

**DIRECTIVE (EU) 2020/1 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 1 January 2020  
on establishing the principle of democracy at work, in capital, and in every field of economic life**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 8, 11, 49, 54, 63, 102, 153, 191, 345 and 352 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The principle of democracy is central to the European Union and all member states.<sup>1</sup>
- (2) The European Union and all member states are committed to international human rights, including the rights to freedom of association, equal treatment, social security, rest and leisure, to take part in democratic government, to natural wealth and resources, and to the benefits of science.<sup>2</sup>
- (3) To become an ever more democratic society that upholds human rights, the European Union aims for sustainable development, price stability, a highly competitive social market economy, full employment, social progress, and protection and improvement of the environment.<sup>3</sup>
- (4) There is an untenable divide between democracy in the constitution of member state politics, and the democratic deficit in the constitution of the European and global economy.<sup>4</sup>
- (5) The principle of one person, one vote is central to democratic accountability in politics, but in the economy votes in companies are dominated by shareholders, particularly banks, asset managers or other financial intermediaries.<sup>5</sup>
- (6) Banks and asset managers dominate votes using other people's money, particularly from workers saving for retirement.<sup>6</sup>
- (7) Banks and asset managers have used voting power from other people's money to support company directors and managements in escalating director pay, in enriching their own businesses of selling

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<sup>1</sup> Treaty on European Union [art 2](#).

<sup>2</sup> UDHR 1948 [arts 20-29](#), ICCPR 1966 [arts 1\(2\), 22 and 25](#), ICESCR 1966 [arts 1\(2\), and 6-15](#), and ILO Conventions nos 89, 96, 105 and 111. The Charter of Fundamental Rights of the European Union 2000 partially codifies these.

<sup>3</sup> TEU [art 3\(3\)](#).

<sup>4</sup> cf L Brandeis, *Testimony to Commission on Industrial Relations* (1916) vol 8, 7659-7660

<sup>5</sup> e.g. EA Posner, FS Morton and EG Weyl, 'Proposal to limit the anti-competitive power of institutional investors' (2017) [81 Antitrust Law Journal](#) 1, 2 (if BlackRock, State Street and Vanguard's votes were combined, they would be the largest shareholder in 438 of the S&P500 companies). AMNT *review into fund managers' voting policies and practices* ([May 2019](#)) 20-23 (finding that almost no UK asset manager is prepared to follow client instructions). Deutsche Bundesbank, *Statistische Sonderveröffentlichung* 9 ([2005](#)) 32 (showing that banks as deposit holders cast over 60% of company shares). These statistics were discontinued the following year.

<sup>6</sup> See above Posner et (2017), AMNT (2018) and Deutsche Bundesbank (2005). On workers saving for retirement composing the money in the stock market, see E McGaughey, 'Democracy in America at Work: The History of Labor's Vote in Corporate Governance' (2019) [42 Seattle University Law Review](#) 697, 715-719 and 741-3.

financial products to companies, in failing to take meaningful action to stop climate damage, in failing to take action to combat the pay gap between men and women, and in failing to reverse the declining share of labour's income.<sup>7</sup>

(8) The authoritarian model of economic management, to the exclusion of the true contributors to enterprise, has cultivated widespread economic dislocation leading to the threat of an increasingly authoritarian politics, that challenges democracy and human rights at the heart of the European Union.<sup>8</sup>

(9) Concentrated economic power escalates inequality, deprives people at work from the gains of growth and the benefits of science and technology, and concentrates capital ownership into the hands of fewer and fewer people.<sup>9</sup>

(10) Concentrated economic power leads to a restriction of competition in product and service markets where bank and asset manager control is most pronounced.<sup>10</sup>

(11) Concentrated economic power has led to a hoarding of assets among the largest undertakings, depriving communities of the resources for full investment and full employment.<sup>11</sup>

(12) The dominant position of banks and asset managers in the control of other people's voting rights has led to widespread exclusionary and exploitative abuse, that is incompatible with the principles of competition, full employment, social progress, and improvement of the environment.<sup>12</sup>

(13) Experience and evidence demonstrates that publicly accountable enterprises improve wages and conditions for workers, deliver superior services for customers, sustainable environmental practices, and long-term sustainable development.<sup>13</sup>

(14) When workers have genuine voice in their enterprise and share fairly in its product, they are willing to contribute more to production, and are happier both in and out of work.<sup>14</sup>

(15) When workers and investors have genuine voice in the management of their money, they express preferences in favour of improving the environment, social progress, and good governance.<sup>15</sup>

(16) When members of the public have genuine voice in the management of services of a general economic interest, they ensure that prices are stable and sustainable, quality is improved, and governance is sound.<sup>16</sup>

(17) The solution to the economy's democratic deficit is to set minimum standards in enterprise governance to require voting rights for workers, investors, and members of the public, and to prohibit

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<sup>7</sup> e.g. S Hirst, 'Social Responsibility Resolutions' (2018) [43 Journal of Corporation Law 217](#), 224-227. For among the first accounts of asset manager self-dealing, see J Rifkin and R Barber, *The North Will Rise Again: Pensions, Politics and Power in the 1980s* (1978) 114 (Chase Manhattan managed a \$423m pension for tire company, Firestone, while its bank trust held 950,000 shares in Firestone and its former president sat on the board).

<sup>8</sup> e.g. Trump, Brexit, Le Pen, AfD, Lega Nord, etc

<sup>9</sup> e.g. T Piketty, 'About Capital in the Twenty-First Century' (2015) [105\(5\) American Economic Review 48](#)

<sup>10</sup> J Azar, MC Schmalz and I Tecu, 'Anti-Competitive Effects of Common Ownership' (2016) [Ross School of Business Paper No. 1235](#)

<sup>11</sup> P Seitz, 'Apple Has Largest Cash Stockpile, Twice That Of Microsoft's' (20 May 2016) [Investor's Business Daily](#) and X Gao, 'Corporate Cash Hoarding: The Role of Just-in-Time Adoption' (2018) [Management Science \(forthcoming\)](#), 6.

<sup>12</sup> Treaty on the Functioning of the European Union [arts 101-102 and 106](#).

<sup>13</sup> e.g. S Deakin et al, 'The economic significance of laws relating to employment protection and different forms of employment: Analysis of a panel of 117 countries, 1990-2013' (2019) [158\(1\) International Labour Review 1](#)

<sup>14</sup> e.g. P Blumberg, *Industrial Democracy: The Sociology of Participation* (1968) chs 2 and 3.

<sup>15</sup> e.g. AMNT, *Red Line Voting – Voting instructions: Environmental, Social, Corporate Governance* (2016)

<sup>16</sup> e.g. M Florio, *Network industries and social welfare: The experiment that reshuffled European utilities* (2013)

financial institutions voting on other people's money without instructions.

(18) Workers should be guaranteed the right to vote by default in every workplace in the general meeting of the company, and have minimum representation on the board or directors, and have analogous rights in all enterprises regardless of legal form, subject to size thresholds set by member state law that will be periodically reviewed.

(19) Workers should have the right to participate, as well as being informed and consulted, through elected work councils on key issues of workplace policy including significant economic changes, the arrangement of working time, health and safety, the use of any monitoring schemes that affect privacy and expression, the governance of pension or saving funds, and any other issues following collective agreement through an independent trade union.

(20) The ultimate investors in companies should be guaranteed the right to vote for representatives that manage their savings, regardless of the legal form of pension, insurance, or other collective investment fund.

(21) The elected representatives of investors should have the right to give binding instructions to all financial institutions on how the votes attached to securities purchased with their money will be cast, and should develop standard voting policies on key issues of environmental, social and governance policy.

(22) Member states should be encouraged to diversify ownership through profit sharing of companies, where profits are held by funds accessible to every worker and member of the public, consistent with sectoral collective agreements.

(23) All saving funds should be consolidated within sectors of enterprise according to the principle of collective bargaining, to eliminate unnecessary financial intermediation.

(24) The concept of a worker, investor, and member of the public should be defined purposively, taking into account the relative bargaining power of the parties that results from the unequal distribution of property, collective organisation, and information.<sup>17</sup>

(25) Votes should be guaranteed to workers, investors, and members of the public in relation to the governing body of the enterprise, regardless of company group structure.

(26) Every worker, investor and member of the public should be entitled to delegate their voting rights to an independent trade union, or in the case of services of general economic interest to an equivalent community organisation that is organised according to the democratic principle of one person, one vote.

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1* **Principles**

1. The purpose of this Directive is to set minimum standards of democracy in the economic constitution of the European Union.
2. Minimum standards of economic democracy should follow the principle of one person, one vote in workplaces, in the administration of capital funds, and in services of a general economic interest.
3. The practical arrangements for implementing democratic principles in the economy shall be defined by member state law, and by collective agreements between independent trade unions and enterprise managements.
4. Nothing in this directive shall preclude arrangements of member states or collective agreements that

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<sup>17</sup> A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) [Book I, ch 8, §12](#) (unequal property leading to ability to 'hold out' in bargaining). JS Mill, *Principles of Political Economy* (1848) Book V, ch XI, §§8-12 (collective action). WS Jevons, *Theory of Political Economy* (3<sup>rd</sup> edn 1888) ch 4, §74 (information).

raise the thresholds of democratic rights.

#### *Article 2*

##### **Worker right to vote and participate in all companies**

1. Member States shall ensure that every worker of a company has the right to be entered on the register of members for that company. Where the laws of a Member State provide that shareholders or others are entitled to be entered on the company register, or to vote at company meetings, they shall also make provision to be workers to be entered on the same register and to vote on equivalent terms.
2. Each worker shall be entitled to one vote per person in the meetings of companies. Member States shall ensure that workers as a group are entitled to a minimum of twenty percent of the total votes in each meeting. Member States may raise this threshold.
4. Workers as members shall be entitled to bring claims for breach of the duties of directors according to Member State laws and practices.
5. Member States shall ensure that the default constitution of each company, according to national law and practice, contains the right of workers to be registered as members, to vote, and to bring claims for breach of duty, but may enable companies to opt out if the size of the enterprise is under 250 workers. Member States shall inform the Commission of such derogations, and review these thresholds each year.
6. Where a company has control over the governance of another company, workers shall be entitled to be registered, vote, and bring claims on a proportionate basis in the governance of the company with control as well as their own. Member States shall ensure in accordance with national law and practice that this provision shall apply regardless of the legal form of the enterprise.
7. The forgoing provisions shall apply with the necessary modifications to all legal forms of enterprise, including partnerships, trusts, or unincorporated associations, according to Member State laws and practices.

#### *Article 3*

##### **Worker right to be represented on company boards**

1. At least two directors of every company shall be directly elected by the workers of the company. Member States may enable companies to reduce this threshold to one director, or to opt out if the size of the enterprise is under 250 workers.
2. At least one-third of the total number of directors of every company with over 250 workers shall be elected by the workers of the company. Where the laws of Member States provide for two-tier boards of directors, the Member State may choose how the directors elected by workers are to be distributed between the supervisory board and the executive.
3. Member States may alter these thresholds to be more beneficial to workers. Nothing in this Directive shall justify lower standards being used in converting to a European Company or other legal form.
4. Articles 2(6) and 2(7) apply with the necessary modifications to article 3.

#### *Article 4*

##### **Worker right to binding workplace participation**

1. Member States shall ensure that in every workplace with over 50 workers, workers as a whole have the right to elect work councils, in accordance with any relevant collective agreement.
2. Work councils shall have the right to make decisions, according to Member State law and practice, on the following issues:
  - (a) the arrangement of working time,
  - (b) health and safety,
  - (c) the use of any monitoring schemes that affect privacy and expression,
  - (d) the governance of pension or saving funds,
  - (e) hiring and dismissals of workers.
3. Where a work council has a right to participate on issues (a)-(d), the work council has the right to implement changes to workplace policies or decisions, unless the board of directors or other governing objects. A board of directors or other governing body must secure agreement of the work council before implementing any change on issues (a)-(e).
4. If the parties cannot reach agreement on any issue, it shall be referred to a conciliation committee with an equal number appointed by the work council and the board of directors, and an independent chair

agreed by both sides. If agreement on the chair cannot be reached, the chair shall be appointed by a court according to Member State law taking into account the need to promote the sustainability of enterprise and the lasting interests of the workforce in reducing working time, promoting health and safety, securing privacy and freedom of expression, sustainable pensions and savings, full employment, and full compensation for necessary redundancies.

5. Member State law or any collective agreement through an independent trade union may increase the scope and number of the issues listed in article 4(2).

6. Member States shall ensure that members of work councils have sufficient time to fulfil their functions, and are protected from any detriment for their activities related to work councils.

7. Article 2(6) applies with the necessary modifications to article 4.

#### *Article 5*

##### **Beneficiary rights to vote for fund representatives**

1. Every saving scheme shall set aside assets in a fund legally separate from the assets of the sponsoring undertaking.<sup>18</sup>

2. Each saving scheme fund shall have a board of representatives.

3. The beneficiaries of each saving scheme shall have the right to elect no less than one-half of the board of representatives of the fund. The chair of the board with a casting vote shall be a representative of the beneficiaries.

4. Each board of representatives shall issue a policy, publicly accessible on an internet website, that sets out how it will choose investments, how it will cast votes attached to all securities purchased directly or indirectly with its funds, and how these choices advance its environmental, social and governance aims.

5. Article 4(1) shall apply to any form of saving fund whether legally constituted as a contract, a corporate entity, a trust, or other legal form, and whether providing services by the name of pensions, life insurance, a mutual fund, or any other collective investment vehicle. Member States may exclude bank accounts held in credit institutions where deposits are guaranteed by law, unless such credit institutions make investments attributable to deposits.<sup>19</sup>

6. Member States shall take steps to encourage saving schemes to be consolidated into larger entities, in coordination with social partners, and wherever possible in accordance with sectoral collective agreements. Member States shall inform the Commission of the statistics to consolidate funds, and review progress in consolidation each year.

#### *Article 6*

##### **Financial intermediaries not to vote without instructions from representatives**

1. Every financial intermediary has a duty to follow the voting policy and specific instructions on how securities that it holds for clients shall be voted from the elected representatives of saving scheme funds.

2. No financial intermediary that manages funds on behalf of any client may vote on securities except in accordance with the policy or instructions from that client.

3. Where a financial intermediary pools savings from different clients into single funds, it shall ensure that votes are cast where necessary on a split basis in relation to each client's portion of funds.

4. Member States shall ensure that effective remedies, including injunctions and proportionate monetary penalties, are set in law for any failure of financial intermediaries to follow voting policy or instructions.

5. Where any financial intermediary takes contributions directly from beneficiaries, the duties in articles 4(2)-(5) apply in relation to the saving schemes of the whole undertaking.

#### *Article 7*

##### **Worker share of the benefits of enterprise**

1. Member States may<sup>20</sup> enact laws for companies to share the benefits of enterprise with workers and members of the public by:

(a) requiring that ten to twenty per cent of the profits of each enterprise are allocated each year to

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<sup>18</sup> This particularly affects the schemes referred to the Institution for Occupational Retirement Provision Directive [2016/2341](#) art 2(1)(e) which refers to companies that use 'book-reserve schemes'.

<sup>19</sup> Credit Institutions Regulation (EU) [575/2013](#) art 4(1)(1)

<sup>20</sup> This article is not framed in binding terms, due to the limit in TFEU [art 153\(5\)](#) on legislating on pay.

sectoral funds,

(b) ensuring that each sectoral fund has representatives elected by workers in that sector of enterprise, as defined by the law of the Member State or in accordance with collective agreements,

(c) ensuring that each sectoral fund gives returns to workers in that sector and registered members of the public as defined by geographical zone, work or other relationship to the sector, as defined by Member State law, with a view to reducing inequality between sectors and regions,

(d) ensuring that each fund makes investments according to modern portfolio theory, the need to eliminate all greenhouse gases as soon as technically possible, and the social and economic interests of its beneficiaries,

(e) ensuring that each fund has the objective of sustainable, long-term development and returns from the fund for the benefit of its beneficiaries.

2. Member states may choose to have transition periods of up to five years to phase in article 7(1)(a) and to disapply any requirements to companies with under 250 workers.

#### *Article 8*

##### **Public member right to vote in services of general economic interest**

1. Member States shall ensure that in all enterprises that provide services of a general economic interest the members of the public who depend on the service have a right to be registered and to vote on the basis of one vote per person. Members of the public shall have a minimum of twenty percent of the total votes in each meeting of the enterprise.

2. Member States shall ensure that, for the board of directors or any other governing body of an enterprise responsible for services of general economic interest, registered members of the public have the right to elect at least two directors to the board.

3. Member States shall determine the members of the public entitled to be registered and to vote according to the use of the service, or geographic vicinity. Users of a service shall be automatically registered. For residents who are not automatically registered, each enterprise shall have a procedure for registration that takes no longer than 4 days, and requires no more than a name, address, and postal identification, as strictly necessary.

4. Member States shall enact rules for the following services and members of the public:

- (a) credit institutions, for all customers holding a deposit account or a loan agreement,
- (b) natural resource extraction enterprises, for all residents in the relevant geographic area,
- (c) electricity enterprises, for all residents in the relevant geographical area,
- (d) gas enterprises, for all residents in the relevant geographical area,
- (e) water enterprises, for all residents in the catchment area,
- (f) railway enterprises, for all regular users as defined by Member State law,
- (g) bus enterprises, for all regular users as defined by Member State law,
- (h) telecommunications enterprises, for all residents in the relevant geographic area,
- (i) universities, for all students, and alumni should Member States choose,
- (j) schools, for all parents of students,
- (k) health care institutions, for all residents of the relevant geographical area
- (l) sport clubs, for all members of the club.

5. Member States may enact higher standards, and for a wider range of enterprises.

#### *Article 9*

##### **Member State and regional state rights in enterprises with strategic environmental impact**

1. Notwithstanding article 63 of the Treaty on the Functioning of the European Union and with regard to article 65, Member States and regional or local governments within member states shall enact overriding voting rights for enterprises with strategic environmental impact that are either incorporated or have production located within its jurisdiction.

2. Enterprises with strategic environmental impact shall include:

- (a) the manufacturers of automobiles or any product with internal combustion engines,
- (b) any enterprise engaged in the extraction of fossil fuels, including coal, oil and gas,
- (c) any other enterprise whose production or business methods result in significant greenhouse gas emissions, particularly those listed in article 8(4)(a)-(d), (f) and (g).

3. Overriding voting rights shall be used according to the principle of proportionality with the objective of eliminating environmentally damaging greenhouse gas emissions. Nothing shall preclude a board of directors, or members of enterprise, taking action that reduces greenhouse gas emissions more quickly.
4. Member States shall take action within each enterprise to eliminate greenhouse gas emissions as soon as technically possible. Member States shall report annually on the Thursday by 5pm before 31 March each year on the progress of eliminating greenhouse gas emissions to the Commission.

#### *Article 10*

#### **Definitions**

For the purpose of this Directive:

- (a) 'enterprise' means a company, partnership, association, or other entity or group of entities where one or more entities control others, irrespective of its legal form engaged in an economic activity.
- (b) 'executive board' means a company or other board of directors which manages the company day to day.
- (c) 'financial intermediary' means any institution that provides services to manage assets on behalf of a client.
- (d) 'independent trade union' means an organisation that is democratically accountable to its members and free from any external influence, including an employer or the state.
- (e) 'member' of a company means any person who is entered on the register of members of a company according to national law and practice.
- (f) 'supervisory board' means a company or other board of directors which monitors an executive board.
- (g) 'worker' means anyone who provides work in return for a wage, under the direction of another, taking into account the relative bargaining power of the parties, and the purpose of upholding rights.

#### *List of related Directives*

1. Information and Consultation Directive [2002/14/EC](#)
2. Shareholder Rights Directive [2007/36/EC](#)
3. Certain Aspects of Company Law Directive [2017/1132](#)
4. Institutions for Occupational Retirement Provision Directive [2016/2341](#)
5. Undertakings for Collective Investment in Transferable Securities Directive [2009/65/EC](#)
6. Alternative Investment Fund Managers Directive [2011/61/EU](#)
7. Credit Institutions Directive [2013/36/EU](#)
8. Markets in Financial Instruments Directive [2014/65/EU](#)
9. General Data Protection Regulation [2016/679](#)