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DRAFT REPORT

on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive (2021/2005(INI))

Committee on Employment and Social Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive (2021/2005(INI))

The European Parliament,

- having regard to recital four of the Preamble of the Treaty on European Union (TEU) confirming the European Union's attachment to democracy,
- having regard to Article 3(3) of the TEU,
- having regard to Article 9, Article 151 and Article 153(1) (e) and (f) of the Treaty on the Functioning of the European Union,
- having regard to Articles 12, 27, 28, 30 and 31 of the Charter of Fundamental Rights of the European Union,
- having regard to Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies¹,
- having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation²,
- having regard to Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses³,
- having regard to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees⁴ and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees⁵,
- having regard to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community⁶,
- having regard to the study of its Policy Department for Citizens' Rights and Constitutional Affairs of May 2012 on relations between company supervisory bodies and management, which proposes amending Directive 2002/14/EC on informing and generally consulting employees to include employee representatives in company

¹ OJ L 225, 12.8.1998, p. 16.

² OJ L 303, 2.12.2000, p. 16.

³ OJ L 82, 22.3.2001, p. 16.

⁴ OJ L 294, 10.11.2001, p. 22.

⁵ OJ L 207, 18.8.2003, p. 25.

⁶ OJ L 80, 23.3.2002, p. 29.

boardrooms,

- having regard to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids⁷,
- having regard to Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies⁸,
- having regard to Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees⁹ (the European Works Council Directive),
- having regard to the European Added Value Assessment of January 2021 entitled ‘European works councils (EWCs) – legislative-initiative procedure: revision of European Works Councils Directive’,
- having regard to the opinion of the European Economic and Social Committee of 2 December 2020 on an industrial transition towards a green and digital European economy: regulatory requirements and the role of social partners and civil society¹⁰,
- having regard to the opinion of the European Economic and Social Committee of 31 August 2020 on an EU legal framework on safeguarding and strengthening workers’ information, consultation and participation,
- having regard to the opinion of the European Economic and Social Committee of 17 October 2018 on the package on European company law¹¹,
- having regard to the opinion of the European Economic and Social Committee of 16 March 2016 entitled ‘Upgrading the Single Market: more opportunities for people and businesses’¹², which calls for greater worker involvement in business governance,
- having regard to the opinion of the European Economic and Social Committee of 20 March 2013 on employee involvement and participation as a pillar of sound business management and balanced approaches to overcoming the crisis¹³,
- having regard to its resolution of 12 March 2009 on employees’ participation in companies with a European statute and other accompanying measures¹⁴,
- having regard to its resolution of 14 June 2012 on the future of European company

⁷ OJ L 142, 30.4.2004, p. 12.

⁸ OJ L 310, 25.11.2005, p. 1.

⁹ OJ L 122, 16.5.2009, p. 28.

¹⁰ OJ C 56, 16.2.2021, p. 10.

¹¹ OJ C 62, 15.2.2019, p. 24.

¹² OJ C 177, 18.5.2016, p. 1.

¹³ OJ C 161, 6.6.2013, p. 35.

¹⁴ OJ C 87 E, 1.4.2010, p. 133.

law¹⁵,

- having regard to its resolution of 15 January 2013 with recommendations to the Commission on information and consultation of workers, anticipation and management of restructuring¹⁶,
- having regard to its resolution of 12 September 2013 on cross-border collective bargaining and transnational social dialogue¹⁷,
- having regard to its resolution of 17 December 2020 on a strong social Europe for Just Transitions¹⁸,
- having regard to its resolution of 21 January 2021 on the new EU Strategy for Gender Equality¹⁹, which calls for an urgent end to the deadlock in the Council in order to adopt the proposed directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (COM(2012)0614),
- having regard to the Commission communication of 12 December 2012 entitled ‘Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies’ (COM(2012)0740),
- having regard to the resolution of the European Trade Union Confederation of 22 October 2014 entitled ‘Towards a new framework for more democracy at work’,
- having regard to the report of the European Women’s Lobby of February 2012 entitled ‘Women on boards in Europe: from a snail’s pace to a giant leap? Progress, gaps and good practice’,
- having regard to the study of the International Labour Organization (ILO) of February 2010 entitled ‘A comparative overview of terms and notions on employee participation,
- having regard to the ILO study of November 2018 on corporate governance models: structure, diversity, evaluation and prospects,
- having regard to the G20/OECD Principles of Corporate Governance of 2015 and the statement of the Trade Union Advisory Committee to the OECD of 28 May 2021,
- having regard to the third Eurofound European Company Survey of 14 December 2015 on direct and indirect employee participation,
- having regard to Principles 7 and 8 of the European Pillar of Social Rights,
- having regard to the Commission communication of 4 March 2021 on the European

¹⁵ OJ C 332 E, 15.11.2013, p. 78.

¹⁶ OJ C 440, 30.12.2015, p. 23.

¹⁷ OJ C 93, 9.3.2016, p. 161.

¹⁸ Texts adopted, P9_TA(2020)0371.

¹⁹ Texts adopted, P9_TA(2021)0025.

Pillar of Social Rights Action Plan (COM(2021)0102),

- having regard to the Porto Declaration and Porto Social Commitment,
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A9-0000/2021),
- A. whereas democracy in general and democracy at work in particular are core values of the European Union and provide a very solid foundation on which to strengthen Europe's resilience and social contract; whereas these core values are also incorporated in the Community Charter of the Fundamental Social Rights of Workers and the Charter of Fundamental Rights of the European Union;
- B. whereas the voice of workers is a key element of the European Social Model, whose shared legacy of social dialogue, workers' participation, collective bargaining, employee representation on boards, health and safety representation, and tripartism are the building blocks of a diverse and socially sustainable future;
- C. whereas democracy at work plays a key role in strengthening human rights in the workplace and society, not least when trade unions and workers' representatives are actively involved in business due diligence processes; whereas more democracy at work would be an effective way of addressing the inequalities at work and in society;
- D. whereas workers' participation, collective bargaining coverage and unionisation are declining across the EU;
- E. whereas trade unions and workers' representatives have played a key role in mitigating the impact of the COVID-19 pandemic in the workplace, from the introduction of measures to protect the health and safety of workers, notably essential workers in highly exposed workplaces, to the implementation of job retention schemes such as short-time work and new forms of work organisation like working from home;
- F. whereas sustainable corporate governance can only be achieved with employee involvement; whereas the economic model based on the short-term 'shareholder value' principle has failed to encourage long-term investment and proper respect for human rights and, in particular, for the participation rights of trade unions and workers during past crises²⁰;
- G. whereas sustainable companies are distinguished by the fact that they have mechanisms for expressing the voice of workers and including workers' interests in strategic decisions that have an impact on the workforce and entire communities and regions²¹;
- H. whereas studies have shown that worker participation enhances productivity, innovation, work organisation, gender equality, decision-making and alternatives to

²⁰ Rapp, M. S., Wolff, M., Udoieva, I., Hennig, J. C., 'Mitbestimmung im Aufsichtsrat und ihre Wirkung auf die Unternehmensführung', *Hans-Böckler-Stiftung*, No 424, June 2019; Ernst and Young, *Study on directors' duties and sustainable corporate governance*, July 2020.

²¹ *Ibid.*

crisis-induced employment reduction²²;

- I. whereas employees are not mere ‘stakeholders’ of companies, but ‘constituting parties’ alongside shareholders and managers; whereas worker participation in companies is a key component of a pluralistic model of corporate governance based on democratic principles, fairness and efficiency²³;
- J. whereas the active inclusion of workers in companies’ decision-making processes will be essential to ensure the fast, substantial and sustainable policy and strategy changes required by the twin digital and green transitions, which will herald tremendous changes in the world of work;
- K. whereas the Conference on the Future of Europe offers an opportunity to move beyond crisis mode and involve the EU’s citizens in shaping its future, strengthening democracy at all levels;

Workers’ participation in companies

1. Notes the rich and interlocking network of workers’ participation at workplaces across the entire Union, from workers and trade union representatives elected by and from the workforce at the local level, to cross-site works councils in more complex companies, to dedicated health and safety representation, and employee representation on companies’ supervisory or administrative boards;
2. Acknowledges the different legal frameworks for board-level worker participation in 18 EU Member States and Norway; highlights that the scope and intensity of worker participation in company boardrooms varies greatly;
3. Is convinced that the workers’ voice must be a key component of EU initiatives to ensure sustainable corporate governance and due diligence on human rights;
4. Calls on the Commission to respect the agreements between European social partners at both cross-industry and sectoral level and to refrain from unilaterally deciding, in spite of the joint request of those social partners, not to transpose such agreements through a generally binding Council decision;
5. Notes that through loopholes, the EU Statute for a European Company (*Societas Europaeae* – SE) is inadvertently enabling companies to circumvent national regulations, particularly on board-level employee representation; regrets the fact that the 2019 Company Law Package²⁴ is serving to perpetuate these shortcomings rather than resolve them; notes that cross-border mergers are also used to avoid representation rights; stresses that companies use complex corporate structures and supply or subcontracting chains to circumvent social standards;

²² FitzRoy, F., Kraft, K., ‘Co-determination, Efficiency and Productivity’, *British Journal of Industrial Relations*, Vol. 43, Issue 2, June 2005, pp. 233-247; Kraft K., Stank J., Dewenter R., ‘Co-determination and innovation’, *Cambridge Journal of Economics*, Vol 35, Issue 1, 2011, pp. 145-172.

²³ ILO study of November 2018 on corporate governance models: structure, diversity, evaluation and prospects.

²⁴ Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 as regards cross-border conversions, mergers and divisions (OJ L 321 12.12.2019, p. 1).

6. Regrets the fact that the 2019 Company Law Package failed to adequately define a high EU standard for information, consultation and workers' board-level representation in cases where companies restructure across borders;
7. Reiterates that several EU legal acts concerning workers' board-level representation rights do not establish minimum requirements for board-level representation in the various kinds of European company or for companies that use EU company law instruments to enable cross-border company mobility and legal reorganisation such as cross-border mergers, conversions and divisions;
8. Calls on the Commission to make the necessary improvements to the frameworks regulating SEs and European Cooperative Societies and to the Company Law Package, and to amend Council Directive 2001/86/EC to introduce minimum EU rules governing employee representation on supervisory boards;
9. Calls on the Commission and the Member States to establish the necessary conditions and requirements to ensure that at least 80 % of corporations in the EU are covered by sustainable corporate governance agreements by 2030²⁵; calls, to this end, for the establishment of strategies agreed with workers to positively influence environmental, social and economic development through governance practices and market presence, to strengthen the role of directors in pursuing the long-term interests of their company, to improve directors' accountability towards integrating sustainability into corporate decision-making, and to promote corporate governance practices that contribute to company sustainability, including corporate reporting, board remuneration, a maximum CEO-to-worker pay ratio, board composition and stakeholder involvement²⁶;
10. Calls on the Commission to deliver on its commitment to put forward without further delay a directive on binding human rights due diligence and responsible business conduct, including workers' rights such as the right to organise and collectively bargain, health and safety, social protection and working conditions; stresses that this directive should establish mandatory due diligence covering companies' activities and their business relationships, including supply and subcontracting chains, and should ensure the full involvement of trade unions and workers' representatives throughout the whole due diligence process;
11. Is convinced that introducing and monitoring new digital technologies in the workplace successfully and in a trustworthy manner will require timely and meaningful information for and consultation with trade unions and workers' representatives to ensure full respect for their health, safety, data protection, equal treatment and well-being at work and prevent undue exploitation and surveillance of workers, in particular via management by algorithms; underlines the fact that trade unions and workers' representatives should have the necessary access and means to assess and evaluate digital technology;

A new framework for information, consultation and board-level representation

²⁵ Commission staff working document of 4 March 2021 accompanying its European Pillar of Social Rights Action Plan (SWD(2021)0046).

²⁶ *Ibid.*

12. Stresses the need to strengthen, enforce and consolidate all the relevant EU laws to ensure that information and consultation is an integral part of company decision-making at all levels within companies;
 13. Stresses the importance of ensuring timely and meaningful information and consultation across the EU before any decisions are made about policies or measures with cross-border implications; emphasises that workers' representatives must have access to the requisite expertise to assess the implications of these cross-border policies and processes for the workforce;
 14. Calls for the EU to ensure that employees are also represented on boards in European-scale companies, above all when those companies make use of EU legislation for the purposes of cross-border company restructuring and mobility;
 15. States that much remains to be done to ensure gender equality in all aspects of worker participation across the EU;
 16. Calls on the Commission to introduce a new framework directive on workers' information, consultation and participation for the various kinds of European companies, including subcontracting chains and franchises, and for companies that use EU company mobility instruments, in order to establish minimum standards on issues such as anticipating change and restructuring, in particular at company level;
 17. Stresses that many shortcomings in EU law would be overcome by introducing thresholds for a minimum EU standard of board-level representation under this new framework directive; considers, to this end, that workers' representatives should have the following number/proportion of seats on boards: 2 or 3 seats in small companies with 50 to 250 employees, one third of all seats in companies with 250 to 1 000 employees, and half of all seats in big companies with more than 1 000 employees (within the company and its direct or indirect subsidiaries);
 18. Recalls that the European Works Council Directive is part of the EU *acquis* on information for and consultation of employees; expresses concern over shortcomings in the directive's design, notably the enforcement of information and consultation rights;
 19. Calls on the Commission to guarantee information and consultation rights to ensure that the European Works Council can deliver its opinion before consultation is completed at the respective level; calls on the Commission, moreover, to ensure access to justice, to put an end to exemptions for old, so-called 'voluntary' pre-directive agreements after more than 20 years, to introduce sanctions, to consolidate the concept of the 'transnational character of a matter' and incorporate it into the European Works Council Directive, to prevent the abuse of confidentiality rules, and to ensure the efficient coordination of information, consultation and participation at local, national and EU levels;
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20. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

The EU is still firmly in the grip of the pandemic, which has created new challenges and uncertainties as well as accelerating trends and deepening problems that existed prior to the pandemic. Jobs and workers need to be protected. Certain sectors and regions have been particularly badly hit, and a fast and sustainable economic, social, political recovery is needed. Thanks to innovative measures to safeguard employment, mass unemployment has been prevented, but restructurings and insolvencies may only have been delayed by these measures.

At the same time as Europe engages in the recovery, the European Green Deal and the digitalisation of work will involve huge transitions. The European Union aims at a just transition in which no one should be left behind. However, new strategies and policies are needed in order to ensure that all will benefit, not only the few.

Democracy at work must be a key element of this strategy, so that workers have a voice and can shape and influence this change instead of being only subjected to these transformative processes. This will be vital to shape these social, economic and environmental challenges and to build a responsible and sustainable recovery for all. Companies that make full use of employee participation are almost twice as likely to integrate sustainability strategies into their management guidelines as companies are without employee participation.

The EU is not just a common market; it is a community with core values and is justly proud of the unique achievement of its social model. Information, consultation and participation rights anchor the crucial role of the social partners in achieving these goals. This is reflected also in the nearly 40 different EU Directives in the areas of employment law, company law and health and safety protection which provide for workers' involvement.

The patchwork of different and at times contradictory rules regarding the information and consultation of workers and their representation in the peak governance organs of the company results not only in a lack of legal certainty for all actors involved. It also means that with each new legislative initiative which touches upon workers' rights, only new layers of similar rules are added without comprehensibly addressing the problem.

To remedy this, a new EU framework on information, consultation and board-level employee representation should be a comprehensive additional legal instrument which has a horizontal effect in setting standards for workers' involvement to which all related legislation would refer as a common set of rules, procedures, and standards. A new framework should include or be accompanied by renewed efforts to introduce the necessary improvements to the legal framework on European Works Councils.

Democracy does not stop at the workplace. More democracy at work links the debate on the future of work with the debate on the future of EU and strengthening democracy in Europe.