THE FINANCIAL PARTICIPATION OF WORKERS

AND THE ROLE OF THE SOCIAL PARTNERS

The Belgian Case

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INTRODUCTORY REMARKS

Belgium has a rather weak record regarding the financial participation of workers. The lack of supportive legislation led to a media campaign, organised at the end of 1998 by 60 leading companies, trying to force the Belgian government to act on a promise concerning financial participation for employees. The companies included some of the largest and most important in Belgium, and the main employers' organisations have also supported the campaign[1].

Indeed, Belgium clearly lags behind on financial participation, compared with the USA, France, the UK and the Netherlands. Several regulatory proposals had been tabled over the years, and in 1996 the government promised to take action. By 1998 not much had happened and there were only some partial measures, which we will discuss further.

"The main reason for this state of affairs is that the Belgian two main trade unions, the Christian and the Socialist unions - with the exception of the smaller Liberal Trade Union - are not at all in favour of different forms of financial participation by employees, whether this takes the form of profit- or capital-sharing. They claim that it does not narrow the gap between capital and labour, nor does it consist of a form of industrial democracy. Furthermore, these schemes do not alter the power relations within the company. Employees, the unions claim, have very little impact on the profitability of the company. In addition, they allege that such a model leads to corporatism and weakens employees as a group. It opens the possibility of conflicts of interest between employees in different companies, or even of different groups within companies, thus reducing group solidarity"[2].

A number of companies that have been using such schemes had, moreover, been involved in fiscal lawsuits. The issue concerned the treatment by the taxation authorities of this element of the remuneration package. The key question centres on whether or not it is part of the wage or salary, and hence taxable.

Companies, in their 1998 campaign, viewed financial participation as an element of pay, but pointed out that shareholders are taxed at the rate of only 25% whereas employees are taxed at the level of their highest income bracket. They urged a new form of taxation of this kind of wage component.

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[1] "Leading companies pressurise government on financial participation", *www.eurofound.ie/1998*.
Financial participation is one of the new management techniques, used bycompanies in Belgium to remunerate and motivate their employees. Since the government was not taking any decisive action on the matter, contrary to past promises, in December 1998, a group of companies placed an advertisement in a number of Belgian newspapers to prompt it to act.
The companies include some of the largest and most important in Belgium: Ackermans en Van Haren, Colruyt, HBK, Barco, Mercator en Noordstar and Picanol.

[2] *Idem*.

No wonder that financial participation of workers in Belgium used to be on a low key. An inquiry organised in 2000, involving enterprises with more than 50 employees in four dynamic sectors of activity: banking, insurance, informatics and basic chemicals, gave following results. 62 out of 273 enterprises responded to the questionnaire (22.7). 50 % of the respondents had one or more forms of financial participation.

	Managers and "cadres"	White& blue collars
Free shares	2	1
Shares sold with discount[3]	9	8
Stock options	5	3
Profit sharing	16	10.

The most invoked reason not to organise financial participation by the companies was the legal uncertainty about the various schemes[4].

Since then, however, major developments have taken place, which may profoundly affect the significance of financial participation in Belgium, namely the Act of 26 March 1999 on shares with "decode" stock options and a project by the Belgian Government (October 2000) concerning participation of employees in the capital and the profit of companies. This project was approved by the Chamber of Representatives (March 2001) and may soon become law. This new Act would lay down a comprehensive legal framework for financial participation of workers. The Act is clearly inspired by the guiding principles of the Pepper reports of the European Union.

[3] This includes enterprise saving plans, increase of capital for the benefit of the employees and all enterprise plans where employees have to make a financial contribution to obtain shares of the enterprise.
[4] Clubs S., "Werknemersparticipatie en de ontwikkeling van sociaal kapitaal: een empirische studie in de Belgische context", *INOPE, Nieuwsbrief* 2001/1.

§ 1. The legal framework

I. A general framework: The Act on participation of employees in the capital and the profit of companies (2001?)[5]

The new Act governs participation schemes in the private profit sector. The non-profit and the public sectors are excluded. It applies to companies, which are subject to company tax. However, the Government is of the opinion that in a later stage there should also be a financial participation scheme for the public and the non-profit sectors[6].

A. Philosophy

The philosophy behind the Governmental project is that participation of workers entails enormous advantages:

* The growing international competition, as a consequence of the globalisation of the economy and of the introduction of the euro, creates enormous challenges for the enterprises. Enterprises can only succeed and have success in this competitive environment when they can stimulate the **internal cooperation** of all the employees. Workers' participation is one instrument to that end, equally important as a favourable social climate. Participation makes co-operation "the" leitmotiv within the enterprise. Cooperation contributes to well performing enterprises, which can answer successfully the challenge of global competition.

* The economic force of a country depends in an increasing manner on the way that a country can stimulate, spread and use knowledge. **Knowledge** and **know how** can only flourish in an environment where people work together. Knowledge is a **joint venture**. The time that someone could cry out " eureka" is long behind us. A great deal of knowledge is now generated within the enterprises. And also within the enterprise the principle is valid that knowledge will only emerge when it is created and used in a cooperative way. As workers' participation stimulates participation, it becomes also a dynamic instrument in the acquisition and spreading of knowledge.

* Workers participation is not only a matter of **sharing of profit**. In due time workers participation will **involve employees more in the management of the enterprise**. Indeed, if the employee receives a part of the profits, he will necessarily want to be **informed** about the results of the enterprise. The results of the enterprise become his results. A participative culture will stimulate the enterprise to be more **transparent**. This will increase the quality of the management (**corporate governance**). A dynamic

[5] The Act has been prepared by a working group, headed by Professor Paul de Grauwe, Senator and member of the Conservative Party, which provided the Prime Minister for the present Government and byrepresentatives of social partners, civil servants and business. The report dates from 20 March 2000 ("Een wettelijk kader voor werknemersparticipatie. Verslag van de werkgroep werknemersparticpatie", - Mimeo, 14 p.).

will be developed whereby better informed employees will be more involved in policy making. This will eventually lead to more **democracy** in the enterprise.

B. Principles

The Act contains the following guiding principles, which are inspired by the two European Pepper reports.

1. The participation plan has to be introduced at the level of the enterprise;
2. Financial participation set up by the enterprise must be voluntary;
3. The plan should be the result of collective bargaining between the employer and the representatives of the employees;
4. Participation is collective, this means that it is available to all workers in the enterprise;
5. The financial participation scheme is to be based on a predefined formula, whereby there should be a clear link with the results of the enterprise;
6. Financial participation does not replace the remuneration of the employees; it constitutes additional income.

The principles underline first that the setting up of a worker's participation scheme is to be **voluntary**. Enterprises cannot be forced to set up such a scheme.

Secondly, participation is a **collective** venture. The scheme has to open to **all employees** and has to be established by way of **collective bargaining.** Participation should have a mobilising effect for all and is **not an instrument for individual motivation.** For the last purpose, there are other techniques, like for example stock options. Workers participation aims the stimulation of all employees to **engage** themselves for the enterprise.

In the third place, workers participation asks for a high degree of **transparency** in the management of the enterprise so that there is clear link with the financial results of the enterprise. This will enhance **corporate governance** in a positive way. Well-managed enterprises create the **trust**, which is necessary to make systems of workers participation function effectively.

At last, these principles state clearly that participation cannot replace the remuneration of the employee. Financial participation constitutes additional income. Indeed, employees are not to be considered as managers, who have to bear the risk of entrepreneurship. Employees should always be able to fall back on their normal salary in case the enterprise is doing financially less well.

To these European Pepper principles, the Belgian Government has added two:

** The advantages, which are awarded in the framework of participation schemes, which respect the Pepper principles, do not fall under the normal **fiscal and social security regimes**, which normally cover remuneration;*

** The enterprises will be able to develop **two schemes of participation**, namely participation in the **capital** and participation in the **profits of the enterprise**. Thus, the Act allows **flexibility** and various forms of financial participation for the enterprises to choose from.*

C. Fiscal and social security rules

The Government encourages financial participative schemes by awarding tax and social security incentives.

These incentives are as follows:

In case of **participation in profits (cash)**, the employee will pay

13, 07 % as a social security contribution;
25 % as an advance levy.

The employer will pay 40 % corporation tax.

Example

Participation of the employee : 100 BEF

Corporation tax (40%) 66.7 of which 50 % is paid to the social security institutions

Total cost for the enterprise: 166.9

Gross income employee 100

Employee contribution

Contribution social security 13.07
Advance levy (25%) 21.7

Net income= employee 65,2

In case of participation in shares, the employee will pay

15 % advance levies 15

Net income = employee 85

So in case of participation in shares of the company, the employee contributes 15 % of the value of the shares; in case of participation in the profits (cash) of the company, he will pay 34, 77 %.

Participation in shares is thus favoured over payments in cash. The reason is self-evident: participation in shares creates a greater bond of the employee with the enterprise.

Since these benefits do not constitute remuneration, they are not taxed as such.

D. Conditions to be fulfilled in order to be able to benefit from the tax and social security incentives

The conditions are as follows:

1. The employer takes the initiative. His proposal will be discussed in the works council, or in the committee for prevention and protection of the enterprise, or with the union committee. If these participative structures are not present in the company, the same procedure will be followed as when negotiating the work rules for the enterprise.

This condition affirms the voluntary character of the participation scheme. However, when the enterprise decides to go ahead there has to be a concertation procedure with the institutions, representing the employees at enter prise level. When there are less than 50 employees, the employer will inform and . consult the employees in writing.

2. This concertation procedure must lead to a specific enterprise collective agreement, which establishes the participation plan. Such agreements can normally only be signed from the employee side by the trade unions. If enterprises, where normally no collective agreements are concluded (enterprises with less than 50 employees and without a union committee) the employees will sign individually a joining act, which will be submitted for approval to the Minister of Labour and Employment. The Minister has to make his decision within a delay of two months.

The collective agreement is a specific agreement, which will only deal with the participation scheme. The Government accepted this demand from the trade unions. Needless to say that some employers are not happy with this requirement.

3. Participation cannot replace remuneration. Therefore, before participation can be instaured, the wage increase, allowed under the governmental wage policy, must have been granted. The Minister of Labour and Employment will exercise the necessary controls to that end. In case that condition is not fulfilled the participation scheme will not be able to be prolonged.

4. The participation scheme can be introduced either at the level of the enterprise or at the level of the group, to which the enterprise belongs. In case of a group, there will be one specific collective agreement for the whole group.

5. The total amount allowed for participation is determined by a double ceiling of maximum

** 10 % of the total wage bill (gross);*

** 20 % of the profits before taxes.*

The idea behind both ceilings is that the outcome of the financial participation scheme is unpredictable and contains risks for the employees, who may become financially too dependent, if the amount provided by the scheme would be considerable. Therefore, a ceiling has to be established in relation to the remuneration effectively paid to the employees. 10 % of the (gross) wage bill is a maximum. Enterprises can decide to stay below that level.

A second ceiling, namely of 20 % of profits before tax, indicates the concern that the shareholders should not have to give away too big of a percentage of the profits, especially if these are unexpectedly low.

Both ceilings have to be respected. In enterprise where the wage bill is considerable in relation to profits, the second ceiling of 20% may be reached first.

6. The participation scheme should be open to all employees. The specific enterprise collective agreement will determine whether the financial participation is obligatory for the employees or not.

This condition is a compromise between two options. One favours the idea that employees should be free to decide for themselves whether or not to participate in the scheme. The second option underlines the collective aspect of the participation and proclaims that all employees should participate when the enterprise decides to establish a financial participation scheme. The compromise leaves it open to the negotiators at enterprise level to agree on what they want to do: make the scheme obligatory or not.

7. Employees are salaried workers, performing in subordination[7]*. No distinction is made between employment contracts for a fixed term and contracts for an indefinite term. The company collective agreement can stipulate a condition of seniority of maximum one year (accountancy year). In case the contract comes to an end, the employee (or in case of death, the heritors) will benefit of the participation advantages on a pro rata basis.*

8. The financial advantages have to be the same for all employees. Equal treatment thus. The specific enterprise collective agreement can, however, deviate from that rule. In that case there should be objective criteria to do so. These criteria have to be established by a sectoral collective agreement. Criteria like age, function, seniority and others may be relevant.

[7] This also appies to employees working for public companies, which are subject to company tax.

This condition has been strongly inspired by the idea of the participation scheme as a collective happening. As said, the purpose is to mobilise all employees. This can, according to the Government, be done best if equal treatment is respected. High and low receive the same. Equal treatment also maximises the chances that all employees, inside and outside the enterprise, will accept the participation scheme. The egalitarian principle has as a consequence that the Governmental contribution by way of a tax decrease is the same for all involved employees.

The Government was however of the opinion that a certain amount of flexibility was desirable. Therefore the possibility of a deviation of the egalitarian principle has been foreseen. A sectoral collective agreement is however needed to that end. The question is whether it will be easy to conclude such agreements and whether the trade unions will want to deviate from the egalitarian principle.

9. In case of participation of shares, there should be normal voting rights for the holders of the shares, in case the employees.

10. In cases of participation in shares of the company, the collective agreement will determine the period during which these shares will be blocked. This period will be between 2 and 5 years.

The idea is that the Government wants to prevent that the employees would sell the shares immediately. In that case there would indeed be no difference with participation in cash. Therefore a blocking period is necessary. That period may however not be too long, otherwise the link between the advantage and the financial results of the enterprise becomes to weak.

11. The specific collective agreement can also determine whether the distribution of shares shall be done through intermediary institutions (e.g. a participation fund or a cooperative) or directly to the employee. The collective agreement may provide, in case such an intermediary institution is set up, that the employee is free to join or not to join. The right to vote within the intermediary institution will be on the basis of one person, one vote.

The underlying idea of the possibility to establish an intermediary institution is especially meant for SME's, which might want to set up such an intermediary structure to administer the shares of the employees. Each enterprise is free to do or not to do so.

12. The financial participation schemes should not have a negative effect on the employment in the enterprise. They should not be an occasion to alter the employment policies in the enterprise. Consequently, the discussions within the enterprise between employer and employees concerning the financial participation scheme will also relate to employment policies of the company. The result of these discussions will be taken up in the collective agreement. At macro-level the social partners will regularly evaluate the impact of the participation schemes on the employment situation.

Some seem to fear that participation could be a bait to make employees more readily to accept restructurations in the enterprise. Profits after restructuration might go up for the benefit of those who stay. Therefore it should be spelled out clearly how the participation scheme would effect employment in the enterprise.

II. The Act of 26 March 1999: shares with décote stock options

The most important objective of this Act concerning an "employee stock option" plan (ESOP) is to involve managers and collaborators more in the future growth of the enterprise. The ESOP is considered an instrument to increase the loyalty and motivation of the employees, who can participate in the increased value of the enterprise, which is created through their own efforts.

The Act applies to the "companies"; this is the private profit sector. The employer is free to indicate the employees, who can benefit from the option. So, not all employees will necessarily benefit from the ESOP.

The stock option plan gives the employee the possibility to acquire during a given period a number of shares of the enterprise at a pre-fixed price. In case of increase of the value of the shares, the shares can be bought at the pre fixed price. In doing so, the employee acquires a given income, which is tax-free.

The granting of the option, however, is considered as a taxable benefit, by determining the value of the option with an exercise period of 5 years at 15% of the price of the shares at the moment the option is granted. This percentage will be increased by 1% per year for options attributed for more than 5 years. Taxation for options with an exercise period of 5 years will be reduced to respectively 7.5% and 0.5% for each year above the period of 5 years: the option must be granted by the employing company or its parent and cannot be exercised before 4 and after 10 years, it cannot be transferred during life, and the option price must be definitely fixed at the moment of the grant.

Share options are granted free of social charges.

The advantages are legally not considered to be "remuneration" in the sense of the 12 April 1971 Act on the protection of remuneration.

Stock options have lately become less popular; especially give the enormous dip the Stock exchange has taken. A number of dot.coms have gone broke, their shares being worthless. In the meantime some employees have paid 15 % taxes on shares, which are now without any value, and thus loose money. This is even more appalling for those employees, who were for the most part paid in stock options, as was the case in a number of start-ups.

Let's repeat that this Act leaves it up to the employer to decide who can benefit from the stock option plan he proposes, while the social partners are not involved at all.

III. Increase in capital with preferential shares (1991)

Art. 609 of the Code of Corporations allows corporations to issue shares, which can be partially or totally reserved for all employees and offered at a discount of maximum 20 %. Provided that the shares are blocked for a period of five years, the discount is free of income tax and free from social security contributions. The maximum amount of shares to be issues is 20 % of the corporation's capital, the increase of capital included.

Employees must have a certain seniority, to be determined by the enterprise, between periods of minimum 6 months to maximum 3 years.

The works council of the corporation is entitled to be informed and consulted first on the principle of the capital increase for the benefit of the employees and consequently on the way the capital increase is implemented.

IV. Tax incentives for employee participation in the capital of the enterprises (1983)

The so-called Monory-bis Act of 28 December 1983, amended in 1986 and 1993, allows an employee (18 and 64 years of age), who buys fully paid up shares at the time of the incorporation of a company or an increase in capital to deduct BEF 22.000 from his taxable income. This measure was very successful.

§ 2. An alternative scheme: share in profits - profit parts

One company, that wants to avoid the discussion whether a share in profits legally constitutes remuneration, with all the consequences this entails regarding tax and social security law and maintain a maximum of flexibility, developed a scheme whereby employees are entitled to buy a share in the profits. This company decided (September 2000) to sell 15,000 profit parts to its employees. These parts entitle the employees to obtain a part of the profits of the enterprise over the period 1999 - 2004.

The profit, which is reserved for the employees, is 20 % of the company profits after taxes, minus 8% for the rewarding of the invested capital. This money is accumulated in a fund and will comprise the profit share of 5 years (1999 - 2004).

All employees, who have a seniority of at least 3 years, can participate in the scheme, which is voluntary.

As there are 15,000 profit parts, the value of one profit part will be the total amount of reserved profits, divided by 15,000.

One profit part costs 500 BEF.

Employees can buy profit shares in the following way:

* Blue-collar workers and white-collar workers, first category can subscribe for 25 parts;

* Gang-bosses and white collars, second category can subscribe for 50 parts;
* Foremen and white collars, third category can subscribe for 100 parts.

Additional parts can be bought, according to the seniority of the employee with a maximum of 20 % of the number of parts he can get according to his status in the enterprise.

After the 5th year the employees can use their profit share to buy stock of the company. The employees can buy - together - up to maximum 10 % of the shares of the company. If there is an excedent of profits, higher than the 10 % shares, then this amount will be paid to the individual employees, taking applicable tax law into account.

The stock, thus obtained in the company constitutes full shares and entails voting rights for the employees in the general assembly.

The shares the employees get are in name and not transferable. After 1 October 2006 the employees can decide to keep the shares or to sell them to enterprise at the value of the stock then.

This scheme is a risk-taking scheme for the employees, in the sense that if the company makes no profits at all, the profits parts, paid by the employees at 500 BEF per piece, are worthless.

Up to now some 77% of employees have bought profit parts and the scheme seems to be well under way.

In this scheme there is no involvement of the social partners.

§ 3. The role of the social partners

It is clear that the social partners have opposing views on the issue of participation of employees in the profits of the company. The employers associations and employers in general are pro. The Federation of Belgian Enterprises and the National Federation of Small Firms and Traders supported the 1998 campaign, we referred to earlier.

The major trade unions remain opposed.

Whereas according to the legislation enacted in 1983 and 1999, employee representatives are not all involved, they have a definite role in the legislative schemes of 1991 (information and consultation of the works council) and especially in the new Act (2001?), setting a general framework for employee participation in capital or profit.

In this forthcoming Act of Parliament there is a full-fledged co-decision making power for the trade unions. Financial participation schemes under the forthcoming Act can only be introduced unless there is a specific collective enterprise agreement to be concluded with the trade unions. Employers are not happy with this requirement. Many fear that at

the occasion of the concluding of such a collective agreement other demands will be made by the trade unions. There is also some apprehension given the fact that all employees have to receive the same share: equal treatment. The Act allows the possibility for the partners at enterprise level to deviate for this egalitarian rule and have some difference of treatment between the employees in relation to their remuneration and with a maximum of double the amount the lowest paid employee will get. Some doubt that an agreement on that issue with the trade unions will be at all possible.

However, these requirements were *conditions sine qua non* for the Act to get the necessary backing in Parliament.

The recent declarations of the Chemical and Metal working trade unions do not look promising. Their national leaders declared that no agreements would be concluded at enterprise level unless there were first sector wide agreements, which then would have to followed up at enterprise level. Some employers, who referred to the lack of democracy in the trade unions and their hierarchical structure of decision-making, saying that the trade unions do not really represent the onion of the work force regarding this matter, self-evidently regret this[8].

[8] "Vertrouwen. Kreten uit een vorige eeuw", *INOPE, Nieuwsbrief* 2001/01, 1.

CONCLUDING REMARKS

Belgium has traditionally lagged behind regarding financial participation of workers. The necessary legislation, backing financial participation by way of tax and social security incentives, failed to pass Parliament for a long time. One of the main reasons is the opposition of the trade unions, which are profoundly against the idea of financial participation. Wages have to be increased is their motto, and especially those of the lowest paid. This had as a consequence that until recently there were only very partial measures related to acquiring shares by the employees; so a legal measure in 1983, but which was not necessarily related to acquiring shares of the company of the employee, but to the stock market in general. Also the 1991 Act concerning the increase in capital with preferential shares needs to be mentioned.

Until 1999, the 1991 Act constituted the most widespread scheme in Belgium. Since the adoption of the new stock option legislation on 26 March 1999, a growing number of companies offered stock options plans to their employees. But, as indicated earlier, a number of employees suffered losses since a lot of start ups and even other companies saw their market share tumble and the employees concerned having already paid 15 % on the prefixed value of the shares.

The question is whether the new act (2001), which will be shortly adopted in Parliament, will succeed widely. The new legislative measures are generally welcomed, but the problem remains that certain companies will want to look to alternative routes in order to escape the obligation to conclude collective agreements on these matters..

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