

# Loyalty Shares and Loyalty Voting



The hottest topics in company law are currently due diligence of ESG, corporate sustainability, and disclosure. It goes without saying that we have a fiduciary duty to sustainably govern our planet. Companies and all their stakeholders must likewise be involved in the transition towards a sustainable world. A recent and related, although not new, phenomenon is the nudging involvement of the shareholders via loyalty shares. Legislators claim that loyalty shares can attract long-term shareholders for long term investments, counteracting short-termism and less sustainable practices. The last decade a number of European countries have introduced loyalty shares, following France as the leading example whereas it only modified its system in 2014 to a default loyalty share regime and the Netherlands where the company law already facilitated loyalty share schemes subject to the principle of equal treatment carefully scrutinized on its merits by the Dutch courts. Italy introduced loyalty shares at the end of 2014, Belgium in 2019 and Spain in 2021. Depending on specific jurisdictional modalities, loyalty shares offer increased voting rights of two votes for each share held by the same shareholder for an uninterrupted period of two years from its date to registration. It implies that the legislator considers ownership for two years and more as long term engaged shareholders. Legislators

failed to explain why the limitation to two voting rights per share would be sufficient for creating loyal shareholders.

The introduction of loyalty shares was and is not enthusiastically applauded<sup>1</sup> and there is ample evidence that its introduction served the interest of the large controlling shareholders. Becht and others showed that the reformed French regime ‘allowed the French state to enhance its influence over a number of listed companies it considers “strategic”, without the approval of existing public shareholders’.<sup>2</sup> Bajo and others found Italian evidence that controlling shareholders adopted the double voting right regime for liquidating part of their stake without losing control<sup>3</sup> and Declercq and others illustrate in Belgium that so far changes towards loyalty shares were ‘pushed through unilaterally by a sitting blockholder’ of a well-established listed entity, and not at the IPO stage when investors can evaluate its pros and cons (ECFR, 1, 2023, page 56).<sup>4</sup>

However, less is known about the attractiveness of these loyalty voting shares in the longer term to others than the controlling shareholders, neither about the loyalty of shareholders holding the shares with higher voting rights. Currently, I am investigating whether other than controlling shareholders are attracted to become loyal shareholders and how these shareholders vote in general meetings of shareholders. In this current research I found in one of the large Italian MIB-listed companies, that introduced the system of loyalty votes – ‘voto maggiorato’ – in 2016, 465 shareholders showed up at the meeting that decided with a 73.4% majority of the attending voting rights to introduce the system of double voting rights for loyal shareholders.<sup>5</sup> Fortunately for the controlling shareholder the introduction of double voting rights in Italy only requires a two-third majority of the votes of the attendees; a higher majority would have resulted in the maintenance of the one share one vote rule. Excluding the votes of the controlling shareholder, only 43% of the shareholders voted for the introduction of double voting rights and without the support of the two other large shareholders, who are also represented in the board of directors, the support drops to a powerless 14% of the votes. An overwhelming majority of the non-controlling shareholders voted against the

1 M. Roe & C. F. C. Venezze, *Will Loyalty Shares Do Much for Corporate Short-Termism*, 78 Bus. Law. 467 (2021), doi: 10.2139/ssrn.3763970.

2 M. Becht, Y. Kamisarenka & A. Pajuste, *Loyalty Shares With Tenure Voting – Does the Default Rule Matter? Evidence from the Loi Florange Experiment*, 63 J. L. & Econ. 473 (2020), doi: 10.1086/708162.

3 E. Bajo, M. Barbi, M. Bigelli & E. Croci, *Bolstering Family Control: Evidence from Loyalty Shares*, 65 J. Corp. Fin. 101755 (2020), doi: 10.1016/j.jcorpfin.2020.101755.

4 S. Declercq, J. Delvoie, T. Monnens & T. Vos, *Loyalty Voting Rights in Belgium: Nothing More than a Control-Enhancing Mechanism?*, 1 ECFR 56 (2023), doi: 10.1515/ecfr-2023-0004.

5 All data are on file with the author.

loyalty voting share system. More than 90% of all the participating shareholders voted against the introduction of loyalty votes and only twenty-six shareholders (5.6%) supported the initiative. Among those shareholders were the three largest shareholders – one controlling shareholder and the aforementioned two others – who divided their holding in five ‘direct’ shareholders. One individual shareholder, thirty-three institutional investors, two pension funds and five other types of shareholders approved the introduction of the ‘voto maggiorato’. Whatever the type of the active voting shareholders, almost all different classes of shareholders are strongly opposing the loyalty voting rights.

Excluding the large shareholders – thus retaining the twenty-one other supportive shareholders – only eight of them were still active shareholders in the general meeting of 2019 in which for the first time the shares could have obtained double voting rights and only four of them were still voting their shares in the general meeting of 2023. Overall, many more shareholders that voted against the introduction of double voting rights continued to participate in the subsequent general meetings. In 2019 approximately 20% of all the shareholders that participated in the 2016 general meeting, voted in the general meetings of 2017, 2018 and 2019. These shareholders account for more than 40% of the participating shares (excluding the controlling shareholder) in the 2019 meeting during which the loyalty shares were effective. In 2019 one shareholder that voted against the introduction of loyalty shares in 2016 enjoyed the loyalty voting rights and two institutional investors who voted for the loyalty shares in 2016 enjoyed double voting rights (next to the large shareholders). The combined voting power of these three loyal shareholders was less than 0.5%, that of the controlling shareholder

over 62%. It illustrates that it is hard to see how loyalty shares endorse long-termism.

The case study provides further supportive evidence that the introduction of loyalty shares in stock exchange listed companies serves in the first place the interests of the controlling shareholders. It could also be considered as a legally endorsed private benefit for the controlling shareholder. It does not mean that loyalty voting shares can never be in the interest of other stakeholders and the company. As others have convincingly argued, in some stages of corporate life, like before and shortly after IPOs, loyalty shares can serve various needs. It is much harder to find similar arguments for having this kind of shares in listed entities, with or without controlling shareholders. One could suggest adopting a majority of minority rule for adopting loyalty shares when there is a controlling shareholder, guaranteeing that the controlling shareholder is not the only stakeholder supporting this legal move. However, the case study also shows that over the years the (non-controlling) shareholder base that is actively involved in voting, changes. Therefore, I would like to make a plea that the modalities for having loyalty shares are regularly renewed by the general meeting of shareholders. According to the case study more than half of the active (non-controlling) shareholders have exited the company after five years, it sounds like a reasonable period for renewing the support for maintaining the loyalty voting share system, but maybe it is easier to align a recurrent vote for the remuneration policy with that for the loyalty shares.

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