

Chapter 5

Trade union influence on companies via pension fund investment

Gerald Klec and David Mum

1. Introduction

This chapter analyses the extent to which trade unions are attempting to reduce the gap between factual ownership and lack of control over workers' capital managed by pension funds and to exercise influence over the companies this capital is invested in. It is concerned with an attempted democratisation of the economy by trade unions exerting influence via rights derived from securities held in pension fund portfolios. This is also called the 'active approach' to principle-based investment or socially responsible investment (SRI). Reducing this gap would be a major step in the direction of promoting long-term sustainable investment, thus supporting the Sustainable Company. The major focus of the analysis is the United States, but Canada, the United Kingdom, the Netherlands, Switzerland and Austria are also examined. The selection of countries was based on the relative significance of company pension funds, as well as on the basis of trade union activities in this area and the research activities and experience of the authors.

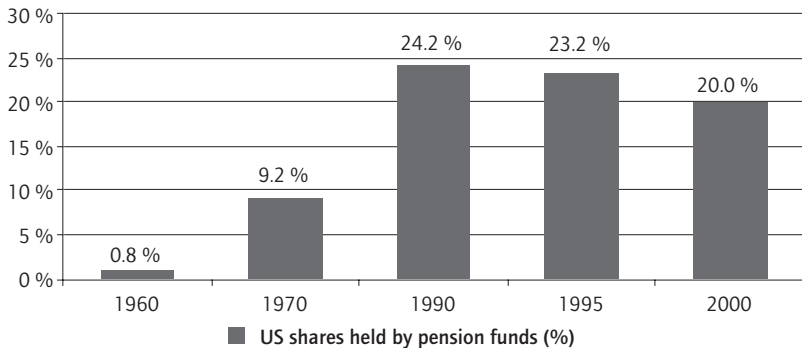
In 2007, before the outbreak of the financial market crisis, financial assets worldwide totalled around USD 200 trillion (Roxburg *et al.* 2009). Whereas in 1980 total financial assets roughly equalled annual global value creation, by 2005 they were roughly three times greater than value created (Share the World's Resources 2012). These figures illustrate the growing relative size of financial markets vis-à-vis the real economy.

Simultaneously with the increasing dominance of the financial markets came the rise of institutional investors. Pension funds managed around USD 28 trillion in 2007 (Huffs Schmid 2009: 4), which amounted to around 14 per cent of total financial assets globally. Since the predominant purpose of pension funds is retirement provision for workers, this means that a considerable proportion of global financial assets belongs to workers. However, the latter have little control over how

these resources are used. Capital is largely under the control of the financial industry, which often acts to the detriment of the real economy and workers' labour and employment conditions.

Pension funds invest in both government and corporate bonds, as well as ownership stakes in companies in the form of shares. On top of this are real estate investments and alternative forms of investment (e.g. hedge funds and private equity). Due to the increasing significance of funded old age provision through the increased involvement of funded elements in public pension systems, as well as the fact that funded company pension systems in many cases are still in the development phase,¹ the proportion of companies that belongs to workers via the equity investments of pension funds has risen sharply in recent decades. According to one estimate, in 2000 pension and investment funds in the United States owned around 45 per cent of all shares (Bundestag 2002: 66). According to the New York Stock Exchange (NYSE), the proportion of US shares held by pension funds rose from 0.8 per cent in 1950 to 20.6 per cent in 2001.

Figure 1 Proportion of US shares held by pension funds (%)



Source: NYSE based on the figures published by Zanglein and Schlissermann (2004: 9).

1. In the development phase of a funded provision system there are relatively many prospective beneficiaries for whom contributions are paid into the system, as against (still) relatively few beneficiaries. As a consequence of this the capital stock grows systematically. This effect no longer manifests itself once capital additions and withdrawals are balanced by a correspondingly high proportion of beneficiaries.

In other words, the development of funded old age provision through pension funds has led to marked changes in the ownership structure of listed companies.

2. Different approaches to SRI

2.1 Theoretical work on pension funds

As early as 1976 Peter Drucker in the United States coined the term ‘pension fund socialism’ to describe changed ownership structures due to the advent of institutional investors. According to Drucker, if one defines socialism as ownership of the means of production by workers, the United States is the first socialist country. Drucker was referring to the fact that in 1976 pension funds already owned 26 per cent of equity capital, by means of which they could have controlled the economy (Minns 1996: 46). Drucker forecast that pension funds would hold 50 to 60 per cent of share capital within 10 years (Drucker 1976: 1). He asserted that this change had barely been noticed hitherto and its significance had not been recognised (‘The revolution no one noticed’). Drucker claimed that the Swedish model of capital accumulation in the hands of workers, which was being discussed at that time, would have to operate for 25 years before it could achieve what had already been achieved in the United States by 1975 (Minns 1996: 46).

For many neoliberals this was a decidedly threatening scenario. For example, the leading market liberal Milton Friedman took the view that fully funded social insurance with high share prices could provide a way for socialists to achieve dominant control through the state over the economy.

Many authors qualifying Drucker’s remarks have pointed out that, although the ownership structures of listed companies has shifted strongly in favour of institutional investors, this has not been accompanied by any shift in company control to the workers. Jeremy Rifkin and Randy Barber asserted in 1978, in their book *The North Will Rise Again*, that workers must ask themselves whether they are willing to continue to allow their own capital to be used against them or whether they want to achieve control over pension funds so that their capital is invested in such a way as to rescue jobs and regions.

Since then there has been much discussion of how workers can obtain more control over their capital and trade unions have also engaged in significant activities in this connection. In 2003, Joe Guinan called for a capital strategy of the Left to overcome the gap between formal ownership and real control. The French co-founder of regulation theory Michel Aglietta asserted that shareholders had exchanged control rights for liquidity. The more liquid the financial markets, the further away from companies the shareholders are. He thus called for social capital ownership. Savers should be involved in decision-making processes concerning investment strategies. Performance indicators for evaluating companies should be expanded (e.g. significance of human capital, research and development, working conditions in developing countries, improvements in environmental protection) and the time horizon for measuring investment returns should be extended to three to five years.

Ewald Engelen, on the other hand, took the view that the goals of old age insurance and the achievement of more control over the economy by workers are fundamentally contradictory. Saving for old age requires risk diversification. The more diversified investments are, however, the lower will be the control over individual companies. Furthermore, in many pension fund boards workers do not have equal representation. The engagement activities of pension funds are concentrated on corporate governance issues. Ultimately, this leads to a strengthening of the shareholder ideology. The screening of investment portfolios is a blunt instrument when it comes to changing companies' behaviour.²

2.2 The passive approach

In the case of the so-called passive approach to principle-based investment, the focus is on the selection of pension fund securities portfolios. The exertion of influence over companies with whose social, ethical or environmental performance one does not agree takes place via the securities markets. Principle-based investors sell and no longer invest in the shares of companies with whose behaviour they do not agree. Such

2. Screening involves the targeted selection or exclusion of investment funds or individual shares on the basis of certain criteria. Screening thus means the application of positive, negative and exclusion criteria. For example, companies active in the arms industry or nuclear power can be excluded from the portfolio. On the other hand, with an active approach investors exercise their voting and participation rights and thereby try to achieve certain ends.

behaviour, given the extent of SRI share ownership, could theoretically affect share prices. However, such an effect is empirically not discernible: companies can still get access to capital if they are avoided by SRI investors.

This approach, which is also known as ‘screening’, requires comprehensive analysis, which is provided by companies specialising in SRI. The application of exclusion criteria is relatively simple. Based on these criteria certain branches or companies are excluded from investment portfolios, for example, nuclear power or tobacco. In the case of the Best-in-Class approach, by contrast, no branches are excluded a priori. Rather the ‘best’ companies are selected for investment from each branch. In other words, those companies are chosen which have a higher than average rating in accordance with certain criteria, such as environmental efficiency, social considerations or dealings with stakeholders within and outside the company. The Best-in-Class approach requires detailed analysis in order to be able to rank individual companies. Within the framework of this approach and SRI ratings it is expected that competition will emerge between companies with regard to their social, environmental and governance performance. Further investor groups can be accessed by acceptance in a sustainability index or a sustainability fund.

A passive approach to principle-based investment can be achieved more cost effectively than an active approach, especially if existing funds are invested in companies fulfilling the SRI criteria of the investor. In Continental Europe the passive approach is more widespread than in North America. Ethical and environmental criteria are in the foreground here, with social criteria somewhat less important.

2.3 The active approach

The active approach to SRI through engagement utilises the opportunities offered by shareholders’ rights. On this basis dialogue with companies is pursued in order to steer their behaviour in a desired direction. By exercising voting rights based on shareholdings this pressure can be increased. In this area significant progress has been made in recent decades. Institutional investors join forces for the purpose of concerted engagement or vote on the basis of recommendations.

In support of the exercise of voting rights proxies and the delegated exercise of voting rights are organised. Furthermore, analyses of

shareholder meeting agendas are sometimes prepared with specific voting recommendations. For a more universal application recommendations of a general nature are issued for certain typical agenda points.

Statutory requirements have encouraged this. In some countries, such as Switzerland and the United Kingdom, pension funds must state whether and in accordance with what criteria they exercise voting rights arising from shares. Although this is not obligatory for the exercise of voting rights, these regulations in general have led to the strengthened and more critical use of these rights. While the pension funds previously either stayed away from general meetings, were present but did not vote, or for the sake of simplicity uncritically accepted management proposals, voting rights are now increasingly exercised, sometimes in concert with other institutional investors. Major institutional investors take the approach 'voice before exit'. Before the institutional investor sells his securities because he does not agree with the company's policies, he attempts to exert a positive influence on the company's activities. In the United States, investment funds have been obliged since 2003 to report on their voting behaviour at the general meetings of those companies in which they have shareholdings. Practical problems arise in particular for smaller investors who do not hold securities directly, but rather within the framework of an investment chain have invested in a fund that holds these securities. Even with good intentions in such cases exercise of voting rights is often not possible because there is no legal right to the use of voting rights arising from securities.

Another problem for exercising voting rights – the need for a physical presence at general meetings – has declining significance since large companies are increasingly allowing voting over the internet or by postal vote. Shareholders themselves have been active in this regard and have been able to increase their presence at general meetings by organising systems of mutual proxy voting and by using proxy voting services. The percentage of the share capital for which votes are cast at general meetings has increased in Switzerland, for example. Eumedion in the Netherlands organises proxy voting for its members, which include many Dutch pension funds. Within the framework of the 'Shareholder Communication Channel' full power to exercise voting rights can be conferred on a central representative.

Dialogue with the company, in other words, the active approach to engagement, is associated with considerable expenditure of resources

unless it is carried out via bundled services. Engagement is effective only when activists have significant shareholdings at their disposal.

3. Pension fund investment and trade unions

3.1 The trade union position on activism

Trade unions in the United States, Canada and the United Kingdom prefer engagement to screening. The British TUC makes the point that the screening approach forces pension funds to withdraw from many investments. Divestment is a one-off act, however, which means that influence can no longer be exerted over the company to get it to change its behaviour. In contrast, engagement changes neither the portfolio nor the risk profile of the pension fund.

Trade unions that were directly or indirectly involved in the management of second-pillar pension resources in various countries began to address this issue starting in the 1990s. The importance of company pensions within trade unions' range of tasks depends in particular on the significance of the second pillar in the overall system of old age provision in the given country. While in countries such as the United States, the United Kingdom, Switzerland and the Netherlands company pension provision receives much attention due to its great weight, in countries such as Austria and Germany the issue doesn't play such a significant role. Addressing these issues is controversial among trade unions because in a way it implies acceptance of funded pension provision. The trade union position tends to focus on demands for a strong pay-as-you-go funded pension system.

Trade union influence over pension funds in North America is more strongly anchored than in Europe. This is also due to the fact that the model of company financing in the United States is based much more on the issue of equity via the stock exchange, resulting in a higher volume of shares. In (continental) Europe, company financing takes place much more through external capital (banks) and even in the case of equity issues it is often the banks that hold company securities.

Trade union shareholder activism is a comparatively new phenomenon. The AFL-CIO began to dedicate resources to it in the 1990s, establishing an Office of Investment. The AFL-CIO has published directives on voting

behaviour, as well as – since 1997 – regular reports on the voting behaviour of investment managers. The AFL-CIO's directives on voting behaviour overwhelmingly include corporate governance questions. These are directed against excessive management pay and the maximisation of profits in terms of a short-term perspective, leaving aside long-term interests. The AFL-CIO advocates that over 50 per cent of total management remuneration should depend on long-term incentives. The board of directors³ is supposed to control the management. It is thus supposed to be independent of the management. The AFL-CIO recommends that at least two-thirds of the directors should be independent of the management. Furthermore, an independent director – and not the CEO – should be chair of the board of directors. Proposals on better representation of women, employees or certain minorities are supported. Measures for decent jobs, such as further training, security of employment and a supportive work environment, should in general be demanded because this contributes to productivity and long-term financial performance.

The British TUC began to address engagement and pension funds systematically in 2003. The effect of this engagement was hampered by the fact that in the United Kingdom decentralised labour relations dominate, which hinders the development of nation-wide or branch-wide pension plans.

In Canada, trade unions tried from the 1980s to obtain more control over pension funds. In 2001, the organisation SHARE (Shareholder Association for Research and Education) was founded by the trade union movement in order to support pension funds in the interests of workers, to develop directives on voting behaviour and to promote engagement. In this country, trade unions are represented in the funds for public sector workers and have established themselves as important actors in the

3. In Anglo-American countries most companies have a monistic system, in which the management is not institutionally divided from supervision. Both functions are undertaken by the same body, the board of directors. In the dualistic system, by contrast, the board of directors and the supervisory board are separate. Employees' representatives, for example, are represented in the supervisory board of large companies in Germany and Austria, but not represented on the management board. The board members in the monistic system are elected only by the shareholders through the general meeting. The directors are usually divided into executive and non-executive directors. The executive directors undertake the operational management of the company. The non-executive directors are active primarily in an advisory and supervisory capacity and do not perform this office as their main employment.

improvement of corporate governance. The trade union-associated pension company Bâtirente in Quebec takes a comprehensive engagement approach focused on environmental, social and human rights issues.

A common endeavour is the effort to publicise information on the voting behaviour of investment funds and the level of agreement with the trade union directives in order to create transparency and a basis for the selection of funds by trustees.

3.2 Trade union codetermination options in pension funds

With regard to the involvement of employees' representatives in pension fund governance individual countries exhibit various models. Trade unions as a rule cannot control the management of pension funds. If representatives of member workers in the funds are involved, they mainly comprise a minority on the board of directors or the supervisory board, at most making up half of the members.

There are pure company pension funds that are under the influence of the contributing company. While in the United States their management is mainly structured without employees' representatives, in the United Kingdom one-third of members of the board must be nominated by the beneficiaries. In order to be able to achieve something, however, they must seek agreement with representatives of the employer.

In the case of multi-company pension funds, besides profit-oriented financial institutions, such as the Austrian pension funds, there are also (branch) funds administered by the social partners, such as the Taft-Hartley fund in the United States and the major pension funds in Canada and the Netherlands. In the United States and Canada the pension entitlements of public sector employees are also outsourced to funded pension funds. These often operate with the involvement of employees' representatives.

In the case of financial institutions that offer individual pension plans on a voluntary basis via the employer there is no employees' representation. However, trade unions have sometimes established trade union-related insurance institutions as providers of individual old age pension products (for example, Bâtirente in Quebec or the TUC Stakeholder Pension Scheme).

Most pension funds outsource investment to investment funds. These also exercise the voting rights attached to the shares.

In the United States, trade unions are represented mainly in pension funds for public sector workers, not, as a rule, in company pension funds, while in multi-company funds subject to a collective agreement – Taft-Hartley funds – workers are involved in the board on a parity basis and mainly nominated by the trade union. The Taft-Hartley Act limits the trade unions’ options for exerting influence because it makes it impossible for the trade unions to control a fund exclusively when the employer also makes contributions (Fogdall 2001: 215). In company funds the potential influence of trade unions is low. However, the volume of investment by company funds in the United States is four times larger than that of the Taft-Hartley funds, which are managed on a parity basis. In the United States union-sponsored pension plans with the involvement of the trade unions managed around USD 400 billion in 2007 (AFL-CIO 2007). That is only 2.3 per cent of pension capital, whose total value is USD 17.4 trillion USD. The pension funds for public sector workers could play a bigger role, managing USD 4.4 trillion (i.e. 25.3 per cent of total pension fund assets).

In the Netherlands, as in Switzerland, the management of pension funds is on a parity basis. In the United Kingdom representatives of the members in many company pension funds have one-third of the seats on the board. In Canada, trade unions are represented in the fund for public sector workers. In Austria, representatives of prospective and current beneficiaries are represented on the supervisory boards of the pension funds. They have two supervisory board seats fewer than employer representatives.

In short, there is no trade union control of pension funds in the countries under analysis and thus agreement on decision-making must always be reached with the employer’s representatives. In the best case there is parity representation, which can confer a veto right to labour. An exception to this is the trade union-affiliated pension institution Bâtirente in Quebec, which permits a much more independent approach to engagement than in institutions in which the employers are also represented and which has adopted a very ambitious activist approach. Bâtirente regards itself as not only obliged to offer the members low-cost pension arrangements, but also seeks to use the capital to influence company managements, in particular in Canadian companies, to be more responsible by taking into account environmental, democratic and social

matters. Bâtirente takes a very broad engagement approach which is not limited to aspects of corporate governance, but is also concerned with numerous environmental and human rights issues, since other institutional investors scarcely pay any attention to them.

3.3 Training and networking of pension fund trustees

Trade unions in the United States, Canada, the United Kingdom and the Netherlands try to bring together the representatives of the beneficiaries in the pension funds (pension fund trustees) and to provide services to these trustees so that in their activities they ensure the best possible management of workers' money. In Canada, the organisation SHARE was founded for this purpose. The TUC links up around 1000 trade union-organised trustees. Since 2003 the TUC has produced an annual report on the voting behaviour of investment managers and in October 2004 it published directives on voting behaviour and engagement.

In German-speaking Switzerland a network was established by the trade unions to train and link up trustees (PK-Netz). In francophone Switzerland there is a network for trustees outside the trade union framework, although trade union federations can also be members (ARPIP). SRI and shareholder activism do not have a dominant role in this Swiss networking programme.

In the Netherlands the trade union FNV Bondgenoten conducts training courses that introduce trustees to the basics of company pensions and also SRI. In Austria, since 2008 the Union of Salaried Private Sector Employees, Graphical Workers and Journalists (GPA-djp) has been engaged in network building among representatives in the pension funds, which is directed towards members of pension fund supervisory boards who are also trade union members.

3.4 International trade union networking

The Committee on Workers' Capital (CWC) was founded by the International Trade Union Confederation (ITUC), the OECD's Trade Union Advisory Council (TUAC) and the Global Union Federations as a direction-setting institution in connection with the international promotion of SRI in pension funds.

The CWC operates with relatively low financial and staff resources. The aims of the CWC are achieved mainly through networking and the exchange of information. The CWC has published a series of briefing papers (for example, on forced labour). Much of the information made available by the CWC has been used for the purpose of shareholder activism. Target groups are the trustees of pension funds.

Trade union national and branch umbrella organisations must increasingly act as multipliers so that individual trade unions also become aware of and utilise the work of the CWC. It is as a rule these individual trade unions that are in direct contact with the trustees of pension funds.

4. Different trade union approaches to shareholder activism and SRI

In the Anglo-Saxon countries and also in Switzerland the main focus of trade unions is on the exercise of voting rights arising from the ownership of securities. The Swiss trade unions and the British TUC also favour dialogue with the company (engagement). The focus on exercising voting rights in Switzerland derives among other things from the legal duty of the Swiss pension funds since 2002 to declare how the voting rights arising from share capital are used.

In the largest Dutch trade union FNV Bondgenoten there is no specific initiative concerning the exercise of voting rights. FNV Bondgenoten thus does not provide recommendations on voting rights for the voting behaviour of pension funds, unlike, for example, the British TUC and the AFL-CIO in the United States. In Switzerland, too, there is no direct trade union activity in this area. Initiatives come rather from the investment foundation Ethos, in which pension companies combine. In many national legal systems asset managers are not required to disclose how they use the voting rights that they exercise for their customers.

In Europe, in general the labour relations culture differs markedly from that of North America, which also manifests itself in the context of pension fund activism. In the United States, there is systematic and institutionalised dialogue between the company management and the trade unions only to a very limited extent. The trade unions, which own considerable portfolios of shares via their pension funds, thus have a major interest in exercising their shareholder's rights in order to insist

on dialogue or to enforce their standpoint on voting in general meetings (or the related publicity).

In contrast, the European social and company model is far more than a dialogue between employers and employees' representatives. Company codetermination is partly institutionalised, in particular in countries with the dualistic model of corporate structure, such as Germany, Austria and the Netherlands, but not Switzerland or the United Kingdom. The dialogue between the employees' side and companies thus takes place along a different track in Europe and does not have to take a detour via funded pension schemes.

In Europe thus the approach to the exercise of shareholders' rights is mainly consensus-oriented and many investors tend to be passive. In the first instance, a constructive dialogue with companies is sought – for example, the Ethos Engagement Pool in Switzerland. Although the exercise of voting rights is also cultivated in Europe, it is done in a less conflict-oriented manner than in North America. Ethos in Switzerland and the Shareholder Communication Channel in the Netherlands are initiatives for bundling voting rights and for exercising voting rights for others. In the United States the pension funds of public sector workers – such as CalPERS (California Public Employees' Retirement System) – and union funds sometimes issue public voting rights recommendations, criticise the management and approach the shareholders with open letters.

European and North American trade unions take different positions on more shareholder democracy and safeguarding companies' independence through the company statutes. While US and Canadian trade unions reject so-called 'poison pills', which protect companies against hostile takeovers, the German DGB is in favour. American trade unions take the view that such provisions could also hinder company takeovers that could be in the interests of shareholders. Poison pills would thus, in the view of the US trade unions, primarily safeguard the existing management. The AFL-CIO is against anti-takeover provisions introduced without the assent of the shareholders.

In recommendations for trustees in the case of takeover bids the US trade unions leave out the question of whether they will have negative effects on the employees via synergy effects. The reasons for rejecting or accepting takeover bids in the directives and concrete recommendations

that the authors looked at were always based on whether the level of the bid was regarded as fair for the shareholders and what effect the takeover would have on the future value of the relevant company. This shows that the demand that only decisions may be taken that are in the interests of prospective beneficiaries prevents the trade unions from emphasising their core positions within the framework of pension fund investment. The US trade unions also reject more strongly weighted voting rights for long-term shareholders because it contradicts the principle 'one share, one vote'. The long-term approach should apparently be established above all via adapted incentives in the remuneration systems of managers.

5. Difficulties with regard to trade union influence

Legal guidelines within the framework of company pension provisions limit the extent to which trustees can be used for trade union goals. To act in accordance with these guidelines trustees in pension funds have to make decisions and act exclusively in the interests of beneficiaries. All engagement activities are subject to the filter that they must be in the interests of beneficiaries and may not have a negative effect on the value of portfolios. In the United States, it is even laid down that, in the case of votes, trustees must exercise their voting rights in such a way that they have a positive influence on the share price. Shareholder activism is thus regarded as compatible with trustees' duties if it can lead, after taking costs into consideration, to an increase in the value of the company. The trustees' duties and the character of the assets in pension funds as pension capital thus limit their possible use for activism in the service of trade union concerns. In Canada, too, according to SHARE, the fear of infringing trustees' duties hinders the application of non-financial criteria in investment.

The question of what precisely is in the interests of beneficiaries – whether within the framework of the pension fund's investment process it is merely the value of the portfolio or whether it includes other matters, such as environmental and social performance – is not defined in the law and has to be legally determined on a case by case basis. The time horizon also plays a significant role in this assessment. The high diversification of investments, which is to be welcomed from the risk minimisation standpoint, means that pension funds tend to have such small shareholdings in companies that as a rule it is impossible to influence the company management effectively.

By way of defining and interpreting the duties of trustees the legislature can hamstring engagement or restrict it considerably. Thus the possibility of changing company behaviour by utilising workers' capital always depends on the political determination of trustees' duties and the approval of politically motivated motions. Trade unions should thus support legal clarification of the point that taking into account non-financial criteria does not constitute an infringement of trustees' duties.

In one instance in the United States, for example, the Securities and Exchange Commission (SEC) declared that the AFL-CIO campaign in 2005 against those financial investors who supported the plans of the Bush administration to privatise social security was not compatible with trustees' duties. Four companies supported the proposals of the Bush administration by establishing the Alliance for Worker Retirement Security. As a consequence of the AFL-CIO's campaign two companies withdrew from this alliance.

Particularly striking was the threat of the Republican leadership in California to break up CalPERS and to distribute the capital on the basis of individual contracts with different providers. In this way, any chance of trade union influence would have been ended.

Against this background political campaigns by trade unions via their influence over pension funds are very hard to implement. If engagement activities are to take place in the area covered by the law they must pay close attention to aspects of corporate governance. If shareholders' motions are put forward within the framework of the exercise of voting rights their justification tends to be aimed at governance or the possible negative effect of certain business practices on shareholder value. Possible lines of argument can also include working conditions and environmental aspects. This is because neglecting the interests of employees or environmental risks could also negatively influence the value of the company. On this basis US trade unions have put a number of motions against company managements. Although such motions scarcely find majority support they can direct public attention towards companies' problematic practices.

Many shareholders' motions call on companies to comply with ILO core labour standards. It would scarcely be possible in motions to call for a stronger influence for the employees in the corporate decision-making process. Such motions would encounter little support among the other

shareholders. In 1996–2005, out of 926 motions put by trade union pension funds in the United States, eight motions called for representation of the employees in the board of directors.

Campaigns are launched from time to time concerning working conditions. The TUC supports the ‘Just Pay’ campaign launched by FairPensions (TUC 2012).⁴ This calls on pension funds to put pressure on companies so that they commit themselves to paying fairer wages and salaries that represent a living wage for families. Such wages are above the statutory minimum wage. In the United States, the trade union AFSCME, which organises public sector workers, was able to get pension funds for such workers not to invest in companies that pursue privatisation. A similar anti-privatisation clause that prevents private equity funds from investing contributions in companies that promote privatisation was agreed in four pension funds.

In North America the trade unions with real estate investment funds (ETIs) have issued special investment products. This promoted the creation of affordable housing for groups of beneficiaries with fair working conditions in the course of construction and trade union recognition. Because of risk diversification, however, the shareholding in the portfolios of union funds is limited to a few per cent.

6. Effectiveness of exercising voting rights

The trade unions in the United States have managed to establish themselves as the most significant figures in shareholder activism. Between 1996 and 2005 trade unions put 33 per cent of all shareholder motions (926 out of 2,819) via union funds (Renneboog and Szilagyi 2008). Pension funds of public sector workers, by comparison, put only five per cent and SRI investors four per cent of motions. The most successful motions were those that spoke out against anti-takeover provisions. However, motions in the United States, in contrast to Europe, are not binding.

For activities within the framework of pension fund engagement as a rule agreement with the employers is required, as they have a say in the management of the pension fund. On top of that, investment is mainly

4. FairPensions is an NGO founded in 2005 with the aim of promoting responsible investment on the part of pension funds.

outsourced to investment funds who exercise the voting rights. Clear guidelines must be given to the funds to direct their voting behaviour.

The shares held by pension funds in individual companies are much too low – in order to spread investment risk – to be able to exert a decisive influence. Thus funds in which trade unions are involved are dependent on alliances with other institutional investors. This can be best achieved with corporate governance issues. There can also be constellations in which there is a coalition of interests against the management. But such alliances scarcely emerge when the focus is ‘labour issues’, such as preventing discrimination and similar matters.

Sometimes, pension funds can put effective pressure on a company even when their shareholding is small. Thus the Californian pension fund for public sector workers CalPERS, which had a small shareholding in Disney, could bring about the introduction of a new management by making a public issue of its weak governance. That was a kind of activism that demanded a stronger increase in the value of the company and thus criticised the management on the basis of capital-market-oriented governance.

Trade union-linked funds were the driving forces with regard to motions that sought to rein in the remuneration of CEOs. With regard to shareholder activism and engagement in the 1990s the trade unions in the United States and Canada established themselves as a significant driving force. Success has been limited, however, because motions put forward by shareholders rather than by management rarely obtain a majority. In the course of research the authors found virtually no motions related to company democratisation. There is no empirical evidence of democratisation of a company by pension funds. Companies were called upon in motions to comply with ILO core labour standards, but no motions contained calls for stronger employee influence in company decision-making processes. No allies would have been forthcoming for such motions among the other shareholders. In contrast, numerous activities can be found directed towards obtaining more shareholders’ rights, and sometimes these are successful.

The attempt to establish a long-term perspective on the financial markets ‘from within’ has thus far had a limited effect. There have been motions supported by the AFL-CIO to the effect that the management should hold its shares in the company until retirement, that there should be waiting

periods for bonuses or that share packages as part of management remuneration packages can be earned only after a particular period of time. However, such motions were unable to achieve majority support. The most support was obtained for motions on the individual election of directors.

The difference between ownership and control of capital has to date been resolved only to a limited extent. Progress has been made to the extent that in the United States and Canada investment managers have to disclose their voting behaviour and sometimes receive directives for exercising voting rights. Where in the United States there are separate votes for union funds this takes place in close agreement with trade union voting directives. This shows that in many funds it has been possible to obtain control over how the managers exercise the voting rights of workers' pension capital. However, there is still some way to go to disseminate this practice further.

Strategies for using pension capital to a greater extent in the interests of employees depend on a favourable political climate and legal framework. This is shown, for example, by funds for public sector workers in the United States, whose boards are staffed by the relevant administration. The Republican administration in California ended the pronounced (trade union-friendly) activism of CalPERS in 2004. CalPERS both excluded a number of countries and branches from its investment universe and was also a very active shareholder in conflict with the management of many companies.

A narrow definition of trustees' duties can hinder the exercise of voting rights and application of non-financial investment criteria because trustees fear that this could contravene their duties. Another field of action for the trade unions, accordingly, would be to bring about a change in the regulatory framework. If one considers the number of shareholder motions that have successfully been brought against the management and voted on one could reach the conclusion that the strategy of trying to influence companies through the exercise of voting rights has failed. However, the success of engagement cannot be measured solely by the approval of shareholders' motions at general meetings because many matters are successfully dealt with at an early stage in cooperation with the company and motions are put only when the company ignored suggestions.

In Switzerland, Novartis can be taken as an example. In 2010 motions on ending the dual function of chairman and CEO at the head of the group and on consultative votes on managers' remuneration were withdrawn after Novartis agreed in advance to comply with the demands. From Canada, SHARE reports that at the beginning of 2010 80 per cent of interventions in companies were successful. Successes may also be noted from Switzerland with regard to engagement and the exercise of voting rights within the framework of the Ethos campaigns 'Say on Pay' and 'Stop Chairman-CEO'. In these cases it was not a voting majority that forced a change in behaviour but the pressure on the company in the public debate, the (announced) shareholder motions and the relatively strong agreement that brought it about.

Among other things, differences in national legal frameworks and in the provisions on corporate governance of individual countries are seen as a problem area for the effective implementation of engagement in its numerous varieties. These things hinder a consistent and coherent policy on exercising and delegating voting rights. Another problem is the complexity of investment chains, tied to the problem of representation with regard to the direct ownership of securities and the decoupling of prospective beneficiaries from investment decision-making. The role of consultancy firms is also sometimes characterised by conflicts of interest. Pension funds' engagement is concentrated mainly on domestic companies, but large parts of portfolios are invested in foreign companies. Many fund managers decidedly prefer investments abroad because they do not run the risk of getting on the radar of local media which reports, for example, on how private equity funds treat the employees and whether there are job losses.

7. Voting behaviour of investment managers

Most pension funds invest in investment funds. These then exercise the voting rights attached to the shares. However, investment managers can be given guidelines for voting behaviour and required to provide reports on voting behaviour.

The trade unions in the United States, Canada and the United Kingdom try to achieve more transparency by campaigning for mandatory disclosure of voting behaviour by investment managers. Furthermore, they analyse voting behaviour and evaluate which investment managers vote in compliance with trade union principles and which ones do not.

Many investigations of the voting behaviour of investment managers in the United States, Canada and the United Kingdom show that these managers often deviate from trade union concerns.

The AFL-CIO analyses the extent to which investment funds vote in accordance with AFL-CIO principles. Funds are ranked in three groups:

1. The best group comprises managers whose voting behaviour exhibits 100 per cent agreement with AFL-CIO principles and have voted on more than five motions;
2. The middle group comprises managers who have voted on more than five motions and show between 50 per cent and 100 per cent agreement;
3. The lower group comprises managers who have voted on more than five motions and exhibit below 50 per cent agreement or do not disclose their voting behaviour.

If one looks at the relative distribution of managers in the three groups over time it turns out that they are concentrated in the middle group and that the number of funds that provide data is on a downward trend (see Table 1).

Table 1 Distribution of Investment Managers by accordance to AFL-CIO principles, 2006-2010

Year	2006	2007	2008	2009	2010
Best	40	31	27	30	29
Middle	58	60	52	38	52
Lower	24	20	23	18	15
Total	122	111	102	86	96
Relative distribution					
Best	33%	28%	26%	35%	30%
Middle	48%	54%	51%	44%	54%
Lower	20%	18%	23%	21%	16%

Source: AFL-CIO (several years), authors' calculations.

The US trade union AFSCME⁵ (American Federation of State, County and Municipal Employees) participated in an analysis of the voting behaviour

5. By its own estimate, the AFSCME has 1.6 million members who work primarily in the public sector and in health care.

of investment funds on managers' remuneration in 2007 and 2008. Between 2006 and 2007 the median earnings of a Chief Executive Officer (CEO) of S&P 500 companies⁶ rose by 23.6 per cent to 8.8 million USD. This usually happened without disagreement from the shareholders. The latter as a rule voted in conformity with the management and thus enabled excessive management pay. When individual shareholders put forth motions that contradicted management recommendations they were usually rejected by investment funds.

In 2008, management motions received 84 per cent support from investment funds on average (for comparison, in 2006 75.8 per cent and 2007 82 per cent). Shareholder motions were most successful when they favoured the approval of severance payments by the shareholders. In 2008 they obtained, on average, 69 per cent agreement and in 2007 63 per cent. In 2006 the AFSCME began to call on companies to present shareholders every year with an advisory non-binding vote on CEO remuneration. These motions for regular 'say-on-pay' votes received an average of 45 per cent approval (AFSCME 2008). A binding regulation of this kind in the United Kingdom serves as a model for say-on-pay votes. In the United Kingdom, a remuneration report has had to be produced and voted on since 2003. From 2003 to 2011, however, only 18 such reports were not accepted (Williamson 2012). During the same period the ratio between CEO pay and average employee income rose from 1:132 to 1:157. Say-on-pay votes thus have not prevented excessive pay. The TUC now focuses on involving employees in remuneration committees.

An analysis by the Canadian trade union institution SHARE (Shareholder Association for Research and Education) on the voting behaviour of Canadian investment funds from 2006 to 2008 showed that, as a rule, the funds voted with the management. The management usually recommended the rejection of shareholder motions and funds approved only 7.8 per cent of these motions in 2008. In contrast, directors proposed by management received 95 per cent approval. A motion on a higher proportion of women on boards was rejected by 90 per cent of investment funds. There was little support for reducing managers' remuneration: 80 per cent of the funds rejected a motion on sustainability criteria with regard to management pay. A motion binding

6. The S&P 500 (Standard & Poor's 500) is a share index based on the market capitalisation of 500 of the largest listed US companies.

voting rights to a long holding period for shares and paying higher dividends for this received only 3.3 per cent agreement. Ethical and socially sustainable funds showed much lower support for management motions and by far the highest support for shareholder motions. However, in 2008 ethical funds managed only 0.37 per cent of the assets of all funds.

Table 2 Approval rates of management and shareholder motions in Canada

	Motions in 2008	All investment funds	Ethical funds
Motions by management – approval rates			
	Election of directors	95.5%	49.7%
	Appointment of auditors	99.8%	81.3%
	Stock options, amendments to the company statutes	95.1%	58.3%
Shareholder motions – approval rates			
	Total	7.8%	80.3%
	Women's quota on the board	9.7%	100.0%
	Individual election of directors		100.0%
	Majority voting [1]	3.7%	100.0%
	Disclosure of participation in hedge funds	10.5%	100.0%
	Voting rights and higher dividends in the case of longer holding periods	3.3%	52.6%
	Limitation of management pay	1.4%	68.8%
	Non-binding vote on pay (Say on pay)	50.8%	100.0%
	Taking into account environmental and social factors with regard to management pay	9.6%	100.0%
	CSR	20.8%	100.0%
	Sustainability	12.8%	100.0%
	Sustainability report in accordance with the GRI – Global Reporting Initiative	32.6%	100.0%
	Working conditions	11.0%	100.0%

[1] Majority voting requires that director nominees be elected by majority of votes at an annual meeting of shareholders. In many companies majority agreement is not necessary for the election of a director. In the case of the 'plurality vote standard' a single pro-vote can be enough in uncontested elections.

Source: SHARE (2009b), authors' own calculations.

These results show that the investment funds rejected enhanced incentives to apply a longer time horizon for investments and the focus on short-term objectives continued. Matters backed by trade unions, such as a higher proportion of women in executive bodies, were rejected. When

investment managers vote at their own discretion they often go against trade union positions. In Canada, 67 per cent of managers did not receive instructions on how to cast their votes in 2007. Since 2006 investment managers in Canada have had to disclose their voting behaviour on the internet. The financial industry lobbied to prevent this provision.

On the basis of these assessments it is clear that, when there are specific instructions, investment managers mainly vote against trade unions' wishes, even for capital managed for employees. Trade unions have thus – often successfully – tried to oblige managers to disclose their voting and have called on pension funds to give investment managers guidelines on how to vote. In the United States, Canada and the United Kingdom trade unions have also issued directives on voting behaviour and specific voting recommendations. At the end of 2002 the AFL-CIO lobbied the SEC successfully for a requirement that investment funds must disclose their voting behaviour.

8. Democratisation of companies: unconvincing successes and potential solutions

The success of the exercise of trade union influence over pension funds to democratise companies to date is unconvincing. The effect of using voting rights is limited because motions put forward by shareholders instead of management rarely obtain a majority.

Michel Aglietta's assertion that shareholders have traded control for liquidity does not apply to all pension funds. Large pension funds passively invest substantial parts of their portfolio as universal owners and thus remain long-term investors in important listed companies. They thus do not make use of the possible liquidity of their shares.

Transparency with regard to control due to share ownership has been increased through legislation. In the United States and Canada investment managers have to disclose their voting behaviour. Swiss pension funds have to set out rules on how their voting rights arising from share capital are exercised. The funds are not obliged to vote, however; this is merely a duty to make a declaration. In the Netherlands there is no such duty; the generally prominent role of SRI, however, means that some of the large funds have decided to declare their voting behaviour via their websites. In the United Kingdom, the TUC advocates that managers should disclose their voting behaviour in standardised form.

Transparency enables the trade unions and other interested parties to monitor whether voting rights are exercised in compliance with trade union directives and specific recommendations.

The trade unions in the United States, Canada, the United Kingdom, the Netherlands and Switzerland consider it appropriate to devote resources to shareholder activism and networking trustees. Even though significant impulses towards economic democracy cannot be expected to result from this, it has been a successful strategy to the extent that they have managed to increase transparency and in many funds have influenced voting behaviour. It cannot be expected that the financial markets' inherent evaluation and orientation of company policy in terms of short-term goals can be overcome through a change in corporate governance via shareholders' motions, however. This can succeed only when there are generally binding legal provisions 'from outside'. In conclusion, the authors can state with regard to three countries under consideration – the United States, Canada and the United Kingdom – that the trade unions have managed to establish themselves as new actors within the framework of shareholder activism.

Capital managed and invested for employees should not be used against the interests of employees. A financial services company that manages a pension fund can achieve control over assets under management which exceed invested proprietary capital by a large factor. Thus the trade unions have begun to make efforts to control the managed capital better. The outsourcing of the exercise of voting rights to consultancy companies would make it possible to overcome the contradiction between the diversification of assets and the attempt to influence companies. If many smaller funds outsource the exercise of voting rights to consultancy companies that vote in accordance with trade union principles the limited forces of many funds could be combined. If this concentration proved possible across borders influence would be increased even further.

In order to acquire more influence trade unions and employees' representatives have to become more active and establish themselves as actors. There are a number of possible starting points for that purpose. In the area of financial services' duty of disclosure concerning the exercise of voting rights in (listed) companies there is a need for Europe-wide action. There is no reporting requirement in either Austria or Germany concerning the manner in which voting rights are exercised by investment companies. Thus cooperation is needed with providers that have both

capacities for research and exercise voting rights. Furthermore, directives are required that lay down positions that the trade unions can support. One ambitious idea would be to establish a proprietary (trade union) pension fund that invests in a socially responsible manner and exercises its voting rights in the interests of employees.

9. Conclusions

The analysis presented in this chapter leads to a number of conclusions:

- Within the trade union movement the idea of trade union influence in pension funds is controversial because it is sometimes construed as implying support for funded pension provision.
- Trade union influence and engagement with regard to pension funds are dependent not only on the volume of invested assets or the significance of the second pillar, but also on the organisational structure of pension funds and, in particular, the involvement of employees' representatives.
- If the second pillar is split into many small pension funds it limits engagement activities (e.g. like in the United Kingdom).
- On the other hand, there are very large company pension funds without trade union involvement (especially in the United States) that have no engagement activities.
- In many pension funds the influence of the trade unions is only indirect because they cannot nominate board members. The trade unions try to network and support the employee trustees and to launch policy initiatives in so far as it is possible (e.g. United Kingdom and Austria).
- In multi-company pension funds in the United States the relevant trade unions face several employers, as a result of which the trade unions dominate engagement activities in these funds which are managed on a parity basis.
- The trade unions in the United States, Canada and the United Kingdom have separate departments or organisations for SRI and

engagement, as well as their own directives on voting behaviour. They issue recommendations on concrete voting behaviour at the relevant general meetings.

- The exercise of voting rights in Europe is increasing, which ultimately can be traced to initiatives to bundle and proxy voting. Overall, in the case of European pension funds, this remains at a much lower level than in the United States. Different country-specific regulations on shareholders' rights complicate engagement in Europe.
- Shareholder motions seldom achieve a majority in North America either. However, putting forward a motion or threatening to do this often brings about a change in behaviour. Successful shareholder motions within the framework of campaigns conducted in several countries include the 'say-on-pay' initiatives concerning management salaries or initiatives against the accumulation of positions in company management.
- In the United States and Canada trade unions have managed to improve the transparency provisions with regard to investment funds. Since 2003 in the former case and 2006 in the latter case these funds have had to disclose their voting behaviour. Where there are separate votes for union funds this takes place in close agreement with trade union voting directives.
- The Committee on Workers' Capital as an international initiative serves the purposes of networking and exchange of information. However, the level of awareness of the CWC's work must be boosted in individual trade unions.
- Trustees' duties limit the options both for engagement and for the selection of SRI portfolios because all actions must serve the exclusive purpose of being in the interests of beneficiaries as future pension recipients. This leads even employees' representatives to caution with regard to SRI, where this is legally permissible. The engagement activities of the trade unions are thus launched mainly on the basis of issues of corporate governance, even if other reasons may have led to dissatisfaction with the management. On one hand, such motions are compatible with trustees' duties; on the other hand, such issues are also more suited for forging alliances with other investors.

- The training of trustees is a key issue. It is thus important how one reaches the individual trade unions. The necessary infrastructure is key to making contact and exchanging views and information.
- Although a tendency on the part of engagement activities towards a democratisation of company governance is discussed in theory, there is no empirical evidence for it. Trade union funds also strongly favour shareholders' rights, even when this comes into conflict with the interests of the employees of the company (for example, anti-takeover provisions).
- The transaction costs of exerting influence are enormous. The trade unions need expertise in trade union law (international!), securities law and so on. Only a few trade unions have the relevant resources and do this 'in-house'.

References

- AFL-CIO (several years) AFL-CIO key votes surveys 2006–2010. Washington.
- AFL-CIO (2003) AFL-CIO proxy voting guidelines. Washington.
- AFL-CIO (2007) Hearing on carried interest: part III - pension issues, United States Senate Committee on Finance, Washington.
- AFSCME (2008) Compensation accomplices: mutual funds and the overpaid American CEO, Washington.
- Aglietta M. (2002) Die finanzielle Globalisierung, in Aglietta, M. *et al.* (eds.) Umbau der Märkte. Akkumulation – Finanzkapital – Soziale Kräfte, Hamburg, VSA Verlag, 9–24.
- Aglietta M. and Rebérioux A. (2004) From financial capitalism to a renewal of social democracy, Prisme, 5, Cournot Centre, Paris.
- Bundestag (2002) Schlussbericht der Enquete-Kommission: Globalisierung der Weltwirtschaft – Herausforderungen und Antworten, Berlin.
- CWC (2009) CWC review. Vancouver.
- CWC (2010) Trustee education survey (key findings), Vancouver.
- CWC (2011) CWC proxy review: a pension trustees guide to key shareholder votes in 2011, Vancouver.
- Drucker P.F. (1976) The unseen revolution: how pension fund socialism came to America, New York.
- Engelen E. (2004) The rise and fall of the Swedish wage earner funds: a cautionary tale [Online], http://www.havenscenter.org/real_utopias/rup2004.htm [Accessed 10 Jan 2013].

- Ethos (2007) Ethos Anlagekonzept [Online], <http://www.ethosfund.ch/d/produkte-dienstleistungen/ethos-konzept.asp> [Accessed 23 Feb 2012].
- FNV (2007) Maatschappelijk verantwoord beleggen (Sozial verantwortliches Investieren), Amsterdam.
- FNV Mondiaal (2008) Strategic plan 2009–2012, Amsterdam.
- Fogdall S. (2001) Exclusive union control of pension funds: Taft-Hartley's ill-considered prohibition, *The Journal of Business Law*, 4(1), 215–237.
- Guinan J. (2003) Pensions fund socialism: the left needs a capital strategy [Online], Oxford. http://www.voiceoftheturtle.org/show_article.php?aid=321 [Accessed 07 Jan 2013].
- Huffschmid J. (2009) Finanzmarktkapitalismus: eine stabile Formation, Paper für die gemeinsame Tagung Kapitalismustheorien von ÖGPW und DVPW, 24–25 April 2009, Vienna.
- Roxburg C., Lund S., Atkins C., Belot S., Hu W.W. Hu and Pierce M.S. (2009) Global capital markets: entering a new era, September 2009, McKinsey Global Institute.
- Minns R. (1996) The social ownership of capital, *New Left Review*, 1(219).
- Renneboog L. and Szilagyi P. G. (2008) The success and relevance of shareholder activism through proxy proposals [Online], Tilburg, <http://efmaefm.org/OEFMSYMPIUM/CGC%202009/papers/Szilagyi.pdf> [Accessed 07 Jan 2013].
- Rifkin J. and Barber R. (1978) *The north will rise again: pensions, politics, and power*, Boston.
- SHARE (2009a) Pension fund investment and disclosure: acknowledging environmental, social and governance considerations submission to the federal department of finance, 16.3.2009. Vancouver, Financial Sector Division.
- SHARE (2009b) Proxy voting by Canadian mutual funds, 2006–2008: a survey of management and shareholder resolutions, Vancouver.
- SHARE (2010) Key proxy vote service 2009: shareholder engagement activity reports 2008–2010, Vancouver.
- STWR (Share the Worlds Resources) (2012) Global financial crisis: key facts [Online], <http://www.stwr.org/global-financial-crisis/key-facts.html> [Accessed on 3 March 2012].
- TUC (2004) Shareholder voting and engagement guidelines, London.
- TUC (2010) TUC fund manager voting survey 2010, London.
- TUC (2012a) TUC fund manager voting survey 2012, London.
- Williamson J. (2012) Shareholder voting on executive pay in the UK, CWC Meeting, May 2012, TUC.
- Zanglein, J.E. and Schlisserman, E.M. (2004) Pension fund capitalism: the pension revolution Wall Street noticed, New York.