured voting has shown to be particularly suitable and appreciated for controlled firms, or by other public firms with relatively concentrated ownership.[157] There is no evidence, though, on the use of this loyalty-enhancing mechanism by purely widely held companies.

Tenured voting also represents a response to regulatory competition within European Member States. In this respect, however, Europe is a special environment, where regulation—specifically, takeover regulation—strongly influences companies and shareholders to efficiently bargain in shaping the most appropriate structure of their voting power. Deviations from the 'one share, one vote' principle at the level of single Member States may require a tailor-made adaptation of the law, touching sensible areas

[155] Osipovich, Alexander, Berman & Dennis, NEW STOCK EXCHANGE TO TAKE LONG-TERM VIEW, WALL STREET J., October 17, 2017, B.1, *available at* gcalhoun.files.wordpress.com/2017/10/17-10-16-wsj-new-stock-exchange-to-take-long-term-view.pdf.

[156] Dallas & Barry, *supra* note 9, 635.

[157] Dallas & Barry, *supra* note 9, 645.

for the integrity of the European market and bearing the risk of excessive fragmentation across Europe.

Definitions	
Nº	Progressive order identifying companies in Table B.
Companies	Thirty-nine companies included in the sample are listed in descending order according to capitalisation as of 29 June 2018 (each had tenured voting as of June 2018). In Table B, 38 companies are considered because for one (row 15) the register was not available (it is assumed that no shareholder registered).
Proposal	The directors' proposal, submitted before the general meeting of shareholders; when this document was not available, data were gathered from the minutes of the general meetings, or from the IPO registration documents. In a few cases the report was not available [NA].
Main Statements	Main statement of the directors' proposal to explain why tenured voting supports the interest of the company. Beyond slight differences in wording, four main statements that focus on the alleged benefits of tenured voting rights were identified and summarized. Specifically: 'Statement A' **[A]** (26 observations)—in this case, directors emphasise tenured voting rights aimed at 'increasing the loyalty/long termism of the shareholder base'; 'Statement B' **[B]** (20 observations)—underlines a more direct effect of tenured voting as the opportunity given to directors to 'enhance long-term strategies'; 'Statement C' **[C]** (9 observations)—the most concealed one, it simply focuses on the 'rewarding effect of tenured voting rights', and some companies add that such a reward is 'necessary to maintain the pre-eminence of long-term shareholders'; finally, 'Statement D' **[D]** (8 observations)—suggests that tenured voting rights may 'increase loyalty of minority shareholders'.
Ind. Directors/Minority	The number of independent directors /and the number of directors appointed by minority shareholders. When this information on board composition is not contained in the pre-general meeting proposal prepared by directors, it was taken from the corporate governance report, or the remuneration report, or the minutes of the general meeting when the board was appointed. In a few cases, the information was not given [NA].
Board Unanimity	The board's support for the proposal on tenured rights. When unanimity of the board cannot be derived from the pre-general meeting report drawn up by directors, the information is inferred from the minutes of the general shareholders' meeting, if it provides such evidence. In a few cases, the information was not given [NA].
General Meeting	Date of the shareholders' general meeting that approved the introduction of tenured voting in the articles of association. **[S]** indicates that the decision was adopted when a facilitating quorum was applicable. **[IPO]** indicates that the company introduced the clause relating to tenured voting rights prior to listing.
Quorum	Percentage of shares represented at the shareholders' general meeting (presence quorum)/and percentage of those voting in favor of the adoption of tenured voting rights. In a few cases, the information was not given [NA].
Multiplier	Multiplying factor of tenured voting rights after maturity. In Italy, the maximum is 2.
Loyalty	Maturity period, in Italy, should be set at not less than 24 months.

Registration	Date of registration of the Registered Shareholder who applied to mature additional voting rights for all or a portion of her shares. **[Pre-IPO]** indicates that the company introduced the clause relating to tenured voting rights prior to listing.
Registered Shareholder	Shareholder who registered the largest holding. They are classified into four groups for each company, depending on the percentage of share ownership (***a)*** >50%, ***b)*** > 45%, ***c)*** > 30%, ***d)*** and ≤ 30%).
Registered Shares	Registered shareholders may have registered, to mature tenured voting, all their shares or only *some* of them, sometimes at different times.
Stake Reduction	Dilution of the voting rights that occurred when, after registration, the first shareholder reduced part of the holding.
Maturity Date	Maturity date of the first portion of shares registered by the Registered Shareholder.
Empowerment	The power distribution after maturity is provided on the Italian Financial Supervisory Authority (Consob) website, once the first shareholder has matured additional voting rights; this official source **[OS]** also considers the dilution effect resulting from the maturity of double voting gained by other shareholders registered and accounts for the very rare cases in which some shareholders renounced the maturation of additional voting rights. When maturity is still due, the source is either the directors' pre-general meeting report, if it contains such information **[D]**, or a forecast generated by calculating all the voting rights attributed to the first shareholder/the amount of the company's voting rights **[F]** (in this case, the projection is made assuming that the total number of issued shares will not change, or, if they do, the benefit of additional voting rights is extended to them as provided by all companies' articles of association). **Moreover, power was categorized as follows:**
Absolute dominance	The result of tenured voting empowerment: the shareholder can impose her vote in all ordinary and extraordinary shareholders' meetings.
Dominance	The result of tenured voting empowerment; when two condition are met: *i)* considering that the average participation in the general shareholders' meeting in Italian companies is 70 per cent, the *Registered Shareholder* is entitled to two-thirds of these voting rights; *ii)* considering the Presence Quorum in the general meeting that introduced the tenured voting in Table A, the registered shareholder is or will be entitled to two-thirds of these voting rights.
Near dominance	The result of tenured voting empowerment: the shareholder already possessing statutory control gets very close to the *Dominance* position.
Control	The result of tenured voting empowerment: thanks to tenured voting, the shareholder is entitled to more than 30% of the voting rights.
Non-controlling shareholder	The result of tenured voting empowerment: the shareholder is entitled to less than 30% of the voting rights.

Dilution Post-Empowerment	Other relevant shareholders have registered who will mature additional voting rights after June 2018. It is unknown whether other non-relevant shareholders were also registered, as this information was not publicly available.

Table A

39 companies included in the sample (all companies with tenured voting in June 2018)
companies listed in descending order according to their capitalisation on 29 June 2018

N°	Company	Proposals	Statements	Ind. Directors/ Minority	Board Unanimity	General Meetings	Quorum	Multiplier	Loyalty	Registration Date
1	Davide Campari	X	[C]	9/3	X	28.01.2015 [S]	81,23/76,05	Double voting	2 Years	09.04.2015
2	Diasorin	X	[B]	4/0	X	28.04.2016	82,41/73,36	Double voting	2 Years	07.07.2016
3	Amplifon	X	[A]	5/1	X	29.01.2015 [S]	83,63/69,90	Double voting	2 Years	02.04.2015
4	Hera	X	[A][B]	11/3	X	28.04.2015	74,68/81,60	Double voting	2 Years	01.06.2015
5	De' Longhi	X	[C][B]	5/0	NG	11.04.2017	88,01/73,81	Double voting	2 Years	21.04.2017
6	Salvatore Ferragamo	X	[A][B]	3/0	X	20.04.2018	88,20/85,82	Double voting	2 Years	02.07.2018
7	I.M.A.	X	[A]	3/0	NG	21.04.2017	79,06/76,19	Double voting	2 Years	01.06.2017
8	Iren	X	[B][D]	9/2	X	09.05.2016	72,72/79,44	Double voting	2 Years	01.06.2016
9	Reply	X	[C][D]	3/0	X	13.09.2017	75,42/77,53	Double voting	2 Years	31.10.2017
10	Technogym	NA	[A]	Na	X	16.02.2016 IPO	100/100	Double voting	2 Years	04.05.2016 pre-IPO
11	Datalogic	X	[A]	2/0	NG	04.05.2017	83,91/81,41	Double voting	2 Years	27.07.2017
12	Tod's	X	[D]	6/0	X	21.04.2017	63,13/85,09	Double voting	2 Years	15.05.2017
13	Maire Tecnimont	X	[B][D]	5/1	X	18.02.2015	76,14/87,62	Double voting	2 Years	31.03.2015
14	Gima tt	NA	[A]	NG	X	26.06.2017 IPO	100/100	Double voting	2 Years	12.10.2017
15	Biesse	X	[A]	2/0	NG	24.04.2018	80,02/64,57	Double voting	2 Years	NA
16	Carel Industries	NA	NA	Na	NG	27.02.2018 IPO	100/100	Double voting	2 Years	06.06.2018 pre-IPO
17	Zignago Vetro	X	[A][C]	7/0	X	28.04.2015	69,86/93,32	Double voting	2 Years	22.02.2016
18	Gruppo Mutuionline	X	[A][B]	7/NG	X	24.04.2018	64,33/90,32	Double voting	2 Years	29.08.2018
19	Cairo Communication	X	[A][C]	4/0	NG	18.07.2016	78,43/97,25	Double voting	2 Years	29.12.2016
20	Saes Getters	X	[A][B]	4/0	X	03.03.2016	53,15/95,16	Double voting	2 Years	23.03.2016
21	DeA Capital	X	[A][B]	3/0	X	17.04.2015	62,10/93,93	Double voting	2 Years	05.06.2015
22	Nice	X	[A][C]	3/0	X	24.04.2015	81,39/99,59	Double voting	2 Years	02.12.2015
23	Mondadori	X	[A][B]	4/0	X	27.04.2017	73,72/89,34	Double voting	2 Years	17.05.2017
24	Cofide	X	[B][C][D]	6/0	X	27.04.2015	58,17/94,23	Double voting	2 Years	01.06.2015
25	Carraro	X	[B][C]	3/0	X	15.04.2016	65,30/100	Double voting	2 Years	29.04.2016
26	Sabaf	X	[A][B][D]	5/1	X	28.04.2016	56,82/90,59	Double voting	2 Years	01.08.2016
27	Astaldi	X	[A][B][C][D]	8/0	X	29.01.2015 [S]	75,02/71,47	Double voting	2 Years	01.03.2015
28	Intek Group	X	[A][B]	3/0	X	19.06.2015	47,10/97,83	Double voting	2 Years	15.06.2016
29	Landi Renzo	X	[B]	2/0	X	24.04.2015	68,15/86,72	Double voting	2 Years	07.10.2015
30	Openjobmetis	NA	[B]	Na	NG	12.10.2015 IPO	100/100	Double voting	2 Years	20.01.2016 pre-IPO
31	Exprivia	X	[A]	4/0	X	22.04.2015	46,49/100	Double voting	2 Years	23.02.2016
32	Centrale del Latte d'Italia	X	[A]	5/0	NG	13.06.2016	63,05/99,99	Double voting	2 Years	02.01.2017
33	Fidia	X	[A]	3/0	NG	28.04.2017	56,29/100	Double voting	2 Years	09.04.2018
34	Class Editori	X	[A][B]	6/0	X	30.04.2015	70,81/100	Double voting	2 Years	27.10.2016
35	Lventure Group	X	[A]	2/1	X	27.04.2017	43,76/100	Double voting	2 Years	03.08.2017
36	Ternienergia	X	[B][D]	3/0	X	16.03.2015	63,00/99,94	Double voting	2 Years	31.03.2015
37	Conafi Prestitò	X	[A][B]	2/0	X	29.04.2015	56,13/100	Double voting	2 Years	05.06.2015
38	Poligrafica San Faustino	X	[A]	3/0	X	24.04.2015	45,06/100	Double voting	2 Years	07.07.2015
39	Gruppo Waste Italia	X	[A]	2/NG	X	05.05.2015	37,44/100	Double voting	2 Years	13.07.2015

Table B (38 companies analysed up to the end of June 2018)

N°	Company	Registered Shareholder	Registered Shares	Dilutions: Stake Reduction	Dilutions: Other Registered Shareholders	Maturity date	Empowerment	Dilution Post-Empowerment
a)		*Tenured voting matured by first registered shareholder*					*After maturity date*	
1	Davide Campari	>50	All	No	Yes	09.04.2017	Dominance [OS]	Yes
3	Amplifon	>50	All	Yes	Yes	02.04.2017	Dominance [OS]	No
10	Technogym	>50	All	Yes	No	07.10.2016	Absolute dominance [OS]	No
13	Maire Tecnimont	>50	All	No	Yes	07.04.2017	Absolute dominance [OS]	No
16	Carel Industries	>50	All	Yes	Yes	23.05.2018	Near dominance [OS]	No
17	Zignago Vetro	>50	All	No	Yes	22.02.2018	Absolute dominance [OS]	No
21	DeA Capital	>50	All	No	Yes	05.06.2017	Absolute dominance [OS]	Yes
24	Cofide	>50	All	No	Yes	01.06.2017	Dominance [OS]	No
27	Astaldi	>50	Some	No	Yes	01.03.2017	Absolute dominance [F]	No
29	Landi Renzo	>50	All	No	Yes	07.10.2017	Absolute dominance [OS]	No
37	Conafi Prestitò	>50	All	No	Yes	05.06.2017	Absolute dominance [OS]	No
		Maturity date still due						
5	De' Longhi	>50	All	No	No	21.04.2019	Absolute dominance [F]	Yes
6	Salvatore Ferragamo	>50	All	No	No	02.07.2020	Absolute dominance [D]	No
7	I.M.A.	>50	All	No	No	01.06.2019	Absolute dominance [D]	No
11	Datalogic	>50	All	No	No	27.07.2019	Absolute dominance [D]	No
12	Tod's	>50	All	No	No	15.05.2019	Absolute dominance [D]	No
14	Gima tt	>50	All	No	No	12.10.2019	Absolute dominance [D]	No
19	Cairo Communication	>50	All	No	No	29.12.2018	Absolute dominance [F]	No
22	Nice	>50	Some	No	No	02.12.2017	Absolute dominance [D]	No
23	Mondadori	>50	All	No	No	17.05.2019	Absolute dominance [D]	No
33	Fidia	>50	All	No	No	09.04.2020	Absolute dominance [D]	No
34	Class Editori	>50	All	No	Yes	27.10.2018	Dominance [F]	
b)		*Tenured voting matured by first registered shareholder*					*After maturity date*	
20	Saes Getters	>45	All	Yes	No	09.04.2018	Dominance [F]	Yes
25	Carraro	>45	Some	Yes	Yes	29.04.2018	Dominance [F]	No
28	Intek Group	>45	All	No	Yes	15.06.2018	Dominance [OS]	No
31	Exprivia	>45	Some	No	No	01.03.2018	Dominance [OS]	No
		Maturity date still due						
9	Reply	>45	All	No	No	31.10.2019	Absolute dominance [D]	No
32	Centrale del Latte d'Italia	>45	All	No	No	02.01.2019	Dominance [F]	No
36	Ternienergia	>45	All	No	Yes	NA	Dominance [F]	No
c)		*Tenured voting matured by first registered shareholder*					*After maturity date*	
8	Iren	>30	All	Yes	Yes	01.06.2018	Non-controlling shareholder [C]	No
		Maturity date still due						
2	Diasorin	>30	All	No	No	07.07.2018	Dominance [D]	Yes
18	Gruppo Mutuionline	>30	Some	No	No	29.08.2020	Control [F]	No
35	Lventure Group	>30	Some	No	No	03.08.2019	Dominance [F]	No
d)		*Tenured voting matured by first registered shareholder*					*After the maturity date*	
4	Hera	≤30	All	No	Yes	01.06.2017	Non-controlling shareholder [OS]*	No
30	Openjobmetis	≤30	All	No	Yes	23.12.2015	Non-controlling shareholder [OS]	Yes
38	Poligrafica San Faustino	≤30	All	No	Yes	07.07.2017	Non-controlling shareholder [OS]	No

39	Gruppo Waste Italia	≤30	Some	No	No	13.07.2017	Control [OS]	No
		Maturity date still due						
26	Sabaf	≤30	All	Yes	No	01.08.2018	Control [F]	Yes