UNIVERSITY OF AMSTERDAM

UvA-DARE (Digital Academic Repository)

Deviations from the 'One Share, One Vote' Principle in the Netherlands

Legal and Empirical Considerations

de Kluiver, H.-J.; Roest, J.

DOI
10.54648/eucl2025018

Publication date
2025

Document Version
Final published version

Published in
European Company Law

License
Article 25fa Dutch Copyright Act (https://www.openaccess.nl/en/policies/open-access-in-dutch-copyright-law-taverne-amendment)

Link to publication

Citation for published version (APA):
de Kluiver, H.-J., & Roest, J. (2025). Deviations from the 'One Share, One Vote' Principle in the Netherlands: Legal and Empirical Considerations. *European Company Law*, *22*(3), 94-100. https://doi.org/10.54648/eucl2025018

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, P.O. Box 19185, 1000 GD Amsterdam, The Netherlands. You will be contacted as soon as possible.

UvA-DARE is a service provided by the library of the University of Amsterdam (https://dare.uva.nl)

Download date:08 Nov 2026

Deviations from the 'One Share, One Vote' Principle in the Netherlands. Legal and Empirical Considerations

HARM-JAN DE KLUIVER & JOTI ROEST: PROFESSOR DR JOTI ROEST IS PROF. OF COMPANY LAW AT THE UNIVERSITY OF AMSTERDAM AND PROF. DR HARM-JAN DE KLUIVER IS PROF. OF COMPANY LAW AT THE RADBOUD UNIVERSITY NIJMEGEN AND EMERITUS AT THE UNIVERSITY OF AMSTERDAM.*

In this article, we examine the legal and practical landscape for multiple and loyalty voting structures under Dutch company law. We first outline the mechanisms available to listed N.V.s, focusing on dual-class and loyalty shares. We then provide empirical insights into how these structures are used by Dutch companies listed domestically or abroad. Finally, we assess the likely impact of the EU multiple voting shares (MVS) Directive on the Dutch framework and conclude that major changes appear unlikely given the current legislative stance.

Keywords: Dutch company law, multiple voting shares, loyalty shares, dual-class structures, MVS Directive, Corporate Law, listed companies.

1. INTRODUCTION

In this article, we provide an overview of the situation in the Netherlands with regard to the structures and mechanisms that may be adopted by listed companies to deviate from the 'one share, one vote' principle (§§2–4). We will explain these mechanisms, focusing in particular on dual class share (§5) and loyalty share structures (§6). We will illustrate the practical consequences by providing an empirical overview of these structures used by Dutch listed companies, either listed in the Netherlands or on a foreign stock exchange. Finally, we will discuss the ramifications of the EU Directive 2024/2810 on Multiple Voting Shares ('MVS') (hereinafter: 'MVS Directive')[1] (§7) and draw a conclusion regarding the likelihood of any changes to the current legal framework (§8).

2. LEGAL OPTIONS TO LIMIT THE 'ONE SHARE, ONE VOTE' PRINCIPLE IN THE NETHERLANDS FOR PRIVATE AND PUBLIC COMPANIES

Dutch legislation has a long history of differentiating voting rights and deviating from the 'one share, one vote' principle that was adopted in the Dutch Commercial Code of 1928,[2] a tradition that persists until the present day. In general terms, a variation in voting rights in the Netherlands can be achieved in at least five ways, by issuing:

(1) depositary receipts/certificates of shares, thus decoupling voting power and economic value;
(2) non-voting stock, provided that not all shares may be non-voting;
(3) 'dual-class' shares with a nominal value different from the common shares with the same dividend rights;
(4) loyalty shares, and thereby increase the voting power without additional financial entitlement;
(5) shares of equal nominal value but with different voting rights; these are the actual 'Multiple Voting Shares' as referred to in the MVS Directive.

In the Netherlands, all of the aforementioned options are permitted in relation to private companies since the overhaul of Dutch company law in 2012. Thus, the law offers great flexibility in decoupling voting power and economic rights and value. Since then, it has also been possible for private companies to issue non-voting stock. The 2012 changes also expanded the scope to regulate the rights of holders of certificates of shares in private companies in the articles. Last but not least, it made any restrictions on share transfers in private companies optional and, thereby, made it possible to also list private companies on the stock exchange. On this basis, we have seen a modest increase of Dutch private companies (B.V.'s) being listed on a stock exchange, for example as Special Purpose Acquisition Companies (SPAC).[3]

Such a fundamental overhaul has not occurred in relation to the public company, the Naamloze Vennootschap or (abbreviated) N.V. Therefore, most Dutch listed companies, predominantly of the N.V.

* Certain facts and findings, including those of an empirical nature, are drawn from Joti Roest, 'Dual-Class Shares and Loyalty Shares: The Dutch Perspective', ECCL 2024/3, page 225–245. Emails: j.roest@uva.nl and h.j.dekluiver@uva.nl.

1 Directive EU 2024/2810 on multiple-vote share structures in companies that seek admission to trading of their shares on a multilateral trading facility, OJ L of 14 Nov. 2024.

2 Article 44b Wetboek van Koophandel; for a detailed historical overview of Dutch dual class structures, please refer to T. A. Keijzer, *Vote and Value. An Economic, Historical and Legal-Comparative Study on Dual Class Equity Structures* Ch. 27 (Deventer: Wolters Kluwer 2020).

De Kluiver, Harm-Jan & Roest, Joti . 'Deviations from the 'One Share, One Vote' Principle in the Netherlands. Legal and Empirical Considerations'. *European Company Law Journal* 22, no. 3 (2025): 94–100.
© 2025 Kluwer Law International BV, The Netherlands

type, have less options to adopt a tailor-made capital structure. For N. V.'s, option (1) is severely restricted, and options (2) and (5) are not (yet) available. However, to a certain extent, this lack of flexibility is compensated by the possibilities offered by options (3) and (4).

In addition, as noted above, some of the constraints for the N.V. may be circumvented by opting for a B.V. listed on the stock exchange. However, a listed B.V. will have to comply with a number of legal restrictions also applicable on the listed N.V.[4] Therefore, although B.V.'s have been listed in the Netherlands (*see* above), in practice the listed B.V. has not emerged as an alternative for the listed N.V., also because investors do not seem to trust that their position in a B.V. is protected as adequately as is the case in an N.V.

Hereafter, we will exclusively focus on options available to listed public companies of the N.V. type according to Dutch law, and not discuss the listed B.V. In that respect, we note that Dutch company law legislation is to be found in Book 2 of the Dutch Civil Code; in Dutch 'Burgerlijk Wetboek', abbreviated as 'BW'**.** Therefore, when quoting statutory clauses, we will refer to the number of the provision and the abbreviation 'BW'.

3. DEPOSITARY RECEIPTS

In the Netherlands, it is allowed for listed public companies to decouple voting rights and their economic value, by only issuing depositary receipts of shares to investors. In practice, this is realized by setting up a special purpose vehicle ('SPV'), generally a Dutch foundation, which acquires the shares and issues depositary certificates to the ultimate investors. Dividends and other financial benefits are being paid to the ultimate investors.

In view of voting rights, the position of the holders of certificates has been strengthened over time. According to current Dutch law (Article 2:118a BW), holders of certificates do not only have the right to attend the general meeting and ask questions, but also may request a proxy from the SPV to vote on the underlying shares. The SPV may, however, limit or exclude the voting rights of the holders of the certificates in case of a (1) public offer on the company, (2) if a certificate holder acquires more than 25% of the certificates or (3) if according to the board of the SPV, the interests of the company are at risk if holders of certificates would be allowed to vote (Article 2:118a (2) BW).

For the reasons set out above and the fact the Dutch Corporate Governance Code stipulates that the issuance of depositary receipts of shares is not to be used as an anti-takeover protective measure,[5] the use of certificates of shares has lost much of its appeal for companies and founders/major shareholders who seek to retain control over the company. Where twenty-five years ago, this was a frequently used feature of Dutch listed companies, only a few Dutch listed companies still maintain this structure nowadays.[6]

4. NON-VOTING STOCK

The second option to depart from the 'one share, one vote principle', is the issue of non-voting stock. As indicated above, this option has been made available to Dutch companies of the B.V. type in the fundamental overhaul of Dutch private company law enacted in 2012. However, in view of public companies, whether listed or not, we can be very brief as non-voting stock is not allowed (yet). Although this has been discussed in Dutch legal literature and advisory groups set up by the government, until now there is no consensus in the Netherlands whether to allow this instrument and what conditions should be set. Where in Belgium it was decided in 2019 that non-voting stock can be allowed, provided that such shares would carry voting rights if a fundamental restructuring of the company is being contemplated, the Netherlands, up to now, have not followed suit. As discussed in paragraph 2, this limitation can be circumvented by using a company of the B.V. type. As also explained however, investors do not seem to trust yet that their position is as well protected as in an N.V. type of company.

An Expertgroup, instituted by the Dutch ministry of Justice in 2021[7] advised, by a majority of its members, in 2024 to allow non-voting stock (as well as shares not entitled to dividends) in non-listed N.V's. However, in regard of listed companies, the Expertgroup was divided, with representatives of shareholder organizations expressing their strong opposition to non-voting stock in Dutch listed companies.[8] In light of this, it seems unlikely that non-voting stock in listed N.V's will be permitted in the near future.

3 Fastned B.V. was the first B.V. listed on the AEX Amsterdam; other examples are Corre Energy B.V. (listed in Dublin), Merus B.V. and MYT Netherlands Parent B.V. (both listed at NYSE).

4 Article 2:187 BW.

5 Principle 4.5 DCGC 2025, https://www.mccg.nl/documenten/2025/04 (accessed 11 Jun. 2025).

6 In 1989, Voogd conducted an extensive study into takeover defence measures included in the articles of Dutch listed companies. His research showed that 49/163 companies used certificates of shares (30%). Thirty-four companies (20.8%) combined certificates of shares with another anti-defence m*easures (priority shares or preference shares),* R. P. Voogd, *Statutaire beschermingsmiddelen bij beursvennootschappen* 308 (Deventer: Kluwer 1989). In 2024, only 4/86 Dutch listed companies made use of certification of shares, *see* Maastricht University, *Tussentijdse evaluatie van de wettelijke bedenktijd voor het bestuur van beursvennootschappen* 77–78 (4 Dec. 2024), https://repository.wodc.nl/handle/20.500.12832/3437 (accessed 11 Jun. 2025).

7 www.rijksoverhe*id*.nl/ministeries/ministerie-van-justitie-en-veiligheid/organisatie/organogram/commissies-ministerie-van-jenv/expertgroep-modernisering-nv-recht (accessed 11 Jun. 2025).

8 *See* Advice Expertgroep Modernizering NV-recht (3 Sep. 2024), para. 6.2 en 6.9, www.rijksoverhe*id*.nl/ministeries/ministerie-van-justitie-en-veiligheid/documenten/rapporten/2024/09/03/advies-aanpassingen-titel-2-4-bw (accessed 11 Jun. 2025) as well as Advice on Listed Companies (Beursvennootschap) (30 Aug. 2024), para. 6.4.6, www.rijksoverhe*id*.nl/ministeries/ministerie-van-justitie-en-veiligheid/documenten/rapporten/2024/08/30/advies-beursvennootschap-expertgroep-modernisering-nv-recht (accessed 11 Jun. 2025).

5. DUAL CLASS SHARES

Where Dutch public company law is very strict in respect of the issue of certificates of shares and does not allow the issue non-voting stock, it is interesting that there are almost no restrictions in as far as dual-class shares and loyalty share schemes are concerned. Although the starting point remains the 'one share, one vote' principle, companies do have a wide discretion to deviate from that principle in the articles.

5.1. Voting Rights and Economic Rights

In respect of 'dual class' shares, the only rules to be observed are that (1) each shareholder is entitled to at least one vote (Article 2:118(1) BW) and (2) the number of votes should be related to their nominal value, as defined in the articles (Article 2:118(2) BW). Having said that, Dutch law does allow to issue shares with infinite different nominal value(s). If such shares are issued, the voting rights of the shares with the higher nominal value are proportionate to the nominal value of the share with the lowest nominal value (Article 2:118(3) BW). For example, if a company has issued ordinary shares A with a nominal value of EUR 0.10 and ordinary shares B with a nominal value of EUR 1.0, a shareholder B is entitled to ten votes per share B. The voting ratio between shares A and B is therefore 1:10.

What is crucial in this respect is that, if shares have a different nominal value, this does *not* necessarily entail that dividend rights need to be assigned proportionally as well (Article 2:105(6) BW). In other words, different classes of shares may have different nominal values, and therefore different voting rights, but the dividend rights may be exactly the same.

The creation of these types of shares may occur at the time of incorporation or afterwards ('midstream'), in each case by amending the articles. Of course, all regular requirements for an amendment of the articles have to be observed. Although according to statutory law a simple majority suffices, generally the articles will require a qualified majority (Article 2:121 jo. 2:120 BW). Frequently, also other conditions will have to be met (for example, amendment of the articles may only be possible upon being proposed by the board).

As long as the principles set out above are being observed, Dutch company law is very flexible and leaves a lot of room to create dual-class share structures. Depending on what is to be achieved, such structures can be finetuned. These goals may comprise to attract investors who only want to finance the company if they have a substantial say in its affairs. Probably the most popular goal however is to help founders or major shareholders to consolidate control over the company.[9]

5.2. Practice; Facts and Figures

Interestingly enough, almost all listed companies of the N.V. type using dual-class structures have their real seat/main centre of management, business activities, and often also their listing(s) outside the Netherlands. The flexibility of Dutch company law to create dual-class structures is obviously attractive to companies of which the operations are actually foreign in nature. These structures are therefore usually created in the process of a cross-border restructuring, which entails the move of the registered office to the Netherlands.

As of 1 May 2024, eighty-five Dutch public companies of the 'N.V'. type were listed on the Euronext Amsterdam stock exchange. Some of those companies, almost all having their real seat and operations outside the Netherlands, have set up dual-class structures. A well-known example was Altice Europe N.V., which created two classes of ordinary shares with a voting ratio of 1 (class A) to 25 (class B). Originally a Luxembourg company, Altice converted into a Dutch N.V. The majority of the class B shares were held by the major shareholder (with Patrick Drahi as the ultimate beneficial owner). In 2021, the company was taken private (again). Prosus N.V. is another example. In its articles, it created two classes of shares with a voting rights ratio of 1:1000. Ordinary shares of the controlling shareholder (Naspers) may convert in the MVS if the holdings of that shareholder would be diluted below a certain percentage.[10]

In addition, between seventy and eighty listed public companies only have their registered seat in the Netherlands[11] yet are not listed in Amsterdam, but on foreign stock exchanges in Europe (e.g., Paris, London, Frankfurt, Milan) or in the United States (NYSE, Nasdaq). Examples of such public companies are Airbus S.E. (Paris listed) and Trivago N.V. (listed on Nasdaq). *See* for examples of companies that make use of dual-class shares the table below.[12]

Name	*Class I*	*Class II*	*Voting ratio*	*Listing*
Trivago N.V.	Class A, EUR 0.06	Class B EUR 0.60	1:10	NASDAQ
Ariston N.V.	Ordinary shares EUR 0.01	MVS EUR 0.20	1:20	Milan
Digi Communications N.V.	Class A EUR 0.10	Class B EUR 0.01	10:1	Bucharest Stock Exchange

9 *See* for a (critical) discussion on dual-class shares 'outside the Netherlands' inter alia Jill E. Fisch & Steven Davidoff Solomon, *Dual Class Stock*, ECGI Law Working Paper No 715/2023 §III.A (8–9), Klaus Ulrich Schmolke, *Dual-class Shares on the Rise. Some Remarks on the (re)introduction of Multiple-Voting Rights in German Stock Corporation Law*, 4 ECCL, at B.III–IV (2023), doi: 10.5771/2752-177X-2023-4-359, Lucian A. Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 Va. L. Rev. 585–631 (2017).

10 *See* https://www.prosus.com/~/media/Files/P/Prosus-CORP/policies/other-documents-ddv/Articles%20of%20Association%20English.pdf (accessed 11 Jun. 2025).

11 According to Art. 2:66 BW, a Dutch N.V. must have its statutory seat (registered office) in the Netherlands.

12 *See* in more detail, Roest (fn. 1), *ECCL* 2024/3, C.II.

Name	*Class I*	*Class II*	*Voting ratio*	*Listing*
MFE-MediaForEurope N.V.	Class A EUR 0.06	Class B EUR 0.60	1:10	Milan
Wallbox N.V.	Class A EUR 0.12	Class B EUR 1.20	1:10	NYSE
Nebius Group N.V. formerly Yandex N.V.	Class A EUR 0.01	Class B EUR 0.10	1:10	NASDAQ

6. LOYALTY SHARES

Another way to deviate from the 'one share, one vote' principle is to issue so-called 'loyalty shares', also referred to as 'special voting shares' ('SVS'). The underlying idea is that shareholders who commit themselves to the company for a longer period of time, and become anchor shareholders in the process, are a force for good for the company and help to promote the long-term value creation. The idea is that, as compensation for their commitment and the additional risk of a less flexible investment portfolio, it would be appropriate to reward long term shareholders with additional voting power and maybe even additional dividend rights. In this article, we will not discuss whether such claims are convincing and whether a loyalty share scheme actually does contribute to the envisaged long-term value creation. Much depends in this respect on the circumstances, the position and motives of the shareholders acquiring the loyalty shares.

Although rewarding long-term ownership is often stated to be the main objective of loyalty schemes, it is clear that, in practice, such schemes are (also) used to consolidate or increase a dominant position. As Keijzer (2020)[13] notes, 'it will often be unclear what the real motive is' for introducing a variation in voting rights. Most of the literature is relatively sceptical and tends to focus on safeguards against the possible abuse of loyalty shares. This may range from an exit right for dissenting minority shareholders, a statutory rule requiring approval by the majority of the minority in case of transactions with controlling shareholders, and so-called 'sunset provisions'.[14]

In addition to the literature, a comprehensive analysis of the advantages and disadvantages of multi-voting and loyalty shares is presented in the European Commission's 'Impact Assessment Report', published on 7 December 2022.[15] The advantages of these instruments include a positive influence on the decision of founders to seek a listing, a potentially higher share price, better protection against short-termism, and high transparency compared to other control instruments. However, the disadvantages include the far-reaching and time-unlimited power of founders/controlling shareholders, the possibility of other shareholders being overruled, e.g., when it comes to 'sustainability', and potential 'agency costs' partly due to the lack of proportional interest between voting power and shareholder interest. Ultimately, these factors reduce the attractiveness of these instruments for investors. In conclusion, the European Commission states that there is no definitive evidence to support or refute the use of such shares.[16]

6.1. Developed in Corporate Practice

Unlike, for instance, in France, Germany,[17] Italy, Spain and Belgium, Dutch company law does not regulate loyalty shares. However, given the flexibility of Dutch company law, loyalty shares schemes have developed in corporate practice. The Dutch Supreme Court, in its DSM decision,[18] has confirmed that such structures are compatible with Dutch company law.

Generally, the fundamental characteristics of a loyalty scheme will require shareholders who wish to qualify for loyalty shares to register their ordinary shares, have the shares removed from the securities trading system and administrated in a separate account. Therefore, the shares can no longer be traded. After a certain holding period, to be determined in the articles, an extra SVS is granted for each ordinary share deposited in the system. If a loyalty shareholder deregisters ordinary shares from the register (in order to trade the shares) and the SVS is transferred back to the company for no consideration.

13 Keijzer, *supra* n. 2, at 523; T. A. Keijzer, *Dual-class aandelenstructuren*, 46 Ondernemingsrecht (2021) and recently: T. A. Keijzer & M. A. Verbrugh, *Architectuur en ondernemingsrecht – de EU Listing Act en het voorstel inzake meervoudig stemrecht*, 65 Ondernemingsrecht (2024). *See also* A. A. Bootsma, *Loyaliteitsdividend, bijzondere stemrechtaandelen en de positie van minderheidsaandeelhouders* 157 MvO (2016); S. Cools & T. A. Keijzer, *Over meervoudig stemrecht, loyaliteitsstemrecht, levenscycli en horizonbepalingen. Rechtseconomische en rechtsvergelijkende beschouwingen*, 70 Ondernemingsrecht 371 ff (2019).

14 *See* for an in-depth discussion inter alia Keijzer, *supra* n. 2; Mark J. Roe & Frederico Cenzi Venezze, *Will Loyalty Shares Do Much for Corporate Short Termism?*, 76 Bus. Lawyer 467–507 (2021); Isabel Fernández Torres, *Loyalty Shares: An International Perspective. A Suitable Instrument to Fight Short-Termism?*, 4 ECFR 556–590 (2022), doi: 10.1515/ecfr-2022-0018; David J. Berger, Jill E Fisch & Steven Davidoff Solomon, *Extending Dual Class Stock: A Proposal*, ECGI Law Working Paper No 707/2023; Jill Fisch & Steven Davidoff Solomon, *The Problem of Sunsets*, 99 Boston U. L. Rev. 1057 ff (2019); Albert H. Choi, *Concentrated Ownership and Long-Term Shareholder Value*, 8 Harv. Bus. L. Rev. 53–99; Steven Declerq, Jeroen Delvoie, Theo Monnens & Tom Vos, *Loyalty Shares in Belgium: Nothing More than a Control-Enhancing Mechanism?*, ECFR 27 ff (2023), doi: 10.1515/ecfr-2023-0004; M. Wyckaert & H. J. De Kluiver, *Regulering van de beurs-NV en de beurs-BV in België en Nederland,* in *Ondernemingsrecht in de Lage Landen* 163 ff (H. De Wulf e.a., Deventer: Wolters Kluwer 2020) and Klaus Hopt & Susanne Kalss, *Multiple-Voting Shares in Europe. A Comparative Law and Economic Analysis*, ECGI Law Working Paper No 786/2024.

15 *See* in relation to the Directive on multiple vote share structures (fn. 1) the original proposal of 7 Dec. 2022 and the extensive Impact Assessment 137 ff, www.eur-lex.europa.eu/homepage.html (search term 52022SC0762; accessed 11 Jun. 2025).

16 Impact Assessment, *supra* n. 15, at 150.

17 Hopt & Kalss, *supra* n. 14, §II; Schmolke, *supra* n. 9 under C.

18 Supreme Court (Hoge Raad) 14 Dec. 2007, ECLI:NL:HR:2007:BB3523, *NJ* 2009, 105, *JOR* 2008/11.

6.2. Practice; Facts and Figures

Loyalty shares have become quite popular in Dutch listed companies, but as in the case of dual-class shares, the scheme is almost entirely adopted by Dutch companies having their real seat, centre of main interest and operations abroad. Again, most of these companies are not even listed on the Amsterdam stock exchange but on exchanges elsewhere in Europe or the US Generally, loyalty shares are granted to 'existing shareholders' in the process of a cross-border restructuring prior to a stock exchange listing being obtained.[19] As dominant control is obtained before listing, the mandatory bid rule does not apply.[20]

Loyalty schemes have become specifically popular with a number of Italian companies.[21] Apparently, it was felt that Italian law was unduly restrictive.[22] CNH Industrial N.V. (CNHI) was the first to set up a shareholding structure with loyalty voting rights in 2013, after it was created through a cross-border statutory merger (and a domestic merger) within the Fiat group. Shareholders of the companies that dissolved as a result of those mergers could obtain loyalty shares by registering their (ordinary) shares in CNHI acquired at the time of the merger. After these restructurings, CNHI was listed on the Amsterdam stock exchange.[23] New shareholders were entitled to loyalty shares and the accompanying voting rights after having been registered as shareholder for an uninterrupted period of three years. Loyalty shares have the same nominal value (EUR 0.01) as ordinary shares. Holders of loyalty shares of CNHI therefore received one additional vote and are thus entitled to cast two votes in total. As a result of the loyalty scheme, the majority shareholder, Exor N.V. (indirectly controlled by the Agnelli family), controls CNHI.

Voting rights may be further increased if an investor continues to be a shareholder in the company. At Exor N.V., a shareholder receives an SVS A (granting four additional votes) after registering for five years. After being registered for ten years, the SVS A is converted into an SVS B entitling the shareholder to nine additional votes (ten in total). The Fiat companies Ferrari N.V. (listed in Milan), Iveco Group N.V. (listed in Milan), and Stellantis N.V. (listed at the NYSE, and in Milan and Paris) have loyalty arrangements very similar to that at CNHI. Schemes resulting in entitling nine additional votes are adopted, inter alia, by Davide Campari-Milano N.V. (Campari), Ermenegildo Zegna and Brembo S.p.A (listed on Euronext Milan). The only other Amsterdam listed company with a loyalty shares scheme (next to Exor), since December 2024, is Havas N.V., a foreign based spin-off from the Vivendi company (controlled by the Balloré family).

6.3. Loyalty Shares are Accepted under Dutch Law but Certain Limitations Apply

Although loyalty schemes are accepted in Dutch corporate practice and the company and its (founding) shareholders have wide discretion, the practice is not without limits. A key criterion that courts apply in this respect is that the scheme should be reasonable and fair (*see* for that general standard Article 2:8 BW) and that the principle of equal treatment of shareholders is observed.[24] According to Dutch law, the essential criterion when evaluating whether the equal treatment standard has been respected, is whether any deviation from that doctrine has its basis in an 'objective justification'. Such a justification may be to secure the long-term interests of the company and its strategy.

An example in point is the decision of the Amsterdam Court of Appeal in the Mediaset/Vivendi case.[25] A cross-border merger of various Mediaset entities (controlled by the Berlusconi family) resulted in a Dutch company adopting a loyalty voting scheme. This loyalty voting scheme was very much in favour of the Berlusconi family which, indirectly (via its holding company, Fininvest S.p.A), held around 35% in the new company. On the basis of the loyalty scheme, Fininvest (i.e., the family) would see its voting power increase dramatically. This move clearly was also intended to outflank Mediaset's second biggest shareholder, the French company Vivendi S.A. (controlled by the aforementioned Bolloré family), which held 29% in Mediaset (but could only to a very limited extent participate in the scheme to prevent it from passing the mandatory bid threshold). Vivendi argued that the loyalty scheme violated the principles of reasonableness and fairness (Article 2:8 BW) and equal treatment (Article 2:92(2) BW). The court considered the purpose of the loyalty scheme ('to foster the development and continued involvement of a core base of long-term shareholders') was in itself a legitimate one, however, the court also ruled that Mediaset had not been able to explain adequately that the scheme was appropriate and necessary to achieve that objective or, at least, proportionate to the objective it pursued.[26] The court moreover considered that the loyalty scheme was primarily designed with to ensure that Fininvest would hold absolute control over the listed entity.[27] The court therefore prohibited the cross-border merger.

Ultimately, in May 2021, the parties agreed to a settlement. This basically involved a sale by Vivendi of its shares in Mediaset, with Fininvest buying a substantial part of the shares. In exchange,

19 In cross-border statutory restructurings, shareholders who do not agree with the transaction have an exit right that provides a form of minority protection.

20 As is noted by Bootsma, *supra* n. 13, §3, the mandatory-bid regime does not apply outside the EU/EEA (and therefore does not apply when the company is listed on the NYSE or NASDAQ).

21 *See* for a detailed analysis, information and references to literature and other sources: Roest, (fn. 1) *ECCL* 2024/3, at D.II.

22 Please refer to the contribution of Irene Pollastro to this Special Issue.

23 For a detailed analysis of the loyalty scheme, *see* M. van Olffen, *Nederlandse loyaliteitsaandelen met een Frans sausje*, 67 Ondernemingsrecht 334–335 (2013) and Keijzer, *supra* n. 2, §28.8.4.3.

24 Article 2:92 BW, Art. 85 Directive 2017/1132/EU and Art. 4 of Directive 2007/36/EC ('Shareholders Rights Directive').

25 Amsterdam Court of Appeal 1 Sep. 2020, ECLI:NL:GHAMS:2020:2379, *JOR* 2020/279.

26 Consideration 3.20.

27 Consideration 3.22.

Vivendi undertook to vote in favour of the proposals that would introduce the company on the Amsterdam stock exchange. In the process, the loyalty scheme that was struck out by the Court was replaced with a dual-class structure as explained in paragraph 3. Ironically, the Balloré family decided, at the time of the listing of the Vivendi spin-off Havas (in December 2024), to introduce a loyalty scheme in that company.

7. MVS STRUCTURES AS ANTICIPATED BY THE MVS DIRECTIVE ARE NOT YET ALLOWED

The final option to depart from the 'one share, one vote principle' distinguished in paragraph 2, would be to allow different classes of shares carrying different voting rights without this having to be reflected in the nominal value. This is not yet allowed under Dutch law for public companies. However, this will have to change in order to implement the Directive on multiple-vote share structures. The Directive aims to encourage the listing of SMEs by allowing their founders or controlling shareholders in general, to retain control of the companies after they are listed through share structures with multiple voting rights. The scope of the Directive focuses on companies seeking listings on multilateral trading facilities (MTFs), including SME growth markets.[28]

A MVS is defined as '*a share belonging to a distinct and separate class of shares that carry more votes per share than another class of shares with voting rights on matters to be decided at the general meeting of shareholders*'.[29] But the preamble sub (4) also states that a MVS structure '*is not a structure where differences in voting rights are solely determined by different nominal values of shares*'. In addition, the preamble (under 6) further explicitly contemplates that loyalty shares are outside the scope of the Directive.

This wording would seem to imply that loyalty share structures and MVS created through two classes of ordinary shares with different nominal values – as discussed above in paragraph – fall outside the scope of the Directive. That would mean that the protective measures required by the Directive would not have to be applicable on '*dual class shares*' and loyalty schemes as discussed in paragraphs 5 and 6.

In respect of the MVS structures as anticipated by the MVS Directive, such protective measures would comprise (Article 3) that introduction (or amendment) of a MVS structure would require a qualified majority and a vote on each class of shares which is affected. Since, under Dutch law, an amendment of the articles only would require an ordinary majority decision, legislation on this point will be necessary.[30] In addition, the Directive prescribes minimum provisions to protect the interests of shareholders who do not hold MVS once the listing comes into effect. This includes a qualified majority if the structure is to be modified[31] and statutory rules which would limit the impact of MVS decisionmaking by either a maximum weighted voting rights ratio[32] or a rule whereby qualified majority decisions not only need the required majority of the votes cast,[33] but also a certain number of shares or share capital represented or should require a separate vote in each class of shares which rights are affected.[34] Member States have the option (but not the obligation) to implement further safeguards in their national systems of company law that could include various forms of sunset provisions (Article 4(2)(a–c)).

8. CONCLUSION. WHERE TO GO FROM HERE

The freedom under Dutch company law to have multiple voting rights is subject to debate. Various proposals have been made to curb the power of controlling shareholders, including a statutory rule that certain major transactions between the company and the controlling shareholder should require a majority of the minority vote and statutory sunset clauses. However, the legislator clearly struggles how to evaluate the competing ideas of facilitating long term value (and stability) considerations and protection of minority shareholders. In Belgium for example, in line with French and Italian law, the extent of multiple voting rights and loyalty shares for listed companies is limited to double voting rights (Article 7:53 WVV). Belgian law also sets clear limits for the mirror image of loyalty shares, i.e., shares without voting rights.[35] It remains to be seen whether the Dutch legislator, when implementing the MVS Directive, will seize the opportunity to restrict the use of dual-class structures, loyalty share schemes and MVS. From time to time this question has been raised in the Dutch parliament. However, in a letter of 24 January 2023, the minister of Justice,[36] having consulted the expert group mentioned above,[37] informed parliament that at this point in time additional statutory

28 Article 1(1) MVS Directive.
29 Article 2(2) MVS Directive.
30 An exit right for 'ordinary' shareholders, as has been suggested in the literature, is not mentioned in the MVS Directive as a legislative option for Member States.
31 Article 4(1)(a) MVS Directive.
32 Article 4 (1)(b)(i) MVS Directive.
33 Article 4 (1)(b)(ii) MVS Directive.
34 Decisions of the GM on the appointment and dismissal of members of the (supervisory) board are excluded; for details, *see* Art. 4(1)(b)(ii) of the MVS Directive.
35 Such non-voting shares are allowed in listed companies, but the position of holders of non-voting shares is subject to safeguards. For example, holders of non-voting shares have de facto voting rights under well-defined circumstances (essential decisions relating to the company) set out in the WVV (*see* Art. 7:157 WVV).
36 www.rijksoverhe*id*.nl/documenten/kamerstukken/2023/01/24/tk-voortgang-modernisering-ondernemingsrecht (accessed 11 Jun. 2025).
37 Parliamentary Documents 2022/23, 29752, no. 17, Advice of an Expert Group on Loyalty Shares (5 Dec. 2022), (para. 8), www.rijksoverhe*id*.nl/ministeries/ministerie-van-justitie-en-veiligheid/documenten/rapporten/2022/12/05/advies-over-loyaliteitsaandelen (accessed 11 Jun. 2025). The Expertgroup concluded that statutory rules are not necessary nor advisable to promote loyalty shares as there is little evidence that loyalty shares lead to long-term, sustainable value creation. In practice, but mainly seems to be used by controlling shareholders. The Expertgroup intended to discuss the issue of statutory restrictions for loyalty shares (and other multi-voting shares) at a later stage, but until now the Expertgroup has refrained from doing so.

provisions to regulate loyalty shares are deemed neither necessary nor desirable and not contemplated. In addition, on 3 February 2023 the minister, explaining the position on the proposed MVS Directive, announced that the Dutch Government 'will strive to ensure that the proposal from a technical perspective offers as much flexibility as possible to be aligned with the Dutch system'.[38] Although this statement is not unequivocal, it suggests that it is *not* likely that the discussed flexibility of Dutch law, in regard of dual-class structures and loyalty voting schemes, will be substantially reduced in the near future.

38 Position of the Dutch Government 13 (3 Feb. 2023), https://open.overhe*id*.nl/documenten/ronl-9fa1b50b583ba8566c46f959f3746933f33e8fe4/pdf: 'Het kabinet zal erop inzetten dat het [EU-]voorstel wat techniek betreft zoveel mogelijk de ruimte biedt om aangesloten te worden op het Nederlandse stelsel', (at 13).