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Preface

A new scenario

Claudio Stanzani (President of SindNova)

The last two years have been deeply affected by a serious economic recession that has imposed a need to reflect on the organizational model of production and its relationship with risk capital. Corporate governance has been accused of having failed to assess and balance the risks of company management and fuelled distortions in management incentive systems.

Every crisis brings about change. The current crisis has highlighted the social and institutional fractures in the global society. Few today would disagree that what has happened forces us to rethink company structures, political categories and institutional models.

In their practical application, governance theories have failed to protect production from financial speculation and have led to significant changes in the relationships between management and owners¹.

What has come off worse in this is the protection of stakeholders, especially those who in the current production model benefit from the long-term economic sustainability of production².

That workers are not to blame for the crisis is a common position adopted by all analysts and has been repeatedly stated by the European trade unions³.

That workers and their organizations must also be called upon to play a role in overcoming the crisis is an equally shared option. In fact, the strength of the trade union initiative could promote an organizational model in which production and risk capital are finally linked by governance mechanisms based on transparency and sustainability and above all, the assumption of responsibility by all the actors that participate in production.

In any case, stakeholders that obtain a role in corporate governance will be called upon to assume greater responsibility in exercising their new power. Participation and responsibility necessarily need to co-exist in open corporate governance.

The German trade unions know this only too well⁴.

In fact, the suspicions German trade unions have regarding models that provide for the

¹ See point 23 of the report of the High Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière, Brussels, 25 February 2009 and known as the Larosière Report. Similar conclusions have been reached by the experts of the European Corporate Governance Forum, Annual Report 2008, published in May 2009.

² Larosière Report, point 111.

³ The European Trade Union Confederation has underlined and supported these positions on several occasions and in particular, in the declaration of Paris, 28 May 2009.

⁴ A recent study by V. Telljoahann of the Emilia Romagna branch of the IRES (Institute of Economic and Social Research) highlights the conduct of the German social partners in response to the crisis in the automobile industry.



participation of employees in the capital of their own company (as can be noted in the interviews published as part of this project⁵) have now been replaced by a new vision.

The inevitability of widespread restructuring of an entire sector - a sector that already suffers from existing structural problems - has hastened the search for new solutions. From an anthropocentric point of view, it could be claimed that the financial crisis has merely helped production actors (capital, management and workers) to free their energy, including their intellectual energy, to explore and innovate, redistributing power and responsibility in governance and industrial relations.

IG Metal has begun a process in which financial participation is a complement to codetermination (like at Schaeffler), the object of exchange to consolidate the choices of an industrial partner (Opel-Magna) or could even become a feature of a new trade union strategy aimed at breaking a negative spiral that threatens the solidity of the bargaining system and the protection of labour⁶. Workers' sacrifice is turned into ownership. The participatory element of employee-shareholders is guided by the trade union because it is equally synergic to corporate governance and industrial relations tools. Share ownership involves the entire automobile sector and becomes the precursor to a new governance at the service of new capitalists (see Volkswagen and Daimler).

Employee share ownership thus becomes a condition of the worker, created to last and become part of our culture.

A recent case in point is the acquisition of Chrysler by FIAT. In the Italian trade union movement, CISL maintains that participation in risk capital, in order to participate in the management of company life, can only be beneficial to the company itself because it appeases social conflict and finances undercapitalized companies. CISL supports a strategic vision in which share ownership is fully implemented when it provides participatory mechanisms for employee-shareholders and a new capitalist culture in which equity participation must exist in companies regardless of their size⁷.

In Italy, CISL feels that employee share ownership has certain virtues; it consolidates employee participation and rewards the assumption of responsibility by workers in company transformation processes, even in economic terms. The Alitalia affair, where the trade unions played a crucial role and where the assumption of responsibility determined the allocation of part of future profits to employees, is emblematic.

Chronologically, these two circumstances followed the elaboration of the study project coordinated by SindNova, but in some ways they prove its relevance. It is possible to detect a trend here. In fact, those mentioned are strategic choices whose efficacy can only really be studied in a few years time.

The SindNova report offers tools for reflection through the in-depth study of a number of cases in which employee share ownership and corporate governance have coexisted for some time and offer the researcher solid elements for analysis.

⁵ The country profiles, case studies, names and positions of the people interviewed can be found on the website www.governancesindnova.eu, which should be considered complementary to this summary report.

⁶ Telljohann (op. cit.).

⁷ Interview with Raffaele Bonanni, Secretary General of CISL.



PART I

**METHODOLOGY AND CONCEPTUAL
BACKGROUND**



Financial participation, corporate governance and social dialogue

The following report investigates employee share ownership and its ability to consolidate social dialogue when it manages to influence the governance process within a company. To offer the reader a logical and conceptual basis, we immediately state that the report has been drafted within the framework of the PEPPER system.

We are referring to the economic and financial types of worker participation classified in the report entitled *Promotion of Employee Participation in Profits and Enterprise Results in the Member States of the European Community* dated 1991 and further defined in 1996⁸ when the words “including equity participation” in the heading underlined the conceptual importance of employee share ownership in PEPPER models.

The second report therefore groups forms of employee involvement into two categories: profit sharing and employee share ownership without, for this reason, having presumed incommunicability between the two. On the contrary, the report highlights the possible correlations and bridges that unite the two segments.

Our report has limited studies to the second segment.

The title also refers to corporate governance. What link is there between participation and social dialogue and corporate governance?

In its communication⁹ dated 2003, the European Commission premises that, “Well-managed companies, with consolidated good corporate governance practices and sensitive to social and environmental issues, outperform their competitors. Europe needs more of these companies in order to generate employment and support greater long-term growth”. It is also stated that effective corporate governance “will help to strengthen shareholders' rights and the protection of third parties”.

The definition of corporate governance adopted by the European Commission, in other words, “**the system by which companies are directed and controlled**”, is very broad.

It is known that there is no agreement in the scientific world on the definition of corporate governance. Those who have dared to undertake this arduous task have often chosen to juxtapose definitions that gradually limit the boundaries of this subject matter.

The High Level Group of Company Law Experts in support of the European Commission produced a report on a modern regulatory framework for company law in Europe¹⁰ in which they consider of prime importance in the paradigms of corporate governance the elements of disclosure, the role of shareholders (above all, access to information and the functioning of the Shareholders' Meeting), the Board of Directors, the Auditors and Community regulations.

The proposal of the high level experts does not come from a desire to overcome the eclectic nature of the doctrine, nor does it aim to demean the various experiences of individual

⁸ In fact, the second PEPPER Report merely acts on the basis of the Recommendation of the Council dated 27 July 1992 (93/443/EEC), which places the emphasis on “equity participation” in its title.

⁹ Communication from the Commission to the Council and European Parliament, Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward. COM (2003) 284 final.

¹⁰ Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe, Brussels, 4 November 2002. Rapporteur: Dominique Thienpont.



European companies. It is simply functional to the aim of putting Community law in a position to improve company law (and modernise corporate governance) against the backdrop of greater integration of the European market.

The Communication from the European Commission indicates not only shareholders and company management among the subjects of governance, but also third parties. Among the latter, explicit reference is made to workers. Without doubt, workers are subjects that benefit from good governance, yet their right to be a part of it has not been either acknowledged or unacknowledged.

Of the action tools mentioned by the Commission, labour representation does not have a specific role even though the "spirit" of worker participation in company bodies exists in texts and above all, in the real world, which the community project to harmonize (or bring together) legislation and practices must necessarily take into consideration¹¹.

The question of social dialogue and corporate governance remains controversial.

To move on to the third conceptual element of our title, the concept of social dialogue includes relational dynamics that entail the relationships between company and labour. Its complexity encompasses collective bargaining (with its repercussions on the individual labour relationship) and the involvement and participation of workers, right up to sharing in the life of the company and its risks.

Limiting our analysis to the corporate dimension, social dialogue is legitimately part of the governance of an organized unit - which is what a company is - of which the labour factor is one of the keystones.

Handling relations with the stakeholder-employee is a function of corporate governance that is sometimes referred to as industrial relations, human resources or human capital and is a function that is always present in large companies (and even in smaller ones). Managing human capital is the strategic key to effective management of the change that in the organization of production is often identified as restructuring. These are traumatic events for all the elements of the company and the key to success lies in the ability to "find" through social dialogue the voice of those who (often against their will) interpret change and can therefore, understand it better and deal with it with greater responsibility¹².

Responsibility is a concept that will return often in our work and will become the underlying theme uniting the three conceptual elements of our title: employee share ownership, corporate governance and social dialogue.

¹¹ When looking at the complexity of the current economic and financial crisis, experts are concerned with drawing attention to the shortage of corporate governance rules. Such analysis is well illustrated in the so-called Larosière Report on Financial Supervision in the EU, Brussels 5 February 2009. Therein, the group of experts underlines that a single financial market cannot function properly if national rules and regulations are significantly different and that Europe should do more to create a harmonized set of rules. Amongst the areas of action for European institutions, the report stresses the need to reinforce corporate governance as this is one of the greatest failures of the current crisis.

With reference to the financial world, the Larosière Report denounces the practices of corporate governance that "have not carried out their tasks with enough consideration for the long-term interests of stakeholders". The report focuses on incentives for top managers, whose perverse effect is that investors and capitalists expect to draw huge profits to the detriment of other stakeholders.

¹² European Commission, Restructuring in Europe Report 2008. A Review of EU Action to anticipate change and manage employment change. Brussels, 2008.



The “origin” of worker involvement in corporate governance

Is there a relationship between the three elements? The over 50 interviews carried out as part of this report highlighted a difficulty for interlocutors to identify the relationship that exists between the three elements. On the other hand, commenting on empirical cases facilitated the reconstruction of positions that, in their absence, would have remained hidden.

In the framework of the political debate in Europe, it is the European Parliament that tries, initially, to explore connections between employee share ownership and corporate governance.

In its Resolution¹³ dated 2003, commenting the EC Communication dated 2002¹⁴, the European Parliament encouraged a broader involvement of employees in company equity, turning the focus on the most favourable aspects of these tools.

The European Parliament refers to

- associations of employees and the representation of such associations in the company decision-making bodies, recalling the French model;
- private companies (not listed on stock exchange markets) exploring forms of codetermination in favour of employees-shareholders;
- setting up foundations with the aim of making them act as shareholder on behalf of employees-shareholders;
- fostering information and consultation rights, especially in their international dimension, to support employee financial participation plans.

Finally, the Parliament points out the need to link financial participation and other forms of employee involvement to encourage the concept of partnership.

The interaction between the workforce and companies can develop along various relationship patterns. With the intention of simplifying matters, we could say that workers, in their collective representation, can represent an internal or an external interlocutor for company management.

They are external when, organized in the form of trade unions, they develop a bargaining package aimed at collectively solving the problem of the use and remuneration of labour as a production factor: the behavioural model is antagonistic and the most common tool is the collective agreement.

¹³ European Parliament resolution on the Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on a framework for the promotion of employee financial participation (COM (2002) 364 - 2002/2243(INI)). See also the opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on a framework for the promotion of employee financial participation (COM (2002) 364 final).

¹⁴ Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on a framework for the promotion of employee financial participation. COM (2002) 364 final.



The interlocutor is internal when the worker is considered an integral part of the company unit and management relates to the same as a “partner” in the corporate project. In this case, workers organized as company-level representatives (generally elected), interact with company management or the owners in order to solve labour problems and sometimes, to share strategic policies.

In the logic of social dialogue, that is gradually establishing itself in Europe, bargaining and involvement integrate until they form a relationship model in which “external” and “internal” processes move coherently. When they do not coincide, trade union and corporate representation structures coexist in the search (truthfully, not always without some tension) for an additional sharing of functions and competences.

Worker representation, whether internal or external, must be based on the presence of an interlocutor within the company: the decision-maker. The logic of the agency contract (or the formal relationship through which the manager assumes the task of promoting contracts in the interest of the proponent/owner, stably and against payment) that dominates the theories of corporate governance, establishes a balance in the exercising of power contended between the two poles of management/owners.¹⁵ Having assessed this balance each time (if put in the position to do so), worker representation directs its desire for interlocution towards management or towards owners, as the case may be.

Obviously, the agency relationship that links management and owners is a dynamic and constantly evolving one. Labour representation updates its strategy (if put in the position to do so) based on the changing governance context. Clearly, transparency and comprehensive information are essential for a correct relationship between the company body and the labour factor.

The European Commission testifies to a trend that considers the European corporate model (with the exception of the Anglo-Saxon one) unbalanced in favour of management; it registers a certain dominance of management on ownership with undesired alterations and negative consequences on good governance and therefore, more generally, on the efficiency of the market¹⁶. For this reason, measures have been taken to strengthen ownership in the governance game (see the minority shareholders directive) or to make management responsibilities more pressing.

It may be useful here to mention the fact that ownership is increasingly considered a source of the *sociality* of corporate governance. Ethical funds and active share ownership seem to become aspects of the new capitalism that even the trade union world will have to take into

¹⁵ The writer wishes to specify that the bipolar model supported herein is in itself a simplification as it is known that both the doctrine and judicial systems of the market economies separate or proceduralize decision-making power until it overcomes bipolarization by recognizing third parties such as creditors, users, workers and third party subjects. These subjects acquire a role when the right to safeguard their interests is recognised by the law and can be legitimately protected as early as the decision-making phase. In this analysis exercise, it is useful for us to simplify and imagine a structure for exercising bipolar power whose equilibrium is the result of social pacts, the heteronomous norm, national cultures, the culture of enterprise and lots of other factors, not least of all the size of the company.

¹⁶ Among the initiatives announced by the European Commission in the framework of “Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward” many are in favour of Shareholders’ Meetings and active participation of the shareholders in company life.



account¹⁷.

If we want to arrange the interactions of internal/external processes in labour representation and management/ownership in the control of companies, as mentioned above, we obtain the following matrix:

Matrix of labour involvement in corporate governance

	1) Internal processes	2) External processes
A) Company Management	Consensus building <ul style="list-style-type: none"> - Information and consultation rights - Employee participation 	Managing conflict <ul style="list-style-type: none"> - Collective bargaining - Flexible salaries and profit sharing - Social legislation and labour flexibility
B) Ownership	Sharing risks of the business <ul style="list-style-type: none"> - Individual share ownership - Collective share ownership 	Trade unions as new capitalists <ul style="list-style-type: none"> - Pension funds and similar funds - Socially-responsible investors and CSR

Cluster 1A identifies a relational element, the search for consensus that generally leads to employee involvement processes. These are generally supported by heteronomous legislative or contractual interventions that determine the operational methods *ex ante*.

Whilst Europe has for decades been passionate about the endless debate between the supporters of *soft* or *hard* participation (presuming a widespread consensus in considering the participatory relationship model more favourable to the competitive development of European companies), we cannot but take note of the neutrality of Community law with regards to forms of participation that go beyond the right to information and consultation.

We cannot therefore, refer to an ideal participatory model. However, this is now a banal statement for all those who study European industrial relations. Less banal is stating that all participatory models are known and included in the national legislation of member states. Participation cannot be enclosed in pre-established categories, as if the history of participatory phenomena had already revealed and catalogued all possible experiences. On the contrary, the potential for experimentation has yet to be comprehensively addressed.

It is alive and well in the experiences of European companies. Innovative industrial relationship practices demand to be studied and understood. Of these, share ownership has had alternating fortunes, assuming an elitist and residual importance at certain times in history and becoming a fundamental strategic model at others. Suffice to consider the outcry the Chrysler-FIAT deal caused and the role played by the American employees' pension fund. In Europe, the event reintroduced the debate on share ownership after years of niche research.

¹⁷ Meaningful examples are illustrated in S. Davies, J. Lukomnik, D. Pitt-Watson, The new capitalists. How citizens are reshaping the corporate agenda, Harvard, Boston, 2006.



The second cluster 2A refers to the company management vs. external labour representation relationship; that is, the interaction between the company and labour unions.

For many companies in Europe, the collective agreement adopted in companies is a “given” element¹⁸. In other words, it falls outside the control of management. Here, the ability of individual companies to influence the content of the agreement is null or in any case, very limited.

However, saying that the contractual relationship with the trade union ends upon signing the collective agreement is limiting. Even in the presence of extremely binding supra-company agreements, the perfecting of the contract keeps the relationship between company management and employees-shareholders alive; in fact it makes it strategic. Supra-company agreements must be applied in companies and at times integrated. Application and integration definitively resolve the issue of the individual labour relationship. Application and integration also determine the stability and longevity of the agreement. At best, collective agreements present elements that permit the constant updating of conditions, reducing to a minimum both the costs of renegotiation and inefficiencies linked to the failure of the agreement to correspond to the real needs of the parties. This, in brief, is the added value of good governance.

Interlocution with the owners can therefore, be a necessity or an addition; this should be assessed each time. The third cluster B1 focuses on the relationship of the workforce with ownership. We should first state that the relationship with the workforce can vary enormously, depending on the role of the owners in corporate governance. This can reach its peak in cases when company management and owners coincide or fade to nothing when, where ownership and control do not coincide, management proceeds to drain the functions of the Shareholders’ Meeting.

Workers can choose to participate in ownership. They can become sole owners of the company, they may exercise control or be holders of a share of corporate capital, be it very small or more or less significant.

A more far-reaching strategic option is that of turning work into ownership. Share ownership or participation in corporate capital can come about for various reasons. If the first PEPPER report indicated share ownership as the ultimate form of participation in company results (in this case, the profits or dividends), other studies have considerably expanded the number of reasons that can push a company and workers to commit to share ownership plans¹⁹.

¹⁸ Once again we exploit a conceptual simplification to make our reasoning clearer. We are fully aware that company-based agreements are the main tool for establishing working conditions in numerous European companies. Nonetheless, we assume that the reflections elaborated in the following paragraphs on collective bargaining as a tool for good governance can, even more so, be extended to companies in which supra-company agreements are not applicable.

¹⁹ Some important studies in this area are: European Foundation for the Improvement of Living and Working Conditions, *Recent Trends in Employee Financial Participation in the European Union*, by Erick Poutsma, Dublin 2001. Lowitzsch et al, *Financial Participation for a New Europe. A Building Block Approach*, Rome & Berlin, March 2008; *Changing Patterns of Employee Financial Participation in Europe*, final report by Erik Poutsma, January 2006; R. Santagata, *Il lavoratore azionista*, Giuffrè, Rome, 2008.



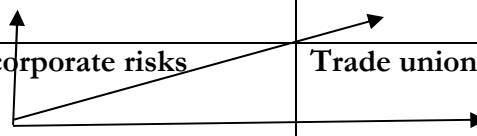
The motivational component is founded on the firm belief that the more the owners determine corporate governance, the more labour has to have some form of interlocution with owners in dealing with change. The more owners impose the terms of measuring the success of business, the more strategic it is to bring the values of labour and the sociality of production into the ownership factor.

Given current trends towards the modernisation of corporate governance and social dialogue, in Europe, cluster 2A is destined to increase its importance in the complex system of industrial relations.

This observation means we can sense the importance of the last cluster. The fourth cluster 2B highlights the relationship between trade unions and financial entities. This is the ability of the trade unions to commit the largest investors - in other words those who can become interlocutors - to support social clauses. Employees become new capitalists and as such, use an economic language that focuses on the sustainability and ethics of business. There can be varied tools even if, currently, the debate focuses primarily on corporate social responsibility, with regards to the sustainability of business, and the presence of labour in the financial market through pension funds, with regards to the ethics of business.

Our study starts from cluster 1B or share ownership. In other words, those forms of employee share ownership that are able to affect corporate governance and therefore, influence the other areas or aspire to shift the balance of corporate governance. It is therefore, possible to see in what measure the other areas are affected.

	1) Internal processes	2) External processes
A) Management	Consensus building	Conflict management
B) Owners	Sharing corporate risks	Trade unions: the new capitalists



PART II

**A STUDY OF EMPLOYEE OWNERSHIP
AND CORPORATE GOVERNANCE**



The attitude of the social partners

Social partners have been called upon to give an initial assessment of the project and its methodology. All of them consider employee financial participation part of their agenda and showed a clear interest in the project²⁰.

It is important to stress the point that this report does not seek to represent the positions of the social partners, nor does it aim to give voice to the political expectations of the organizations involved. The sole purpose of the interviews and case studies was to help the researchers.

The ETUC underlines how employee financial participation can help capital and labour to establish new forms of partnership. These new forms of partnership are necessary in order to meet the challenge posed by new competition patterns. Employee share ownership should aim to improve employee involvement in governance, making the company more reactive and productive.

Eurocadres has alerted on possible conflicts of interests. These could be found at various different levels of corporate governance. The study should point out potential risks and possible solutions.

The EMF considers the financial crisis to also be a crisis of the models of corporate governance and it hopes that this will lead to the introduction of new governance models. This reasoning forcefully imposes a reflection on new participatory capitalism.

From the business point of view, BusinessEurope underlines the fact that the effects of employee share ownership can only be assessed case by case. These depend on how the schemes interact with other elements of corporate governance and more generally with the environment in which the company operates. Many factors, both internal and external, are prominent in establishing a company's managerial culture: human resources, the business strategy and the nature of the business, tax regimes, labour market regulations, environmental constraints, etc. All employee financial participation tools can be considered positive, but of course they must be coherent and synergic with all company functions. Therefore, BusinessEurope suggests not limiting the study to aspects concerning labour and capital.

CEEP would like to focus on services of general interest. They are interested in having more information on how ESOS are implemented or used. As a sector, services of general interest is undergoing far-reaching transformation. The study should highlight the added value that ESOS can have in managing change and restructurings.

In countries like Germany and Belgium, strong doubts remain on employee financial participation tools. The greater receptiveness of employers does not seem to be sufficient to fuel the project capacity of social dialogue in this matter.

²⁰ A list of people interviewed (who did not ask to remain anonymous) is available on the website www.governanceSindNova.eu.



In Belgium²¹, trade union organizations insist on the need to safeguard the polarization of industrial relations on two areas of interest - labour vs. capital - because, in their opinion, this is instrumental to the correct and effective execution of collective bargaining.

In Germany, trade unions experience the need to safeguard codetermination, which already offers workers important opportunities to influence company decisions. Further commitment in terms of risk-sharing does not interact with the existing participatory model and therefore, they do not see a need to discuss it in terms of corporate governance. However, the new IG Metal strategy in the context of restructuring of the automobile sector shows a new attitude of the German trade unions towards employee share ownership.

The French social partners register various positions that inevitably reflect the plurality of actors. On the trade union side primarily, the positions of national confederal organizations are mutually integrated and offer various levels of concurrence. The position of the trade union movement has to take into account the abundant legislation promoting company savings plans that only partially coincides with the promotion of employee participation in the capital of their company. In France, tax incentives, the opportunities to save in pension schemes, the repercussions on wage structures and the cost of labour and the tendency of companies to export schemes overseas mean that the trade union movement is committed to assessments of the system rather than the governance of individual companies.

In the Italian trade union movement, CISL maintains that participation in risk capital, in order to participate in the management of company life, can indeed be beneficial to the company itself because it appeases social conflict and finances undercapitalized companies. CISL supports a strategic vision in which share ownership is fully implemented when it provides participatory mechanisms for employee-shareholders and a new capitalist culture in which equity participation must exist in companies regardless of their size. In Italy, CISL feels that employee share ownership has certain virtues; it consolidates employee participation and rewards the assumption of responsibility by workers in company transformation processes, even in economic terms.

The Alitalia affair, where the trade unions played a crucial role and where the assumption of responsibility determined the allocation of part of future profits to employees, is emblematic.

If in Turkey the search for democratic structures in industrial relations means such debate is premature, in new member states the wounds caused by the privatization processes of the 90s have yet to be healed²².

In the business world, the most recurrent observations reiterate those already expressed in the European Forum on Corporate Governance. In 2006, the group raised the following initial doubts - “members pointed out the possible risks of including employees or other stakeholders in the corporate governance debate. In some cases, their interests are used by management as an excuse for following its own line and acting contrary to the interests of the shareholders. This can even result in being detrimental for employees who are

²¹ Details regarding country case studies are available on the website www.governanceSindNova.eu.

²² The experience of employee share ownership programmes in privatization processes in new member states has been reported in “Lavoratori e capitale di impresa in Europa” (“Workers and Corporate Capital in Europe”), edited by SindNova, Quaderni SindNova no.18, Edizioni Lavoro, Rome, 2001.



shareholders, either directly or through their pension funds. One of the members also pointed out the OECD principles that deal with the role of employees only in very general terms and took the view that the Forum should stay within that framework²³.

The aim of the study carried out by SindNova with its European partners was also to confute or confirm the initial doubts expressed by the social partners. The following paragraph will deal with two recurring initial doubts: the conflict of interests that should weaken the participating trade union in its role as a negotiator and the excessive risk that the employee-shareholder is exposed to. The aim will then be to see how to organize employee-shareholders and how corporate governance is modified when the trade union comes into play.

Antagonist trade unions and the question of the conflict of interests (clusters 1a and 1b)

Although they are not always clearly expressed, trade union reservations revolve around the fear that the presumed conflict of interests can lead to under-remuneration of the labour factor and favour extra profits for the capital factor.

This can happen for two reasons:

- workers themselves can waive some of their demands, tempted by the possibility of obtaining greater advantages on profits or on the value of the shares held.
- on other occasions, negotiators may be less serene in their assessment when building economically important participatory-type relationships with the counterparty.

In fact, empirical records show that in the cases in question, employee wages established within the framework of collective agreements applicable to the respective companies, rank in the upper bracket or in any case, are above the sector average. Often, employees in these companies benefit from services and programmes that support work in various ways and tangibly help workers (from mobility programmes to career progress and life-work balance).

This happens in all the companies studied, with the exception of Dexia and Total.

In short, the idea seems to emerge that work is more remunerative in companies in which workers are shareholders, even when wages are established by collective or individual agreements. The concept can also be expressed in these terms: “open” corporate governance does not exhaust the need for an agreement, but consolidates it thanks to continuous and fully-informed negotiation.

In fact, negotiation can also be expressed through reiterated conflict marked by continual stop-and-go bargaining strategies. Naturally, this presumes overcoming of the existence of two antagonistic poles of interest.

²³ Quote from the minutes of the meeting of the European Corporate Governance Forum, 1 June 2006. ec.europa.eu/internal_market/company/ecgforum/index_en.htm.



However, collective bargaining can equally be seen as the expression of gradual modifications to the contractual clauses in a context characterised by the absence of trade union disputes. This determines the conditions for an agreement that is more stable because it is capable of leading to correct remuneration of the labour factor. Collective share ownership is in harmony with this latter method.

In fact, in the cases studied, this condition of the absence of trade union disputes seems to be an inalienable component of the governance structure. Obviously, an objection could be made that governance that is open to worker involvement does not solicit the need for employee share ownership. However, it cannot be denied that employee share ownership commitment is an incentive to the acquisition of the awareness of a new relationship dimension - that of corporate governance - that leads to the development of responsibility in the conduct of the subjects physically involved in the processes of corporate governance, including the use of labour and its remuneration.

In the cases studied, a conflict of interest is openly declared in the Irish cases. There, in fact, the experience of employee ownership is very recent and is the result of privatization and a liberalization process. It is clear to see what far-reaching changes Eircom and AerLingus underwent. Unions, shareholders and managers had to tackle dramatic situations caused by company restructurings and re-engineering but despite uncertainties for the future, the experience continues.

The question of excessive risk (cluster 2a)

A recurring observation in the trade union field is that share ownership burdens workers, already sufficiently exposed by the fact that their income and profession depend on the future of the company, with excessive risk.

The reservations of the trade unions are further fuelled by the financial scandals of the beginning of the century (that led to pressure by Community institutions for interventions to modernise corporate governance) that have made trade unions even more reluctant to accept certain PEPPER systems. The traumatic events registered in new EU member states²⁴ and experienced by workers in the 90s are still an open wound.

The invitation of the European trade union movement to reconsider its judgement on employee share ownership is therefore legitimate, but on this point our study focuses on assessing the real manifestation of risk.

The acquisition of shares by employees can occur via:

- shares given as part of salary (this does not occur in the cases studied).
- the allocation of voluntary or compulsory savings (BPM, Dexia, Total, ENEL).
- additional and supplementary payments, that is, not replacing current income flows or the current equity of the worker (Handelsbanken, IsBank).

²⁴ Quaderni SindNova no.18, quote.



The last hypothesis, which is also quite frequent, would make trade union objection unfounded as stock received would be an additional opportunity, labour being already fully remunerated. In the absence of a share ownership scheme, that wealth would simply not exist for workers. For example, when they retire, Handelsbanken employees can count on a considerable additional sum. Anyone who has taken part in Oktogonen since the start of the profit-sharing scheme will benefit from capital of approximately 1 million euro in addition to (and not as a replacement of certain items of) the pension income that all other employees in the sector enjoy.

On the other hand, with regards to the possible replacement of the cash performance with shares, two possibilities practiced today can be identified. The first is retribution through the allocation of shares or options on shares in order to link the interest of company management to the interests of shareholders. This form of remuneration is popular in top-level professions and therefore, does not concern us. Another method could be to assign (part of) the bonus from participation in company profits in the form of shares. Here, the risk the trade union world expresses is real. The complexity of the wage structure in Europe tends to integrate forms of variable retribution in order to guarantee higher salaries that can tap into the greater wealth produced by the company. In Europe, these reward mechanisms are increasingly becoming part of a complex policy of labour retribution that is structured in France, well-diffused in Italy and being explored in many other countries, like Belgium, Spain and the United Kingdom.

Assigning the bonus in shares can lead to a replacement effect. Collective bargaining therefore has the task of preventing this effect taking place or guaranteeing that this exchange is warranted by a “valid” reason.

If we look at the Irish cases - Eircom and AerLingus - we discover the full potential of employee share ownership in terms of good governance, even when the reorganization of a privatized sector is at stake. In particular, in the liberalization of the telecommunications sector in Ireland, the trust managing the employees' shares has acquired recognised authority, so much so that its representative was convened by the government in order to discuss the future organization of the telecommunications sector in Ireland.

The Irish experience reminds us of the FLAEI strategy (Italian Energy Sector Trade Union). With a strong representation among ENEL workers, FLAEI would be ready to use any tool in order to give workers a say in the governance of a company that is so strategically important to the wellbeing of the country, workers and citizens. The general secretary of FLAEI is aware that traditional industrial relations bodies are unable to grasp the complexity of the work of ENEL as a company and therefore, hopes for greater commitment and assumption of responsibility by workers through participation in corporate governance. To achieve this objective, the organization aims to also take advantage of company-level bargaining to favour the collective share ownership of ENEL employees. It will have been worth it if, at the end of the process, the trade union has acquired a voice at the source of corporate governance, in other words the Shareholders' Meeting.

The financial tools for managing risk become a technical problem. FLAEI poses the problem of the impact of large utilities in the life of citizens and sees new governance as a strategy for preserving the market serving the community.

In France, the question of the structure of wages is strongly felt. Providing incentives for compulsory saving of labour income has forced companies to define the concept of global



retribution. Using this approach, companies set the ceiling of labour costs they are willing to sustain and negotiate the various items that make up the total amount.

In this way, the various forms of employee savings promoted through the use of incentives compete with remuneration; the risk here is that of surrogating the monetary performance with elements of an uncertain value, such as shares and other financial securities. The result is that, in France, the risk management of savings within the framework of labour income dominates compared to assessing the repercussions of share ownership on corporate governance. This perhaps offers a clue as to why, in the country with the longest-standing tradition of financial participation, the link between share ownership and corporate governance is still largely unexplored.

With regards to the allocation of savings, companies can ask their employees to invest their savings (even pension savings) to company shares. Here, the effective exposure to risk must be carefully assessed. Share ownership schemes provide for high initial benefits that make investment in shares in their own company extremely advantageous at the start, reducing the risk of loss of capital invested and withdrawn from the equity of the worker (for example, for each share purchased by the worker, two shares are given by the company).

In France, trade unions have created an Inter-Union Committee on Employee Savings (CIES - Comité Intersyndical de l'Épargne Salariale, which CFDT, CGC-CFE, CFTC and CGT adhere to), that works in the field of compulsory collective bargaining on trade union savings. The aim of the committee is to propose tools for employee salary saving, favouring regulations that benefit workers and directing corporate governance towards social responsibility. Although the concerns of the French trade unions lie in the financial aspect of the issue, they cannot neglect the fact that share ownership triggers corporate governance and this puts the trade union in a position to offer benchmark values for corporate governance that are outside the traditional channels of industrial relations.

The case differs in crisis situations where the purchase of shares by workers can be used as an extraordinary tool to protect jobs. In this case, by its very nature the risk is high, but cannot be compared to other situations because jobs and labour income are already compromised. Here, the risk propensity for the worker rises until it becomes an authentic entrepreneurial propensity in the case of worker buy-outs (this is particularly true in small and medium-sized enterprises). *“It was a crisis-crisis situation, connected to workers’ sacrifice that created an opportunity”* was a statement to describe the Eircom and AerLingus cases.

In small and medium-sized enterprises with employee ownership, investment risk coincides totally with company risk. This risk can however be treated using two tools, as the Spanish experience shows. The Spanish legal system does not make it possible to totally overcome the problem of divestment. However, legal devices that address capital can contain risk. It is important to recall the obligation for a special reserve fund to safeguard the capital invested by workers and the introduction of types of shares or capital shares that favour the transfer of ownership between workers.

A solution has been found at Tullis Russell is that all employees, after they have worked for the company for a year, receive free shares that give an annual profit. After 5 years, employees can freely sell their shares providing there is enough money available for the fund to buy them. Ownership is real; it can be converted into liquid capital when an employee



needs money. There are restrictions on how many shares people can sell and in fact, employees have the lowest priority - over the years the shares of people who have retired or left the company have been bought, but often none came from active employees. This is accepted because an elected body makes the rules, in consultation with the Board. Delisting from the stock exchange has not been a problem for Eircom or its ESOT.

By adopting a pragmatic approach it is therefore, possible to establish that the issue of excessive exposure to risk for workers is real, but can be managed and reduced to a totally acceptable share of risk (as occurs in the cases studied). It is however, clearly necessary to bear in mind which elements of a share ownership scheme reduce this risk and open the way to opportunity instead.

Holder vs. Owner

Sometimes employees must be prepared to become owners. It can be part of trade union strategy or, on the other hand, trade unions can intervene later.

It may happen that enlightened and charismatic men decide to change company culture and become themselves the driving force towards innovation. When Jan Wallander decided to reverse the unsatisfactory trend of his business, he planned a profit-sharing scheme that would make employees co-owners of their own bank. He was perfectly aware that not enough had been done to achieve his goal. Employee share ownership was part of a plan that would make Handelsbanken one of the most competitive banks in Sweden.

When the family owning Tullis Russell decided to dismiss their ownership stakes, they felt the need to protect their employees. The ideological commitment behind this decision (more than other factors that lead to employee financial participation, such as privatization, problems or new company start-ups) led to the involvement of a series of subjects, such as, for example, owners, owners/managers, owners/managers/employees, employees/managers and employees.

In the Kardemir case, there was a general desire to save the factory that the well-being of the entire region was relying on. Various actors, from Chambers of Commerce to various groups of stakeholders, had stepped forward. The determination of the employees prevailed and they gained control of the factory.

Although in the distant past, the decision to make IsBank employees owners of the bank belongs to a single man, Mustafa Kemal.

Based on our cases, there is a cultural factor linking employee share ownership and corporate governance.

Should we therefore ask ourselves what is missing for a shareholder to become an owner?

The *holder* possesses an equity share. He makes an investment whose result is, logically, determined by market performance. If the employee-shareholder acts individually, his



position is like that of a small shareholder. For the latter, the investment strategy comes down to two options: either holding on to the share or selling it. The choice between the two is dictated by equity-type financial considerations, in other words, the possibility of being more or less rich by holding onto or relinquishing ownership.

The *owner* is a less fatalist holder. He is fully aware that the success of his investment does not depend on market plots and intrigues. He is conscious of the fact that the strength of his investment derives from the economic power of the company he is co-owner of. He knows that the first step of any complex decision-making process begins with the owners. More than the Stock Exchange list, the owner is concerned with company information statements. The owner thus assumes responsibility; a maturity that pushes him towards promoting his investment thanks to his own personal contribution and commitment.

The equity element pertaining to ownership of the share is not therefore, sufficient for the shareholder to define himself as a (co)owner. For a holder to become part of the category of owners it is necessary for the equity implication to be accompanied by two other characteristics. The first is heterodefined and concerns the availability of rights connected to the equity share. Basically, this is the right to vote in the Shareholders' Meeting and all its repercussions. The European legislator assumes that the price paid for the share is proportionate to the right the shareholder can effectively exercise in possessing that share. The wording of the phrase implicitly admits that too often in Europe the shareholder finds it difficult to exercise these related rights²⁵.

The distance between holder and owner also concerns the definition of different classes of shares and access to the types of shares that make the exercising of rights associated to ownership more or less easy (capital without a vote, capital with a proportional vote, capital with many votes, etc.). It concerns access to documents and correct and prompt information, the right to ask management questions and receive motivated replies and the ability to confer or receive proxies.

The functioning of the Shareholder's Meeting is a problem for the aspiring owner. Through diffused share ownership, workers acquire the right to participate in company life and we can presume that technology will make exercising the right to vote easier²⁶.

Having checked the willingness to exercise the role of owner by voting (exercising of a right) in an informed and participatory manner (responsible exercising of a right), the holder-owner metamorphosis is still not complete. In fact, the second characteristic of the owner is the willingness of the subject to exercise such rights and this is entirely subjective.

Compared to the holder therefore, the owner encloses the equity element, legal status and on top of that, a behavioural attitude.

However, having created the conditions for an informed vote is still insufficient to make workers either co-owners or subjects participating in the life of the company. In the

²⁵ Directive 2007/36/EC, whereas 3.

²⁶ European institutions adopted concrete measures in directive 2007/36 dated 11 July 2007, regarding the exercising of certain shareholder rights in listed companies.



condition of single small shareholder, an employee denotes the irrelevance of his shareholding and this discourages active participation or the assumption of responsibility.

Small shareholders forming associations is a way of making their voice stronger. This is also due to the fact that a small shareholder could have serious expectations regarding their influence on company life if he can make his voice heard with lots of other small shareholders. Why is the idea discarded *a priori*? More than bureaucratic difficulties - which would nevertheless occur - what weighs on this is the difficulty in pinpointing and organizing a group of shareholders motivated to form an association, in other words, with common interests and fully-shared objectives. The fact that small shareholders form an association is a way for making themselves heard.

For employee-shareholders, forming an association has a specific meaning. For them, belonging to an association traditionally means being member of a trade union. This means that in share ownership models that develop to the point of becoming an integral part of corporate governance, the trade union has a strong role that leads to the triangular governance management model.

With the exception of the United Kingdom (Tullis Russell and John Lewis Partnership), trade unions are deeply-rooted and become leading actors in the functioning of a company. They are both the promoters of a culture of participation and strong actors capable of dealing with the choices of shareholders in order to grasp opportunities. They are the cradle of participatory experiences; firstly because they kept them going when they were in the early stages (despite adopting approaches that are diametrically opposed, as is the case with ENEL and Dexia) or because they supported them.

There is a recurring aspect; the share ownership of employees that influences governance coincides with a high rate of trade union membership of personnel. It is difficult to establish a causal relationship between the two. However, it seems clear that the coincidence of the two phenomena means that the trade union participatory base is the same as the body that associates employee-shareholders. This means that trade union life has a direct influence on the conduct of the organ that represents workers (associations, foundations, pension funds, ESOPs and so on).

Ownership and Voluntariness

Forming an association, expressed fully by being an owner, has another implication which affects the concept of voluntariness. Maturing a responsibility means fully assuming the decision to become shareholder. Employees can be tempted, helped or forced to make this decision but, without doubt, it has to be voluntary.

The participatory element becomes a fundamental step in the metamorphosis of the holder. Having become an owner, he is part of a collective. We should therefore, not underestimate the individual predisposition of the employee-owners towards share ownership and gaining awareness of being part of an organized community with a corporate objective; the concept



that achieving a corporate objective also depends on the continuity of his participation in collective life.

The collective organism will acquire an autonomous and independent purpose that promotes the decision to belong, but makes that purpose independent of the desires of the individual. The collective organism needs individual membership in order to maintain its strength - and along with this its prerogatives and role - and not see it disappear. This is a virtuous circle of values because, whilst becoming part of an association is an individual and responsible choice (it is voluntary), a participatory status imposes a responsibility towards the collective that translates into obligations of permanence (in other words, it conditions voluntariness).

At Handelsbanken, participation in Oktogonen is not compulsory, but an intrinsic part of the status of bank employee. When questioned, all those interviewed replied: why should an employee choose not to participate?

At JLP, partnership is basically an intrinsic condition in the employment relationship.

At BPM, employees do not have to be persuaded to purchase shares and become members of the association "Amici della BPM". On the contrary, simply providing information on the role of employees in governing the bank was sufficient to convince over 90% of BPM employees to take part in collective share ownership programmes.

The prospects for the success of collective share ownership are a discriminating element for implementing the participatory process and keeping it alive. Whether implementation is determined by an enlightened man (Wallander, Ataturk, Mr. Erdal) or a traumatic event (a corporate crisis such as at AerLingus, Eircom and Kardemir, transition to market economies like in the Hungarian cases, necessary domestic entrepreneurial training such as in the patently clear examples of the companies SLL and SAL, members of CONFESAL), its continuity depends on the promotional actions supported by collective subjects, such as the trade unions (this is common to the cases studied in Italy, Sweden, Turkey and Ireland), or entrepreneurial associations (CONFESAL) that promote the original spirit. Only in France does public power legally press for the dissemination of employee share ownership schemes.

In many of the cases studied, new employees did not have a choice regarding their involvement in ownership, with all that this means in terms of involvement in governance. This is now part of the culture of the organizational unit they belong to.

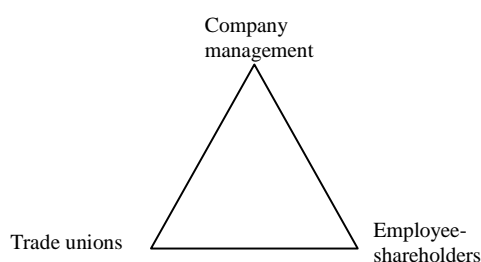
Collective ownership and good governance. The question of responsibility (clusters 2bis and 2ter)

In some cases, workers exercise control or a relevant influence with minority capital shares: 10% in Handelsbanken, about 2% in BPM, 42% in IsBank, 15% in AerLingus and 35% in Eircom. In other cases, they hold 100% of the capital or the right to vote, such as in Tullis Russell and the John Lewis Partnership. At other times, minority shares can lead to a form of employee participation in company management bodies (the threshold in Dexia is 5%). In others, the share represented by employee-shareholder organizations is not sufficient to obtain any role in governance (e.g. ENEL).



Empirical evidence suggests that share ownership could not impose itself as a strategic decision by employees in competition with institutional investors. It demands rules that favour employee ownership above other pretenders. These are not imposed rules, but are generally the result of statutory choices. These are forms of alteration of the proportionality of corporate control that however, derive from clear and transparent independent corporate choices. Employee-shareholders can be favoured in two ways: as the beneficiaries of new share issues and through the creation of profit-sharing schemes to increase employee share ownership or limits to the accumulation of capital valid for subjects external to governance. When this advantage is not offered, as happens at ENEL, there is little hope of success.

In the cases analysed, the descriptive breakdown of corporate governance in a company with employee-shareholders can be illustrated by a triangular relationship that centres on company management, employee-shareholders and the trade unions.



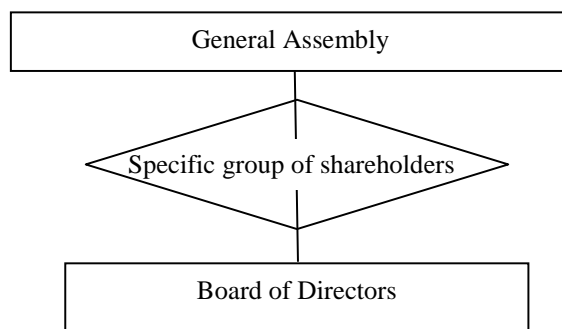
This breakdown applies to all the cases studied, with the exception of the United Kingdom (Tullis Russell and the John Lewis Partnership). It is at the potential stage in the cases of DEXIA, ENEL and in particular, in the French experience. It does not seem to be a model applicable to small and medium-sized enterprises.

In France, exceeding the ceiling of 3% of the holding of company shares by employees would impose the appointment of at least one director by the employee-shareholders. In fact, the tendency is to reproduce a triangular model of governance. Exercising this right would imply a participatory mechanism that would put employees in a position to agree on a name or a series of names to be included in the company management team. Wherever this were not possible, the right could be exercised by an employee savings fund called *Fond Commun de Placement d'Entreprise* that holds shares in that company. Usually with a contractual origin, these funds enjoy democratic management in which participating workers are represented in the administrative organ by their trade unions.

It is interesting to see how in our cases, somewhere in the governance process, players (main shareholder groups) feel the need to introduce forms of democratisation that aim to put shareholders on egalitarian positions regardless of the quantity of shares they control.

For this purpose, in some cases a diaphragm between the shareholders and the Board of Directors is set up.





The Nomination Committee in Handelsbanken, the Share Council in Tullis Russell and the Central Representation Council in AerLingus are an example of this. They play very different roles and have very different competences, but we have noted that such bodies decide on the basis of consensus. What they do have in common is the idea whereby the weight of the stocks held by each shareholder is not important. Only at BPM, does the “one man-one vote” principle become the dominant form of governance (cooperative regime). It is therefore, very difficult to draw common conclusions on how shareholders are represented in the committees and groups stemming from the Board of Directors.

The existence of a trust or an entity (shareholder associations, pension funds and suchlike) collectively holding employee shares can restrict the range of events concerning restructurings and mobility²⁷.

Often, employee-shareholders do not like such events. Normally, corporate governance is the result of a fragile balance of elements, including national legislation and codes and practices that would be difficult to reproduce in different environments. Furthermore, the EU area is not uniform, especially as far as industrial relations and corporate governance are concerned. In general terms, we can assume that the dominant group of owners will be unlikely to accept a shift in the control of the company if this should imply a dilution of power.

This is evident in all cases in which employee share ownership followed a privatization process and employees put an end to a series of speculative or hostile takeover bid attempts (Eircom is a case in point).

In the specific case of employee share ownership, we have seen that companies develop specific corporate cultures that are (even with regards to large groups) well-rooted in the territory in which they operate. These different cultures also lead to socially advanced behaviour in the way business is conducted.

Mobility would thus mean a change in the nature of the business: when mobility implies a denaturalisation of corporate governance and change can become too uncertain a challenge for everyone and too costly a risk (a clear example of this are Tullis Russell, Handelsbanken and BPM). If we refer to our cases, we can state that employee share ownership becomes a

²⁷ Here we refer to the range of events underlined in chapter VI of the Report of the High Level Group of Company Law Experts, cit. In a nutshell, the group of experts describes various types of corporate transactions like a change in company head offices, mergers, acquisition of subsidiary companies, events concerning the corporate capital.

factor of resistance to mobility, not necessarily because employees are reluctant to change, but simply because company sustainability is at stake. Of course, this is only true when change can alter the ownership structure and modify corporate culture. BPM is an emblematic case.

Sometimes, restructuring and change are an option to be considered when companies face difficult situations, even if owned by workers. Here, the sense of responsibility plays a fundamental role; employees and their representatives must accept change and reorganization even when it has costs for the workforce.

What we have learned from our cases is that employees are not “obstinate” owners. When the company (let’s say, the business) shows evident shortages and employees are not in the position to introduce changes, they can decide to step back and end their ownership. This should also justify the fact that surviving cases are normally successful ones. Previous studies showed that employee share ownership plans were triggered by companies to deal with difficult situations, but they did not last long once the crisis had passed²⁸. This is supported by the widespread opinion that the “exit strategy” is the natural attitude of employees (see the Kardemir case, but even at AerLingus the experience seems to be constantly under discussion).

As mentioned, changing from being a holder to an owner is a long cultural process that fades quickly. We can assume that the reiterated concept of responsibility recalls the idea that employees are pretty aware of the business they are employed in and secondly, they will be likely to opt for an exit strategy rather than consciously condemning their company and their jobs.

To summarize:

- dominant groups of shareholders would be unlikely to alter the combination of factors that have determined their dominant position.
- encouraging a direct involvement of stakeholders in company ownership has the direct effect of enlarging the composition and the secondary effect of inducing a lower risk profile in corporate governance (this is well represented in the three banks).
- one can assume that when employee-owners gain a space in corporate governance, the business will be well-rooted in the territory and less inclined to use “mobility” for speculative reasons or to seek cheap labour.
- responsibility becomes a two-way concept that the company and its management also have to stick to.

Responsibility and control. New corporate culture for managers and trade unions

The relationship dynamics of this triangle are outside the traditional and formal framework of social dialogue. In the companies studied, we saw that the parties concerned chose to base

²⁸ These aspects have already been analysed by SindNova in its publication “Lavoratori e capitale di impresa in Europa” (“Workers and Corporate Capital in Europe”), Quaderni SindNova no.18, Edizioni Lavoro, Rome, 2001.



their relationships on the balance of independent rules and practices that history has rendered strong. That's because history has made them part of the organizational culture. Each case is an extremely unique experience. As well as the triangular relationship structure, what they have in common is constant reference to the concept of "responsibility".

Management whose benchmark shareholder is organized labour must have precise cultural connotations. In this type of company, management has to dialogue with owners that are different to those traditionally operating on the financial markets. These are owners who share in the destiny of the company, are constantly present in the workplace and are particularly invasive. Furthermore, employee-owners assess management on the basis of parameters that are not orthodox compared to the traditional financial culture. Attention to the return on capital and the creation of profits exists, but the performance of the company is assessed along with other variables such as the sustainability and sociality of labour, the consolidation of a corporate culture and the optimization of the relationship with employees, clients/users and the territory.

Therefore, along with other fundamentals of good governance, management training is a crucial aspect for its sustainability. Management's orthodox cultural background, acquired through educational qualifications, management training and experience in various companies, rarely addresses the needs of these companies. This is why management is often formed within the company unit or selected from the territory on which the company operates (some examples: Handelsbanken selects top management within its own staff, BPM finds administrators among the most qualified professionals in Milan, Kardemir has co-founded a university).

The employee-shareholder seems to be more reassured by the expertise of company managers, their compliance to the corporate cultural model and their ability to ensure corporate performances maintain a high level. Although important, the salaries paid to management, which are generally entrusted to a special committee of the Board of Directors, are never disputed by employee-shareholders.

Responsibility is a challenge for the trade unions too.

A typical objection expressed by those representing corporate management is that the trade unions, by their very nature and especially in Europe, are supra-company and generally sector unions and are entrusted with representing the interests of workers beyond the company dimension.

The conflict of interest is expressed properly here. The trade union-shareholder continues to assess the consolidation of a production sector or territory. The company is only a fraction of its field of interest. Furthermore, trade union management builds professional relations with direct competitors and has access to potentially sensitive information.

For this reason, some corporate actors instinctively consider trade unions in conflict with the position of dominant shareholder in a single company (an opinion disproved by the previous paragraph).

The less the rules of the game are formalized, the more good governance will depend on the level of responsibility a trade union manages to express. When governance rules are informal, there are higher risks of deviating from correct practices.

Company effectiveness is at stake and not, as many have presumed, the efficiency of the



negotiating function of the trade union. The most likely outcome of that would be the end of the experience of participation rather than lower labour salaries.

A fair solution could be the following. The company trade union dominates the employee-shareholder body. The decisions of employee-shareholders are taken in the exclusive interest of the company. Through trade union participatory mechanisms, employees-partners-shareholders go beyond their particular interests in the national trade union. Statutory democratic procedures operate and mediate interests within the organization. All fine, so far.

The problem arises when, due to the importance of a particular company context, the national level tends to become interested in facts concerning that specific company. Often the empirical importance of companies, such as BPM, HB, IsBank and the Irish cases, highlights a strong influence on the national level, sometimes even the federal level, in the fortunes of companies with employee-shareholders.

The trade union officials that operate in employee-shareholder associations must be independent of the trade union leaders that represent sector or supra-company interests.

Some small formal stratagems may solve the problem. For example, management of the organism representing employee-shareholders (that express the opinion of the shareholders in the Shareholders' Meeting) must be independent of national management.

According to the protagonists of the cases analysed, trust can only be built through the daily conduct and real independence of local trade unions from national trade unions, in particular in choices that concern the setting-up and strategic life of the organism representing employee-shareholders. In this case, the most effective form of control is the participatory base that is heavily involved and well-informed. Employees, especially if they are shareholders, naturally concentrate on the success of their company and do not tolerate deviations or distractions by decision-makers, whether they be managers or owners and whether they be independent or the expression of the employees themselves.

Employee control in SMEs

The number of small and medium-sized enterprises in Europe is the highest in the world and in many European countries they represent more than half of the whole economy. In France, 46% of workers are employed in enterprises with less than 50 employees. We quote France, as the French strategy on employee share ownership openly aims to disseminate employee financial participation in SMEs.

In SMEs, employee share ownership meets the concept of entrepreneurship. However, the French trade union organizations are mostly focused on investment diversification and cannot see how employees could be protected against the risk of losing their capital and savings. They consider the cooperative model the most suitable for helping employees to become owners of the company.

In some way, in France social partners cannot see employee ownership in SMEs as a strategic option for limited-liability companies. In other cases in Europe, the situation is different.



All the ESOPs in Hungary are established in small and medium-sized enterprises (with less than 250 employees, except for the railways which have more: 400).

The successful case of Herend, a porcelain manufacturer, was the first. Other successful cases are: UVATERV, a company in the construction sector; MAV Bombardier, railways, SOLVENT, a trading company in the meat industry.

Herend was a workshop for employee share ownership schemes. It was the place where the idea was generated and it still remains an outstanding example. One of the reasons behind the choice to involve employees in corporate capital was that the potential of the company was based on the skills and know-how of the people and not on the technical equipment. The other reason was that the company had recorded positive performances for a decade. There were many potential buyers and that is why, when trade unions, both local and national, showed the intention to join forces and proceed with the buy-out, political support suddenly emerged. At that time, all 1,600 employees were pleased to participate in the buy-out. In 1992, when the ESOP started, in Hungary there were around 300 ESOPs and the HEA association had 104 members. Today, there are 32 members and 52 ESOPs. There are several reasons behind this: capital concentration in the hands of managers or external investors; the reduction of the number of ESOPs because of their non-collective structure, which allow individual employees to sell their shares; the end of the business. Many consider this experience at the end of its cycle.

The Hungarian case shows that employee share ownership can help promote change in SMEs, especially in labour-intensive operations needing a qualified workforce.

However, we have also learned that company restructuring is too limited a motivation to make employee share ownership last. Without a wider political consensus, such experiences will slowly fade away. Employee financial participation in SMEs needs legal and economic support.

What is relevant to the Spanish experience is that all the employees of SAL and SLL (workforce-owned companies) strongly participate in company governance thanks to the spirit of the business and the legislation ruling the business.

Legislation intervenes in several areas of company life, such as the right to preferential acquisition, preferential rights in capital increases, reserve funds that cannot be shared out and that allow shareholders to join and leave, restrictions on the number of non-shareholder employees, restrictions on how many company shares can be held by non-employees and by individual shareholders, etc.

All this gives company governance a specific identity. The law imposes the following constraints on company governance (elements that strongly influence the structure and behaviour of owners and management):

- the majority of corporate capital should be owned by employee-shareholders as a whole who personally and directly work for the company against payment and who are on long-term contracts for indefinite periods;
- establishing a limit to the maximum amount that any one shareholder can own, normally 33%;
- the existence of two types of shares or shareholdings dependant on whether or not the owners thereof are company employees;
- preferential right of acquisition and transfer of shares or shareholdings owned by workers;
- setting up a special reserve fund for the purpose of making good any losses incurred.



These all are key points which, along with tax benefits, contribute to promoting and developing this type of company. Companies must comply with the above-listed conditions in order to maintain their status as owner-employees. Losing this classification may force the company to pay back all tax benefits received.

For this reason, managers are always keen to preserve and maintain all conditions giving them the possibility to benefit from such specific legal status.

Latvia and Croatia are small countries with a weak economy. Therefore, employee financial participation is still an unexplored tool. However, the social partners perceive the importance of such schemes, even in a production system where domestic capital is mainly concentrated in SMEs.

The notion of financial participation is new for Latvia and its dissemination began after the PEPPER report was published. In 2007, the social partners in the tripartite committee introduced the idea of Employee Financial Participation (EFP). A working group was established and because of this initiative a number of amendments were introduced in the tax system to encourage employee financial participation. However, the measures envisaged are insufficient. Beside taxation, which is the main obstacle, a further problem is a lack of understanding of the system and the poor long-term strategies of the enterprises.

In Latvia the conditions which may promote EFP in the current situation are: the profit tax rate that is lower than the personal income tax rate; capital gains are not taxed; a need to reduce government spending (possible field of application of EFP); under circumstances of low salaries and growing inflation; need to give workers financial support through salary measures.

Conditions which, on the other hand hamper the implementation of EFP in Latvia are as follows:

- 1) Existing legislation, which is insufficient to promote EFP. In fact there is no legislation that is specifically dedicated to EFP. The laws enabling forms of EFP refer exclusively to employee share ownership.
- 2) The country's budgetary constraints, which force the government to make economic decisions focused on the short-term to increase revenue.

However, there are also aspects that refer to the enterprises and employees that hamper the implementation of employee financial participation, despite the positive attitude shown by employers and trade union organizations. In Latvia, the Tehnika case was studied as a paradigm of an employee share ownership scheme; initially the scheme helped the company to become successful on the market, but once the business was stable, the scheme appeared to lose its very *raison-d'être*.

Lessons to be learned:

Employee share ownership in SMEs is possible. Financial technicalities are not an obstacle for sustainable ownership schemes.

On the one hand, they can help companies to overcome difficult moments, but they need a favourable legal and tax regime if they are to last.

The promotion of employee share ownership in SMEs can be more successful if matched with social objectives (promoting local entrepreneurship, helping the income and employment of disadvantaged categories, supporting small businesses based on highly-qualified human resources, etc.)



SMEs need a comprehensive institutional support to make employee share ownership stable and sustainable. Such institutional support should be a combination of legal measures, tax regimes and positive policies.

Tax regimes raise two types of problem:

- Tax allowances to employees often lead to aid to companies. Tax regimes can prove incompatible with EU legislation on state aid.
- Countries with fewer resources cannot afford to promote PEPPER instruments based on tax benefits.

In terms of governance:

- Workforce-owned companies should be led by managers and not by employee-shareholders.
- The triangular model of governance is not applicable and trade unions will refrain from playing a role in governance.
- Renewing the ownership structure (replacing former employees with new entries) is a factor of success for the company.
- Trade union rights will be guaranteed and collective bargaining will be present (unlike what normally happens in companies of similar size).

PART III

CONCLUSION



Some final thoughts

The study carried out by SindNova and its partners starts from empirical evidence and then offers grounds for drawing up a more general assessment of experiences of the governance of companies dominated or strongly influenced by employee-shareholders.

We focused our attention on the ownership side and have thus shown how employee involvement in company equity spreads its effects to company governance and culture.

Compared to traditional forms of employee involvement normally promoted in the European social model, we have highlighted a prevalence of autonomy and responsibility. Governance mechanisms in which employees have a role are not constrained in hetero-defined rules, but focus on rules freely chosen by the players that are protagonists of company events.

Keen to respect company law, good governance rules and constraints imposed by the culture and environment in which they operate, company partners (shareholders) shape their partnership to run the business as successfully as possible.

Employee share ownership does not necessarily mean to take over the business, but the desire of employees to have a voice (assume responsibility) on ownership and start dialoguing with capitalists. At Handelsbanken, Dexia, IsBank, BPM, Eircom, AerLingus, Kardemir and Total, employee-shareholders (and often the unions themselves) share ownership with other groups of shareholders. The aim is not to replace capital, but to have a role where decision-making starts and where the supreme interests of the company and its employees are at the stake.

Where this happens, a new partnership between labour and capital will emerge and thanks to enhanced internal cohesion, the company will be more competitive and fairer with its employees. This theoretical principle has been conveyed into concrete terms by Jan Wallander, former CEO of Handelsbanken. Employee share ownership was one of the ingredients of the bank's far-reaching reorganization in the 70s.

The ETUC mentioned renewed partnership as a factor of competitiveness for modern companies on the global market. Empirical evidence shows that such a partnership, when based on employee share ownership, is the result of the cultural maturity of all the actors involved. In this case, it is likely that company governance reproduces a triangle pattern occupied by management, employee-shareholder and trade unions.

There is something valuable in the decision of employees to organize in order to have a voice. It leads us to think that lawmakers should support and encourage employee financial participation; for instance, by offering legal measures and tax regimes that offer employees a concrete opportunity to be proactive shareholders. However, the lawmaker will leave actors free to decide to start a new partnership and, if they wish, the lawmaker shall refrain from imposing predefined models, but will leave partners free to tailor partnership rules to their actual needs.

Individual or collective ownership?

Normally, in public limited companies (or limited-liability companies) controlled by employees, employee shares (or fractions of capital) are held by an entity that could be a pension fund, an Anglo-Saxon style trust, a foundation or an association of employee-shareholders (see table 2 in the annexes). Employee capital can also be divided and held by different entities. In this case, each company is a law unto itself. The independence of



company offices leads to various options. Obviously, the broader the range of options, the more efficient the final solution.

Profit-sharing is a recurring theme. Sometimes it fuels employee share ownership, at other times it simply fuels the sense of belonging of employees. It is neither bargained nor negotiable and is undoubtedly an additional element that does not influence the setting of salaries.

One of the possible solutions is individual share ownership alongside collective ownership, even if this is more probable in small and medium-sized enterprises or in companies not listed on the Stock Exchange whose shares cannot be transferred or can only be transferred under the control of the company itself.

Tax regimes also influence the form of governance. In the full description of the cases analyzed it is possible to see operations on company equity and loans aimed at maximizing profits. This makes life more complicated and sometimes influences the allocation of shares to employees and their maintenance.

Given such complexity, it is evident that governance is also the result of historical and environmental conditions; all companies studied are deeply-rooted in the territory and represent a piece of the culture of the area in which they have been established.

During the first stage of our study some, above all from the trade union side, had pointed the finger at the potential conflict of interest of employees (namely their representatives) in the dual role of owners and bargainers. They also raised the issue that employees-owners would be overexposed as their income and professional life already depended on the success of the business.

Both objections can be disproved by the cases studied. Our empirical evidence shows that labour is remunerated above the average for the sector and main competitors. Overexposure is real, but can be managed and reduced to levels of risk that employees find totally acceptable (and accept). However, it is necessary in share ownership to have a clear idea of the risks involved and the fact that these may also open the way to new opportunities.

However, we have also learned that new opportunities pose a difficult challenge. Employees and trade unions are not themselves immune from capitalism diseases. As capitalists, the weakest point we have revealed is that trade unions tend not to formalize the choices (independent) that govern relationships between themselves and the body representing employees-shareholders. The less the rules of the game are formalized, the more good governance will depend on the sense of responsibility a trade union manages to express. Here overall company efficiency is at stake and the most likely outcome of any deviation from good governance will be the end of the employee share ownership experience.

The matrix of employee involvement in company governance was the backbone of our project. We can assume that employee financial participation schemes based on equity ownership and profit-sharing do not alter the dynamics of the system of industrial relations, but on the contrary exalt its characteristics.

In concrete terms, this means that traditional forms of participation (cluster, consensus-building) are reinforced. On the contrary, it cannot be stated that the adoption of employee financial participation results in the establishment of traditional forms of employee



participation.

Collective bargaining becomes more efficient. In the most advanced experiences, more stable collective bargaining leaves room for human resources to concentrate on qualifying human capital.

In terms of sharing risk, employees have developed different strategies in dealing with owners. What is certain is that if ownership gains power in governance it must become a strategic interlocutor for employees too. Equity participation is a well-known experience in Europe. Even though statistics do not permit quantification in EU27, it is evident it is a growing phenomenon²⁹.

The experience of this project shows that real involvement in company governance is something more than the simple fact of holding equity shares by employees. A holistic approach is necessary that can take into consideration these three main elements:

- to favour the access of employees to company equity (tax regimes, savings plans, share granting schemes, etc.).
- to modernise company law in the direction of improving the ability of minority shareholders to have a voice (stakeholder rights, improving protection and opportunities for minorities in the General Assembly, transparency of governance and full access to prompt and complete information, etc.).
- to promote an employee ownership culture, exploiting the potential of social dialogue.

Some prejudices expressed by the social partners on employee share ownership originate in an attempt to consider the large-scale consequences it can have. Indeed, our cases do not allow us to affirm that workforce-controlled companies always perform better than their competitors. However, in the light of the experiences studied, we can state it is possible to build a fully successful social-oriented business thanks to open governance in which employees exert (even) a dominant influence. This is already something; it is a starting point.

How do unions experience their condition as new capitalists?

Once involved in corporate capital, unions can develop a strong sense of responsibility. As key stakeholders, trade unions are able to orientate governance in a positive way just as the concept of open governance intends. Once equipped with defences against capitalism diseases, trade unions add a level of dialogue with the financial market and condition the ways in which management responds to the financial market. Thus leading management to opt for long-term strategies and keeping companies away from speculative operations.

Trade unions can represent a new way to be investors. They will provide managers that they have appointed with parameters or priorities that may differ from orthodox financial culture. This means that company management (accountable to shareholders) will also adopt new tools and methods to meet the investment strategies expressed by their benchmark shareholders.

With regards to privatization, it seems clear that pushing employee share ownership until it gives employees a dominant influence in the governance of privatized companies has the

²⁹ The EFES observatory estimates 9.1 million employee-shareholders in the Annual Economic Survey of Employee Share Ownership, 2008. It is a growing phenomenon even if the current crisis has reduced the value of shares held by employees: “because of the crisis, the value of shares held by employees has dropped from 258.3 billion to 240.2 billion euro, marking a decrease of 15.2%. However, this is still much more than the 2062 billion of the previous year. In relative terms, the share capital of employees forms 2.63% of the risk capital structure”.



effect of reducing the number of events that can concern the company itself.

If the need for liberalization is added to this, it can have a dual effect; it makes liberalization slower, but at the same time a qualified ownership is constructed that can orientate the reorganization of the sector in the interest of all those involved.

A final remark on small and medium-sized enterprises. It is undoubtedly true that small and medium-sized enterprises do not need governance mechanisms because the owner decides. This means that when employees hold part of the equity they are automatically part of the decision-making process, without the need for mediation.

The methods and motivations for an employee buy-out have already been studied. Our study shows that despite the simplest governance systems, employee equity ownership in SMEs deserves complex legislation. Company law should respond to the specific needs of companies owned by employees in terms of share (or equity) trading between employees and govern the setting up of funds to compensate the risk or facilitate exiting the crisis imposed by the market.

This may be worthwhile if we consider that small and medium-sized enterprises drive employment and social inclusion, especially for disadvantaged categories.

In conclusion, those who carried out this study interviewed social partners throughout Europe, not in order to voice their position, but to give a solid anchorage to the empirical analysis they carried out.

The recent economic crisis that occurred during the study, re-launched employee share ownership as a governance tool in company restructurings. Every crisis brings about change. Economic difficulties have highlighted the social and institutional fractures in the “global village”. Large corporations were dominating global economies and governance theories had failed to protect production from speculation. In the near future, workers and their trade union organizations must also be called upon to play a role and promote capitalism models in which production and investment capital are finally linked by governance mechanisms based on transparency, sustainability and above all, the assumption of responsibility by all actors that participate in production. Employee share ownership can make these corporations virtuous, consolidating employee participation and compensating for the assumption of responsibility.

In more general terms, the belief emerges in our cases that employee share ownership can make the concept of social market economy tangible. There is also awareness in the trade union world that innovation must concern corporate governance on the whole, in order to anchor production to its social imperatives. Corporate governance is the evolutionary space in which industrial relations can mature behavioural attitudes aimed at improving (not so much company decisions, but) the attitude of the company in making better decisions. In this case, “better” means the renewed ability of the company to satisfy the obligation of social utility that determines the protection of private initiative in modern democracies.

Therefore, corporate governance is a complex issue and its effects extend far beyond the traditional scope of industrial relations. For workers to be able to influence corporate governance they have to use new tools and assume new responsibilities: what is needed is innovation in industrial relations.

For industrial relations, employee share ownership is an innovation that focuses on human



behaviour and proposes various different relationship categories. It is a tool that focuses on man because this is where the worker and owner coexist. It interrogates man on what has to be done and exalts the assumption of responsibility. A company whose employees share in its profits, is a company that has decided to trust people and that in exchange receives internal cohesion from the human factor that determines its success.

ANNEXES



Table one Profiles of the companies studied

Company	Country	Sector	Size	Profile
JOHN LEWIS PARTNERSHIP	UK	Retail	Large	JLP runs a business which includes 27 John Lewis department stores, 201 Waitrose supermarkets, an online and catalogue business, a services company called Greenbee, a production unit and a farm. All 69,000 permanent staff are partners who share the benefits and profits of the entire business. The JLP is one of the UK's most profitable retailers - sales grew by 6.3% and pre-tax profit by 18.7% during the year to 27 January 2008, with a turnover of nearly £6.9 billion in 2008.
ISBANK	Turkey	Bank	Large	Isbank was set up as the first private bank in Turkey after the independence of the country in 1924. Today it is a publicly traded firm (shares are listed on the Istanbul (ISE) and London Stock Exchanges) and the bank's market capitalization is the fourth amongst private corporations in Turkey (end of March 2009). Isbank Complementary Pension Fund has invested in company shares, collectively administered for the benefit of all 21,000 Isbank employees and (in addition) pensioners through a specific trust.
BPM	Italy	Bank	Large	Based in Milan, Cooperativa Banca Popolare di Milano (BPM) is a bank with offices throughout the country. Established in 1865, BPM ranks among the 5 major banks in Italy with 97,796 shareholders of which 47,000 members of the cooperative. Its core business is retail banking where private individuals account for about 90% of the 1.2 million customers. SMEs are the bank's main target market. As a modern financial group, BPM offers several financial services, from retail banking and insurance to business-to-business services. They have 756 outlets (726 agencies). In 2008, BPM had 8,588 employees, of which only 210 were temporary.
ENEL	Italy	Energy production and distribution	Large	ENEL is Italy's largest power company and Europe's second listed utility in terms of installed capacity. It produces and sells electricity and gas across Europe, North America and Latin America. Further to the acquisition of the Spanish utility Endesa, with its partner Acciona, ENEL is now present in 22 countries with approximately 83,000 MW of generating capacity (as of 30 September 2008) and serves more than 52 million electricity and gas customers. In 2007, ENEL employed 70,500 workers, about 15,000 more than the previous year. The increase in the number of workers was due to the international expansion of the group. In 2006, trade union density was 70%.
HANDELSBANKEN	Sweden	Bank	Large	The bank is a public liability banking company. It can be classified in the category of banks that operate on a global level. It offers a full range of financial services in Sweden, Denmark, Finland, Norway and Great Britain. Handelsbanken's concept is to offer private and corporate customers a full range of financial services and a high level of services based on the customer's requirements and personal relationship. Business operations are highly decentralized. This means that all business decisions concerning individual customer relationships with the bank are made by the local branch. Over the years, the number of local branches has steadily increased with the aim of keeping the bank well-rooted in the territory. In December 2008, Handelsbanken had approximately 11,000 employees in 22 countries.
CONFESAL SAPO AND SLPO	Spain	All	SME	SAPO and SLPO have specific governance rules and benefit from special tax regimes. They represent a rate of GDP ranging from 3% to 4%, employing 25,000 people. They account for about 4% of the total number of registered companies in Spain with more than one employee. Spanish workforce-owned companies are associated in CONFESAL.
TOTAL	France	OIL	Large	The fifth listed integrated international oil company in the world and main actor in the chemical sector, Total is present in all five continents. It operates in over 130 countries and has almost 97,000 collaborators. Total exercises its activities in all sectors of the oil chemical field.
AERLINGUS	Ireland	Air transport	Large	AerLingus is a leading low-cost, low-fare Irish airline primarily providing passenger transport services. AerLingus is listed on the Irish and London Stock Exchanges, under ticker EIR1 on the Irish Stock Exchange and ticker AERL on the London Stock Exchange.
KARDEMIR	Turkey	Metal	Large	The Karabuk Integrated Steel Mill is a public company listed on the stock exchange. The factory is the oldest steelmaker in Turkey. Over 3,500 employees currently work at the factory, the major employer in a region with a population of nearly 250,000. Since the buyout in 1995, Kardemir has undertaken major new investments in infrastructures and machinery. The change in production technology has brought a reduction in the cost of steel production. Sales increased some 55% in the first 4 years and much more in the following years.
TULLIS RUSSELL	UK	Paper	Medium	Tullis Russell, founded in 1809, is a manufacturer of high quality printing grades of paper and cardboard, dealing also with the manufacture and distribution of other paper products for specialist uses. The company employs nearly 800 people at three sites in the UK and one in South Korea. It has annual sales of around £136 million. Tullis Russell is doing significantly better than its competitors, who are all suffering, with most losing money.
EIRCOM	Ireland	Telecom	Large	Eircom is the principal provider of fixed-line telecommunication services in Ireland with approximately 2.6 million fixed-line telephone access channels in service. Its mobile division, Meteor, which was acquired on 23 November, 2005, is the third largest mobile operator in Ireland. As of 30 June, 2008, Meteor had approximately 983,000 mobile subscribers. The company faces a host of challenges in the newly-deregulated Irish communications market; once a protected state-owned phone monopoly, Eircom now has to deal with private competitors for the first time. It has 7,200 employees.
DEXIA	Belgium	Bank	Large	The Dexia Group is a European credit institute that as of 31 December 2008 had 36,760 collaborators in 37 countries, although its presence mainly centres on Europe. Most of the group's collaborators (around 94%) operate on the basis of open-ended contracts; an indication of great occupational stability. Also as of 31 December 2008, the bank's own funds amounted to 17.5 billion. The activity of the group focuses on the public sector with complete banking and financing solutions offered to local operators in the public sector. Dexia is also present in the retail banking and commercial banking sectors in Europe, mainly in Belgium, Luxembourg and Turkey.



Table two Key indicators of company governance and employee financial participation

Company	Economic performance	Employee ownership	Who owns the shares	Position in the GA	Composition of the Board of Directors	Employee reps/TU officials on the Board	Chairman appointed by employees	Attention to the independence of managers and other good governance standards
John Lewis Partnership (UK)	Positive	100%	Trust	Yes	5 appointed by employees 5 appointed by the Chairman 2 independent	No	Yes	Explicit
ISBANK (TK)	Positive	42%	Pension Fund	Dominant influence	7 appointed by the pension fund 4 by the Peoples Party	No	Yes	Implicit. Greater attention to the quality of the managers.
BPM (IT)	Positive	2%	Employees	Dominant influence	Currently employees appoint the Chairman and 12 Board members. 8 are shared by the 2 lists of minority shareholders.	Yes, through the association "Amici della BPM".	Yes	Bank-specific governance rules. Attention to the competence of the managers rather than the formal measure of independence/enforceability
ENEL (IT)	Positive	About 0.2%	Employees	Minority group	No influence	No	No	Scarce influence on the CG
HANDELSBANKEN (SE)	Positive and better than competitors	10.2%	Foundation	Dominant influence	Takes part in the nomination committee with the 4 main shareholders	Yes. 2 reps through the Oktogonen Foundation	Not directly	Greater attention to the quality of the managers.
CONFESAL SAPO and SLPO	Generally positive	50%+1	Employees	Dominant influence	Appoint managers.	No	Yes	No specific rules apply to small and medium enterprises.
TOTAL	Positive	3.85% shares = 7.40% voting rights	Individual employees or employee investment funds	Minority group with special rights granted by the law.	1 appointed by the employee investment fund (FCPE TOTAL ACTIONNARIAT France) + 2 observers from the Works Council.	Yes, as observers.	No	According to French codes of governance AFEP-MEDEF.
AERLINGUS	Not declared	12.59% + 4% pilots and cabin crew	ESOT	Relevant influence	2 out of 15 appointed by the ESOT.	ESOT reps (considered employee reps).	No	Neutral on the salaries and status of managers.
Kardemir	Positive	51% initially now probably 10%	Employees directly	Relevant influence	Originally four members out of 7. Today none of the managers is appointed by employees.	No. Trade union influence remains as heritage of the past experience.	No	Neutral
TULLIS RUSSELL	Significantly better than competitors	100%	30% individuals, 42% Employee Benefit Trust, 28% Russell Trust	Dominant influence	All members of the board.	Employee representatives in the Share Council exercise a supervisory role and veto power on some strategic decisions of the board.	Yes	Influence on several governance issues including composition of the board, wages policies, etc.
EIRCOM	Not positive	35%	ESOT	Relevant influence	2 members out of 7. The vice-chairman (a former unionist or with a close relationship with unions) is a businessman.	ESOT appointed people are not considered employee reps.	CEOs have to be approved by the ESOT, but not through the power to veto. ESOT appoints the vice-chairman. Currently the CEO is an ESOT man.	On such a small Board of Directors, after delisting, it is not actually meaningful to distinguish between dependent and independent.
DEXIA	Positive until 2008. Bailed out during the crisis.	2.06	Investment fund	No influence	Currently none. 1 rep if employees hold at least 5% of shares.	-	No	-



Table three Key elements of employee share ownership schemes in the companies selected

Company	Employee-shareholders as a % of the workforce	Employee share-ownership schemes fuelled by...	Owned directly by employees or through a collective body	Name and nature of employee- shareowners body	Voluntarism (or cases in which voluntarism is meaningless)	Trade union density	Influence of the unions on governance
John Lewis Partnership	100%	-	Trust	John Lewis Partnership Trust Limited	No	0%	None
ISBANK	100%	Pension scheme	Pension fund	IsBank Pension Fund	No	Almost 100%	High
BPM	Almost 100%	Share allocation to employees (currently suspended)	Directly by employees but via membership of an employee-shareholder association.	Association called "Amici della Banca Popolare di Milano".	Yes, a small investment is needed to exercise a vote. Almost all employees decide to buy shares.	Almost 100%	Very high
ENEL	0.2%	Allocation of shares to employees.	Directly.	A.Di.G.E. promoted by CISL	Yes	About 50% in Italy.	Very low
Handelsbanken	100%	Profit-sharing.	Foundation.	Oktogonen Foundation.	No	75%	Very high
SAPO SLPO	At least 50%+1	Special regime for employee-owned shares.	Individuals.	-	Yes	Higher than the average for SMEs in Spain	None in each individual company. Support the business model represented by CONFESAL.
TOTAL	Almost 100%	Profit-sharing and investment schemes.	As part of different investment plans and through the FCPE (<i>Fond commun de placement d'entreprise</i>)	FCPE FRANCE and FCPE International	Yes	-	Low
AerLingus	Almost 100%	Profit-sharing	ESOP	ESOP Trust Limited (ESOT)	Yes (even if the profit-sharing scheme limits voluntarism)	High	The ESOT can stop company decisions.
Kardemir	Likely 10% controlled by the employee-shareholder association.	None	Directly + Kardemir Association of employees-shareholders.	Association of Kardemir employees-shareholders.	Yes	High	High even if, after listing on the stock exchange, it is impossible to work out how many shares belong to employees.
TULLIS RUSSELL	100%	Profit-sharing + ESOP	Directly or through two different trusts	Employee Benefit Trust, a charitable trust called Russell Trust	Yes (even if the profit-sharing scheme limits voluntarism)	80% but no role in governance	EBT and the share council must approve all strategic company decisions.
EIRCOM	35%	Profit sharing + ESOP	ESOP	Eircom ESOT	Yes (even if the profit-sharing scheme limits voluntarism)	High	Unions appoint 4 out of 7 trustees. The ESOT votes in block in the General Assembly.
DEXIA	?	Saving plans + direct allocation to employees	Individual ownership + Investment fund	Dexia Star	No	High	No influence. There is a will to keep employee share ownership below the threshold of 5% entitling the appointment of 1 rep to the Board.



Table four Company case-studies and the matrix of worker involvement in corporate governance**JOHN LEWIS PARTNERSHIP**

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>The Partnership Council acts like a supervisory body.</p> <p>The Chairman of the Board is accountable to the Council and is normally sensitive to suggestions received from it. The Council has the power to dismiss the Chairman.</p> <p>The Board of Directors consists of 12 members, 5 of which are elected by employees and 5 by the Chairman.</p> <p>Other forms of participation are softer and linked to communication processes.</p> <p>A third level consists in branch-level forums that give employees a chance to influence decisions at the local level on local issues.</p>	<p>Collective bargaining is absent, but this is not seen as a shortfall.</p> <p>Conflict is prevented by managing a series of tools to deal with the problem of employee salaries. Salaries are considered generous whilst various listening points in the workplace give employees a chance to voice their individual problems.</p> <p>Wages respond to market rules and are normally higher than the average for the sector.</p> <p>Bonuses linked to profit-sharing are awarded on an individual basis and are in addition to wages.</p> <p>Dividends are distributed to the partners (employees) on an equal basis.</p>	<p>Employee control stems from corporate rules. Risk capital is very low and not relevant compared to company turnover.</p> <p>Some reserves ensure a sustainable leverage ratio.</p> <p>Risk management relies mainly on an effective system of internal control. Trade unions are absent.</p> <p>Employees are called to appoint management through an election system that recalls ballots for political representation.</p>	<p>Employees do not hold shares. They exercise a right to vote to appoint managers and have an opportunity to influence corporate governance.</p> <p>There are tangible results in terms of CSR. JLP has a set of responsible sourcing principles and a code of practice concerning partnership. This internal code, which has been translated into 9 different languages, sets out JLP's expectations of suppliers and covers issues such as wages and benefits, working hours and conditions and health and safety, the use of forced or child labour, employee representation and worker associations, equality, welfare and respect for the environment and animals.</p>



IsBank

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>Employee share ownership does not develop any of the traditional forms of participation. Consensus is simply the result of company governance stemming from employee ownership.</p>	<p>In IsBank conflict is low. In this case, stable collective bargaining should be seen in the interest of the employees. Advantages do not lie in the widespread peace enjoyed, but in the fact that the workforce feels it has a high salary. It should be noted that collective bargaining is possible only in companies where trade unions are recognized.</p> <p>In IsBank, a certain level of conflict is considered useful for a better perception of the mood of the workforce. Human resources dedicate particular attention to anti-cyclical tools capable of safeguarding employment levels in the bank. Such policies bring unions and company management closer together and become part of the identity of the bank.</p>	<p>The governance mechanism puts the union in a dominant position, controlling 42% of the shares. Their control is exercised through an employee pension fund.</p>	<p>In this way, it is possible to guarantee that the bank endorses certain values promoted by employees in its decision-making processes. Governance then develops autonomously. Trade unions meet management again when working conditions and wages have to be negotiated: they play a different role and feel a sense of responsibility to keep conflict low and obtain optimal agreements.</p>



Banca Popolare di Milano

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>Employees are not directly represented on the company board. Employee-shareholders are represented through their association “Amici della BPM”. All managers appointed by the employees have a role in all sub-committees and working groups to whom the powers of the Board of Directors are delegated. Consensus is the simple result of company governance stemming from employee share ownership.</p>	<p>About 5% of wages depend on the economic results of the bank (coherent with the Italian model of collective bargaining). Company-based collective agreements normally last three years and the profit-sharing scheme is periodically assessed on the basis of the results announced by the company each year. At BPM this “check-and-go” procedure is a continuous process in which the risks of renegotiation are extremely low and the level of satisfaction of employees rather high. This peace allows for greater investment in innovative practices benefiting both parties.</p>	<p>Specific corporate governance rules give trade unions a great influence in the Shareholders’ Meeting. Trade unions are able to submit their demands dealing with governance and corporate strategies. On the basis of that, they propose their candidates for the board. The BPM model is a case worth mentioning as it shows a different way to be a stakeholder in complex corporate governance. Other institutional or traditional investors have to mediate their position with employee-shareholders. The result is a company with a strong managerial identity.</p>	<p>The discussion that influenced the last Shareholders’ Meeting in 2009 (which elected a new President chosen by the employees) is an emblematic example of the ability of the unions to be active on the ownership side. In this way, they show their concept of capitalism and measure their views against positions expressed by other groups of shareholders.</p>



ENEL

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>There are no traditional forms of participation at ENEL. Collective agreements ensure information and consultation rights. For the time being, employee share ownership is not able to affect the consensus building process.</p>	<p>Employee financial participation would open new routes to collective bargaining. Italian ENEL employees already enjoy profit-sharing schemes and satisfactory long-standing collective agreements. FLAEI CISL is willing to explore the possibility of profit-sharing fuelling share ownership plans. This will have the dual effect of leading to tax benefits and encouraging a more mature collective bargaining culture. This approach is still opposed by FILCEM CGIL that has different opinions.</p>	<p>Employee-shareholders have very little influence on ownership. This means that management pays little attention to their requests. Many stakeholders attend the ENEL General Assembly but their corporate capital is small. Under current rules it is impossible for a shareholder (with the exception of the government) to hold more than 2% of capital. Employee share ownership could be a way to introduce innovative elements to corporate governance, too. A share ownership plan should therefore be accompanied by stronger cohesion of the workforce and specific rules to make the collective exercising of votes by employees easier.</p>	<p>Of course, holding shares is not seen as a goal in itself. It should go hand in hand with the aim of influencing corporate governance in order to bring to its attention certain values, such as respect of environmental issues, more balanced governance (the Italian government retains a sort of right to veto strategic choices) and closer attention to users and customers. In this sense, ENEL is quite active in the field of CSR. The weak side of it is the scarce involvement of stakeholders and the accountability of actions taken in the field of CSR. ENEL is a global player in the field of the production and distribution of energy. Its operations are strategic for the well-being of entire countries and their citizens.</p>



Handelsbanken

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>In Sweden, by law employee representatives sit on company boards.</p> <p>In Handelsbanken, employees have chosen to be represented on the company board as employee-shareholders.</p> <p>The difference lies in the fact that, being the expression of the most important shareholder, Oktogonen representatives have a greater weight on the board and all its sub-groups.</p> <p>A system of rights to information and consultation complement this. Consultation is built in such a way that employees can be involved in decision-making processes, being fully and promptly informed.</p>	<p>Collective bargaining does not produce conflict. It is in tune with the rest of the sector and Handelsbanken is simply “doing better than others”.</p> <p>Thanks to stable and long-standing collective bargaining, the bank can easily concentrate its efforts on innovative policies for promoting human resources. The Oktogonen system, including the profit-sharing scheme, is not considered to fall under the scope of collective bargaining. Its statutory rules belong to the company and the Oktogonen bodies and allocations of the annual bonuses are unilaterally and autonomously decided by the company board (where, of course, employee representatives are well represented).</p>	<p>The governance mechanisms of the profit-sharing scheme feeding the Oktogonen Foundation, give the trade union a position as a key player in the General Assembly. Finansförbundet is able to exercise a strong influence on the General Assembly on strategic choices concerning the bank and its business.</p> <p>Given that the performance-related bonus is not considered remuneration, employees do not perceive additional risk, but only consider it an advantage.</p> <p>Employee-shareholders are not dominant. They share their power with three other groups of shareholders.</p>	<p>Even if the Oktogonen experience is considered unique in Sweden, it reflects a more common wish to go beyond the traditional patterns of employee involvement.</p> <p>Handelsbanken remains an example of a corporation that is profitable in the long-term and whose performances exceed the average of its direct competitors and outperform the average of the sector.</p> <p>All this happens with a strong attention to CSR and the social return of the business.</p>



Dexia

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>No effects have been registered on consensus building as employees have never exceeded 5% of ownership, in other words the threshold that triggers mechanisms to attribute the right to appoint employee representatives to the company board.</p>	<p>The employee share ownership plan is agreed with the unions and, to date has not influenced collective bargaining. There is a vague desire to preserve antagonism as a driving force for industrial relations.</p>	<p>Employees and their trade unions do not see the ownership side as an interlocutor.</p>	<p>By introducing a share ownership plan, Dexia managers pursue the aim of stabilize a share of between 3% and 5% of total capital. This goal has not yet been achieved.</p> <p>The Dexia experience confirms that employee share ownership can be a corporate governance tool, but it is successful only when it reflects the expectations of both the company and its workers. This is not the case in Dexia today.</p>



SAL and SLL companies associated to CONFESAL

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>According to the company statutes, employees</p> <ul style="list-style-type: none"> - choose management - monitor and control all company decisions. <p>However, they do not appoint employee representatives therein. Information and consultation rights are implemented effectively and this is considered a good practice for SMEs in Spain.</p>	<p>Confesal has established framework agreements with the two main Spanish trade union confederations, UGT and CCOO.</p> <p>These common rules have two basic aims:</p> <ul style="list-style-type: none"> - on the one hand they establish a better environment for developing sustainable and peaceful industrial relations - on the other hand, they prepare collaboration with unions in the promotion of the business model. <p>Employee financial participation has created the conditions for highly-stable industrial relations and a strong spirit of cooperation between employers and trade unions.</p>	<p>Employees hold at least 50%+1 of capital. One holder cannot retain more than 33% of shares. Both trade unions and employers are aware that the competitiveness and long-term profitability of the business is related to the know-how and skills that employees use through direct participation. Such participation, along with relevant guidance and supervision, is only possible if employees are properly trained and assisted.</p>	<p>The business is normally deeply-rooted in the territory and well-connected to its real economy. This is why many consider these companies a way for creating employment and most of all, a way for re-employing workers who have lost their jobs thanks to entrepreneurship and the start up of new businesses. In this sense, employees are less speculative capitalists that create companies that can last. In macro terms, such companies are socially useful as they become a tool for absorbing the unemployed and help the creation of domestic capital.</p>



Total

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>Employee share ownership has neither started any new form of employee participation nor reinforced existing ones.</p>	<p>In Total, industrial relations are stable and collective bargaining satisfactory.</p>	<p>In Total, employees have not yet established a proper strategy for dealing with owners. However, trade unions are not indifferent to how the investment funds holding employee shares evolve. The fact that employees do not feel a risk linked to their investment can explain their reluctance in trying to conquer a role in the board of the company via a better coordination of their voting rights in the Shareholders' Meeting.</p>	<p>In France, trade unions consider employee share ownership a method for introducing forms of economic democracy to the financial markets rather than to single companies. Trade unions are keen to assist employees in making fully informed choices regarding management of their investment and to defend their interests where necessary. A recent law entitling employee-shareholders to appoint their own representatives to the board once their participation exceeds a minimum threshold could change the attitude of the social partners.</p>



AerLingus

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>In a company like AerLingus, trade unions with relatively stronger positions thanks to ESOTs ensure that the flow of information is efficient. The situation is different as far as employee participation on the company board is concerned. Employee share ownership generates a different kind of governance, but not a proper system of employee participation.</p> <p>Many have noted that the arrival of Ryanair is a negative element and employees feel the ESOT experience is less effective and respondent to their real needs. In fact, the trust that manages employee shares appoints managers and not employee representatives to the board.</p>	<p>On the corporate side, even if the trade union position is important the share ownership programme should not influence collective bargaining. The company does not have to be run in an acritical employee-friendly perspective. This means that the power arising from share ownership does not turn into the search for immediate and short-term benefits. In any case, managers are inclined to listen to and meet the needs of workers.</p>	<p>A sense of frustration amongst workers towards ESOT arose after 2006 when, following privatization, the trust borrowed 45 million euro to buy more shares, followed by another loan. The preoccupation lies in that fact that neither dividends nor profit-sharing can produce the cash flow necessary to repay the trust debt. Trade union organizations consider the lack of interest by the workforce the cause of some decisions that betray the expectations of the employees. We should recall that: a) trust directors are in clear minority on the Board of Directors and b) privatization and then liberalization of the market have caused deep restructuring in the sector. Social tension at AerLingus reflects similar situations throughout the air transport sector.</p>	<p>AerLingus is the most controversial case analyzed. A right balance has not yet been found between employee-shareholders, other investors, trade unions and management. A lot can be explained by looking at the characteristics of both corporate governance and industrial relations in Ireland.</p> <p>At the end of the day, the employee share ownership schemes and the trust can reasonably make the voice of employees heard at Shareholders' meetings pointing out their views on running the business.</p>



Kardemir

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>The trade union exercises a very powerful influence, backed by the fact it represents not only workers but also employee-shareholders. The role and influence of the trade union are exercised through informal procedures. In fact, there is no formal participation structure in the company for information and consultation and no official opportunity for discussing corporate strategic choices. The close relationship between trade unions and management means that the former often identify with the latter. A constant flow of information is guaranteed between the trade unions and the Kardemir Workers' Association, created and run by the trade union to represent employee-shareholders.</p>	<p>In terms of collective bargaining, in the earlier stages of the buy-out, the Kardemir workforce accepted a wage freeze and gave up a number of fringe benefits, including overtime and some paid holidays to help the new company. In 1997, trade unions and workers accepted an agreement that increased wages by 40% and increased benefits by 20% in addition to share dividends (that are not part of wages). Wages continue to grow and past sacrifices have been compensated by dividends or the sale of shares.</p>	<p>Today it is almost impossible to know the percentage of employee-owned shares: the company has around 50,000 shareholders. For these reasons, the trade union is conscious of the need to create a group of fully independent directors and therefore, does not send representatives to the Board of Directors. In any case, the trade union is still influential in managerial choices. The power of the trade union primarily influences the corporate culture that has matured and the habit of cultivating constructive relations with management. It can therefore be said that the union has helped the company and this guarantees its role in governance. The union allow corporate management to grow and exploit its independence.</p>	<p>The particular location of Kardemir steel mill determines a strong connection between the plant and the local community. Karabuk and the other small towns nearby, represent a real industrial district that rotates around Kardemir. Following privatization, local government and the company drafted a territorial upgrading plan in order to improve the living conditions of workers and their families and promote the economic growth of the area. A far-reaching change occurred in the quality of management thanks also to personnel selection policies that focused on quality skills and know-how. This offered the opportunity to promote the foundation of a university in Karabuk to train future company managers.</p>



Tuliss Russell

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>Direct employee involvement is considered the way to make employees feel an active part of the consultation process. The highest level of participation is the Share Council, a strong consultative and representative body that is directly and constantly in touch with both the board and the employees (who elected its members). An employee information and consultation body has recently been established that includes both trade union representatives and Share Council members.</p>	<p>The trade unions perform a traditional collective bargaining role, negotiating work terms and conditions and wage levels. The wage level is above the average in the sector and in addition there are dividends and profit-sharing. Along with the Share Council, the trade unions are informed by the CEO on decisions regarding labour and employment. The trade unions also discuss vocational training, health and safety and other work-related issues.</p>	<p>Employees are shareholders. Nonetheless, mechanisms to protect employee shares are in place. A system peculiar to the UK allows for employees to benefit from compensatory payment in the event of redundancy. This measure is part of the collective agreement and is a form of compensation that benefits those affected by inevitable company decisions that penalize employment levels. However, the risk relating to the state of business remains.</p>	<p>As capitalists, employees accept that the company is largely exposed in terms of CSR. The company is deeply-rooted in the territory and the way Tuliss Russell is managed has strong repercussions on the local community. Attention to the well-being of the workers and the entire community is a legacy of the entrepreneurial culture of the family that formerly owned the company.</p>



Eircom

Consensus building	Conflict management	Risk sharing	Employees and new capitalism
<p>Regardless of the financial participation scheme, an information council exists at Eircom, along with a series of parallel information structures. Whenever an important decision is made at board level, they inform employees. All directors are trained to communicate with employees. There is an Internet site on which information is published for diffusion.</p> <p>An Eircom newsletter is also regularly issued to all employees and contains information and financial and organizational data. Trade unions use their own communication channels.</p>	<p>The authority of the trade unions in the company has allowed for the development of some forms of dialogue. All unions can thus discuss salaries, work conditions, including hours of work, regardless of the ESOP. When the ESOP was created, it was the national agreement “Partnership 2000” that inspired share ownership. Those who took part in the share ownership contract benefited from the rules of Partnership 2000 and benefited from a 4.8% wage increase. Those who adhered to the Superannuation Scheme would also make a 4.8% contribution to pension schemes, thus benefiting from the second set of benefits provided for by Partnership 2000 for 1999.</p>	<p>The trust is managed by 7 trustees, 4 of which are nominated by the trade union, two by company management and an external Chairman (to be approved by the Irish government). The role of the ESOT has been crucial in several company situations. The partnership approach is an interesting key to both relationships within ESOT, between ESOT and the trade union and between ESOT and company management. Some do not hide their doubts regarding a potential conflict of interest implicit to the governance structure.</p>	<p>ESOT representatives accompanied by the CWU secretary general of Eircom trade unions have been admitted to the governing committee in order to discuss the future of telecommunications in Ireland. The authority of the ESOT and its managers is recognized and the fact of taking part in the reorganization of the sector is a guarantee for the future of workers in the sector and the company. The share ownership plan for Eircom is of great importance to employees. Note that when employees vote in the trust, the one man-one vote principle applies. This gives democratic value to the behaviour of employees-capitalists.</p>





C.E. VS/2009/0303

Employee financial participation for corporate governance and social dialogue

SindNova
Puis



Governance

Study cases

Company	John Lewis Partnership IsBank Banca Popolare Milano Handelsbanken Dexia Total Aerlingus Kardemir Tullis Russell Saf Tehnika Eircom Enel
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Country	Spain Belgium France Germany
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COMPANY CASE: JOHN LEWIS PARTNERSHIP

John Lewis Partnership (JLP) runs a business which includes 27 John Lewis department stores, 201 Waitrose supermarkets, an online and catalogue business, a direct services company called Greenbee, a production unit and a farm.

Two Settlements in Trust made by John Spedan Lewis in the last century¹ established the company currently known as the John Lewis Partnership, owned in trust for the benefit of its members employees, who become Partners from the moment they are recruited. All shares are held collectively for the benefit of employees (no employees directly own shares in the company). The trustee of the Settlements is John Lewis Partnership Trust Limited ('the Trust Company'). Its Chairman is the Partnership's (board of directors) Chairman. Other trustees are the Deputy Chairman and the three Partners elected every year by the Partnership Council as Trustees of the Constitution².

All 69,000 permanent staff are Partners who share benefits and profits of the entire business.

The JLP is one of the UK's most profitable retailers – sales grew by 6.3% and pre-tax profit by 18.7% in the year to 27 January 2008, with a turnover of nearly £6.9 billion in 2008.

The JLP has a written **Constitution**, which places “the happiness of its partners at the heart of a successful business”. The respect of the rules stated in the Constitution is granted by three Trustees of the Constitution elected by the Council of Partners³.

Huge part of the success of the company is believed to be due much to the co-ownership principles settled in the Constitution and implemented through different initiatives and mechanisms. Co-ownership is not used as a major selling point with customers, however, the organisation does believe that customers notice the better service delivered by staff who are engaged.

It is in the interest of the company to invest in developing in the partners a sense of being involved and know that their opinion matters.

Most important ways of encouraging an employee ownership culture descend from the philosophy set in the Constitution, based on a “sharing success and responsibility” principle: sharing gain (sharing the benefits of co-ownership - bonuses); sharing knowledge (making a huge amount of information available to partners and taking time and trouble to make sure that employees understand how the business is performing); sharing power (operating a range of councils and committees with which partners can become involved, using the co-ownership and corporate governance structures).

Employee ownership is reflected in the reward strategy.

The base pay is determined with reference to market rates, with additional individual increments on the base of the merit (assessed by performance appraisal). Financial benefits from co-ownership represent the most interesting reward connected to the co-ownership: each year, every partner receives a bonus worth a certain percentage of the salary, which is calculated on the basis of the company profits of the year before. Emphasis is always on collective reward for collective effort, so there are no individualised rewards or incentives, and bonuses are paid as a fixed percentage of salary. The partnership bonus was 20% of pay (the equivalent of more than 10 weeks' pay) was distributed as a profit-related lump sum in March 2008, for a total distribution of £181m last year. The bonus has not been lower than 15% of pay in the past five years.

¹ The founder of John Lewis Partnership, John Spedan Lewis, handed over control and ownership of its business in two trust settlements. The first settlement, in 1929, set up the current partnership and enshrined the principles of profit sharing. Financial control of the business was handed over at this point, but not in the form of a gift – the deal gave Spedan Lewis the right to be paid back for the ordinary shares he handed over. In 1950 the Founder handed over ultimate control to the current Trust that owns the entire Partnership for the benefit of all its employees.

² Article 18(ii) of the Constitution.

³ The Chairman, members of the Group Executive and the Company Secretary may not be Trustees of the Constitution.



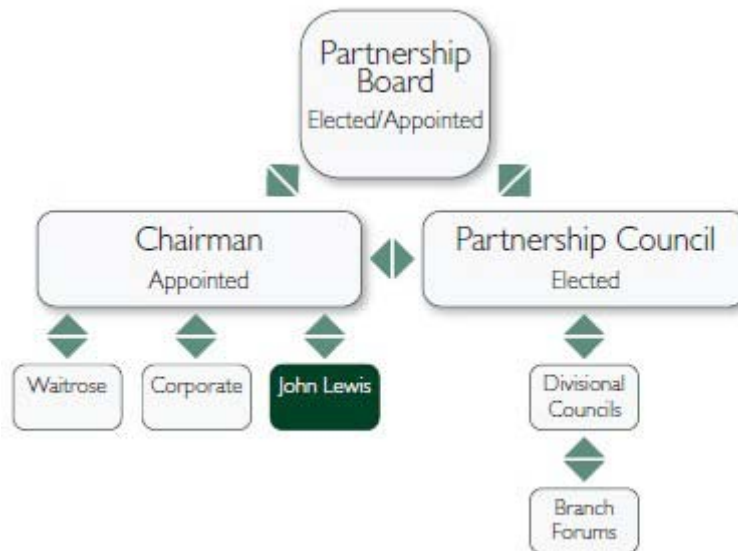
Partners also benefit from provisions from profit for social and leisure facilities, linked to the founder’s principle to take a holistic view of people. They are offered a final salary pension scheme, Bonus Save, a Government approved share incentive plan and five subsidised holiday centres around the country.

The governance system is set out in the Constitution. In the CSR report 2008, it is clearly stated that the governance structure “gives managers the freedom to be entrepreneurial and competitive in how they run the business, while giving all our Partners the rights and responsibilities of ownership through active involvement in the business”.

Governance structure

JLP has **three governing authorities**:

- The Executive Chairman (CEO)
- The Partnership Board (board of directors)
- The Partnership Council (a body directly elected by partners).



The **Chairman** is the Chairman of the Partnership Board, by virtue of his appointment as Chairman of John Lewis Partnership Trust Limited. He nominates his successor in accordance with the Articles of Association of John Lewis Partnership Trust Limited. The nomination has to be agreed upon by the whole Partnership Board. As the senior executive in the Partnership, he is ultimately responsible for its commercial performance. He appoints the members of the Group Executive (5 directors in the Partnership Board), which coordinates executive responsibility in the Partnership, and the views of principal management.

The Partnership Council represents Partners as a whole. It acts as a channel of communication between management and Partners in general, and has the right to discuss, to ask questions and to make recommendations on any subjects it wishes, and thereby to hold principal management to account.⁴ The Trustees of the Constitution divide into constituencies the Partners entitled to vote in elections, which are held every two years, by secret ballot. A capillary representation system is set at level of each of the two main division

⁴ Article 7 of the Constitution: “The Council may ask the Partnership Board or the Chairman anything it wishes, and they must answer unless doing so would in their opinion damage the Partnership’s interests. The Council is responsible for informing Partners about its activities”.



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of the company (John Lewis and Waitrose), and Local Forums are established in branches or other units to carry out at a local level the functions that Partnership Council carries out for the Partnership as a whole⁵.

Each Partner has a single vote in elections to the Council. Any Partner who is entitled to vote in a particular election may be a candidate in that election, and may stand in only one constituency. He must be proposed and seconded by Partners entitled to vote in the constituency for which he is standing.

The Council meets whenever it wishes, but at least twice a year, and when the Chairman or the Trustees of the Constitution ask. At or before the second meeting of each new Council, the Council elects one of its members to be its President, three Partners to be Trustees of the Constitution and three to be appointed as Directors of John Lewis Partnership Trust Limited, five Partners to be appointed as members of the Partnership Board.

Each year the Council is entitled to funds equivalent to at least one percent of the pay and Partnership Bonus received by Partners for the previous trading year, funds to spend this money in any way that it considers good for the Partnership⁶.

The **Partnership Board** is the board of directors of John Lewis Partnership plc. The Board has ultimate responsibility for issues of major policy and for allocating the financial and other resources of the business. It decides the Partnership's policy for the financing and development of its business, and monitors its implementation. It takes responsibility for preparing financial statements, which must give a full and fair view of the state of affairs of the company.

The Board is composed by a mix of five directors elected by the Partnership Council⁷ and five chairman-appointed directors. In addition there are two external non-executive directors, who are not eligible to receive Partnership bonus or other benefits, and are not members of the Partnership's pensions schemes, in order to preserve their full independence. Among its task, the Partnership Board approves and monitors the Partnership's revenues and capital spending and determines each year the amount of the Partnership's profits that should be reserved for the maintenance and development of the Partnership's business, and thus the rate at which Partnership bonus may be paid.

Accountability principles are set up in order to grant effectiveness to the governance system as a highly democratic one. The Council decides policy on any kind of Partnership expenditure which the Chairman refers to it, including matters relating to the use of profit such as discount, pensions and sick pay. The Chairman accepts as fully as possible the recommendations of the Partnership Council. Before rejecting any, he must consult the Partnership Board. Soon after the end of each trading half year, the Chairman must attend a meeting of the Council, to review the Partnership's trading position and its general progress and to answer questions. The Council has the power to pass a 'Resolution upon the Constitution' to dismiss the Chairman according to the Articles of Association of John Lewis Partnership Trust Limited. (R. Oakeshott though underlines that for the

⁵ The constituencies are decided so that the Council as a whole may have properly informed discussion, rather than to provide proportional representation for the different groups and sectional interests of Partners. The two main divisions of JLP are John Lewis and Waitrose, each one having its own council, to function in the Division as the Partnership Council does for the Partnership as a whole. These councils meet whenever they wish, but at least twice a year, and when the Trustees of the Constitution ask. Meetings take place within working hours whenever they believe that to be necessary. A Divisional Council wishing to communicate with the Partnership Board or the Chairman normally does so through the Partnership Council, but it may do so directly, sending a copy to the Partnership Council. If the council is not satisfied with the response received, it may refer the matter to the Partnership Council. Any Partner who is free to do so may attend any meeting of the Divisional Councils.

Local Forums are established in branches or other units to carry out at a local level the functions that Partnership Council carries out for the Partnership as a whole. Where these guidelines establish a generic model for Local Forums in selling branches in either Division, specific changes or exceptions to the guidelines may be agreed by the Trustees of the Constitution on the recommendation of the relevant Divisional Council.

⁶ However the Chairman has a veto over any proposed expenditure he considers too damaging to the Partnership's business interests

⁷ Equipping the five partner directors on the partnership board for the task is challenging, and most serve more than one term as it tends to take two years to build up the capacity. The company secretariat organises the support for partner directors, i.e. organising courses for directors, using in-house expertise and a list of preferred external trainers; partner directors are mentored by a appointed directors, who will check that partner directors have received relevant papers in advance of a meeting, and offer to talk through any issues with them. Individual talks for partner directors may be arranged with the group finance director upon request, which is helpful if a particular financial issue is being considered by the board.



partners to remove the chairman, and thus in effect vote for a change of top management, it requires a weighted majority and not a simple majority among their elected representatives – but this does not decrease the high level of democracy in the system, as does not the fact that there is no formal recognition of any trade union within the company – to be considered that the unionisation level in the retail sector is very low all over UK).

John Lewis partnership in the grid

Consensus building

The first effort in order to build internal consensus is in the sense of creating and developing a co-owned/partnership culture at all the levels. A great deal of resource is invested in developing employees' attitude to lead in a co-owned way, therefore partnership behaviour is secured - for example - through effective recruitment, extensive employee surveys, and systems of communication and training that reinforce the culture: JLP states its co-owned status up front in the recruitment process, and recruiters will stress what co-ownership means for behaviours at the interview stage – that is, how the organisation will behave towards people when they join and how it expects partners to behave in return. In addition, A range of local and business-wide online communication tools, including the Partnership magazines “the Gazette” and “Chronicles”; roadshows and presentations, including video presentations by the Chairman and Managing Director are held regularly.

JLP operates a clear set of behaviours around its partnership status and these are enshrined in performance management, particularly for line managers, who are required to manage in a co-owned way, characterised by “less tell, more consult”. Most effective channels for internal communications are settled with their collaboration, annual general meetings, local and branch level forums consisting of groups of representatives elected by colleagues, useful for drilling down information cascaded from the group level. An annual Partner survey across the Partnership asks Partners – anonymously and confidentially – for their views on a wide range of issues such as job satisfaction, pay, career development, management, their shop, the democratic bodies and the Partnership as a business.

94% of Partners (62,000 in total) participated in the survey. The “consultation” stage is fostered through the right to ask questions, any time, on any topic, directly on the company Gazette. More in general employees can influence their jobs or working environment by using the democratic structure, using the suggestion scheme (JLP is a very devolved business and individuals are given the space to make decisions and come up with ideas) and through management consulting with partners on key areas and issues, i.e. changes to performance management framework.

JLP operates three levels of **partner representation**: the Partnership Council, two divisional level Councils and branch level forums. Revamped branch-level forums are creating ways for partners to contribute to the running of the business more efficiently at a local level.

Partners are involved in strategic business planning at the Partnership Council level, and this body is able to hold the chairman of the business to account in a similar way as shareholders would in a Plc. Employees are informed about major strategic change through briefings, given at the same time as the information is passed to external parties. Formal AGMs are held at least once a year to foster understanding of the wider business performance. A raft of on-line and printed communications, presentations are provided too.

Managing conflicts

The constitution of the JLP provides for the involvement of employees/partners: as ‘co-owners’ of the business they are provided with full information on all aspects of its operations. Elected councils and forums at all levels of the business provide regular opportunities for management to report to Partners.

This provides opportunities to question management on any subject, while an open system of journalism both contributes to effective accountability and provides a means of sharing information extensively with all Partners.

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During the interview it has not been possible to deeply assess the management of cases of conflict. Apparently, these seems to be prevented, and managed within the frame of constant dialogue that is fostered at all levels.

Collective bargaining is absent, as there are no trade unions recognised within the company.

Sharing the risk of the business

The system of internal control is designed to manage, rather than eliminate, the risk of failure to achieve business objectives. In pursuing these objectives, internal control can only provide reasonable, and not absolute, assurance against material misstatement or loss. The directors have ultimate responsibility for the Partnership's systems of internal control, and also for reviewing its effectiveness. In recognition of that responsibility, the directors set policies and seek regular assurance that the system of internal control is operating effectively. Strategic, commercial, operational, financial and health and safety risk areas are all included within the scope of these activities.

In terms of direct protection of employees from economic losses, it has to be bared in mind that the profit-sharing scheme established in John Lewis is not based on direct individual share ownership, and that the bonus on the revenue is going to be the same percentage of salary as for all the employees.

As underlined by Patrick Burns, President of the Employee Ownership Association in his interview, the most effective way in order to reduce the business risk is to keep wage policy, setting a granted level of income, separated from the distribution of the dividends, which may vary following the performances both of the market and the company itself. Market rates are used to determine base pay, which is higher than the average in the retailing sector. In addition, individual increments can be negotiated on a performance related basis. "Profit-related pay is something else, something additional⁸! It is both the evidence and, at the same time, the result of ownership, which has nothing to do with the income connected to work".

Modernization of corporate governance

The company culture involves to act in a certain socially responsible way. Treating CSR as much like "business as usual" as possible, by setting it in the context of a holistic approach to people at work, is part of this culture. Therefore efforts are aimed at fostering a well-developed sense of CSR amongst people, and keeping CSR aligned with the business.

CSR policies are transparent and accessible to anyone as they are object of public reports⁹. They cover the most diverse issues, from employment relationship and working conditions, to environmental policies related to recycling, waste, packaging, supplier relationships, customer care as a responsibility matter.

In addition to compliance with the system of governance and accountabilities established by its own written constitution, the Partnership aims to apply the highest standards of corporate governance and, although not obliged to do so¹⁰, seeks to conform with the Code of Best Practice set out in section 1 of the June 2008

⁸ Bonus rate was not adjusted in 2008, despite the tougher economic outlook for 2008/09, as the business feels it is important not to shelter partners from bad times by "smoothing" bonuses from one year to the next. "As co-owners Partners take the rough with the smooth".

⁹ CSR reporting: <http://www.johnlewispartnership.co.uk/Display.aspx?MasterId=81f00253-1639-4749-a590-d2cd32540b62&NavigationId=613>

¹⁰ All companies incorporated in the UK and listed on the Main Market of the London Stock Exchange are required under the Listing Rules to report on how they have applied the Combined Code in their annual report and accounts, and either to confirm that they have complied with the Code's provisions or - where they have not - to provide an explanation. JLP is not obliged to respect the code, and to understate to the principle, "comply or explain", nonetheless, it decides to do it anyway, as a precise CSR choice.



Author: *Marina Monaco*

Financial Reporting Council Combined Code on Corporate Governance in a manner framed to suit its democratic ownership structure¹¹.

CSR policies are enacted in the company on the most diverse grounds: for instance, all employees can benefit from the Partnership's training and development policies. The Partnership recruits people with disabilities to suitable vacancies on merit. Where disability occurs during the period of employment, every effort is made to continue to provide suitable employment with the provision of appropriate training.

From the point of view of CSR towards the external, suppliers are more aware of JLP's co-owned status, due to its founder's focus on forging good relationships with suppliers (partners work hard at building long-term relationships based on fair prices and prompt payment, as these principles are part of the partnership's constitution). They aim to uphold internationally agreed standards of labour, and try to make sure that suppliers respect the rights and wellbeing of their employees, support their communities, protect the natural environment and promote high standards of animal welfare. JLP has a set of Responsible Sourcing principles and a Partnershipwide Code of Practice. This internal Code, which has been translated into nine different languages, sets out JLP's expectations of suppliers, and covers such issues as pay and benefits, working hours, working conditions and health and safety, the use of forced, bonded or child labour, employee representation and worker associations, equality of treatment, respect for the environment and animal welfare. The Code is reviewed every year, and minor amendments last year included an additional clause requiring confidential mechanisms to allow workers to report any sub-standard practices or mistreatment.

JLP is committed to contributing to the communities in which it operates, aiming at building long-term relationships with local community and interest groups. For example, JLP Community Liaison Coordinators work with shop Partners to develop effective community involvement plans. It also carries out public consultations before finalising planning applications for all new shops and refurbishments. The Partnership has joined property developers, mall owners and retailers in signing up to the British Council of Shopping Centres (BCSC) Sustainability Charter, which outlines commitments designed to address the energy, waste, water and community impacts of shopping centres.

¹¹ The company substantially applies the principles of the Combined Code, with the principal exception of provision A.2.1 of the code (The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board).

COMPANY CASE: IsBANK

Isbank was set up as the first private bank in Turkey after the independence of the country in 1924. Today it is a publicly traded firm (shares are listed on the Istanbul (ISE) and London Stock Exchanges), and the bank's market capitalization is the fourth one among private corporations in Turkey (end of March 2009).

Since its inception, Isbank enjoys a peerless stakeholder base.

The Treasury used to hold part of the shares, then sold in the course of the following decades, and Ataturk in person owned 28,1%. In May 1998, 12.3% of the Bank's total shares previously held by the Turkish Treasury have been sold to national and international investors in a public offering.

Since August 2005

- 41.5 % of Isbank shares are held by Isbank's own private Pension Fund,
- 28.1 % are formerly Ataturk's shares that are now represented by Republican People's Party¹ and
- 30.4 % are free float.

The Pension fund was established in 1952. Before that there was some employee financial involvement, but on an individual basis. From that moment, the Isbank Complementary Pension Fund invested in shares of the company, collectively administered for the benefit of the all 21.000 employees and (in addition) the retirees of Isbank² through a specific Trust.

In 1967, the Pension Fund had collected the 30% of the shares of the bank, enough to demand to take part to the management of the company. The management accepted this demand, considered almost as normal.³

The revenues are distributed under different forms. Monetary bonuses (20% of the total⁴) are distributed to employees by the bank. The huge amount flows into to the Complementary Pension

Fund for retired people⁵; a part of these dividends is retained by the Fund and is redistributed in the form of services (i.e. healthcare services, scholarships) to employees and retirees and their families.

The trade union federation Basisen, the Banking-Insurance Employees' Union, affiliated to Turk-Is Confederation, plays a fundamental role within a unique system in Turkey which appears as quite advanced and structured.

Employees of Is-bank are all members of Basisen, and currently retired former employees were union members too. They are organised in an association which is connected to Basisen.⁶

The union is not directly implicated in the shares ownership, but it is indirectly involved in the management of the trust, and can be defined as the driving force, the "force behind".

How does the **trust** work?

¹ The Party only administrates the shares, but can not benefit of the revenues, following Ataturk's will, the revenues go to the History Institution and the Turkish Linguistic Institution.

² As for its constitution, based on a legal model

³ In 1975 the Government intervened on the scene, approving a law which meant to nationalize funds of the kind of the Pension fund of Isbank. It was clear that it intended to apply a national control on such a powerful employee share ownership system. During the approving phase of the law (which was longer than expected, as the President did not ratify it at the first reading, but sent it back to the Parliament to be reconsidered), Isbank established a second fund, according to the new legislation, to which all the shares of the first one were sold. The first fund, at the moment of the entrance into force of the nationalization law, ended up to be an "empty" one, with no more shares left. The current Fund owns 42,5%.

⁴ The rate of profit distribution is decided by the GA of the Trust, as set in the constitution of the trust

⁵ On the basis of a defined benefit plan -financed both by employees and employer contributions along the working period - after retirement a monthly income is distributed to the retired all life long.

⁶ even if, technically, trade union membership expires at the moment of retirement



The Trust has a General Assembly every three years. The General Assembly gathers the delegates of the retirees (one delegate each 25 retirees), plus a delegation from each of the 1051 branches of Isbank all over Turkey.⁷

The GA of the Fund elects 5 Trustees to manage the Fund; 2 seats are reserved to 2 executive management representatives (normally the board CEO and his deputy).

Since all the delegates, as all the employees, are members of the union, at the end of the day, the trade union has an influence on the elected delegations of each branch: as a matter of fact, by tradition, these delegates let the President of the union appoint the 5 trustees sitting in the Fund board. They are not “technically” trade unionists, in most of the cases they are financial experts or academics. The following step is just an approval by the different delegations. Employees and retired people give their proxies to the trustees, and they exercise the right to vote in the AGM of the shareholders (one share one vote – “With 42% of the shares controlled the trust rules!”).

The Fund elects 7 managers (out of 11) to seat in the **board of directors**, chosen outside the union (“they are not trade unionists, but professional managers!”), including the chairman of the board and his deputy, as the Fund holds the relative majority of the shares⁸.

The other 4 managers are elected by the People’s Party.

Isbank in the grid

Consensus building

A huge consensus exists among the different poles of interests, employees on the one hand, and management on the other hand. The trade union Basisen plays somehow the role of *trait d’union* among these subjects, due to the high unionization rate and to the fact that also managers are members of the trade union.

Consensus is strengthened by the feeling of taking part to the life of the company “for the good and the bad”, enhanced by the fact that they are all involved in the financial participation scheme. The management is strictly committed to the principles – the mission! – designed by the founders of the bank and of the Republic: contribute to the growth of the Turkish economy. Employee financial participation is a way to enact these principles and fulfil this overall mission. In this view, the sense of being a team is enhanced through building workforce satisfaction.

Internal communication (even in not always structured forms) is encouraged. Worker representation, as a matter of fact, can be played on a double channel: employees can individuate both their trade union representatives, and their representatives in the pension Trust⁹. However, it is not possible to identify information and consultation procedures as in EU countries. Most of the information flow is connected to the presence of the trade union, and to the strict relation established with its members.

However the bank management also stresses the existence of a totally open human resources department, and, from the shareholding point of view, of highly transparent procedures, partly connected to the fact that the group is now quoted on the stock exchange. Internally, beneficiaries (employees and retired people) are constantly informed about the performance of the company through an intranet website constantly updated.

A collective company culture, consensus and a participation spirit are also fostered by training policies consisting in making employees grow professionally within the company and letting them develop internal career paths. The turnover rate is very low and the majority of the management is appointed from in-house: all the current top managers have been promoted within the bank.

⁷ Delegates are elected by all the employees on a regional basis, regional elected delegations take part to the GA of the Trust

⁸ They also have the role of trustees.

⁹ Within the Fund shareholders group, contacts between the trustees and the assembly of employees and retirees shareholders may happen either directly, in the general meetings of the assembly, or through the union, or through the chairman of the board who is a trustee too.



Managing conflict

The consensus building potential descending from the culture and the feeling of owning a part of the company is also the main feature in order to help preventing and managing conflicts.

Possible conflicts regarding working conditions, salaries, and other features that may be object of collective bargaining, are taken care of by the trade union in the company which normally relates to the management. Both the parts tacitly agree on keeping collective bargaining related issues and financial participation separated: for example, the dividends do not influence the level of the basic salary set in the collective agreements (which is notably the highest in the sector), the weekly maximum amount of working hours are strictly fixed (in order to protect workers from the “psychological “ pressure that could be exercised on them when they are called at working longer in the interest of the company which they partly own...).

A certain rate of normal conflict descending from normal industrial relations dynamics is therefore considered as “healthy” for the company. On the other hand, also management shares the values defended by Basisen¹⁰. For instance, job security has always been considered an overall value to be ensured by the trade union. Depending on the financial performances of the market, Basisen has always had interest in modifying the collective bargaining assets according to the needs and the possibilities of the company, but always trying to defend employment. This kind of policy is usual for Basisen (also in other banking institutes where it is present – i.e. Yapi Kredi- dismissals are very rare), but it is clear that the fact that employees represent a huge part of the shareholders is used as an argument to reduce the utilisation of human resources policies including personnel reductions. So far, management has demonstrated to be totally in line with these values, for example granting job security during crisis periods simply not hiring new personnel¹¹. As a matter of fact, there have never been collective dismissals in Isbank, even in the darkest moments of the Turkish economy¹². In a positive cycle, this kind of human resources management policies enacted within such a successful and profitable company as Isbank is also used as an argument by the trade union to foster job security also in other companies (“In Isbank there are no dismissals, so why should you fire people”?)

Social dialogue is very well developed in the bank, i.e. special system has been set up to decide about employees who do not respect internal rules: an internal joint committee, equally composed by members of the management and of the trade union, is established; only through the intervention of this kind of “court d'arbitrage” employees can incur in disciplinary measures. This strengthens the perception in the employees they have to respond to *their* bank, to their own management.

Specific remarks have to be made with regards to possible **conflicts of interests**.

From what referred both by the trade union representatives (E.C. and the President of Basisen) and the management (M. Magemizoglu, Deputy CEO), there is a clear differentiation between the role of trade union and the management role. The board of director is composed of *managers*; despite their appointment (mostly connected to their been chosen by the trade union, practically managing the Trustees appointing them), managers are committed to their duties to run a profitable and competitive business. They have this responsibility also towards all the 2-300.000 shareholders¹³. It is also clear interest both of the Trust and of trade union, in the name of its members and retired people represented, that the bank performs economically well, that the business is profitable¹⁴.

From an external point of view, it is necessary to capture the very subtle aspect of the balance among the different interests involved in the game. The fact that the trade union represent both employees and retirees'

¹⁰ Employees trusts trade union president in the appointment of the 5 trustees the Fund general assembly can nominate; these trustees nominate the chair and other 6 managers in the board...

¹¹ These policies also contribute to the creation of “appeal” of the bank as an employer, towards current employees, but also towards new possible employees. In a management view, this allows to attract valuable human resources.

¹² The second largest bank on Turkey has recently dismissed 1200 employees because of the crisis.

¹³ 30% of the shares is free float; 60/65% of those publicly traded shares are held by institutional investors.

¹⁴ This is the main difference that trade unions and management of Isbank are very keen to underline with respect to the Kardemir case. The steel mill, which was originally owned by its employees for the 51% of the shares, used to have a system of representation of employees shareholders' interests in the board of management, through trade union nominees, which “failed because of the pretension of trade unionists to be capable to act as employers and managers”.

Author: *Marina Monaco*

interests in the Fund¹⁵ determines a very cautious approach from Basisen when performing all its functions. This sensitive balance has to be kept into account, for example, at the negotiating table, where the trade union cannot push too hard, because this can endanger the future of the whole bank, and in particular the interests of the retirees. Basisen, theoretically, is in a position to get even more in a collective bargaining, but this could just be not profitable. If the rights in the collective agreements endanger the competitiveness of the bank, not only employees will be badly effected. On the other hand, within this delicate balance, employees, who are also shareholders, have outstanding collective conditions. “The union is powerful because it does not uses its power unnecessarily”.

This kind of balance and the trust of the employees behind it are framed in a company culture that since 1924 has focused on the development of the consciousness of employees and retirees that the bank is theirs, and that a correct management of industrial relations will ensure them good collective conditions and a serene retirement. “The feeling of participation by the employees is so high that if they knew that the bank was in danger, they would be ready to spontaneously renounce to their bonuses”.

Risk sharing

What if the investments made by the trust perform bad? Will employees and retired people risk to lose their savings and their complementary pensions?

First of all, there is always a state operated pension fund system, which represents a social guarantee. The liability of this pension fund will entirely taken in charge by the government. In addition, there is a pension system in line with the state operated one, which is operated by the employer (a private pension fund constituted in a trust too), which provides another pension flow.

On the top, there is the private complementary (and voluntary) pension Fund, which owns the shares.

In the agreement between the Fund and the bank, it is stated that if there is an actual deficit in the fund, the bank will be liable for it. A specific voice of the balance is dedicated to an extraordinary resource: part of the profits of the bank are in fact reserved on a special fund to cover pension fund losses in case of need. So far, 1.5 billion dollars have been put aside so far for this purpose. This money is low riskily invested.

Isbank represents a model actually not well known. Employers are against spreading it. It is very difficult to replicate the positive governance situation established within Isbank even in public banks and in unionised environments.

¹⁵ The Union President appoints the 5 trustees, as a matter of fact!



COMPANY CASE: Banca Popolare di Milano (BPM)

The Company

Cooperativa Banca Popolare di Milano (BPM) is a national-sized bank based in Milan. Born in 1865, BPM ranks among the 5 main banks in Italy with 97.796 shareholders of which 47,000 members of the cooperative. Its core business is the retail banking where privates represents about 90% out of 1,2 million clients. SMEs are the main target in the enterprise market¹.

As a modern financial group, BPM offers several financial services from retail bank and insurances up to business-to-business services. They have 756 sales points (726 agencies). In 2008, BPM was employing 8.588 employees of which only 210 temporary basis.

Performance

In the year of the worldwide financial crisis, BPM has been able to remain profitable.

Both profit and added values has remained positive even if drastically reduced compared to the previous year.

Governance mechanisms

All Banche Popolare-type companies have specific governance rules. The term “Banche Popolari” substantially implies a cooperative legal status whose governance rules include:

- a) welcome clause (*clausola di gradimento*): purchase of stocks only entitles shareholders with property rights (including the right to receive dividends and options). On the contrary, access and vote in the General Assembly (GA) is restricted to those who are granted with the status of cooperative members. Shareholders can submit request to become members to the company board of directors (normally a specific sub-committee of the board is charged with membership affairs).
- b) One head-one vote: in the GA each shareholder can cast one vote despite the number of shares he carries. Proxies are possible.
- c) Exception made for “*organismi di investimento collettivo* - institutional investors”, nobody, neither individuals nor a legal person, can hold more the 0.5% of the shares of the company.
- d) Restrictions to proxy: in this kind of companies, a member cannot collect more than 10 proxies.

Such rules are meant to reinforce and preserve the main characteristic of the business: preserving the relationship between the bank and the territory and to enhance mutuality aspects of the business.

It has not prevented BPM to introduce some adjustment to the general rules with the aim of improving its governance.

First, in its constitution, BPM forbids members to hold more than two proxies in the GA. Secondly some specific measures have been introduced to achieve the following adjustments:

¹ All figures come from the Social report, 2007



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- protection of minorities in the GA
- transparency of decisions of the board of directors, ensuring independence and suitable capacities of its components (implementation of the *Codice di autodisciplina delle società quotate* – voluntary code of conduct of listed companies)
- transparent exercise of dominant influence exercised in companies under BPM control.
- enhancement of the company's constituency involvement with focus on customers, SMEs and employees. The aim is to promote membership and enlarge the constituency.

In its social report, BPM stresses its adhesion to the voluntary code of conduct for listed companies putting emphasis on independent non/independent directors.

BPM also underscores that the principle one head-one vote and restrictions to proxy collection avoid predefined majorities in the GA. That's because the bank is keen to avoid conflict of interests or undeclared positions, for instance dominant position of big industries in the GA. Being it recognised a typical disease affecting the bank business.

Voters are something more than company owners. Would-be members are submitted to a judgement to evaluate their commitment to values like participation and mutuality.

In a situation of wide-spread-public-capital, which makes BPM governance similar to other corporations, BPM tends to give higher relevance to corporate values rather than striking financial market constraints.

The existing relationship between values and governance is maximized through the following achievements:

- avoiding the creation of predefined majorities
- standing democracy mechanism in the exercise of voting rights.

BPM system cannot be fully understood without having in mind the deep-rooted relationship with the territory. Stakeholders are co-owners of the bank and many of them undertake active role. This explains why stakeholders with homogeneous interests decide to join associations of shareholders (private customers, employees, big investors).

BPM has 1,026,000 clients in 2007. They are concentrated in specific areas, highly concentrated in its vocational territories. The bank is aware that its business depends on the ability to understand client's needs and anticipate the development of the environment in which the bank operates. BPM leads investigations regularly in order to timely perceive changes in local communities and update their products. In this way, business orientation and social responsibility are part of the same concept.

In planning activities, BPM refers to international and national standards of CSR and good governance (like OECD guidelines and Community law and recommendations). The bank has adopted customer satisfaction and transparency tools promoted by ABI, Banca d'Italia, codes of conduct of the Italian Stock Exchange. The social report underscores how the CSR concept mainstreams the entire governance system.

Employee share ownership and its implications

- Shareholders: 93,796



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- Members of the cooperative 47,278 (with right of vote “one head-one vote”)
- Non members 46,518 (only property rights)

In order to have all elements to evaluate the governance of the bank, it must be said that the group of shareholders-members own 23.28% of the total capital, while shareholders with no-voting rights own 76.72% of the shares.

BPM is listed on the Italian stock exchange since 1994.

The indissoluble tie linking the territory and its bank, is proved by the fact that 60.7% of the shareholders reside in the Lombardia territory and namely in Milan.

Employees and property: employees carrying shares are 8,515. To be noted that this figure includes shares carried by employees' minor children (parents exercise voting rights attached to the shares on behalf of children, according to the company constitution). Together with employees of the controlled companies, employees-shareholders are 8,890. They represents less than 10% of the shareholders.

Employees/property/membership: it is also interesting to note that almost all the employees are members of the cooperative. It means that they can exercise a voting right in the GA. Members-employees represent about 12% of the capital represented by all members. They represent 2.7% of the total capital of the company.

Other shareholders: institutional investors, even though they represent about one half of the total capital, enjoy 7 votes in the GA.

About 40,000 customers represent 5 times the capital held by the employees and 72% have right to participate in the GA.

Potentially, customers retaining more than half of the available votes, could have a large dominant position in the general assembly if they put themselves in the position to express a uniform vote.

In general, the GA expresses the will of half of the shareholders and 23% of the total capital of the bank.

Table 1 Composition of the corporate capital - Dec 2007

Type of Shareholder	Total shareholders		Of which members		Of which no-members	
	Number of shareholders	Carried shares	Number of members	Carried shares	Nr of non-members	Carried shares



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Employee of BPM	8,515	11,346,987	7,960	11,289,833	555	57,154
Employed in the group	375	259,138	318	229,204	57	29,934
Customers	39,558	54,514,162	28,610	46939465	10,948	7574697
Institutional investors	287	231,102,060	7	3,718,347	280	227,383,713
Big partners-shareholders	61	30,386,988	17	5,483,728	44	24,903,260
Strategic partners	16	22,773,395	12	16,268,760	4	6,504,635
Others	44,984	64,651,501	10,354	12,693,278	34,630	51,658,223
<i>TOTAL</i>	<i>93,796</i>	<i>415,034,231</i>	<i>47,278</i>	<i>96,622,615</i>	<i>46,518</i>	<i>318,441,616</i>

Who does attend the GA?

In 2007 and 2008, in 4 meetings, about 3,000 members attended the GA. Employees have been the most represented group. They have expressed about half of the votes in the GA.

Employee share ownership has been promoted in the past years implementing a “Piano di Accumulo Azionario – Stock Creation Plan”. Since 2004, 4,700 employees have joined the plan for a sum of 9.8 million shares locked into the plan and 1,550,000 share distributed as an incentive. The Plan has been stopped in 2007 on request of the association of the employee because of the uncertain course of the shares and the possible change in the tax regime. New plans could be activated in the next future.

Out of 7,960 employee-members, 7,278 are members of the “*Associazione Amici della Cooperativa Banca Popolare di Milano – Association of BPM friends*”. Financial participation of employee digs its roots far in the origin of BPM. Consequently to the reform of the voting system in the GA in 2002, employees adopted a new association status allowing them to better manage their capacity to have a single voice in the GA.

Today, the association Amici di BPM is the most influent association of members/shareholders. In the last elections their list gathered the highest number of votes and got the right to appoint the President of the Board of Directors and the majority of the members of the board. The board can count up to 20 members and at least four seats are reserved to minority shareholders (namely lists that did not get the majority).

Other relevant associations are

- “Associazione Insieme per la Cooperativa Banca Popolare di Milano – Association Together for BPM” composed by former employees and customers. They have 3,500 members.
- “Comitato Soci non dipendenti della Banca Popolare di Milano – Coordination of non-employed members of BPM” whose members are mainly customers and creditors. They have 4,300 members.



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- “BPM 360 gradi – BPM 360 degrees” is an association led by an institutional investors Amber Capital which is trying to represents in the GA assembly those that would keep the company better responding to the market requirements.

What is interesting is that the employee group, despite the fact t they are one fifth of total customers members, represents almost the half of the organized members of the cooperative. It shows that employees feel quite more committed than other stakeholders.

Institutional investors can only benefit from property rights and have no chance (because of the cooperative nature of the corporate) to be dominant in the GA.

It should also be noted that the limitation to proxy collection generates specific dynamics in the GA. It means that shareholders/members must personally cast their votes. The IT instruments and new EU legislation can encourage “voting at distance” mechanisms but, for the time being, it represents the very minority of the cast votes. The fact that the major part of the members are concentrated in the Lombardia region means that all vote-holders can have easy access to the corporate life and its General Assembly. It exalts the link with the territory and make such territorial roots a pre-condition of good governance.

BPM IN THE GRID

Consensus Building

BPM can be considered a peculiar system of employee participation. The main trade unions of the bank sector (FIBA-CISL, FISAC-CGIL, UILA-UIL and FABI) are part of the Association BPM friends. In particular, FIBA and FABI are considered to be dominant in the Association. Both organizations, when acting together, they are presumed to have a dominant influence on the appointment of directors. They also have a direct representation in the company board, according to the statutory rules governing the company governance.

It means that the main group of interest in the GA is able to decide (or having a major influence on) all the managing and supervisory bodies of the companies and subcommittees.

But of course the situation could change and other stakeholders, differently organised could one day prevail in the general assembly.

In this case, the employee association, in a minority position, will continue to be represented. Minority lists are entitled to appoint at least 4 directors in the board of directors and at least one representative in each subcommittee or supervisory body.

Participation is not the result of an industrial relation scheme but the consequence of a proper system of governance. Employee participation is the result of a combination of some factors:

- cooperative company type
- low threshold of concentration of shares (max 0,5%)
- one head-one vote principle (deviation from one share-one vote principle)
- large and historical system of employee participation in the company
- close link with the territory.

Of course, associations of member/shareholders must be equipped with internal rules in line with the



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provisions of the market authorities like Consob and Banca d'Italia. It means that the association of employees must be able to keep a constant dialogue with those authorities. It means that they have also developed skills and capacities to manage issues which are far from the traditional cultural background of a trade unionist.

Managing conflicts

The governance setting has a clear impact on the collective bargaining management. The basement of the Italian system is the national collective agreement of the sector. National collective agreements may be integrated by a company level bargaining. The latter adapts the industry collective agreement to the specific company situations. At company level is possible to introduce an extra-wage, normally a profit-sharing scheme.

In concrete terms, a rate of about 5% of wages can depend on the economic results of the company. The company-based collective agreements last normally three years and the profit-sharing scheme is periodically assessed on the basis of the results announced by the company during the year. It allows employees to check if the profit-sharing scheme actually responds to the real potentiality of the company.

In BPM, this “check and go” procedure is a continuous process in which risks of re-negotiations are extremely low and level of satisfaction of employees rather high.

BPM is leading an attempt to increase the wage's rate submitted to the company results.

Such “concertative” way to intend industrial relations has allowed the company and the unions to explore advanced experiences of company-based welfare. Worthy to be mentioned, the career progression schemes (adopted, as best practice, also in the national collective agreement), vocational training, reconciliation of family and professional life, mobility plan, pension funds, etc.

It must be noted that such highly participative system does not prevent unions from exercising conflict (even if only in extraordinary circumstances) it has been the case of the staff of a controlled company Cassa di Risparmio di Alessandria, where the reorganization of work (implementation of a IT system matched with the reduction of the staff), after the take-over, has caused several concerns among the workforce and led to a strike in 2008.

Sharing risks of the business

BPM shares have produced a dividend of about 3% in the last years even if the course of shares has been declining. It has generated the deferment of the employee share ownership plan. On the same time, employees capital rate has been regular.

Company results, even through considered positive, has not been in line with the market standard and pose some concerns for the future. The company size is not considerate adequate especially looking at the concentration process happening in Italy and Europe. Considering the recent concentration process of the Italian financial market, BPM remains the smallest among the big Italian players.

The peculiar legal status - and the consequent governance system - of the company is at the same moment considered a strength and a weakness. The first one, because it determines the identity of the bank and, the second, because it becomes a deterrent when looking for a business partner.



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Modernisation of company governance

A pension fund exists but not related to the company governance.

BPM edits its social balance and refers to “Principi di redazione del Bilancio sociale – Principles for a social reporting” issued by GBS (Gruppo di studio per il bilancio sociale – Study group social balance) and “Modello di relazione per il bilancio sociale per il settore del credito pubblicato dall'ABI – Model for social reporting in the bank sector issued by Italian Bank Association”.

They declare their governance to be built for the harmonisation of different interests of members/shareholders, customers, employees and other stakeholder.

Concerning this last aspect, the company has built a system of social reporting in which is visible the attempt to mainstream the CSR concept in the whole process of governance of the company. A “*comitato guida* – leading committee” is composed by the top directors engaged in all different governance functions. They will be supported by a “*comitato di coordinamento* - coordination committee” which is the interface with the stakeholders and will have as operative body the “*rete di referenti interni* – network of in-house contact people” for implementation of project and spreading of the results.



COMPANY CASE: HANDELSBANKEN

The Company

The Bank is a public liability banking company (publ). Handelsbanken can be classified in the category of universal banks. It offers a full range of financial services in Sweden, Denmark, Finland, Norway and in Great Britain. Handelsbanken's concept is to offer private and corporate customers a full range of financial services and a high level of services based on the customer's requirements and a personal relationship.

The business operations are highly decentralised. This means that all business decisions concerning the individual customer's relationship with the bank are made by the local branch. In the years, local branches are regularly increasing in number. The aim is to keep the bank well eradicated on the territory.

In December 2008, Handelsbanken had approximately 11,000 employees in 22 countries. Around 30% of the workforce is employed outside Sweden mainly in the Nordic countries, UK and Poland. Banks boast an advanced policy on equality (37% director positions to women and policy in favour of parental leaves) and in-house selection of managers (90%) to get the most from its workforce.

Company Performance

The bank ranks a stable position among the three main banks in Sweden by volumes and employees. For thirty years, Handelsbanken has outperformed their main competitors under different indicators. Basically, in terms of return on equity Handelsbanken has done better of the average of the main competitors in the Nordic and UK market.

It's secret staus in the regular capacity of the bank to reduce costs. In this way, the Bank has been able to produce value for their shareholders. Since 1985, the growth of Handelsbaken shares have doubled both the Stockholm All-Share-Index and the Banking sector Index.

Handelsbanken has a low risk tolerance. For many years, this approach has resulted in lower losses on loans. Even in 2007, Handelsbanken's return on equity after standard tax for total operations was 15%. Excluding non-recurring items, return on equity after tax was 14,1%. The corresponding figure for a weighted average of other major Nordic banks was 10.6%.

Using the average of other Nordic banks, Hadelbanken is more performing in terms of return on shareholders' equity, Customer satisfaction index, cost effectiveness rate.

According to the annual report approved by the General Assembky, the Bank has well reacted to the turbulence of the financial market. In 2008, Handelsbanken shares have suffered of the economic crisis loosing part of their value but the bank is still doing well as shown by all economic indicators. Return on equity was 15% against 10% as average of main competitors. Loan losses as a proportion of lending were 0,11% which is considered high assuming the low risk profile of the Bank investments but quite below the average of the Nordic competitors which have suffered a loss of 0.35%. The fact that in periods of shortage of liquidity on the interbank market, Handlesbanken has constantly been a net investor in the Swedish interbank market.

The stability of the Bank is considered a result of the culture backing its governance whose credibility is strongly related to the employee ownership.

Governance Mechanisms

Over a long period, the Bank has developed a clear corporate culture which is explained in a document called Our Way. This document was developed by Jan Wallander former Group Chief Executive from 1970 to 1978



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and Chairman of the Board from 1979 to 1991. He currently holds the office of Honorary Chairman. He has to be considered the inventor and the promoter of the Handelsbanken model.

Translated in all languages of Countries where the Bank operates, Our Way Bank's fixes goals, ideas and work methods that all employees must be aware of Handelsbanken business is organised on a strictly decentralised model, whereby most important business decisions are made at the branches, close to the customer. This also means that the Bank has a very flat organisational structure. Between branch managers and chief executives there is only one levels. This creates short, efficient and clear decision paths.

The board is nominated by the General Assembly on the basis of proposals made by the nomination committee. The Nomination Committee gets a primary role in company governance. The GA decides how the Committee is appointed (and their fees) and currently it is composed by one representative of the main four groups of shareholders plus the chairman of the board. The nomination committee's task also includes the evaluation of the board activity, primarily based on the report that the chairman of the board submits to the committee. Member of the boards can be remarked by level of independency: non-independent (generally employees representatives), independent of the Bank, independent of bank's management, independent of major shareholders.

Handelsbanken has approximately 100,000 shareholders. Most of these (about 60% of the total number of shareholders) owns fewer than 500 shares. The 10% of shareholders, whose holdings exceed 2,500 shares each, all together hold 90% of the share capital.

30 April 2009, 39% of the outstanding shares were owned by large Swedish institutions. International investors owned some 30%.

The major Swedish shareholders on 30 April 2009

Shareholder	No. of shares	Percentage of votes
The Oktogonen Foundation	65 800 000	10.7
Industrivärden	65 027 309	10.6
Swedbank Robur Funds	19 162 882	3.1
Alecta	16 558 000	2.7
AFA Försäkring	14 162 229	2.3
Lundbergs	13 432 000	2.2
AMF Pension	9 400 000	1.5
Second National Swedish Pension Fund	8 289 157	1.3
Fourth National Swedish Pension Fund	6 497 600	1.1
Third National Swedish Pension Fund	6 178 690	1.0
Folksam/KPA/Förenade Liv	5 355 252	0.8
First National Swedish Pension Fund	5 091 517	0.8
AMF Pension Funds	4 541 833	0.7



Didner & Gerge Fund	4 315 000	0.7
Handelsbanken's Research Foundation	4 100 000	0.7

The 4 main shareholder groups are: Oktogonen Foundation, Industrivarden, Alecta, Lundbergs.

In GA 2009 about 900 people took part representing 52% of the votes. In 2008 Oktogones expressed 10.8% of the votes, the chair man, Industrivarden 10.6% Alecta 4.1% and AFA Forsakring 2.5%. As said before the nomination committee has a key role in the appointment of the board. The Nomination Committee submits a list of candidates for the board that the GA is called to adopt on simple majority.

The Nomination Committee is composed by 4 of the main shareholder groups and the Chairman.

The largest shareholders, contacted by the chairman on mandate of the GA, appoint one representative each to constitute, together with chairman, the nomination committee. They will stay in charge until a new nomination committee is appointed by the next general meeting (e.g. Members of the Nomination Committee in 2010 shall be announced at least six months before the 2010 annual general meeting).

Therefore, the 4 biggest shareholders are in the position to nominate the company board. Formally the Committee is supposed to adopt its decisions on simple majority, according to the principle one head one vote. In practice, the Committee takes its decision by consensus and the weight of the single shareholder groups is well recognised.

The Committee represents about 25% of the available votes in the GA. It means that the board is likely directly nominated by 25% of the total issued capital. Even if the GA of Handelsbank is well attended (a bit less than 1000 people each year), it is hard for other groups to collect more than 50% of the available votes. It makes the choice of the 4 main shareholders 'invulnerable'.

Employee Share Ownership And Its Implications

Since 1973 every year but two, the board has decided to allocate part of the bank's extra profits to a profit-sharing scheme for the benefit of the employees. The funds are managed by the Oktogonen Foundation.

Allocations are subject to the achievement of the pre defined goals return on shareholders' equity after standard tax has to be higher than a weighted average of the other listed Nordic and British banks. If the criterion is met, one third of the extra profits can be allocated to the employees. The amount is limited to 15% of the dividends payable to shareholders. If, one year, the bank lowers the dividend paid out to its shareholders, no money will be allocated to the profit-sharing scheme (that is to say to Octogonen). All employees receive an equal part of the allocated amount. Criteria for allocation of extra profits can evolve according to new realities.

In spring 2008, the board approved an allocation to Octogonen Foundation in respect of the 2007 financial year amounting to SEK 6,000 for each full-time employee in Sweden.

A considerable part of the funds are invested in shares of Handelsbanken, so Oktogonen is today the largest shareholder of the bank. The board of the Oktogonen Foundation is appointed by the Swedish Union of Finance Sector Employees. Than the Foundation will submit two candidates to sit in the company board in representation of the foundation and therefore of the employees (indeed the Octogonen reps replace both reps that employees are normally entitled to appoint in accordance with the Swedish law)

The Octogonen Foundation

Octogonen, a foundation for the employees of Handelsbanken, was founded in 1973 on the initiative of former CEO, Jan Wallander. Jan Wallander was a very prominent business leader and a strong believer in the importance of human relations and the role of employees in banking.



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The role of the foundation is to receive, administer and distribute profits from the bank to the employees. The idea of the profit-sharing system is that half of the profits exceeding the average profits of comparable banks should be shared equally between the shareholders and the employees. Taking the difference in tax situation between shareholder and employees into account, it was decided that one third of profits exceeding the average profit of comparable banks be transferred to Octogonen. This calculation is based on profits after financial adjustments but before taxes.

The funds annually transferred to Octogonen are administered by the board of the foundation, which is free to use the funds as they see fit. It is, however, understood that the main part of the funds will be used for buying shares in Handelsbanken. At present (March 2006), 78% of the funds are invested in Handelsbanken shares and the rest in other major companies traded on the Stockholm stock exchange.

There are no safeguards regarding the value of the fund. Octogonen funds are dependent on market conditions.

All full-time employees earn shares in Octogonen, depending on years of employment. Part-time employees and individuals that only work part of the year earn shares in proportion to their working time. Persons working less than 25% of a year are not included. Position and salary are not considered when computing the amount of shares earned.

The board members of Octogonen are elected by each of the regional chapters of Finansförbundet, the financial sector union of Sweden. The unions at Handelsbanken have, as do all trades unions in Sweden, a legal right to appoint two union members to the company board. The unions in Handelsbanken decided to let one of the positions of the board be elected by the Octogonen board and

one by Finansförbundet.

An employee can withdraw their share in Octogonen at the age of 60. Individual shares are calculated on the basis of the number of years of employment and the current share value at the end of the year before the individual turns 60. Payment can be made in the form of a lump sum or in parts over fifteen years. The shareholder does not have to be an employee of Handelsbanken at the time of the sixtieth birthday. Currently, Handelsbanken has 9,900 employees, and there are altogether 18,000 employees and ex-employees holding a stake in Octogonen.

Since the initiative started in 1973, one year Handelsbanken did not deliver anything to Octogonen. Hence, Handelsbanken has always outperformed comparable banks.

The funds in Octogonen have grown to a considerable amount over the years. Currently, Octogonen holds over 10% of the shares in Handelsbanken. In 2006, a person who has been a full-time employee since 1973 has a stake in Octogonen of some 750,000 euro. Of the current value of Octogonen funds, about 10 % represent dividends from Handelsbanken and 90 % thirds represent the increased value of the shares.

Both the management of Handelsbanken and Finansförbundet are in agreement that the existence of Octogonen should have no effect on the salaries of the employees or on wage negotiations in Handelsbanken. Salaries are set individually and processed in a system with annual individual wage negotiations.

Handelsbanken profit-sharing is a collective system. All employees get the same benefit, regardless of individual performance. Individual performance is observed in the individual pay policy of the company and is handled in the employer/union relationship.

HANDELSBANKEN IN THE MATRIX

Handelsbanken and consensus building

Collective managing of share in Handelsbanken has brought to a large system of employee involvement. According to both employee, shareholders and directors the ownership scheme has enhanced in a synergic way the participation system which is indeed endemic in the Swedish system. The Octogonen system make Handelsbanken a unique case in the Nordic panorama. In the sense that, generally speaking, in Sweden employee



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representatives sits in the company boards because of legal provisions. In Handelsbanken, employees have chosen to be represented in the company board as employee-shareholders. The two elected are not summing but simply replacing the two that employees would be entitled to appoint.

The difference runs in the fact that, being expression of the most important shareholder, the Octogonen reps have a greater weight in the board and will be empowered to participate in all sub groups of the board.

On top of that, employees and trade unions can enjoy of a wide spread opportunities for consultation as traditionally provided in the Swedish legislation and practices.

Thanks to the profit sharing scheme associated to the Octogonen, employees can acquire a greater awareness of strategic company decisions. Looking at criteria generating the yearly allocation of shares it is possible to appreciate how the employees can have notice of the company performances against their main competitors, they will be aware of the structure and distribution of profits and dividends to the shareholders, development of costs (substance and structure) and the formulation of strategic strategies to maximise cost reductions.

The level of employee awareness and motivation can only be understood matching the formal participation structure with a couple of organisational measures that complement the effective involvement of the employees in the bank management. It is the case to refer to the very flat hierarchy scale (very few steps between the top executive management and the staff) and the absence of budgets (two innovation strongly wanted by the Jan Wallander). Another relevant organisational characteristic is the fact that almost all the managers are selected within the bank's staff. It means that directors have grown in the business. This have the double effect to hand down the company culture to reinforce human relationships (managers know personally their people). Both are considered factor of success of the business organization.

Once we have seen how all employees are committed and aware of the complexity of the participation system we can add a further consideration.

Octogonen is ruled by the main union of the Bank sector. Financeförbundet is the most important union in the sector and it is considered strongly representative. In Handelsbanken, they organise about 65% of the workforce (a second union NAME represents only 5%). According to its Statute, the local branch of Financeförbundet in the bank is entitled to appoint the Octogonen board and in turn the Octogonen board appoints two members of the board of the Bank. There are no restrictions in the appointment of the members of the board in the sense that, as currently happening, it is allowed to bear offices in the union (both at national or branch level) and member of the Bank's board. As well as being member of the Octogonen board does not prevent from being bank's board member.

It gives great power to the Banks branch of Financeförbundet. What has emerged in the investigation is that the trade union activity is considered well independent and authoritative.

It creates a climate of strong cooperation and high internal cohesion which is unanimously considered a point for the bank competitiveness. The word 'responsibility' is often used by the different actors (company management, unions and Octogonen representatives). Unions, exercising participation rights, maintain its autonomous but even more important, they are recognised as such by employees and company. It let observers realising that sustainability of the model goes quite beyond a mere legal requirement but it is the result of an eradicated culture in the company. And in Handelsbanken such eradicated culture exists and this is endorsed as the reason of its success.

Managing conflicts

Conflicts between workers and the company are substantially absent. It is not a result as such. In Sweden, conflict is very low everywhere in the sector. Not only because no strikes are allowed when collective agreements are in force but because of the specific culture of industrial relations backing the Swedish model.



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Sitting in the company board gives unions a big responsibility and Financeförbundet traditionally recognises the worth of a profitable business. The Union is aware that stability of employment and improvement of working conditions depend on the capacity of companies to produce profits.

'Responsibility' can also be considered the key concept to avoid conflict of interests. In Handelsbanken, as in Sweden at large, employees recognise unions' autonomy and their capacities to bear their responsibilities. To make it simpler, we can assume that Handelsbanken and the unions can group their collective agreements (potential sources of conflict) in two areas. The first group deals with those agreements regulating processes and functioning of industrial relations. The second area refers to all that measures regulating working conditions and salaries. Being both agreed at national level they have in the company-based-agreements a complement to adjust general rules to the concrete situation in the single business. The necessity of the company-based agreements is by the way limited by the effectiveness of participation instances that also ensure a fair implementation of collective agreements in the company. Coming back to the two main aggregates, both are not producing conflicts, and it is in tune with the rest of the sector. Handelsbanken is simply 'doing better' situation. The bank can, thus, easily concentrate efforts on progressive policies for the valorisation of its HR resources. It is worthy a mention the bank's programme on equal opportunities (considered highly successful) and the career progression according to which all the Bank's directors are supposed to be insiders. It is in fact considered a pre-requisite for company directors the capacity to handle the company culture and relative management instruments. It is to be considered that the Octogonen system, including the profit sharing scheme, is not considered to fall under the scope of collective bargaining. Its statutory rules belong to the company and the Octogonen bodies and allocation to the Foundation is unilaterally decided by the company board (where of course employee representative are well represented).

Sharing Risks

One of the goals endorsed by Mr Wallander was to make employee aware of the risks behind the business. The aim was to create a responsible cohesion inside the all staff of the bank. The profit sharing scheme over performed since the beginning and employees become the first group of shareholders soon in the seventies.

Since then, employees hold a great stake in the Bank's capital and today they have great expectation for the results yielded by the system.

They have also acquired a strong awareness of the cost system and the necessity to reduce them but on the other hand they also have a feeling of great stability of their job place.

If we consider that amount granted by Octogonen to an employee after 30 years is near to one million euro, we can imagine how committed the employee could feel with the company performance. This should be not undermined.

In the end of the day it is about shares and their value is fluctuating on the stock market. Hard to convince employees to retain their investments once they consider that shares have reached a peak. In many other cases, employee share ownership ceased to exist just because the attitude of employees to sell shares when they reached profitable values.

In Handelsbanken, employees can dispose of their shares only when they are 60. No exceptions are possible or tolerated. It is considered a precondition for the good functioning of the scheme. By the way, restrictions are also well accepted by the staff as it is considered a pure extra payment on top of fulfilling remunerations and a sustainable pension treatment (the bank also offers a pension scheme to their employees).

It means that the Mr Wallander has really been able to make the system as something extra for the advantage of the employees and it has been to make the system being perceived not merely an extra payment but a 'plus' in terms of participation, company competitiveness and business success.



COMPANY CASE: DEXIA

Historique

Dexia est né de la première fusion trans-frontalière européenne entre le Crédit communal de Belgique et le Crédit local de France. Dans un premier temps, ces deux sociétés opérationnelles ont été placées sous le contrôle conjoint de deux sociétés holdings : Dexia Belgique et Dexia France, détenant chacune 50% du capital.

En 1996, le titre Dexia Belgium fait son entrée en Bourse et le titre Dexia France se substitue au titre Crédit local de France déjà coté à la bourse de Paris. Depuis novembre 1999, les titres de Dexia SA sont également cotés sur la bourse de Luxembourg. Fin 1999, les structures ont été unifiées par la fusion des deux holdings de tête en une seule société, Dexia SA qui contrôle le Crédit communal de Belgique (devenu Dexia Banque Belgique en 2000), Dexia Crédit local et la Banque Internationale à Luxembourg (détenue à 100% par Dexia SA depuis 2003), filiale du Crédit Communal de Belgique.

En 2000, Dexia acquiert aux Etats-Unis la *Financial Security Assurance*, l'un des leaders du rehaussement de crédit des obligations émises par les municipalités et devient le leader mondial sur le marché des services financiers au secteur public. En 2001, Dexia acquiert *Artesia Banking Corporation* et devient le numéro 2 de la bancassurance en Belgique. En 2006, Dexia acquiert une participation de contrôle dans la banque turque DenizBank.

Aujourd'hui le groupe Dexia est une banque européenne qui compte 36 760 collaborateurs au 31 décembre 2008, répartis sur 37 pays même si la présence de DEXIA reste focalisée sur le continent européen. Les collaborateurs du groupe ont principalement un contrat à durée indéterminée (près de 94 %), signe d'une grande stabilité du personnel. A la même date, ses fonds propres s'élèvent à 17,5 milliards. L'activité du groupe se concentre sur la banque du secteur public, proposant des solutions bancaires et financières complètes aux acteurs locaux du secteur public et sur la banque de détail et commerciale en Europe, principalement en Belgique, au Luxembourg et en Turquie.

Impact de la crise financière : effondrement de la valeur de l'action

Le 29 septembre 2008, dans le cadre de la crise des subprimes, Dexia est sous pression, en raison de ses relations d'affaires supposées avec Fortis et des difficultés de sa filiale américaine, FSA, spécialisé dans le rehaussement de crédit. En bourse, après avoir perdu 7,53% à 10,07€ le 26 septembre, le titre Dexia s'effondre, le 29 septembre, de 34,26% à 6,62 euros.

Le 30 septembre 2008, suite au plan de sauvetage du groupe orchestré le 29 septembre par les gouvernements belge, français et luxembourgeois (injection de capital d'un montant de 6,4 milliards d'euros), le groupe annonce la démission de ses deux principaux dirigeants, Pierre Richard et Axel Miller, remplacés par Jean-Luc Dehaene et Pierre Mariani.

En manque de liquidité, les gouvernements français, belge et luxembourgeois se sont engagés le 9 octobre 2008 à garantir les nouveaux financements interbancaires et institutionnels de Dexia. Cette garantie, qui prend effet jusqu'au 31 octobre 2009, pourra être renouvelée pour une durée d'un an mais a une maturité de seulement 3 ans.

Le 24 octobre 2008, François Rebsamen, membre du parti socialiste, démissionne de ses fonctions d'administrateur de Dexia.

Le 20 février 2009, le cours de l'action à la bourse de Bruxelles chute à 1,85 euro, soit son niveau le plus bas depuis 5 ans, marquant une perte de plus de 90 % de la valeur du titre sur un an ! Le 5 mars 2009, à la clôture de la Bourse de Bruxelles, le cours de l'action était de 1,21 euro, une perte journalière de plus de 20%. En 2009, sauvée de la faillite par les Etats français et belge, Dexia supprime 900 postes, dont 250 en France.

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Composition de l'actionnariat du groupe DEXIA :

Au 31 décembre 2008, DEXIA totalisait un nombre d'actions de 1 762 478 783. Du rapport d'activité 2008, il ressort que l'actionnariat du groupe DEXIA se compose pour l'essentiel de la façon suivante :

- Caisse des dépôts et consignations 17,61% du capital
- Holding Communal : 14,34%
- Groupe ARCO : 13,92 %
- Etat fédéral belge via Société fédérale de participations et d'investissement 5,73%
- Etat français via Société de prise de participation de l'Etat 5,73%
- Groupe Ethias 5,04 %
- CNP Assurances 2,97%
- Région flamande via le Vlaams Toekomstfonds 2,87%
- Région wallonne 2,01 %
- Région de Bruxelles-Capitale 0,86%

Au 31 décembre 2008, les collaborateurs du groupe Dexia possédaient 2,06 % du capital de la société contre 3,84% au 31 décembre 2007. 26,86% du capital sont détenus par d'autres actionnaires institutionnels et individuels.

Les plans d'actionnariat

L'initiative de proposer un plan d'actionnariat aux employés de DEXIA a été lancée en 2000. L'objectif annoncé était de permettre aux salariés de l'entreprise d'acquérir des actions à un prix intéressant doublé de déduction fiscale. Il était également convenu que les actionnaires salariés auraient la possibilité d'être représentés par l'un des leurs au conseil d'administration s'ils détenaient 5 % du capital du groupe. Ce seuil n'a jamais été atteint.

L'objectif principal du Groupe était d'associer tous les collaborateurs à la stratégie et à la croissance de DEXIA et leur permettre de se constituer une épargne salariale investie en titres de leur entreprise à des conditions avantageuses. Par ailleurs, le Groupe y voit une façon de renforcer le sentiment d'appartenance à un Groupe socialement unifié autour d'une seule holding de tête, DEXIA.

Tous les collaborateurs des sociétés détenues directement ou indirectement à plus de 50% par DEXIA peuvent participer au plan d'actionnariat sous la double réserve :

- de justifier d'une ancienneté dans le groupe de plus de six mois
- d'être toujours actif au sein du groupe à la réalisation de l'augmentation de capital.

Les actions souscrites sont des actions DEXIA dont le prix de souscription a été réduit à concurrence de 20% par rapport au prix du marché au moment de la souscription. Toutes les actions sont bloquées pendant cinq ans. Les collaborateurs ne peuvent investir plus d'un quart de la rémunération annuelle brute moyenne de la catégorie socioprofessionnelle à laquelle ils appartiennent.

DEXIA offre à ses collaborateurs deux types d'offre et plusieurs options :

- **Poffre classique** : le collaborateur finance la totalité de ses actions avec ses fonds propres. Il en devient le propriétaire direct. Ces actions sont nominatives et inscrites dans le registre des actionnaires. Les actions font l'objet d'une période de blocage de 5 ans. Durant ces 5 ans, il perçoit les dividendes éventuels.

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- **Poffre levier** : dans cette offre, pour toute action souscrite au moyen de son apport personnel, neuf actions DEXIA complémentaires sont automatiquement souscrites au nom du collaborateur.

Ces actions sont bloquées pendant 5 ans. Pour assurer la mise en place et la gestion administrative de cette offre levier, les collaborateurs optant pour cette formule mettent en commun les actions souscrites au sein d'une structure collective sans personnalité juridique, « DEXIA Star ». La gestion et l'administration du fonds sont confiées à un **conseil de surveillance paritaire**. Les actions sont nominatives et inscrites dans le registre des actionnaires au nom du fonds agissant au nom et pour le compte des membres du personnel concernés. Ces derniers détiennent alors une part du fonds. Les droits de vote attachés aux actions DEXIA détenues dans l'offre levier sont exercés par les représentants des membres du personnel au sein du conseil de surveillance du fonds. A l'échéance du plan, le collaborateur reçoit soit la valeur en numéraire, soit les avoirs sont convertis en actions DEXIA. L'offre levier peut être standard, moyenné ou à click offrant des rendements différents

Compte tenu de la chute de cours de Bourse de l'action DEXIA, le plan d'actionnariat a été suspendu et reporté à une date ultérieure. Une réunion extraordinaire des conseils de surveillance a été organisée pour fournir aux partenaires sociaux l'information adéquate.

Hauteur des dividendes distribués aux actionnaires du groupe DEXIA 2000-2008 et sortie des plans 2001 et 2002

<i>Dividendes exercice</i>	<i>Montant brut</i>
<i>2000</i>	<i>0,43 EUR</i>
<i>2001</i>	<i>0,48 EUR</i>
<i>2002</i>	<i>0,48 EUR</i>
<i>2003</i>	<i>0,53 EUR</i>
<i>2004</i>	<i>0,62 EUR</i>
<i>2005</i>	<i>0,71 EUR</i>
<i>2006</i>	<i>0,81 EUR</i>
<i>2007</i>	<i>0,91 EUR</i>
<i>2008</i>	<i>0</i>

Compte tenu de la crise financière, le Conseil d'administration a proposé à l'AG des actionnaires du 13 mai 2009 de ne pas verser de dividendes pour l'exercice 2008 à titre exceptionnelle.

Sortie des plans 2001 et 2002

En 2006, les salariés ont pu sortir du plan d'actionnariat 2001. 6 collaborateurs sur dix y avaient participé à concurrence de 170 millions d'EUR. L'offre classique a affiché un rendement de plus de **70%** et l'offre levier, un rendement de plus de **160%**.



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En 2007, L'offre classique a affiché un rendement de plus de **191%**, et l'offre levier un rendement de plus de **744%**.

La Charte de gouvernement d'entreprise

Le Code belge de gouvernement d'entreprise, qui remplace les recommandations formulées en la matière par la Commission bancaire, financière et des assurances, la Fédération des entreprises de Belgique et Euronext Bruxelles, est entré en vigueur le 1er janvier 2005. Le Code belge de gouvernement d'entreprise comprend neuf principes obligatoires pour les sociétés cotées. Dexia entend respecter ces neuf principes.

Lors de sa réunion du 3 février 2005, le conseil d'administration de Dexia SA a constitué en son sein une commission « gouvernement d'entreprise », composée d'administrateurs de Dexia SA, chargée de mener une réflexion et de formuler des propositions sur les différents thèmes de gouvernance traités par le Code belge de gouvernement d'entreprise et sur les adaptations éventuelles par rapport à la situation existante chez Dexia. Les travaux de cette commission ont notamment mené à l'élaboration d'une charte de gouvernement d'entreprise, d'un règlement d'ordre intérieur du comité d'audit, ainsi qu'à la révision des règlements d'ordre intérieur du conseil d'administration et du comité de direction.

Lors de sa réunion du 13 novembre 2008, le conseil d'administration de Dexia SA a modifié son règlement d'ordre intérieur afin de renforcer encore sa gouvernance.

La charte de gouvernement d'entreprise de Dexia SA donne un aperçu détaillé des principaux aspects de gouvernance de la société. Le premier volet traite de la structure et de l'organigramme du groupe Dexia. Le second volet décrit la structure de gouvernance de Dexia, et comprend toutes les informations nécessaires sur la composition, les attributions et les modes de fonctionnement des organes de décision que sont l'assemblée générale des actionnaires, le conseil d'administration et le comité de direction. Les règlements d'ordre intérieur du conseil d'administration et du comité de direction y sont par ailleurs intégralement repris. Cette partie de la Charte décrit également les compétences des directions générales au niveau du groupe, et des fonctions centrales de Dexia SA. Le troisième volet traite des actionnaires et des actions de Dexia. Il contient une description des relations que Dexia entretient avec ses actionnaires et un aperçu des caractéristiques du capital de Dexia et de ses actions. Le quatrième volet donne un aperçu du contrôle exercé sur et au sein du groupe Dexia. La partie « contrôle interne » de ce volet contient les informations relatives à l'audit interne, la déontologie, la compliance. La partie « contrôle externe » traite des missions du commissaire et du protocole relatif à l'encadrement prudentiel du groupe Dexia conclu avec la Commission bancaire, financière et des assurances. Le dernier volet de la Charte décrit la politique de rémunération de Dexia envers les administrateurs de la société et les membres du comité de direction.

Plusieurs éléments de la Charte de gouvernement d'entreprise sont repris, comme préconisé par le Code belge de gouvernement d'entreprise, dans le rapport annuel 2008 de Dexia SA.

La Charte est publiée depuis le 31 décembre 2005 sur le site internet de la société (www.dexia.com), et régulièrement mise à jour.

Actionnariat salarié, gouvernance d'entreprise et dialogue social

Entretien avec Jean-Pierre Verelst, coordinateur général CNE-GNC (CSC), Unité technique d'exploitation, DEXIA Banque Belgique, 30 avril 2009, Bruxelles. Pierre.verelst@dexia.com +32 222 33 80.

Le management représenté par le DRH, Roger Leyssens, n'a pas donné suite à la demande.



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Impact sur la gouvernance d'entreprise

A moins d'atteindre les 5% du capital, les actionnaires salariés ne disposeront d'aucun mode de participation dans les organes décisionnels, par l'intermédiaire d'un représentant au CA. Il y néanmoins lieu de souligner que la désignation d'un administrateur spécifique serait source de difficulté dans un groupe international comme DEXIA. Il serait en effet difficile de désigner une personne représentant les trois nationalités et les diverses tendances syndicales.

Les actionnaires salariés sont par contre représentés à l'assemblée générale, instance décisionnelle souveraine. Cette représentation est assurée par l'intermédiaire d'un membre du conseil de surveillance. Il s'agit d'une instance particulière composée de représentants des délégations syndicales des 3 pays représentés au sein du groupe et de représentants de la direction, dans la mesure où la direction participe aussi au plan d'actionnariat. Ces mêmes représentants syndicaux siègent par ailleurs au Conseil d'entreprise. Ce conseil de surveillance est chargé du suivi du plan d'actionnariat, d'arrêter des positions communes qui seront défendues par le représentant à l'AG annuelle des actionnaires et aux AG extraordinaires.

Les travailleurs salariés ne participent donc pas directement aux AG. Leur droit de vote est exercé par ce représentant du conseil de surveillance ayant reçu procuration. Il en est autrement pour les travailleurs ayant acquis des actions à titre privé, en dehors de toute participation au plan d'actionnariat. Ceux-là participent en personne aux AG et exercent leur droit de vote à titre personnel.

Il n'existe par ailleurs pas d'association d'actionnaires salariés, comme c'est le cas en France, qui représenterait les intérêts de ces derniers.

Il n'y a donc aucune influence directe sur la prise de décision au sein du Conseil d'administration. Quand bien même le seuil des 5 % serait atteint la désignation d'un administrateur unique se révélerait périlleuse dans la mesure où il serait amené à représenter les intérêts d'actionnaires salariés issus de trois pays différents. Il faudrait dégager une cohésion suffisante qui jusqu'à présent fait défaut.

Impact sur le dialogue social

La qualité d'actionnaire chez les travailleurs est elle de nature à instaurer une paix sociale dans l'entreprise? Les travailleurs actionnaires sont-ils moins enclin à susciter des conflits au sein de l'entreprise en raison de leur participation au capital?

Il semblerait que l'actionnariat salarié ait très peu d'influence sur le dialogue social chez DEXIA. Le secteur financier est un secteur un peu particulier au niveau de l'action sociale, caractérisé par une assez grande sérénité. Le syndicalisme au sein de ce secteur est plus consensuel, marqué par la négociation et les discussions avec la direction. Par ailleurs, il est intéressant de souligner que la direction en offrant autant de garantie aux travailleurs acquérant des actions vise spécialement à s'assurer un actionnariat stable variant entre 3 et 5%. Cela renforce également l'actionnariat institutionnel, typique de DEXIA. Cela contribue à développer chez les travailleurs un profond sentiment d'appartenance à l'entreprise, et un sens de la responsabilité quant à la bonne marche de l'entreprise. Il s'agit là d'un effet de l'actionnariat salarié qualifié de pervers par M. Verelst car le travailleur est à la fois prestataire de service et propriétaire de l'entreprise. Il y a donc un conflit d'intérêt dans le chef du travailleur qui peut se révéler négatif d'un point de vue social. Le travailleur actionnaire aura peut être tendance à faire prévaloir sa qualité d'actionnaire sur son statut de travailleurs et donc à faire taire ses préoccupations sociales.

L'effet est néanmoins limité et ce pour plusieurs raisons : l'existence d'un plafond au-delà duquel le travailleur ne peut investir (qui correspond à un pourcentage de sa masse salariale, et la garantie de récupérer son investissement (après déduction des taxes boursières) en cas de chute de l'action.

Peu de conflits sont par ailleurs susceptibles de surgir entre les travailleurs actionnaires et les travailleurs non actionnaires dans la mesure où les informations concernant la participation au plan d'actionnariat sont confidentielles. De même, les délégués syndicaux n'éprouvent pas de difficultés particulières à intervenir et à



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représenter des travailleurs actionnaires. Les délégués syndicaux font prévaloir en toutes circonstances la qualité de travailleurs sur celle des actionnaires. Ils n'hésitent dès lors pas à multiplier les interpellations et les prises de position en mettant en évidence les conséquences des décisions prises par la direction sur le personnel de l'entreprise.

Il y a lieu de mettre en évidence une particularité de DEXIA susceptible aussi d'expliquer le calme régnant au sein du groupe et la faible influence de l'actionnariat salarié sur le dialogue social. En effet, les organisations syndicales sont soit directement soit indirectement partie prenante à l'actionnariat du groupe. ARCO est en effet un groupe coopératif directement lié au Mouvement ouvrier chrétien, lié à la CSC et est le principal actionnaire du groupe Dexia. Les syndicats libéral et socialiste, de par leur proximité politique sont également actionnaires via le Holding Communal leur permettant de nommer certains de leurs mandataires politiques au Conseil d'administration de la banque. Ces éléments font de DEXIA une société tout à fait atypique. Hormis les interpellations qui pourraient être faites en tant que représentants des actionnaires salariés, des leviers d'interventions existent aussi auprès des actionnaires institutionnels auxquels sont rattachées les organisations syndicales présentes au sein du groupe. Cette spécificité semble expliquer l'absence de remouls au sein de DEXIA.

Partage des risques

Le Groupe DEXIA a développé un système de plan d'actionnariat doté d'une protection particulière en faveur des salariés participant en cas de chute de la valeur de l'action à l'issue de la période de blocage de 5 ans. Il existe trois types d'offre dont le choix revient au travailleur.

Dans l'**offre classique**, le travailleur finance sur ses fonds propres l'intégralité des actions DEXIA qu'il souscrit. En cas de hausse de l'action, le collaborateur reçoit toute la hausse ainsi que la décote de 20 % et les dividendes durant la période de blocage. Si l'action s'est effondrée, le travailleur est assuré de récupérer son investissement, après déduction des taxes boursières.

Dans l'**offre levier**, pour toute action souscrite par le travailleur, neuf actions DEXIA complémentaires sont automatiquement souscrites à son nom grâce au mécanisme financier du levier. Il existe trois types d'offre levier. Dans la **formule standard**, le travailleur au minimum son investissement de départ car il est garanti et bénéficie en plus d'un effet de levier en cas de hausse à concurrence de 65% de la hausse de l'action calculée par différence entre le cours final standard et le cours de référence initial.

Dans la **formule moyennée**, la valeur qui revient au travailleur est égale à son apport personnel plus 85% de la hausse de l'action DEXIA calculée par différence entre le cours final moyenné¹ et le cours de référence initial (soit le prix de souscription avant la décote).

Dans la **formule click**, la valeur due au travailleur est égale à l'apport personnel plus 36% de la plus-value click. Celle-ci est égale à la somme des plus-values annuelles relevées à chaque date de référence annuelle. Chaque plus-value annuelle est égale à la différence positive éventuelle entre le cours de référence initial de l'année et le cours de référence initial de l'année précédente.

Le travailleur actionnaire est donc toujours **assuré de récupérer son investissement** au terme de la période de blocage. Les risques pesant sur les salariés qui optent pour la participation à l'actionnariat sont donc relativement limités. Jusqu'à présent, tous les plans se sont révélés positifs.

L'octroi de cette garantie a été récemment remis en question par M. Mariani (administrateur délégué), qui a annoncé au Conseil d'Entreprise Européen qu'il ne souhaitait plus soumettre de plan d'actionnariat doté de cette garantie. La décision finale reviendra évidemment aux actionnaires dans la mesure où le plan d'actionnariat correspond à une augmentation de capital. Mais il est fort probable que des modifications seront apportées dans les plans futurs, s'ils sont maintenus.

¹ Moyenne de trois cours de Bourse commençant le 20^{ème} jour de chaque mois sur 5 ans, soit une moyenne de 52 cours.

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Modernisation de la gouvernance d'entreprise

L'investissement éthique dans le secteur financier est devenu une préoccupation importante. Ce type d'actions est mené par le Comité de prévention et de protection au travail et du conseil d'entreprise. Aucun lien ne peut dès lors être établi entre investissement socialement responsable et actionnariat salarié.

L'un des domaines d'activités de DEXIA réside dans le financement des collectivités publiques. DEXIA assure donc déjà une sorte « d'investissement social ». Cartesia, ex-BACOP avait également un aspect très social dans les prêts aux particuliers. Le changement de direction risque néanmoins d'apporter quelques changements puisque P. Mariani, administrateur délégué a clairement fait comprendre au conseil d'entreprise que le but du groupe était de faire du profit avant tout.

DEXIA Belgique offre par ailleurs une pension complémentaire sous forme d'« Assurance groupe All Dexia » au profit des salariés leur garantissant une rémunération différée équivalente à 80 % du dernier salaire. En principe, une cotisation personnelle est exigée du salarié mais elle est en réalité supportée par l'entreprise. Il existe aussi des formules de pension complémentaire chez Cartesia et Paribas, fondés sur le principe de « define benefit » mais qui se révèlent moins avantageux que ceux offerts par DEXIA Belgique. Depuis deux ans, le groupe a mis en place de nouvelles assurances groupe et de pensions complémentaires fondées sur le « define contribution » et calculées sur le salaire.

COMPANY CASE: TOTAL

Entretien avec Madame Sylvianne Alonso, Déléguée CFDT, 5 mai 2009, Paris

Un entretien a également été sollicité auprès du management auprès de Guillaume Ropars. Aucune suite favorable n'y a été donnée.

QUELQUES ÉLÉMENTS SUR LE GROUPE TOTAL

Historique et activités

Résultante de deux rapprochements successifs – de Total avec la société pétrolière belge PetroFina, qui a donné naissance à Totalfina, puis de Totalfina avec Elf Aquitaine, qui a engendré TotalFinaElf – le Groupe, rebaptisé Total en mai 2003, est l'héritier de ce prestigieux passé pétrolier et gazier, dont l'origine remonte aux années 1920.

Cinquième groupe pétrolier intégré international coté dans le monde et acteur majeur dans le domaine de la chimie, Total est présent sur les cinq continents. Il exerce ses activités dans plus de 130 pays et compte près de 97 000 collaborateurs.

Total exerce ses activités dans tous les segments de la chaîne pétrolière. Ses activités exercées par le Groupe dans le monde se répartissent en trois secteurs :

- Le secteur Amont comprend les activités d'Exploration et de Production du pétrole brut et du gaz, ainsi que les activités exercées par le Groupe dans les domaines du Gaz et des Energies nouvelles.
- Le secteur Aval inclut les activités de Trading et de Transports maritimes, ainsi que le Raffinage et le Marketing des produits pétroliers, (carburants, combustibles, spécialités - GPL, carburants aviation, lubrifiants) à travers le réseau (sous les marques TOTAL, Elf et Elan) et hors réseau.
- Le secteur Chimie est constitué des activités de Chimie de Base (Pétrochimie et Fertilisants) et de Chimie de Spécialités (caoutchouc, résines, adhésifs et métallisation) dont les produits sont destinés à l'industrie ou à la grande consommation.

En outre, Total détient des participations dans les secteurs suivants : mines de charbon et production d'électricité. Par ailleurs, Total détient une participation financière dans Sanofi-Aventis.

Structure de l'actionariat du groupe TOTAL en 2008

Par catégorie d'actionnaires:

- Actionnaires institutionnels 88% dont 23% en France, 12% au Royaume Uni, 20% pour le reste de l'Europe, 28% en Amérique du Nord et 5 % pour le reste du monde
- Salariés du groupe 4%
- Actionnaires individuels 88%

Le nombre d'actionnaires individuels français de TOTAL est estimé à 540.000

Participation des salariés au capital:

Au 31 décembre 2008, le nombre total d'actions détenues par les salariés se décomposait comme suit:



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TOTAL ACTIONNARIAT France	69 206 754
TOTAL ACTIONNARIAT INTERNATIONAL	16 364 272
ELF PRIVATISATION N1	1 423 273
Actions souscrites par les salariés aux USA	779 445
Caisse Autonome du Groupe (Belgique)	336 001
Actions TOTAL issues de la levée d'options et détenues au nominatif pur au sein d'un PEE	3 201 243
Total des actions détenues par les salariés	91 310 988

Source: TOTAL, document de référence 2008

Ainsi, les salariés du Groupe détenaient au 31 décembre 2008 91 310 988 actions TOTAL, soit **3,85% du capital** et **7,40 % des droits de vote** qui peuvent être exercés en assemblée générale de la Société.

Les accords de participation des salariés au capital

Les salariés de TOTAL peuvent accéder au capital de leur entreprise et être titulaires d'actions via deux canaux : directement dans le cadre d'une augmentation de capital réservée aux salariés, et indirectement dans le cadre des plans d'épargne entreprise investis en actions.

Plans d'épargne entreprise

Dans le cadre d'accords signés en 2002, un «Plan d'épargne Groupe TOTAL», un «Plan partenarial d'épargne salarial volontaire» et un «Plan d'épargne entreprise complémentaire» ont été mis en place pour les salariés des sociétés françaises du Groupe adhérentes. Ils donnent accès à plusieurs fonds communs de placements:

- TOTAL ACTIONNARIAT France (fonds investi en actions TOTAL) pour les salariés des filiales françaises du Groupe
- TOTAL ACTIONNARIAT INTERNATIONAL CAPITALISATION pour les salariés des sociétés étrangères.

Les salariés américains participent à ces opérations par souscription directe à des *American Depositary Receipts* et les salariés italiens par souscription directe à des actions nouvelles déposées auprès de la Caisse Autonome du Groupe en Belgique.

Augmentation de capital réservée aux salariés

Le Conseil d'administration de TOTAL S.A., a décidé en 2007 de procéder à une augmentation de capital réservée aux salariés du Groupe, au prix de souscription de 44,40€ par action. Ce prix correspond à la moyenne des premiers cours cotés pendant les 20 séances précédant le jour du Conseil, moyenne à laquelle est appliquée une décote de 20 %. La période de souscription s'est ouverte du 10 mars 2008 au 28 mars 2008. Cette augmentation de capital était ouverte :

- aux salariés présents depuis plus de 3 mois au dernier jour de la souscription (soit le 28 mars 2008) dans l'une des sociétés détenues directement ou indirectement à 50% au moins par TOTAL S.A. et ayant adhéré au Plan d'Épargne Groupe Actionnariat (PEG-A),

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- aux préretraités et retraités partis directement en retraite ou préretraite qui, au moment de leur départ, étaient salariés d'une société faisant actuellement partie du périmètre ci-dessus et qui détiennent encore des avoirs dans un Plan d'Épargne d'Entreprise (PEE) ou un Plan d'Épargne Groupe (PEG),
- aux salariés en contrat suspendu s'ils ont toujours des avoirs dans le PEE,
- aux salariés partis en préretraite ou en retraite pendant la période de souscription.

Cette augmentation de capital réservée aux salariés a été lancée simultanément dans tous les pays où Total est présent, et où elle est possible compte tenu des obligations légales et administratives locales.

Chaque salarié pouvait souscrire un montant en euros, avec un minimum de souscription fixé à 50 euros. Conformément aux dispositions légales, le montant maximum souscrit ne pouvait excéder le quart de la rémunération annuelle brute, sous déduction des versements volontaires déjà effectués ou programmés durant l'année 2008 dans les autres plans d'épargne. Pour les préretraités et retraités, le montant maximum souscrit ne pouvait excéder le quart de l'ensemble de leurs allocations ou pensions annuelles. Les avoirs deviendront disponibles 5 ans après la clôture de la souscription, soit le 28 mars 2013, sauf cas de déblocage anticipé. La souscription était individuelle et facultative.

La souscription a donné lieu à la création en 2008 de **4 870 386 actions TOTAL**.

Hauteur des dividendes distribués aux actionnaires du groupe TOTAL

<i>Dividendes exercice</i>	<i>Montant net Eur</i>
2004	1,35
2005	1,62
2006	1,87
2007	2,07
2008	2,28

Source: TOTAL, document de référence 2008

Code de bonne gouvernance

Total poursuit depuis de nombreuses années une démarche active de gouvernement d'entreprise et, lors de sa réunion du 4 novembre 2008, le Conseil d'administration a confirmé sa décision de se référer au code AFEP-MEDEF de gouvernement d'entreprise des sociétés cotées de 2008. Certaines pratiques de la Société diffèrent, sur un nombre très limité de points, des dispositions du code AFEP-MEDEF. Elles concernent les points suivants :

- alors que le code AFEP-MEDEF retient la perte de la qualité d'administrateur indépendant à compter de l'expiration du mandat au cours duquel l'administrateur a atteint une ancienneté de présence de plus de 12 ans, ce critère d'ancienneté n'a pas été appliqué pour un administrateur de la Société en raison de l'expérience et de l'autorité apportées au Conseil qui confortent l'indépendance de l'administrateur concerné.

- le Président du Conseil d'administration assure la présidence du Comité de nomination et de la gouvernance. Le Conseil d'administration et le Comité lui-même ont considéré que la présence du Président au sein du Comité de



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nomination et de la gouvernance permettait de faire profiter cette instance de son expérience ainsi que de sa connaissance des activités de l'entreprise, de l'environnement de celle-ci et des équipes dirigeantes, qui sont particulièrement utiles pour alimenter les réflexions du Comité sur la sélection des dirigeants sociaux et des administrateurs de la Société. Le fait que le Président du Conseil, qui n'exerce pas de fonctions exécutives, assure la présidence du Comité permet d'assurer des liens plus étroits entre les deux instances, le Comité ayant en charge l'examen du fonctionnement du Conseil et l'ensemble des questions relatives à la gouvernance du Groupe. Enfin, ce Comité est constitué en majorité d'administrateurs indépendants et les dirigeants sociaux n'assistent pas à l'examen de leur propre situation.

Le Groupe TOTAL a également adopté un Code de Bonne Conduite établissant un certain nombre de règles de conduite éthiques. L'entreprise y annonce son adhésion à:

- aux principes de la Déclaration Universelle des Droits de l'Homme
- aux conventions fondamentales de l'Organisation Internationale du Travail
- aux principes directeurs de l'OCDE à l'intention des entreprises multinationales
- aux principes du Pacte mondial de l'Organisation des Nations Unies.

ACTIONNARIAT SALARIÉ, GOUVERNANCE D'ENTREPRISE ET DIALOGUE SOCIAL

Impact sur la gouvernance d'entreprise

Conseil d'administration: présence d'un administrateur représentant les salariés actionnaires

Les statuts de TOTAL prévoient spécifiquement que lorsqu'à la clôture de l'exercice, la part de capital détenue par le personnel représente plus de 3%, un administrateur représentant les salariés actionnaires est nommé par l'Assemblée générale ordinaire pour autant que le Conseil d'administration ne compte pas parmi ses membres un administrateur salarié actionnaire ou salarié élu. Les candidats à la nomination au poste d'administrateur «actionnaire salarié» peuvent être désignés de deux manières:

- lorsque le droit de vote attaché aux actions détenues par les salariés ou par les fonds communs de placement dont ils sont membres est exercé par les membres du conseil de surveillance de ces FCP, les candidats sont désignés en son sein
- lorsque le droit de vote attaché a aux actions détenues par les salariés (ou par les fonds communs de placement dont ils sont membres) est directement exercé par les salariés, les candidats sont désignés par les salariés actionnaires eux-mêmes. Seules les candidatures présentées par un groupe représentant au moins 5% des actions détenues par les salariés qui exercent leur droit de vote à titre individuel sont recevables.

L'administrateur représentant les salariés actionnaires est ensuite nommé par l'Assemblée générale pour une durée de 3 ans. Si à la clôture suivante, le seuil des 3% n'est pas atteint, la fonction n'est pas renouvelée.

Les salariés actionnaires sont ainsi actuellement représentés au Conseil d'Administration par Daniel Bœuf, membre élu, représentant les porteurs de parts au Conseil de surveillance FCPE TOTAL ACTIONNARIAT France. Il ne siège ni au Comité, d'Audit, ni au Comité des rémunérations, ni au Comité de nomination et de gouvernance.

Conseil d'administration: présence de membres du comité d'entreprises

Madame Alonso a signalé la présence au Conseil d'Administration de deux membres du Comité d'entreprise. Ils siègent de manière effective mais ne disposent néanmoins que d'une voix consultative. Ils ne disposent pour ainsi dire d'aucune influence sur la prise de décision.



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L'exercice des droits de vote attachés aux actions détenues par les actionnaires salariés: rôle du Conseil de surveillance du fonds communs de placement TOTAL ACTIONNARIAT FRANCE

Les actions souscrites par les salariés lors des augmentations de capitale sont généralement concentrées dans *un fonds commun de placement*, qui n'a pas la personnalité morale, et qui est une copropriété de valeurs mobilières dont les parts sont émises et rachetées à la demande des porteurs à la valeur liquidative majorée ou diminuée, selon le cas, des frais et commissions. Il est doté d'un conseil de surveillance et doit désigner un dépositaire, qui reçoit et conserve les fonds collectés, et d'une société de gestion, qui décide des placements sous le contrôle du conseil de surveillance. Ce conseil examine notamment la gestion financière administrative et comptable du fonds.

Les fonds d'actionnariat salarié sont définis comme des fonds dont l'actif est composé d'au moins un tiers de titres de l'entreprise. La gestion de ces fonds doit appartenir à un conseil de surveillance composé soit exclusivement de représentants des salariés porteurs de parts élus sur la base du nombre de parts, soit de salariés représentant les porteurs de parts - élus sur la base du nombre de parts ou bien désignés par les organisations syndicales ou le comité d'entreprise - et, pour moitié au plus, de représentants de l'entreprise. Lorsque la composition du conseil est exclusivement salariale, le conseil de surveillance exerce les droits de vote attachés aux titres émis par l'entreprise et rend compte de ses votes, en les motivant, aux porteurs de parts. En revanche, si la composition est mixte, le règlement du fonds prévoit que le conseil de surveillance exerce les droits de vote attachés aux titres émis par l'entreprise, mais il peut stipuler que les droits de vote relatifs à ces titres soient exercés individuellement par les porteurs de parts. Dans ce cas, le conseil doit mettre à la disposition des porteurs les informations économiques et financières qu'il détient sur l'entreprise.

Le fonds d'actionnariat «**TOTAL ACTIONNARIAT France**» est investi **en titres cotés de l'entreprise**. Il est géré par une société de gestion *AXA INVESTMENT MANAGERS PARIS* qui peut, pour le compte du Fonds, acquérir, vendre, échanger tous titres composant le portefeuille et effectuer tous remplois.

Il est doté d'un Conseil de surveillance composé de 14 membres salariés et porteurs de parts représentant les porteurs de parts salariés et anciens salariés de l'entreprise, élus par les porteurs de parts dans les conditions exposées ci-après ; et de 7 membres représentant l'entreprise, désignés par la Direction de la société TOTAL.

Les 14 membres titulaires (ainsi que les 14 membres suppléants) représentant les porteurs de parts, ont été désignés lors d'une élection au scrutin de liste à la proportionnelle au plus fort reste et sans panachage.

Afin que toutes les Organisations syndicales représentatives au niveau national et dans le Groupe (CFDT, CFE-CGC, CFTC, CGT, FO) puissent être présentes au sein de ce Conseil, le règlement du fonds prévoit de rajouter un siège de représentants des porteurs de parts et un siège représentant les sociétés adhérentes, à chaque fois qu'une liste présentée par les Organisations syndicales représentatives au niveau national et dans le Groupe n'obtiendrait pas un siège par le simple jeu de l'élection au scrutin de liste proportionnelle au plus fort reste.

Il exerce **les droits de vote attachés** aux valeurs inscrites à l'actif du Fonds, décide de l'apport des titres en cas d'offre publique et, à cet effet, **désigne un ou plusieurs mandataires représentant le Fonds aux assemblées générales de la société émettrice**.

Il peut demander à entendre la Société de gestion, le Dépositaire et le Contrôleur légal des Comptes du Fonds qui sont tenus de déférer à sa convocation. Il décide des fusions, scission et liquidation du Fonds. Sans préjudice des compétences de la société de gestion et de celles du liquidateur, le Conseil de Surveillance peut agir en justice pour défendre ou faire valoir les droits ou intérêts des porteurs.

Impact sur le dialogue social

La qualité d'actionnaire chez les travailleurs est-elle de nature à instaurer une paix sociale dans l'entreprise? Les travailleurs actionnaires sont-ils moins enclin à susciter des conflits au sein de l'entreprise en raison de leur participation au capital?

L'actionnariat salarié ne semble pas jouer un rôle dans la régulation du climat social au sein de TOTAL. Il s'agit d'une entreprise dotée d'un climat social extrêmement stable. Les salariés ressentent une certaine fierté vis-à-vis



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de leur entreprise qui en quelque sorte annihile toute velléité revendicative. TOTAL est par ailleurs une entreprise riche, capable de faire de bonnes propositions financières en cas de crise par exemple (fermeture en perspective d'une raffinerie en Normandie). Le climat n'est donc quasiment jamais conflictuel. Le dernier conflit en date remonte déjà à plusieurs années lors de la suppression du lundi de Pentecôte.

Mme Alonso ne voit pas de lien particulier à établir entre dialogue sociale d'une part et actionnariat d'autre part. Les conflits entre salariés actionnaires et salariés tout courts sont inexistantes dans la mesure où l'actionnariat de fait pas l'objet de communication nominative.

Quant au rôle des organisations syndicales, il est plutôt limité en raison d'une part du faible taux de syndicalisation du personnel. Par ailleurs, les délégations syndicales ne sont jamais associées en cas d'augmentation de capital, décidées à l'initiative de la direction uniquement. Elles participent en revanche aux négociations des accords triennaux de participation et d'intéressement aux cours desquelles elles œuvrent pour obtenir le maximum d'avantages.

Les délégations syndicales sont par ailleurs aussi court-circuitées par l'association des actionnaires composée non seulement de salariés mais aussi de retraités, d'anciens dirigeants et dont les revendications sont parfois très éloignées. Alors que pour les syndicats, il y a toujours lieu de faire prévaloir la qualité de travailleur et les valeurs d'équité et de partage, l'association est davantage soucieuse de la qualité d'actionnaire et du montant des profits.

Partage des risques

Interrogée sur la manière dont devait être assuré le partage des risques, Mme Alonso s'est montrée un peu perplexe. Selon elle, le déblocage automatique après 5 ans, les cas de déblocage anticipé peuvent être perçus comme un moyen de limiter les risques à moyen terme.

TOTAL n'a par ailleurs mis en place aucun filet de sécurité en cas de chute catastrophique de l'action. De tels mécanismes ne sont pas promus par l'entreprise en raison du coût que cela engendrerait. Les risques sont donc assumés entièrement par les salariés.

Modernisation de la gouvernance d'entreprise

TOTAL a mis en place un PERCO, plan d'épargne pour la retraite collectif au profit de ses salariés. Cette épargne peut être investie dans différents fonds :

- Total Actions Européennes
- Total Diversifié à dominante Actions fonds ISR
- Total Diversifié à dominante Obligations
- Total Obligations investi en obligation et autres titre de créance
- Total Monétaire à court terme
- Axa Génération solidaire

TOTAL a mis en place un fonds commun de placements favorisant les placements ISR il y a deux ans, *TOTAL Diversifié à dominante Actions Fonds ISR*. C'est un fonds qui recueille très peu de succès. Aucune autre information n'a pu être obtenue.

COMPANY CASE: AerLingus

Background

In recent years there has been increased political support for various forms of employee participation in Ireland. This can be attributed to the influence of numerous EU directives aimed at increasing the level of employee participation. It may also be attributed to a series of national wage tripartite¹ agreements between the Irish government and the various social partners, which have also sought to increase the level of employee participation. This undertaking was reinforced by the subsequent establishment of the National Centre for Partnership and Performance. These measures have aided in improving the attitude of both employers and trade unions towards employee share-ownership².

Managers have traditionally been sceptical of employee share-ownership, preferring to rely on expanding existing collective bargaining structures beyond issues such as pay and employment levels. However, in the public sector management and shareholders (i.e. the government) view employee share-ownership as a means of gaining trade union support for reform. Trade unions had traditionally seen employee share-ownership as being capitalist in nature. Nevertheless, in more recent years they have come to view collective share-ownership as a means of increasing collective or representative participation. As Paul Sweeney (ICTU representative) commented: "The key thing in an ESOP and our policy is to seek influence, collective influence".

In 1982 the Irish government introduced legislation, which for the first time provided tax concessions on employee share-ownership schemes (Finance Act 1982). Under the act, a trust was established to retain shares on behalf of employees. Tax relief was staggered so that employees received benefits (i.e. shares or cash proceeds) free from income tax after a period of seven years. This has subsequently been revised and currently tax-relief is no longer staggered, and participants receive tax-free benefits after a period of three years. Since their introduction in 1982, there has been steady but modest growth in the number of approved share-ownership schemes. In 2005 there was a maximum of 400 operational schemes in Ireland, and that the value of shares per employee has been relatively modest. Despite the limited level of uptake in other sectors of the economy, employee share-ownership has played a significant role in the reform of Irish state-owned enterprises.

Story of an ESOP

Trade union intervention in the privatization of State owned company dates back to 1993, when the ICTU was called to intervene during the privatization process of some public owned companies in Ireland. The operations were conducted in the framework of one of the above-mentioned national social partnership agreements, specifically regarding the management of the privatisation process taking place all over the country. The promotion of employee share ownership in those companies that were passing from being State-owned to the private market was part of the partnership strategy promoted by the Government, who needed the support of social partners to manage often difficult privatization processes; one of the forms in which they were supposed to be implemented was through the purchasing of shares by trade unions.

AerLingus (initially State-owned) was in a very difficult situation, and in 1993 the trade unions, mainly SIPTU (Services, Industrial, Professional and Technical Union) and Impact (Irish Municipal Public and Civil Trade Union) were involved in order to try to solve the situation. The specific request from the government was a help in implementing the so called *Cabill Plan*, aimed to reform the airline by means of reducing employment, and thereby reduce firm costs by €63.5 million per annum. The plan also introduced significant changes to firm work

¹ Among Government, IBEC and ICTU

² National agreements with the government have been running for years, renewed with the "Towards 2016" framework agreement, promoted by National Centre for Partnership and Performance. The NCPP is committed to promote an active program of education and communication for managers and employees towards the promotion of employee participation also under the financial aspects.



practices. The AerLingus Employee Share Participation Scheme (ESPS) was established as part of the restructuring plan: in exchange for this, employees received a 5% shareholding in the firm. The establishment of the AerLingus ESPS established a precedent, whereby trade unions sought similar share-ownership schemes in exchange for the restructuring of other state-owned enterprises.

Paul Sweeney (currently at ICTU – whose interview these notes are partly referred to) was appointed as macro-economist, on behalf of SIPTU, which supported the company in that situation. As a trade for their intervention, at the very beginning part of the trade unions was convinced that it would have been better to get concentrated on wage negotiations and be remunerated. But the company could not afford these expenses anyway, so the trade unions eventually decided to go for the share-ownership solution. Paul, involved in the negotiation of the share holding operations, strongly believed in this solution, also because the company did not have the money to raise wages anyway. Initially, the trade union asked for 90% of the company shares, but the Government refused, even if SIPTU had given 120 million, and the company had been valued only 110 million.

In the end, SIPTU managed to get part of the company's value in cash, and another small percentage in shares, paying for it out of the shares of the profit stream³.

At the beginning the management of the shares was not collective. Only afterwards, following the pressure of trade unions, the statute of the company was changed and an ESOT was established in 2003. Teresa Hannick, Siptu trade union representative in the company, explained that the final decision towards the establishment of the ESOT was actually made to find a way to convince workforce to accept the so called “survival plan after 9/11”. Following the disaster in the USA, the future of all air companies was undermined. Workers in AerLingus suffered cuts of wages, loss of holidays, therefore, as a form of compensation, trade unions asked for the creation of an ESOT shaped like the one in Eircom⁴. “It was a crisis situation, connected to workers’ sacrifice, that created an opportunity”.

AerLingus ESOP Trustee Limited (ESOT) acts as the sole trustee of the Aer Lingus Employee Share Ownership Plan (ESOP)⁵.

The company was privatized and listed on the Irish Stock Exchange in October 2006.

At the moment, the distribution of the company shares is as follows:

12,59% ESOT

29,8% Ryanair

25% Government

4% Pilots and cabin crew

³ Trade unions bought shares first taking a loan, paid back out of profits on the shares. In AerLingus, the trade union got 10% of the shares of the company in the first place; in the following years, all the profits from the shares were allocated to buy more shares (an additional 5%), without distribution of dividends until the buying shares operations was lasting.

⁴ Teresa also referred that it was not the trade union paying for the shares at the very beginning, but the company, who wanted to use the shares as a form of compensation.

⁵ Through a combination of an issue of shares to ESOT, and the purchase by the ESOT of shares previously held by staff under an Approved Profit Sharing Scheme (APSS), the ESOT held around 15% of the issued share capital of the company immediately prior to the IPO of the company's shares. At the time of the IPO, in October 2006, the ESOT subscribed for further shares using a combination of funds due to it under a previous profit sharing scheme and a payment from the Group of €12 million arising from the capitalisation of a pay increase foregone of 0.5%. Following the issue of new shares under the IPO, the ESOT's shareholding immediately after the IPO amounted to 9.92% (51,028,679 shares) of the company's issued share capital. At the time of the IPO, the ESOT was granted an option to acquire 15,549,301 shares held by the Minister for Finance. The company was advised that this option was exercised on 3 November 2006 resulting in the ESOT holding 66,577,980 shares (12.59%) of the issued share capital of the company at 31 December 2006. The ESOT holds these shares on behalf of beneficiaries. The ESOT is also trustee of the Aer Lingus Approved Profit Sharing Scheme (for the tax efficient distribution of shares to the participants) and, at 31 December 2006 held 9,564,570 shares (1.8%) in the company on behalf of beneficiaries. Certain of these shares are subject to a minimum holding period requirement specified by the Irish Revenue Commissioners.

There is a legacy still there in AerLingus though, as some workers still hold individually shares, and it was not possible to force them to converge in the collective administration of the shares.

The rest are ordinary shareholders.

ESOT's position, as a policy practice in Ireland, distributes dividends on a very egalitarian basis: managers and non receive the same dividends, in proportion.

AerLingus ESOT

It is composed of 7 people in total. 4 of them (two from Impact, two from Siptu) are nominated by a company trade union council, called Central Representation Council (CSC). Then there are 2 company people and an independent solicitor. The chairperson of the ESOT in AerLingus is Seamus Cody, deputy general secretary of Impact.

The ESOT manages collectively around 15% of the company (60 million shares).

The ESOT and the Board of Directors

The ESOT nominates 2 non executive directors (out of 15) onto the board. As in AerLingus there are two major unions, SIPTU and Impact, each one of them appoints one director (one is David Begg, secretary general of ICTU, the other a solicitor who has already worked in strict contact with the ESOT in the past)⁶.

There is not an established form of flow of information between the board appointed members and the ESOT; they occasionally meet and exchange views. Anyway, the fact that the directors are trade union friendly is proved.

At the time of the establishment of the internal rules of corporate governance (in Ireland descending from The Companies Act 1963-2003, consolidated in 1987), right after the privatization, a debate was held on the opportunity to maintain a feature of the corporate governance structure typical of commercial state owned companies, where 1/3 of the board should be elected by workers (1977 Workers' Participation Act – not binding for privatised Aerlingus any more). The presence of workers' representatives directly in the board of directors would have certainly been positive in terms of democratization of the corporate governance systems. But the risk would have been high as well: as witnessed by the US experience in United Airlines, where workers used to hold 66% of the shares, workers acting as managers might tend to ask for short term advantages, therefore it was decided for a “mediate” representation of their interests, in order to grant long term views.

This choice, of course, consolidated the role of trade unions as responsible for the appointments of capable and skilled managers, who are not (only) trade unionists⁷, in the corporate governance system. (Sweeney and Cody made this point quite clearly: nevertheless, it is a fact that one of the two directors appointed by the trust is the top of the ICTU).

The Central Representation Council

An important role in the company is played by the CSC. This trade union joint representative created within AerLingus is made up of all the trade unions in the company and represent 90% of the workforce (managerial staff unions do not participate). In other companies this body exist as well⁸, but in AerLingus it has a particularly formal structure. Nowadays it meets once a month and deals with the company on business issues, and the CEO has to participate at least 4 times a year: if the company has board meetings or when makes important decisions regarding the stock market, all the themes will be discussed in the Council, which helps internal relations

⁶ In accordance with the Company's Articles of Association, only the ESOT and the Government can appoint board members (Government can appoint 3 of them).

⁷ See below the section on conflict of interest

⁸ In compliance with the EU directive on information and consultation of workers on the workplace



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between management and the trade unions in the company. The CSC grants a certain level of information flow, even when industrial relations within the company are difficult and tense⁹.

Anyway the big unions in the company are Impact and Siptu, therefore the decisions around the people to appoint within the CSC, the agreed body to nominate the trade union trustees in the ESOT, is going to be mainly influenced – if not made superfluous - by these two trade unions.

AerLingus in the grid

Before going to the analytical grid, some remarks.

The ESOT is dominated by the trade unions. As for Sweeney and Cody, the positive influence employee share ownership can have in terms both of consensus building and of management of possible conflicts certainly arise from the weight that the ESOT can have in the decision making process. This influence on the way of running the company is exercised through the *quasi-veto* power that 15% of compactly managed shares can have in the AGM, and also by virtue of trade union friendly directors that the ESOT can appoint onto the board.

However, the company seems to be characterized by a high level of internal tension. In the first place, it is a financial tension, as the company operates in a very challenging and competitive environment and in difficult conditions (see the raise of the fuel price). Things are made even more difficult due to continuous and hostile take over bids by Ryanair. This is a trade union rival, and additionally is not well seen by the world of business too, not interested in AerLingus at all if not for the landing slots that AerLingus owns at Heathrow airport (valuable several millions Euro). Workers and Trustees are aware that a merge of an acquisition by another company (possibly Air France KLM) would be necessary and will probably be enacted at some point. However, they are very worried about a take over by Ryanair, which would completely dismantle the company and would not care about employees.

In this landscape, Teresa Hannick referred that workers are worried about the fact that, in case AerLingus risked to bankrupt, the ESOT could surrender to the even hostile take over bid by Ryanair: on the one hand, it would be normal for managers of a fund to act in the interest of its shareholders, ensuring them the maximum advantage from the sold of their shares in case the company risked to collapse; on the other hand, workers somehow feel that if the ESOT fell and Ryanair was able to act as the absolute owner, the situation would be unacceptable.

The difficulty of this background situation is reflected also on industrial relation and other fields, and tensions are tangible: for example, between the major shareholder Ryanair and some organised groups, like pilots and cabin crews; frictions also occur at level of management board (apparently the former CEO of Aerlingus has just left, because of problems with trade unions and the majority shareholder).

Tensions are also given by the fact that the company has relatively recently changed its status in a considerable way: up to few years ago the company was State-owned and was not listed on the Stock exchange. The relatively sudden change into a private and listed company imposed the change of certain governance rules, and this has been perceived as an important loss by the employees in terms of participation rights.

This kind of tension, following the interview with Teresa Hannick, Siptu representative in the company, can also be translated into a certain degree of lack of confidence in the ESOT management. The ESOT is young, and still certain procedure, especially in terms of information, have not reached the expected level of implementation.

The ESOT and the Government (holding quite an amount of shares) usually get along in the final decisions to be made in AGMs, but actually they are finally two different independent entities.

⁹ The Pilots Union within the company, holding 4% of the shares is particularly in trouble due to the tense relationship it has with the major shareholder Ryanair, whose director has been forced to recognise their existence in the company but will never negotiate with it. However, the existence of the CSC somehow facilitate things for this trade union as the pilots are represented in this trade union council, and get informed through it.



Managing conflict

Seamus Cody affirms that, as a matter of principle, trade union representatives for Impact sitting in the ESOT, is convinced that collective bargaining should not be affected by share ownership by the ESOT, not even when the power of influence that trade union can exercise is so important - by virtue of their position in the ESOT, and through the appointment of directors on the board. The company does not have to be run in an a-critical workers' friendly perspective, and the power arising from the collective, "compact" management -via the trade unions- of the shares owned by workers must not serve to grant short termed advantages in terms of bargaining power.

However, as far as possible, it is possible to interpret worker' needs. In AerLingus, the ESOT collectively holding and managing workers' shares allows it to vote in block, and to contrast, even with a minority share-ownership, measures proposed/imposed by Ryanair, rival of trade unions, majority stakeholders holding 29% of the company. For example, when Ryanair was trying to take over AerLingus, the choice was to oppose to and block this operation, well interpreting also workers' will (the working conditions would have changed in worst). In the same sense, at the last AGM (June 2009) Ryanair proposed to raise the pay fees to the directors, and the weight of the vote of the ESOT-managed shares did determine the final decision.

If unions exercised their power coming from the collective management of shareholding directly to obtain more favourable working conditions, pay raise and bargaining advantages, in such a competitive market, it would not be profitable: an ESOT grants influence, certain corporate governance rights but it shouldn't give a direct short-termed industrial relation advance. However, the influence of the trade union friendly managers is present: for example the Trust-appointed managers onto the board where the only ones who raised the issue of working conditions on board the aircraft, as a fundamental feature to increase the marketing capacities of stewards and stewardesses on board (issue that no one else has raised before).

In principle, this approach could be translated in terms of *consensus building* too. Cody affirms that it is true that working conditions in the company have got worst over the years, as in Eircom, after all, but this happened mainly because both companies try to survive in very competitive markets, especially when considering that when they were State-owned companies the situation was such that they operated in conditions of *quasi-monopoly*. However, the influence that the ESOTs have had in the years has been positive, and have played off in workers' favour. Workers in AerLingus (38.000 shareholders, after the APSS of 2003 and 2006, involved in the ESOT collective management of the shares) might not see the ESOT as worth a lot of money (lately no or very low dividends have been distributed, as the company has been very low profitable, if not in loss) but worth a lot of influence.

Teresa Hannick refers once again a different opinion. When the board approved an outsourcing program to get rid of ground operations, employees just felt betrayed in the sense of trust they had in the ESOT, as shareholder (being shareholders had not saved their employment!), and in the trade unions, as workers. In that situation the trade union representatives in the board from the ESOT, and the ESOT itself were looked at as defending only shareholder values, not employees'. In particular the presence of David Begg was considered as weird – workers were expecting to be defended by a trade unionist-manager. However, Teresa also underlined that the two ESOT directors are in clear minority with respect to the others, and agrees on the potential "political" impact that the ESOT can play in case of take overs from other companies.

Consensus building

The trade unionists Seamus Cody and Paul Sweeney agree and are strongly convinced that the information and consultation processes are always better than in companies where EFP is not enacted. There is always a better information flow, and especially when trade unions are involved in the collective management of employee share ownership. In a company like AerLingus, trade unions, *relatively* stronger of their positions thanks to the ESOT, ensure that the flow of information is more efficient.

The way to ensure that workers express their will with regards to the positions that the ESOT will have to take in the AGMs is effective and democratic: as in Eircom, also in AerLingus shareholders are constantly informed of



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the issues at stake in the AGMs and are called to express themselves both through proxies or direct single internal decisional procedures.

Even within the ESOT itself, the try is always in the sense to have a strong internal consensus, and 99% times it works, because the role of the trade union in the Trust is not to get direct positive outcomes for workers in the short run, but to make the company work in a profitable way, which is anyway for the good of workers.

Teresa Hannick precised that the sense of belonging to the company, from workers' point of view, does not really descend directly from owning shares of AerLingus. Some employees are very found of the company, they think that the name and the brand are very successful (these were the employees on which Michael O'Leary – CEO of Ryanair- made the first hostile take over bid in October 2006, two weeks after the privatization of the company), and they wanted even to give more money to buy more shares. But most of the employees are not very happy with the ESOT, because they feel that ESOT is not a democratic institution, that they have no say in it and are not actually aware of the functioning of the decision making process within it.

Apparently this bad impression raised since Ryanair's try to take over the company; the company could not legally or technically give the ESOT the information about the bid, following the stock exchange rules; however the impression was that the ESOT was aware of the thing and preferred to keep the thing secret - O'Leary was actually challenging the ESOT: if the awareness of the ESOT had come to light, he could have said that the ESOT wanted to take advantage of the take over, getting a lot of money for the sold of the shares. Anyway, the silence of the ESOT reps was read as a refuse to call general meetings.

Another possible reason for the sense of frustration of employees with regards to the ESOT derives from the fact that the CSC, the information council established within the company, does not really offer all the information connected to the financial aspects, but only business related information. Employees would have expected to be informed by the ESOT about the financial aspects, affecting not only the revenues on the dividends but the state of "health" of the company itself.

However, Teresa also affirms that the situation in terms of flow of information and of perception of the employees has changed with the privatisation, which also signed the entrance on the company in the Irish Stock Exchange, in October 2006. New rules have been established, and some practices, like the one imposed by the Workers' Participation Act regarding the workers' representatives on the board, had fallen. Once, it was possible to have more in depth financial information, for example. But also practical information, like the change of the flight routes, now have to be communicated to the staff at the same time than to the public. The new nature of listed and private company in such recent times, with so many changes in the way of running information processes between workers and trade unions, has had a negative psychological impact on the workforce, for which ESOT does not have any actual responsibility. It is normal that the ESOT cannot spread confidential information, but this is not completely understood by the employees.

Risk sharing

Information regarding this feature have been provided by Teresa Hannick. She refers that the sense of frustration of workers toward the ESOT actually raised after 2006, with the privatization process, when the ESOT borrowed 45 million Euro to buy more shares. She believes that part of the lack of trust that employees feel towards the ESOT regards the fact that lately the ESOT asked for another loan (a previous one was given by the Government at the time of the privatization) in order to buy more shares. Workers are worried about the dividends they are not getting from the shares they already own and about the fact that this operation can not be covered by another profit sharing plan - that the company could not afford (min 12)¹⁰. From workers' point of view, the difficult working conditions they are facing since years, made even heavier by the transition to the commercial market, were supposed to be compensated by a money revenue coming from the dividends. "The

¹⁰ At the time of the IPO, a new profit sharing scheme was established whereby the Group agreed to make available to the ESOT , depending on the return on average shareholders' funds, between 0% and 7.5% of the group profit before taxation and exceptional items annually, commencing on 1 January 2006. This profit share is to be used by the ESOT to any expenses and to repay all borrowings arising from the exercise of the option over 15,549,301 shares referred to above.



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idea that they will not get a penny for who knows how long, not only because the company performs not always well, but also because profits have to be destined to re-pay another loan, for enlarging the ESOT share holding from which they do not feel they receive any advantage, is something employees complaint about". But actually – Teresa specifies - it was a good moment for buying shares, and it was good for the company as well, because it impeached Ryanair to enact a take over bid where shares were available.

Conflict of interest

Following Sweeney's and Cody's opinion, the risk of conflict of interest might actually arise. The reasons are the fact that two Trust-nominated managers are appointed by trade unions, and in certain cases they are trade unionists as well: David Begg seats in the board and is also the secretary general of ICTU. But the role these managers play is well defined. If this was not clear, it would always be possible to end up in a conflict which is not profitable for the company and in the end for the whole workforce. The trade union-governed ESOT does not expect their directors to oppose the company policy on trade unions' behalf. The division of roles has always been clear and the unions has always tried to fight their battles against the company when necessary, but on their own, without expecting Trust-appointed managers to fight at their place. The fact that directors are trade union friendly only adds more skills to the personal, specific ones, and is not supposed to make them act as militant trade unionists in a place which is not made for industrial relation confrontation and not to be led by managers against managers, anyway.

As an example, Seamus Cody referred that last year there were very hard negotiations with the company, characterized by threats and strikes, and the climate was very very difficult. David Begg, now general secretary of ICTU, is one of the two Trust/trade union nominees (out of 15) on the board. The trade union did not ask him to oppose the redundancies, but they asked him to try to get the company to agree to negotiate the way these redundancies had to be carried. Unions finally had to accept the change in the workforce, but managed to negotiate forms and modalities, for example introducing voluntary redundancies.

On the other side, Teresa Hannick referred that employees are not completely satisfied with the ESOT management of its power, when considering that it is run by trade unions. For example, they are aware of the fact that David Begg is a member of the board and wonder what he is doing for them. But of course, he is a board member, he has to act according to his role, and people in the company are over-estimating the influence of the ESOT. Of course the matter here is that employees do not clearly understand the actual possibilities of certain roles.

COMPANY CASE: Kardemir Steel Mill

Historical background

Privatization and closure of unprofitable public enterprises was a key ingredient of government policies designed to reduce public deficit in Turkey as well as in other countries. This approach has brought workers and trade unions to seek and develop alternative approaches to preserve employment for thousands of workers, and, in the specific case, for ensuring the living means for their families and an entire community born and developed in strict connection to the plant.

The Karabuk Integrated Steel Mill The mill is the oldest steelmaker in Turkey and considered 'the industrial school of the country'. As a State-owned company, it offered rather attractive working as well as living conditions to create a regular and stable workforce out of peasants and immigrants in the 1940s and 1950s. The plant provided workers with cheap housing, recreational, educational and medical facilities (beyond the reach of most people at that time). The population of Karabuk raised quite a lot between the Fifties and the Seventies, and the economic life of the town as well as the surrounding towns is totally dependent on the existence of the mill.

Rescuing the Karabuk Integrated Steel Mill, as it was called before the privatization, by the trade union Confederation Hak-Is and Celik-Is (its affiliated steel workers' unions), through an employee buyout meant more than a job preservation operation. The threatened plant was and still is a major employer on which the local community was and is economically dependent. In such a difficult context, characterized by the alternative imposed by the State either to sell the plant or to close it up, the employee buyout of the even ailing (at the time) establishment seemed to represent not only an attractive and viable alternative, but also the only one. In the specific case the role of trade union has been fundamental in the buyout since and even before 1994, as it is crucial nowadays, in terms of management of the industrial relations and governance within the company.

At the beginning of the Nineties, Karabuk steel mill was put on the agenda of the State-owned companies in loss to be sold off. Over the years Government's assistance had already been necessary in several occasions to cover debts and interest payments, some of them largely emanating from a five-month strike occurred in those years, after which workers received about a 500% pay increase. Rises in labour costs coupled¹; lack of investment in new technology and increasing competition from local and foreign steel producers worsened the financial position of the plant. The work organization was neither well designed nor well located. Moreover, the mill experienced problems connected to heavy inefficiency (quite usual in Turkish state enterprises) like over-staffing, political interference, lack of managerial skills and bureaucratic rigidity². The plant also suffered from idle capacity: the mill mostly produced structural steel, for which the market was saturated, but it lacked the necessary technology and machinery to produce following the market demands.

Following a major nationwide economic crisis in April 1994, the Government announced its intention to close down the mill, which had made an average loss of US\$60 million per year in the previous five years. About 6000 workers stood to lose their jobs in a region which was seen to offer few prospects of alternative employment. Upon the announcement, there was another strong community reaction, triggering widespread local opposition, which lasted seven-months, led by the steel workers' union, Celik-Is; the request to save jobs proceeded with the backing of a wide range of local organizations, including local political party branches, the mayor, the chamber of commerce, the artisans' and shopkeepers' association and the local community in general.

The involvement of trade unions

The journey for the privatization of the company with the involvement of the trade union Confederation Hak-Is and Celik-Is (its affiliated steel workers' unions) dates back to 1994, and is based on a series of preliminary studies carried out by trade union officials (Osman Yldiz, Hak-is, in particular, whose interview is referred about hereinunder). The point of reference was UK, considered as a leading country in employee financial participation and employee ownership practices. Hak-is was looking for examples, especially from the financial participation



models developed in Wales and Scotland. At that time, certain British cases were taken as a sort of inspiration behind the idea that workers could own, manage and run companies. The first intervention towards the employee buyout of the steel mill was from the side of trade union, who led the whole operation. Following this, also the Government, although it potentially appeared determined to close down the plant, seemed to support this solution: a governmental commission studying the company concluded that production at Karabuk could continue, provided new investments and a reduction in the workforce. In consequence, the government decided to postpone the closure and gave employees a chance to buy the plant out. Impending closure and the absence of any prospective buyer forced the workers and trade union to mobilize resources to buy the mill themselves. Within a month of the decision to close, a purchase plan was drawn up by a committee composed of union representatives, academics, managers, state planning authorities. To this end, the union took the lead in establishing a new company called Kardemir in association with the Karabuk Chamber of Industry and Commerce (KCIC), the Karabuk and Safranbolu Shopkeepers' and Artisans' Association (KSSAA) and local people.

Kardemir officially purchased the Karabuk steel mill works on 30 March 1995.

The union and employees negotiated the purchase of the plant on favourable terms. The government furnished a grant of about US\$23 million to Kardemir, which undertook to repay it within 15 years at zero% interest. The government also agreed to charge lower rates for railway transport, iron ore and coal. Kardemir borrowed another US\$10 million from banks at commercial interest rates.

In accordance with the government agreement, all workers were first made redundant to receive their severance pay and all other pecuniary entitlements for which the government assumed responsibility.

The workers were, then, rehired by Kardemir, which used the severance pay to purchase shares on the workers' behalf. Although the agreement only allocated 35 percent of the equity of the firm to the workers and the union, they gained the control of the company in a short time as the KCIC and KSSAA members were unwilling to invest money in what they called 'a risky business'.

Each worker was entitled to receive a number of shares in proportion to the worker's wage level and seniority. There was widespread optimism on the part of the workforce regarding the success of their venture. Some workers were, nevertheless, reluctant to spend their severance pay on an uncertain venture.

The union and the company, therefore, launched a publicity campaign to convince them to purchase shares.

Workers would not immediately become beneficiaries of the shares because their sale was restricted for three years, beginning in March 1995.

The situation of the allocation of the shares in 1995 was as follows:

SHAREHOLDERS PERCENTAGE of Shares No of Seats in EB

GROUP A WORKERS 51.8 (%) 4

GROUP B INDUSTRIALISTS and TRADERS (KCIC) 24.2 (%) 2

GROUP C CRAFTSMAN (KSSAA) 1.3 (%) 1

GROUP D LOCAL PEOPLE 22.7 (%)

Consistently, also corporate governance rules have been influenced by the share-ownership. The board membership was structured as follows:

four members representing the workers, nominated by the trade union;

two members nominated by the KCIC and one nominee by the local people.

An unique, but not static model

The Kardemir model, at least at the very beginning, represented a very unique model in the Turkish landscape³, initiated to contrast, as already mentioned, the privatization of the mill, provided that in Turkey, as a matter of



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fact, the wave of privatization normally led to closure of companies, usually in such difficult situations not to be appealing to any buyer.

The model established in 1994 is not a static one. It has been changing over time taking into account different developments and conditions.

In 1998 the structure of the board still included 4 members as workers representatives, but 2 of them were elected by workers, while the other 2 were still directly nominated by trade unions. In 1999, these two trade union nominated reps were actual trade unionists, and when one of the elected members had to leave the board, the trade unions took advantage of the situation to substitute him with another TU representatives.

The other members of the board opposed this behavior, and pushed for professionals instead of trade unionist.

In 2001, a change in the general secretariat of Celik-Is, and some strategic decisions which had led to significant financial losses, signed also an inversion in the participation of the trade union to the board.

Since then, the 4 workers' representatives are still all elected by workers, but among a group of experts, academics, lawyers and accountants, who are preselected by the trade unions.

The general director of the company (currently Osman Kilavuz, interviewed, see below) is nominated by the board; as a matter of fact, he is proposed by the trade unions and highly probably just approved by the 4 workers' side reps.

Directly asked about this circumstance, Osman Yildiz (Hak-Is), underlined that in the time the structure of the Executive Board has changed for two reasons. The initial practice for which the union was sending its representatives to the executive board, either from the local trade union or from its central executive (like the general secretary), led to unsuccessful situation. "The union had to realize that this kind of approach was wrong, because trade unionists are not necessarily managers. Hak-Is changed its policy and started not to send unionists from central administration".

Moreover, an important change in the shareholding distribution occurred over the years played an important role. In the beginning, in 1995, the share-ownership was clearly known; thus the executive board was designed according to the groups of shareholders. Since the Kardemir AS Company started to function in the Stock Exchange in 1998, though, the possibility to know the shares of the group has dramatically weakened.

Workers do buy and sell in the stock Exchange. Nowadays, it is almost impossible to know the percentage of employee-owned shares: the company has around 50 000 share holders⁴. "For these two reason and in order to create a more independent structure for the success of the company, very consciously union is not sending any trade union representatives to the EB. However" Osman says "union is still influential over company for overall matters and main policies, because of the tradition and tendencies, as well as for the habit of close cooperation created between the union and company. As a conclusion, it can be said that union has contributed to save and maintain the function of the company. The company has been transforming into more professional and independent management as the workers are among its shareholders. Union lets this transformation for the independence of the unionism and the modern and independent management of the company to succeed".

Kardemir in the grid⁵

Before a more analytical analysis, it is useful to give some general information regarding the company which might be used as interpretative keys.

A first remark regard the general situation of the company.

Over 3500 employees currently work at the mill, which is the major employer in a region with a population of nearly 250,000. Since the buyout in 1995, Kardemir has undertaken a major new investment in infrastructures and machinery. The change in production technology has brought a reduction in the cost of steel production. Sales have increased some 55 percent in the first 4 years and much further in the following.

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Another indicator of the company's success is the rise in the value of stock, which has been appreciated by 13 times in the first two years (from 1998 on) (Kilavuz). The company is nowadays highly performing and the shares are definitely valuable.

Another remark regards the fact that all 3500 Kardemir workers are member of Celik-Is6.

It is not, thus, clear how and if an employee majority holding of the equity of the company was preserved in the long run. A worker trust had been planned to prevent employee ownership being diluted over time, but its creation has not even been mentioned during the interviews. It has been possible to speak quickly to one of the secretaries of the Kardemir Workers Association, whose members are supposed to be employees-share owners. This association is organised and run by trade unions on behalf of workers', and takes part to the general meetings, representing 10% of the share holding workforce, but the figures are not certain at all.

Osman Kilavuz, when interviewed, remarked that there has been a period in which “any Kardemir employee in Karabuck had a new car”, meaning that many employees decided to sell their shares. Nonetheless the company has almost always performed very well, and is considered as a kind of “miracle” of the industrial landscape in Turkey and a complete success of employee share ownership and trade union management.

Apparently, as Yildirim affirmed following his investigation in 1999, over the years, workers' sense of belonging the company (or the sense that the company belonged to them) has decreased.

Another remark regards the role of trade union within the company. It actually controls the company, exercises a very powerful influence, backed by the fact that it represents not only workers but also employee shareholders. The role and the influence of the trade union are played following very informal procedure: there is no formal structure in the company for information and consultation, no predetermined forum where matters can be discussed and decided. Such a situation is brought to the point that the trade union tends to be almost identified with the management.

Consistently, one could wonder/questioning whether specific governance practices that might have developed within the company have actually been influenced by the existence of employee share ownership, especially considering that it has never been collectively managed, and that nowadays it appears so diluted.

The impression is that it is more due to the strong influence of the trade union, that has somehow led the game since the beginning and that has such a strong and rooted connection to the territory and the local reality.

Consensus building

Osman Kilavuz has made clear that information and consultation procedures do exist but are not formalized (in Turkey there are no legislative forms of information and consultation procedures, anyway). He referred about not always regular meetings with the management and the employees to give them information on production figures, new investments and sales figures, and also to listen to their problems and grievances. Workers are exhorted in these meetings to consider the company as theirs and make greater efforts to keep it productive and successful. Management works hard to instil a spirit of active cooperation into workers, emphasizing that management and labour are “in the same boat”, and moreover, to engender a family feeling among the workforce: Kilavuz insisted in specifying that he is the first one arriving in the morning and that he tends to spend time walking around the plant and meeting people.

The circumstance that all workers are trade union members should somehow grant a certain degree of internal consensus, and a sense of protection with regards to their rights. However, the general impression is that somehow trade unions tend to identify themselves with the management, with the company itself. Trade union representatives in Celik-Is based in Karabuck have made clear that employees (*all* employees) are aware of the fact that in case of problems or of questions, they can always address their concerns to the trade union representatives, and obtain answers. Actually, the sense of “big family” is also enhanced by the fact that the plant represents the centre of Karabuck, the “totem” around which the whole life of the small town (and of the close districts, as Safranbolu) rotates. Trade unionists in Karabuk seem to be completely aware of their role and gave the impression to “have the situation under control”. After all, the internal governance structure grants a certain

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power to the trade union, who claims to exercise it in the total interest of the workers in Kardemir and of the Karbuk community.

A constant flow of information towards shareholders in particular should be granted, beside through the trade union and the provided meetings about production, by the Kardemir Workers Association, created and run by the trade union for shareholder employees. However, there is no direct evidence: no in depth interviews were possible and anyway apparently nobody can know the actual number of workers who are still shareholders and therefore interested in financial information. The Association secretary, very quickly asked, referred about a 10% of workers taking active participation in the Association assemblies. As a consequence, there are no direct nor indirect information of how the Association exercises the rights of the employeesshareholders in the AGMs.

In between the consensus building and the managing conflict areas it is possible to place a feature of particular importance: the *management and work organization*. After 1995, a new management team was brought in with the specific aim to modernize work organization and the company culture. It was necessary to mark the passage from the old, lazy and unproductive public-owned system to a new operational culture, marked, as far as possible, by innovation. A new job classification system was introduced. Supervisory staff has been reduced and changed in its functions. A new personnel policy has been introduced to make workers more productive and reduce over-staffing (productivity has increased incredibly, in the last years). Work flexibility measures have been provided.

Managing conflicts

If under public ownership industrial relations at the Karabuk steel mill were relatively peaceful, as far as it was possible to get from the interviews and the visit to the plant, the situation has not changed, also because the plant is de facto run by trade unions. The trade union representatives play a key role in mediating demands from workers and management decisions, whom they actually control. However, they declare to manage industrial relations “always paying attention not to interfere to much in the action of the board, where, after all, they are well represented”, as referred by themselves. After all, the changing practices in the appointment of the EB members shows a certain level of consciousness that bargaining practices and company management have to stay separate. The impression is also that the trade union is now very cautious in getting formally involved in management decisions, maybe for the fear to be connected to wrong decisions, as it was the case in the past: “Running a plant in the interest of workers does not mean to always say yes”.

Nonetheless, the risk of conflict of interest is not totally over. The problem may arise in terms of what trade unions are able to do for workers, provided that job preservation and the survival of the mill are, must be the first place values, and that these priorities have justified the introduction of relatively hard working conditions, in certain moments.

In terms of collective bargaining, in the earlier stages of the buyout, the Kardemir workforce accepted a wage freeze and gave up a number of fringe benefits, including overtime and certain paid holidays to help the new company; the wage levels were generally much lower than in other firms. Management and the union signed a new collective agreement in 1997 that gave workers a 40% pay rise and a 20% increase in fringe benefits, plus, of course, the dividends of the shares, which were not supposed to be part of the salary, though. Currently the wage level has increased, and for those workers who have kept the shares, the compensation for the past sacrifices has come from the dividends (or the sold of the shares).

Workers and trade unions firmly believe in the future of the plant and in the necessity to make sacrifices to achieve the survival of Kardemir: “we have some problems but we should work. The operation of the plant must be the only thought in our minds”. Trade union refers that the whole community is proud of the achievement that the plant has, so far, survived and so well performed: “Our success will be a model not only in Turkey but also in the world”. This result serves to push workers (and trade unions?) to find alternative solutions than open conflict.

The necessity to achieve the survival of the mill, in the name of the entire community, coupled with the appeals by management and the union, beside the above mentioned salary measures, has made the employees work more intensively. Employee ownership at Karabuk steel mill has resulted in rapid rises in labour productivity and



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enhanced job security. Kardemir has the lowest production costs in the Turkish steel industry, as a result of improvements in management and greater worker motivation. It seems that there is a sort of alignment of employee goals with those of the company: trade unionists and Kardemir CEO referred that, beside the active intervention to improve the production process, the main contribution to the success of the company comes from the will and the sacrifices of workers, the acceptance, when necessary, of hard working arrangements, mutual support, and the adoption and implementation of specific measures such as peer group reinforcement among workers to reducing absenteeism.

Modernization of company governance

The particular location of Kardemir steel mill, in the very North of the country, in the middle of the mountains, determines a strong connection between the plant and the local community. Karabuk and the other small towns around represent a real industrial district completely rotating around the plant life.

Right after the privatization, trade unions in Karabuk and the Government were able to negotiate a plan for the re-qualification of the entire area, in order to increase the life quality of the families of Kardemir workers and give new boost to the local economy.

Following the managerial and staff change planned in the plant, in the name of innovation, personnel policies were more in the sense of hiring skilled and educated workers. This gave the opportunity to ask for the establishment of a university institute, which has been set in Karabuk, gathering students from all over the country. The university institutes are of course oriented in courses and lessons in engineering, management, steel production, marketing, foreign trade, all the possible activities that might be useful and also experienced in the plant.

Of course, the entire community benefit of the introduction of the university in the area. The high level education provided also takes advantage of an international dimension that trade unions wanted to ensure.

COMPANY CASE: TULLIS RUSSELL

Tullis Russell, founded in 1809, is a manufacturer of high quality printing grades of paper and board, dealing also with manufacture and distribution of other paper products with specialist uses. The company employs nearly 800 people at three sites in the UK and one in South Korea. It has annual sales of around £136 million. Tullis Russell is doing significantly – incredibly! -better than its competitors, who are all suffering, with most losing money.

Its journey from family to employee-owned began in the 1940s when three family members inherited 75% of the shares, and the remaining 25% were transferred to a charitable trust, the Russell Trust. Its trustees were (and still are) responsible for acting in the best interests of the employees: they could veto any proposed sale of the business and appoint directors.

By the early-1980s shares were held by 40 family members. In the spirit of the founder of the company, and in line with the family culture, there was a willing seller (Dr David Russell) who wanted to make sure that the employees did not suffer. Many members of the family which owned the company wanted to sell their shares, so that they could use that money in other activities and businesses, but, at the same time, they did not want simply to abandon the employees who had helped to build the company. So the family chairman suggested developing employee share ownership. The family members were happy because they were receiving a commercial price for their shares, and at the same time helping the employees. Only one member of the family, David Erdal, had any day-to-day involvement in the business, and the others were keen to release the value of their shareholding without compromising the firm's independence. Erdal believed this could best be achieved by extending employee ownership.

The employee buyout was based on two sources of finance.

In 1985, the firm introduced a cash profit-sharing scheme, that allocated 15.7% of pre-tax profits to employees. At the same time, a tax assisted scheme was established to allocate shares rather than cash to employees, while paying for those shares out of profits. Under the arrangement, 7.5% of pre-tax profits allocated for this purpose were set aside each year to buy small parcels of shares from family shareholders. The idea was to build up employee shareholdings while reducing those of family members.

Despite the fact that the scheme gave employees a shareholding and annual dividends, it was neither tax efficient nor a quick route to employee ownership.

Therefore, in 1987, the company decided to establish a second more efficient source to finance the employee buyout. The company used a “case law” employee ownership plan to establish an employee benefit trust (EBT). So, the trust purchased a block of shares from the family¹, and employees wishing to sell equity, using a loan from the Royal Bank of Scotland and repaid from company profits. The trust then held the shares on behalf of the employees.

To speed up the process even further, an employee buyout was engineered in 1994 via a capital reconstruction and the establishment of a new company, the Tullis Russell Group (TRG). The new firm agreed to buy all the shares in the business in return for either TRG shares or loan stock. Family shareholders received the mix of loan notes (they converted their 55% holding to loan stock) and non-voting shares in TRG.² The Russell Trust, the EBT and 90% of individual shareholders accepted one-for-one shares in the new business.

¹ in one transaction the family was able to sell almost twice as many of their shares as they could have done under the share scheme arrangements in a significantly shorter period of time

² To help spread the payments, the family converted their shares into long term debt, using a complex system which ensured that they and the company would receive the tax benefits that are available to encourage employee ownership. The family was receiving their money from the company in relatively small amounts each year. From the seller's point of view, they managed to fix their price on day one in 1994, and also to ensure that they will receive interest. From the company's point of view, the main advantage was that they have a know liability and complete control from day one. The final payment was expected to be in 2009, with the company paying interest on the money to the family meantime. In contrast the family's loan notes were fully redeemed by TRG for cash after only 7 years instead of the 15 years that was originally envisaged.



Since 1994, loan stock worth £19 million has been converted back to shares and distributed to employees.

The asset of the employee share ownership

Tullis Russell nowadays is a private company which is now owned entirely by its employees:

- a) 30% as individuals
- b) 42% through an EBT - trusts for the employees and
- c) 28% by a charitable trust, the Russell Trust, which also wishes to benefit the employees.

Tullis Russell Group represents an example of combined trust and share ownership. Following a not codified scheme, initially, employees may hold no shares directly and all employee ownership is through the employees' trust. Over time, the trust may transfer shares to individual employees, but always retaining a minimum percentage of shares in long-term trust ownership. This is what happened in the company.

Therefore, employee financial participation in TRG is realized through three main ways, which have been combined in such a way to benefit both from the advantages of the trust ownership, and from those given by individual share ownership.

- On the one hand there is the EBT (for the composition and the role of the EBT in terms of corporate governance see below), holding collectively most of the shares in the interests of the employees. The Russell Trust retains a so-called "golden share", preventing the sale of more than 10% of assets and any changes to the rules of association that govern the business. Its existence, provided that a minimum number of shares are always held in the trust (10%, necessary to establish a SIP, see below), ensures an important degree both of sustainability of the whole system, and of stability, by placing a strategic block of shares in the hands of trustees who must take the long term view. The establishment of the Trust also facilitates the operations of an internal market and the purchase of shares from current shareholders, by channelling shares to a single purchaser (the Trust itself), rather than seeking to match multiple sellers to multiple buyers; and also limiting up to zero the number of shares in circulation. In addition, the existence of the Trust also enables individual shareholders to defer CGT, as it also accomplishes the functions of a SIP Trust (see below), holding more than 10% of the shares, satisfying the necessary conditions in order to allow the tax advantages for employees individual shareholding.

- The individual shareholding provision ensures that every employee, after they have worked in the company for a year, receives free shares, every year for which there is a profit. The company operates a tax-approved Share Incentive Plan (SIP) to distribute shares to employees for free. This scheme not only makes tax incentives for employees available. It also allows a direct and easily understood ownership, by enabling employees to acquire shares from the trust. It also ensures capital growth, as enables employees to sell back their shares to the trust. In addition, individual share ownership procures advantages in terms of tax deduction for the company, as for the use of a statutory deduction for the value of share based benefit provided to employees.

- A profit sharing plan provides that every year about 15% of the profits are distributed to all employees in cash in proportion to their salaries.

Corporate governance milestones in employee owned TRG

The firm's paternalistic foundations mean that there is a history of wide-ranging employee participation and involvement. As it is the case for few other companies in UK (i.e. John Lewis Partnership), one of the reasons why employee ownership is established in a company is because of the will of the former owner, either for ideological reasons, or because of will to retire (Interview to A. Pendleton, York, June 2009). The ideological commitment behind this decision has granted (more than other factors conducing to employee financial participation, such as privatization, distress or new company start-ups) the involvement of a series of subjects, such as the owners, owners/managers, owners/managers/employees, employees/managers, employees; this degree of involvement has also determined peculiarities in the corporate governance activities, such as work

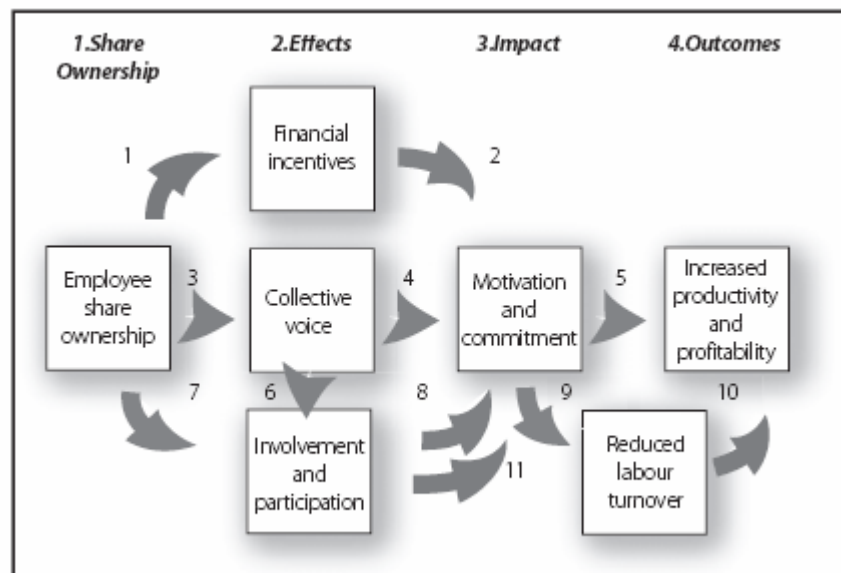
direction, active AGMs, existence of an active trust, important information disclosure, existence of company council.

A main objective of a employee owned company is creating a spread wealth system, in which the wellbeing of the employees and of the local community is realized through a clever and collective management of the company itself: “The main effect of employee ownership is to spread the wealth, widely”³.

In David’s view, while in JLP there is a distribution of profit to employees and therefore a participation in the company by virtue of the good will of the founder, in TRG there is the explicit will to make employees part of the governance of the company by means of right, through the distribution of shares.

In addition, the fact that the share ownership is currently demanded to an EBT which is not just a warehouse for the distributions of shares, and therefore collectively administrated, contrasts with the normal situation in which managers practically hold information and power, while shareholders (especially minority ones) are too far from it. When employees own the company, then also the management of the Trust is actually for their benefit.

In general, employee owned companies tend to be highly successful, as it is the case of TRG. “It is all about creating new social institutions, and new relationships, within and outside the company, in the whole local community. It is the genuine common interest which makes the company successful”.



The Share Council

The main sign of what can be considered a philosophy is that a highly influential **Share Council** was established on 1987, a year after the first profit-sharing payout. It has a series of granted powers and rights which ensure the effective impact of employee ownership on the corporate governance mechanisms.

The Share Council is the primary employee representative body, meaning employees as shareholders, and consists of one representative per 80 employees, mostly directly elected by the whole workforce (on the basis of constituencies). All the company employees are part of the ESOP. Also former employees, now retired, have the right to keep the shares (around 3%). They are also represented in the Share Council (2 members).

It currently counts 13 employee members, elected every three years; 9 of them are elected by staff, four are appointed by the group board; then there is an independent member (currently a chartered accountant who assists employees) and David Erdal, who is an honorary member.

³ David has also a PhD, his thesis was on proving that people living in communities in which work is in employee owned companies have longer life.



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The Share Council meets four times a year.

The Share Council is not a negotiating body – its main purpose is to reflect the opinions of employee shareholders and to advise the board on the share scheme, such as the distribution of shares and dividend payments.

It does not appoint any company board member. The Share Council rejected introducing employee directors on the basis that once on the board, such employees become too distant from their constituencies. In addition, a serious conflict of interest might be realized. However, the appointment of non-executive directors on the operating company boards has to be approved (veto power) by the Share Council, which looks to these people to counter balance the executive directors. Moreover, the Share Council has a right of veto also on any proposed acquisition with a purchase price in excess £15 million. It basically acts as a safety valve for employees' views on how the company is being run.

Although there are no employee directors, the Share Council meets non-executive members on the main board separately, twice a year.

The Council also has six-monthly meetings with the Tullis Russell full board, where Councillors are encouraged to ask questions and challenge the board on business performance and strategy.

The Council also meets the executive directors once a year, over an annual seminar weekend, in order to discuss long term strategic interests, such as wealth sharing priorities for the next few years. The Council receives the group's quarterly results and can quiz the board about them at the twice-yearly meetings. Monthly performance reports are provided to each individual elected share councillor.

The Share Council also consults with the group board on the level of dividend payments and the proportion of shares that will be allocated.

The board of directors

It is composed of all managers, 2 non executive ones, approved by the council, 3 executive and is chaired by the former chief executive. It continuously consult and communicates with the Share Council, and, as in a public company (even if TRG is a private one) it organises its works in committees, where members of the Share Councils are invited to take part to in order to ensure transparency.

The EBT

Ultimately, the most important decisions in the company (for example, selling the business) rest with the trustees of the EBT in the AGMs and the Share Council (who has to veto on such decision, btw). This is a strong body, including four trustees elected by the Share Council, four appointed by the main board and an independent chair, to be approved by the Share Council. The elected share councillors, as a group, meet separately twice a year.

The EBT collects proxies from the employees before the AGM and exercise the vote following the principle 1 person 1 vote.

“The company practices employee involvement but does not allow a gap in expectations to be created that could become problematic – for instance, an employee will participate in the specifying of a new piece of equipment, but the strategic decision to buy the equipment would be taken by management” (interview to C. Parr, CEO).

Tullis Russel in the grid

Consensus building

Tullis Russell managers and employees are enthusiastic of the participation system which has been designed in the view of increasing employees' consciousness of being the owners of the group more and more. *Direct employee involvement* is considered the way make employees feel active part of the consultative process. Main ways of

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encouraging an employee ownership culture are ensuring all employees are entitled and able to have a say on issues that might affect them; being open and honest about financial information; and ensuring that middle managers are driving and living the company's values. These results have of course required a series of efforts and commitment in different directions.

One main feature is the willing of creating strong *consultation* channels: over time the company has developed a very effective consultation process and structure. Employees elect representatives at several levels, including the top one. There is a serious commitment by the managers to consult formally on all major decisions, and to develop a style that consults also on local decisions. In this view, the pursue of the highest level of participation is witnessed by the existence of the Share Council, such a strong consultative and representation body which is directly and constantly in touch both with company management and the employees who have elected the councillors.

Moreover, in the Share Council's constitution, the company does specify which areas it will consult employees (the Council) on. Therefore the Share Council operates to a four-box matrix, which represents company values granted through the consultative and decisional rights included in the role of the Share Council: information and communication; consultation and influence; review and monitoring; decision.

Therefore, following this matrix, it is possible to set out issues on which the Council has to be informed only (such as the *simply envisaged* decision to operate redundancies).

The Council will be consulted on other issues, with respect to which it will be able to exercise a certain influence such as: the setting of remuneration policies, right to suggest share scheme proposals to Company – even if the final decision rests with Company, strategy setting; company performance, acquisitions, use of funds, redundancies, pension deficit, establishment or changes of reward and recognition policies, PRP, composition of the board.

On a further set of issues, the Council has review and monitoring powers: remuneration policy (ongoing, compliance), performance of non-executive and executive directors, board evaluation, strategy implementation, company performance, acquisitions (post implementation), PRP (ongoing and post implementation), board committees, audit, remuneration, nomination, reward and recognition (ongoing compliance).

Finally, the Council has the power of veto, independently from the consultation stage, on the appointment of non executive directors, company proposals on share schemes, acquisitions in excess of £15 million, elected trust directors.

It is clear that the Share Council is not only an information body, but also a fundamental part of the participation mechanisms.

Supporting the Share Council to perform its role effectively is important, and an annual training needs-analysis of its representatives is undertaken. This is used to develop a specific *training* programme. All representatives also attend initial induction training, covering report writing, finances, and presentation skills.

The firm recently established an information and consultation body, which comprises both trade union representatives and Share Council members. This body is consulted as many times as the Share Council, especially when the changes and the matters are particularly important. For instance it was consulted, as the Share Council, when it was necessary to decide the allocation of more money on the pension scheme of the company. (“That was a decision which involved the priorities of the company, and the wellbeing of former employees was considered to be at the first place”).

Enhancing an employee ownership culture has also required *organizational efforts* and modification of the internal structure in order to increase the *bottom-up* flow of inputs and engagement. More and more decisions have been passed down to teams at the local level. Teams operate to continuous improvement principles, with wide participation, both giving and requiring employees a reasonable level of input and involvement in day-to-day issues. Many layers of managers have been removed. Of course, this has required a great effort in terms of training and support to be provided for all employees, to make sure that they can handle the extra responsibilities.

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Another feature is represented by *communication strategies*, as a milestone towards the continuous establishment and consolidation of employee engagement and feeling to be the actual owners of the group. Managers put a lot of time and effort into communicating their strategy, so that employees have a clear idea of where they are, where they are going, and how they can help. This is part of a continuous improvement process: every employee has the right to have a voice on decisions that potentially affect the way they work.

Employees can contribute and ask questions through a quarterly magazine, and a senior manager must respond. “A genuinely free press is fundamental to ensure transparency and sense of sharing, to ensure that the acting of the management is for the good of all, employees and community” (D. Erdal).

Team briefings presented by team leaders, can take place daily, weekly or monthly. The company also hosts “listening lunches”, where senior managers visit locations, listen to individuals and respond to issues.

A bi-annual, wide ranging survey is used to measure employee opinion. Questions asked cover engagement and employee voice, for example, the survey asks employees how they are treated and listened to. Data are collated by department, and feed back is discussed with local area managers, who develop action plans as a result. This strengthens the employees feeling that the decisions are not only communicated but can also be influenced directly by them, in addition to their representatives. Recent examples of actions taken in response to employee feedback include: levels of training, and the extent to which middle managers demonstrate the company values.

Employees are informed about business or strategic issues through a specific annual employee financial report, containing easy-to-access financial information and other articles on corporate governance; moreover, the company is engaged in ensuring all team leaders are equipped to perform financial briefing – which is a particular challenge.

A weekly newsletter on the state of trade, plus a quarterly magazine are issued.

The consultation and communication structure play a fundamental role in creating a sense of belonging in the employees, and a sense of trust towards management’s decisions, even the tougher ones. David refers in particular to the situation in which it was necessary to close a site in Scotland because of the opening of a new plant in Korea. The decision was made on the basis of production necessities: the plant in Korea was producing paper to print on ceramics, and the production of the best clay was in china, therefore it was rational to move the particular segment of the production. Employees informed about the closure were trusting that it was the right decision, and negotiated trainings and correct ways to be re-located (a small percentage of them was made redundant in a gradual way). By the way, employees in the Korean plant are fully involved in the employee owned plan, and are represented in the Share Council.

After all, as specified by Davis Erdal, pioneer of the whole employee ownership operation, the very design of the employee share ownership is aimed at ensuring a high level of cohesion, involvement, participation. “The majority of the *shares are held collectively*, by a trust. This provides stability. There is no need for the shares to be sold or bought on any market: they are retained by the trustees on behalf of the employees. This also makes the consultative structure very real to the employees: they elect half the trustees of the trust (through the Share Council), and the trustees communicate with the employees, telling them about their meetings with the directors to discuss shareholding matters”.

Also the *individual shareholding* provisions are part of the participative strategy. Every employee, after they have worked in the company for a year, receives free shares, every year for which there is a profit. “This direct connection between the individual and the company is very powerful. Moreover, the shares are distributed equally per person, which spreads the feeling that everyone is in it together, working together and sharing the rewards”. After 5 years, employees can freely sell their shares, provided there is enough money available for the trust to buy them. “This adds to the feeling that the ownership is real: it can be converted into liquid capital when an employee needs money”. There are restrictions on how much people can sell, and in fact continuing employees have the lowest priority - in most years, the shares of people who have retired or left the company are bought, but often none from continuing employees. “This is accepted because it has been thoroughly communicated, and because an elected body makes the rules, in consultation with the board. This all reinforces the feeling that it is “our” company, and increases the drive to make it successful: it is only if the company makes good profits that there will be enough money to buy in the shares, and at a good price”.

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Managing conflict

Until a certain extent, the participative structure and the continuous flow of information ensure a sort of prevention of conflicts. The board is very keen in building the ownership culture and in making this process active in a bottom-up direction. C. Parr, CEO, underlines how the sense of partnership and belonging can be developed only if employees feel engaged in their duties and role, and if they are continuously involved in the life of the company. As it is natural, such a young employee owned asset, born only in 1994, has to be trained and developed. It is fundamental to take care of the daily working conditions, of the work organization and on the all those features effecting life of workers within the company, in order to strengthen the feeling that the company belongs to them: they cannot feel part of an hostile working place, even if it allows to earn dividends. Also because, the dividends would not be so generous if the company was not be supported by employees' attitude, their genuine committed way of behaving in its success: TRG performs well, and much better than other companies in the sector, because of the employee engagement.

Industrial relations within the company, anyway, are managed also thanks to the presence of the trade union. In fact the company recognises the Unite trade union and around 80% of the workforce are members.

Trade union representatives represent channel of information for workers, and their presence seems to be appreciated in times of changes and restructuring. Beside – and in parallel with respect to - the Share Council, trade unionists provide information and are constantly informed by the CEO of the main changes in employment and work organization. Training and other work related matters, such as health and safety innovations, are discussed with trade unions.

The Share Council is not a negotiating body. While the Share Council deals with share values, trade unions manages the industrial relations with the board of management. The union performs a traditional collective bargaining role, negotiating terms and conditions of work, and the wage levels. “The level of salary is above the average in the sector, and in addition to this, there are dividends, the shares, and the PRP. “The trade union makes its job, but the cake is what it is. The profits are going to cover developments for the company, salaries, and 15% of the profits are redistributed. Another 7,5% of the profits are allocated in order to distribute free shares to employees: before it was more, but lately the board and the Council decided to repay the debts that the company has with the pension scheme, so nowadays employees receive only 100 shares for free each year.”

Risk sharing

A peculiar system for UK allows the allocation of a certain amount of money in case one employee should lose his job. This is part of the collective agreement and is a form of compensation that the company ensures to the shareholder in case of decisions affecting his employment for the good of the company. However, it is not related to the risks of the change of value of the shares on the market.

Modernization of company governance

CSR and ethics are covered by a number of policies and statements, and the company is currently pulling these together.

A separate set of values covers a progressive approach to safety and environmental issues, open and honest communication, rewarding and recognising success, fulfilling the needs of customers, continually improving products and processes, effective development and training of employees, employee involvement and teamwork, working with openness, honesty and integrity.

The company diverts profits every year into its Russell Trust for charitable activities. This charitable trust distributes around £250,000 to charitable causes annually, generally to pump prime particular charities, both national and local.

The trust is managed by a board composed of the group chairman, two non executive directors from the main board, the chief executive and three family trustees.

Taking into consideration the local reality in which the plant is based in Scotland, it is easy to understand how the company and the way it is run is particularly important for the local dimension. Based in Markinch,



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Glenrothes, in the county of Fife, Tullis Russell has always been the main source of income for Fifers workers and their families. The way the company performs and the developments it has, have an incredible repercussion on the whole life of the local community. In this sense, the company, following the will and the tradition of the family, considers all the consequences that each decision may have on employees as part of the community, in the view of a general wellbeing. David clearly specifies how the whole and very diversified local business benefit from the fact that employees receive money for the shares they all own: if the profits would only be distributed to the top levels of the company, then also the local market would be gradually oriented only towards a certain type of goods, luxury goods, and the benefit for the whole community would be much less spread. Or, money would be reinvested in order to get speculations and would flow far from the town and the region, not producing any other benefit than for its owners. On the contrary, all levels of community, from commerce to education, are involved in an economic benefit that affects first of all normal families, not only few lucky very rich men. Advantages of the good performing employee owned company go into the whole community, as a form of spread wealth.

The company encourages employees to get involved in their local community, and will provide time off and matched funding for any money they raise. It also sponsors managers working in the voluntary sector to attend local leadership training activities.

There is also a specific engagement in trying to keep the supply chain as under control as possible. Most of the outsourced production comes from local factories, working for the TRG, but not only, which benefit from the presence of TRG. This is considered as another way to spread the wealth of a well functioning industrial group for the benefit of the whole community.

It is the company's 200th anniversary in 2009, and it is looking to build an eco centre locally at a cost of around £600,000. this is part of a broader environmental policy, which aims at changing means of productions in such a way that the emissions and the waste are reduced to minimum.

COMPANY CASE: SAF TEHNIKA

SAF Tehnika

SAF Tehnika is a Latvian designer, producer and distributor of digital microwave data transmission equipment. SAF Tehnika has been established in 1999 with 10 employees. SAF Tehnika has succeeded in becoming an international player and has been able to compete with multinational corporations acting in the same business field. SAF Tehnika from 2004 is a public joint stock company incorporated under the laws of the Republic of Latvia and listed on the Riga Stock Exchange. The shares of AS SAF Tehnika are quoted on Riga Stock Exchange. Now are public trade everybody can buy shares and is different.

SAF has introduced, at the beginning of its activity, the ESOP scheme and has issued 60.000 employee shares. When you start a company it is normal to give or to sell shares to employees. It is a common practice that key employees get some part of the ownership income. Performance basis, is agreed on fixed salary, plus shares on performance results.

The motivation for the introduction of the ESOP scheme was because the employee share owner of company increases the loyalty and employees can get monetary benefits on profit sharing.

The share were distributed for free, almost to everybody, with differentiation based on employee position and the length of employment in Saf. The introduction of the scheme was an autonomous initiative of the owners. The scheme did not introduce aspects of governance of the company and did not include voting rights. There was no participation of the employees on supervisory board and the information rights was ensured on informal way.

The scheme was abandoned (equity capital was reduced) due to unfavorable financial conditions for share plans (income from selling shares is taxed) and because it caused for the owners more bureaucracy and did not bring benefit since every benefits have been subject to salary tax. Now SAF is a public company and everybody can buy shares and it is different.

In Latvia historically there are Labour unions for public sector (railway, telecom, electrical education, medical, etc) and there are quite of few organization for private sector which negotiate agreements.

SAF do not negotiate collective agreement and this is true for all the ITC sector. The employee prefers individual agreement. If you need quick cost cutting and if you have very high influence of Union, you might have obstacles.

SAF would wish for legislation for EFP, but in this circumstances it is difficult. It is possible that, in some time SAF will open the negotiation with the government. The legislation is the necessary framework for the ESOS otherwise if enterprises and employees do not get tax benefit is not convenient. The government initiative to get tax from the enterprise clashed with the ESOS scheme.

Governments priority, during these years was to push companies towards legally salary, that is why EFP scheme was not a priority. But they have lot of public company with little liquidity.

The other negative aspect is that the stock exchange is small the market is very little. The stock exchange will be unified in Baltic countries to make one united platform (many companies are owned by Nasdak) and will become more attractive for the employees. If the shares are trade they get benefit dividends and they can sell the shares for profit.

In this experiences, interviewed people see “minus and plus”: the minus which is possible to see in the experience are : difficulty in firing person, then you might end up about ownership and prices.

There are more plus. In fact it is easier to talk about compensation, about bonus and to leave in crisis period of





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the company.

I would rather not to mix EFP with governance because EFP is connected with managerial ability of the employees. The company promotes managerial level and is not necessary connected with ownership. In case SAF will reintroduce this the scheme will not include the governance schemes. The governance is related to the internal culture of the enterprise. In Saf Tehnika they have employees meeting on regular basis and they discuss strategy goals because informed employees are better employees. SAF does practice the information.



COMPANY CASE: EIRCOM

Background

Telecom Eireann, Irish telecommunications company, took its current name Eircom plc when it made its first public stock offering in 1999. The company faces a host of challenges in the newly-deregulated Irish communications market; once a protected state-owned phone monopoly, Eircom now confronts private competitors for the first time.

However, the company seems to be flourishing in its new environment. As a crucial component in Ireland's industrial infrastructure, telecommunications has grown immeasurably in value. Telecom Eireann - and now Eircom plc - has been at the forefront of that growth.

While Telecom Eireann used to share many characteristics with other independent enterprises, its board was appointed by its one and only shareholder, the Irish government. Moreover, it faced virtually no competition. This situation was soon to change. A gradual opening of the Irish communications market occurred in 1992 when the year-old Eircom Group plc began lobbying the government for a license to operate, obtained in 1993.

The impetus towards privatization began in 1991 and gained force as the decade advanced. As Ireland's economy emerged in the era of global commerce, telecommunications became an essential factor in economic success. Critics argued that a private industry was necessary for further economic expansion - to lower costs and facilitate the introduction of new cutting-edge services. While Telecom Eireann had brought Ireland to the verge of an economic boom, only a free market would ensure continued prosperity. In addition, the European Union mandated that its member nations phase out phone monopolies by 2000. Although Ireland and Italy were given more time to implement these changes, the deadline still loomed. In 1998 the Irish government announced that complete deregulation of the telecommunications industry would occur in 2000.

Privatization process, trade union involvement and establishment of the ESOP

ESOP in Eircom was the first form of collective management of employee share ownership in Ireland. Further to that there was no example of employee share ownership trust, collectively held share holding on behalf of workers. Various pieces of legislation allowed some employee participation but it was only on individual basis (Finance Act 1982), and tented to be only for high members of staff and managers. The suspicion that trade union had towards employee share ownership was that management tented to have tax advantages and economically convenience in paying managers.

The introduction of an ESOP, in exchange for radical restructuring and privatisation, was an idea first introduced by Eircom 's Union Coalition (coalition of Eircom's recognised unions¹) in May 1996. David Begg, (who was the general secretary of the largest union in Ireland, the Communication workers Union CWU, at that time, currently general secretary of the ICTU) was close to the US experience in employee share ownership and was involved in the group asked to find a possible solution for Eircom . He knew the company, once privatized, was entering a very competitive market, requiring large change of work practice and wage concessions from the workforce, in order to preserve the competitiveness in the new private environment. The question was of course what workers would have got in return for that. Traditional approach from trade unions would have been to have opted for monetary advantages in return, that the company could not afford anyway. Therefore, the answer was: a holder-ship stake in the company.

Originally, the then Minister for Transport, Energy and Communications, Alan Dukes, offered employees a 5% stake in exchange for firm restructuring. The Union Coalition rejected this offer, and sought a more significant stake in the firm. Following a change in government in 1997, the new Minister of Public Enterprise, Mary

¹ Association of Higher Civil Servants, Civil and Public Service Union CPSSU, Communication Workers Union CWU, Irish Municipal Public and Civil Trade Union IMPACT, Public Service Executive Union PSEU.



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O'Rourke, fully supported the idea of giving employees a stake in excess of 5%. It was eventually agreed that employees would receive a 5% stake in exchange for the transformation agreement (which meant a lot of work practice changes, people working 5 days out of 6 instead of 5 out of 5, with longer working shifts, sometimes recurring to outsourcing...) that the trade unions supported. A further 9.9% stake was purchased in exchange for a 'fair price': partly borrowing some of the money; partly using a pension scheme where employees made no contribution to, and dealing with the company that workers would have made a pension contribution in exchange of the capital value of that (the company would have had the benefit of that saving forever), therefore they eventually agreed to get from the company 100 million Euro.

The Eircom ESOP was established in 1998, and currently it has approximately 14.500 participants, of which approximately half are still employed by the firm. Under the ESOP, at the time of the establishment, 14.9% of the shares in the Company is available to be acquired on behalf of employees. Other purchase was made out of the profits of the already owned shares afterwards: nowadays, as explained later on, through the ESOT, the trade union finally managed to manage collectively through 35% of the company shares..

The Eircom ESOP was established with three main aims: supporting the restructuring plan outlined in The Telecom Partnership, providing employees with strong representative participation, and providing financial compensation for employee participation in firm restructuring. Therefore, on one hand it appears the primary purpose of the ESOP has been gaining employee and trade union support for firm restructuring and privatisation. An anonymous at ICTU commented: "The ESOP in Eircom was not really created for the strategic reason of giving employees ownership; it was put in place to smooth the path to privatisation".

However, it also has to be kept into account that trade unions considered the establishment of the ESOP as positive for workers also with regards to the background in which it has been negotiated. Since 1987, in fact, the Government and the social partners negotiated a series of National Social Partnership Agreements². The establishment of the Eircom ESOP was made also keeping into account the provisions of the fourth of a such national agreements since 1987, "Partnership 2000"³. One of its core objectives was to increase the level of employee participation in the companies, also through financial involvement, promoting the introduction of favourable conditions its establishment. Terms and conditions of the benefit arising for employees taking part to the Eircom ESOP have been designed on the basis of what set in Partnership 2000. (see below)

How does the ESOP work?

The Eircom ESOP has a finite existence, and under existing legislation it will have to be dissolved before May 2014. Moreover, under a provision of the Taxes Consolidation Act 1997, the ESOP will no longer be able to distribute shares in a tax efficient manner to former employees of Eircom after May 2014. After that date the employee financial participation will be dissipated (as for the original agreement with the government, "which does not mean that we cannot stake a new one", Jimmy O'Connor, CWU, former member of the ESOT board said). In order to be eligible to participate in the ESOP, employees had to have given one years continuous service to the firm. The *15 year rule* allows participants to keep the shares for over 15 years after having left the company. Therefore participants might be workers but also people who quit the company and retired people. This is an important particular, because over the years the company was seeking for people to leave the company (through redundancy and early retirement policies); so over the years many workers left the company but not the Trust cover (circumstance which preserved from the problem to buy back the shares of leaving employees - Cody).

² Among Government, IBEC, ICTU and other interests

³ This national agreement with the government have been running for years, promoted and managed by the National Centre for Partnership and Performance. Its core objectives were improving pay and conditions for working people and ensuring a fair distribution of the wealth and benefits created by economic growth. Partnership 2000 stated the commitment of the social partners also to promote forms of financial involvement within companies. Partnership 2000 expired in 1999. "Towards 2016" tripartite agreement (http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Towards2016PartnershipAgreement.pdf) is its successor, but actually it is not a partnership agreement, but just a framework agreement, and has been very low implemented, due the critical financial situation of the last years in Ireland and the step out of the Government.

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The structure of the Eircom ESOP centres on a limited liability trust, Eircom ESOP Trustee Ltd (ESOT, see below). In 1998, the ESOT had received 14.9 percent of Eircom's ordinary share capital. While the shares are held by the ESOT, participants have no ownership rights, including the right to trade or vote using the shares. Instead, the ESOT votes the shares as a block, in response to the wishes of participants expressed by way of a ballot. Each participant receives one vote, regardless of the number of shares to which they are entitled (ESOP 1998).

Another trust, administered by the ESOT, the APSS (Approved Profit Sharing Scheme), holds shares on behalf of the ESOT, and later transfer shares to participants. The ESOP has been designed this way to minimise, as far as possible, the Irish tax liability of participants. Once the Trustee makes a decision to distribute shares to participants, the shares must be first transferred from the ESOT to the APSS through a process of appropriation, after which participants receive full ownership rights over the shares allotted to them.

Since May 2002, the ESOP has made 8 distributions to its participants.

The ESOT and the “adventures” of the company

The ESOT is made up of 7 trustees: 4 trade union nomination people, two company nomination people, and an external independent professional person (to be approved by the Government), following the establishing act, as a chairperson.

The role of ESOT has been crucial in several situations for the company. Eircom has been subject to near continuous takeover speculation since its privatisation in 1999. In 2000, following a takeover attempt, a decision was taken to sell Eircom to Valentia. While under the ownership of Valentia, Eircom was refinanced and then re-floated on the stock exchange in March 2004. In 2005 Swisscom failed in an attempt to takeover Eircom, however the firm was once again taken private by Babcock and Brown in the summer of 2006.

In all these steps, the role of the ESOP has been crucial in order to avoid hostile take over bids, and “to consolidate workers' financial position within the company” (Shay Cody, Impact, Trustee). The support of the ESOP was required to ensure the success of any bid for the firm, but the Trust played a significant role in particular in Valentia's takeover. At the time of the takeover, the Trust was unwilling to accept a cash offer in exchange of its 14.9 percent shareholding: it would have meant the winding-up of the ESOP and the exposure of participants to a large tax liability. Therefore, the ESOT imposed Valentia to include in its offer built-in conditions allowing for the continued existence of the ESOP. Thanks to the support of the ESOT, who recommended the revised Valentia offer, 92% of the balloted participants to the ESOP voted in favour of the take-over.

As such, the Valentia takeover had a number of key effects on the Eircom ESOP. Firstly, the make-up of the ESOP's portfolio was altered. ESOP was now the single largest shareholder in Eircom, although the voting rights of the ESOP were limited to 25%. Following the takeover, the ESOP controlled two of the eleven (at that time) seats on the board of directors of the company, including the vice-chair. Finally, by delisting Eircom, Valentia had removed the ability of ESOP participants to trade their shares following distribution. To overcome this, distributions that occurred during the ownership of Valentia were either in the form of Vodafone shares or were made in the form of redeemable preference shares (i.e. cash distributions). Finally, limitations were placed on the number of issues upon which participants could be balloted.

Other important interventions of the ESOT as a kind of “capitalist investor⁴” (Sweeney, interview), date back to 2003⁵.

⁴ Jimmy Browne, ESOT Trustee: “Eircom is performing very bad, but the ESOP is doing very well... we know how to deal”.

⁵ while still under the ownership of Valentia, eircom undertook a refinancing programme, securing a loan for €1.4 billion from Deutsche Bank and issuing bonds to the value of €1.05 billion. These funds were used in repaying eircom's existing debts and paying dividends to shareholders. This refinancing programme increased eircom's debt to €2.263 billion. Moreover, the refinancing agreement reduced the level of shareholder funds from €757 million to €279 million, thereby increasing the firm's debt/equity ratio to 89%. No ballot of ESOP participants was required prior to the refinancing. However, the refinancing agreement did allow the ESOP to claim €44 million in the form of a cash dividend and to increase the coupon on its preference shares from 11.5 percent to 12.25 percent. Using the proceeds



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In 2006, Eircom underwent a second takeover instigated by the Australian investment firm Babcock and Brown, who held a 12.5 percent shareholding since 2005. Babcock and Brown originally approached Eircom in March 2006, and with the support of the Eircom ESOP made a formal offer for the firm in June 2006. Upon acceptance of the offer Eircom was once again de-listed in July 2006. Similar to the 2001 Valentia takeover, the support of the Eircom ESOP was required in order for this takeover to succeed.

The ESOT used €308 million to purchase a 35% stake in Eircom. At the end of a series of transactions, the ESOP held a 35% stake in Eircom, €299 million worth in preference shares, and €48 million in cash⁶.

Other major shareholder is Babcock and Brown with 65% (Eircom is a private company).

The Trust and the Board

When the trust was set up, the agreement between the trade union and the company was that the trust could nominate one director on the board, so the nomination was for a former politician, not a worker from the company, but a trade union man, former leader of the Labour Party in Ireland. Over the years the trust reiterated this practice, nominating someone with trade union background but also with proved financial knowledge.

After the Valentia takeover the ESOT gained the possibility to appoint 2 members of the board (out of 7), including the vice-chairman. The second person appointed was a stockbroker, not a trade unionist. In 2004, after the second floatation, the ESOT was granted a third seat of non executive directors⁷ onto the board. After the last take over, and therefore currently, the ESOT nominated board members are currently 2 again: a former trade unionist of CWU as vice-chairman, along with a stockbroker (proved trade union friendly).

The current CEO, appointed on 4th July 2009, is an “ESOT man”. Anyway, he was approved by a specific committee. All the new CEOs have to be approved by the ESOT, even if it does not have any veto power.

The influence of the ESOT

Paul Sweeney (ICTU) moves a critic to the general approach of the ESOT: “They – meaning the trade union reps sitting in the ESOT – behave like capitalists, more than workers representatives”, Paul says, underlining a strong conflict of interests with regards to the role of trade unionists as Trustees for the benefit of only one part of the workers in the company, and with regards to the role that ESOT plays in respect of the board (see more below).

O’Connor explains that the role of the trade unionists in the ESOT is to make the direct interest of the ESOT, as a trade unionist sitting in the ESOT “with a different hat”. However the roles are not unmatchable. “The ESOT is dominated by trade unions”, Cody says, “they take care of the final interests of workers”.

Jimmy O’Connor underlines the “partnership approach” as an interesting key to read both the relationships within the ESOT, among trade unions, the relationships between the ESOT and the employees participating the ESOP and the relationships between the ESOT and the board. The “partnership approach” is important both in terms of consensus building and of management of conflicts, but at a different level. The “partnership approach” adopted in the company ensures that trade unions dominating the ESOT develop the decision making process in a collaborative way, among themselves and with the management, not using any veto or strict

arising from the refinancing, the Trustee repaid a large portion of its remaining debt, and financed a cash distribution to the estates of deceased participants (€1.63 million) (ESOP 2003).

⁶ Prior to the takeover, the ESOP controlled 21.4 percent of the ordinary share capital, as well as owning over 144 million preference shares (eircom 2006). When balloted, 92 percent of ESOP participants supported the deal. Under the deal the ESOP received €654 million, consisting of €506 million for the sale of the ordinary shares and €149 million from the sale of preference shares. The ESOP also received a €12 million dividend (eircom 2006). Of the €506 million received in exchange for the ordinary shares, €299 million was received in the form of preference shares and €207 million was in cash.

⁷ The Eircom board is a small one, though, therefore there is not a black and white distinction between executive and non executive directors, in practice (Interview with Shay Cody, deputy general secretary of Impact), but the trust nominated ones are not part of the company management; it is a part time appointment, while the .



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opposition power, but deciding for the best of the company. Therefore there are several joint committees established, for different matters, to let trade unions/ESOT and managers discuss.

In this climate of “partnership”, the ESOT has anyway a huge impact. Beside the possibility to nominate managers board members, circumstance which is not free from critics, and risks, the ESOT and the trade unions dominating it manage 35% of the company. The other shareholder cannot ignore such a slice of the share ownership in the decision making process. “The ESOT speaks out with workers’ voice”, Jimmy O’Connor says, and this circumstance allowed not only to be able to chose the major stakeholders in the occasion of the various takeovers. Against the initial remark of P. Sweeney, Jim Browne, CWU, ESOT Trustee, underlines that few years ago, in a public demand, it was proposed to outsource all the IT operations. The ESOT made this decision be blocked at board level, even with a minority shareholding.

In the same sense, Browne referred that, in June 2009, he went as an ESOT representative, accompanied by the CWU secretary general, to the governmental committee in order to discuss the future of telecommunications in Ireland. As an ESOT representative, he said that the ESOT was ready to support the change and to manage it. “The authority of the ESOT, representing highly involved workers, is outstanding: when the trade unions and the ESOT say that Eircom is keen to be part of the solution for the innovation of the challenges of the industry, well, it has a huge importance for workers’ representation”.

However, O’Connor also clarify that the role of the ESOT is to protect shareholders’ value. If the company is in trouble, as it is the case currently, the necessity to intervene will have to be dealt at trade union level: the weight of the ESOT will still play a key role, but will not have the power to block a board decision without serious arguments. The climate of partnership, anyway, somehow ensures a certain management of crisis situation in the less painful way possible.

Eircom in the grid

Consensus building

Information and consultation procedures in Eircom are satisfying, according to Shay Cody, Trustee of the Eircom ESOT on behalf of its trade union, Impact. In general, he refers, where there is an ESOT, the flow of information is more efficient.

Independently from the financial participation scheme, in Eircom, an information council is set up, along with a series of parallel information structures. Whenever an important decision is made at board level, the CEO has to inform the managers, who are trained to inform the lower levels. There is an internet site to spread information more widely. The newsletter Eircom is regularly issued too to all the employees, and contains data on production and more general financial and organizational information. Trade unions have their own communication channels, in addition. Joint consultative councils are set and gather trade unions on specific issues.

O’Connor and Browne refers about the fact that since Eircom is a private company there is much less disclosure of information than when the company was listed, as disclosure has to be public.

Participants to the ESOP constantly receive information on financial issues and on the floating of the shares, on the benefits they are going to receive, on the conditions to enjoy them. A monthly newsletter called “ESOP”, including some “Extra” issues, is currently published and distributed.

Even the way to ensure that workers express their will with regards to the positions that the ESOT will have to take in the AGMs, is much more effective and democratic, following Cody’s comment. This way workers are constantly informed of the issues at stake in the AGMs and are called to express themselves both through proxies or direct single internal decisional procedures.

In favour of the democratization of the ESOP decision process, it has to be remarked what already said before, that the ESOT votes the shares as a block, in response to the wishes of participants expressed by way of a ballot, where *each participant receives one vote, regardless of the number of shares to which they are entitled.*

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Nonetheless, in terms of *employee participation*, some remarks are due. Some critics have been moved by P. Sweeney with regards to certain practices introduced after the establishment of the ESOT which reduce – in his view - the degree of democratization in ESOP internal decision making process, such as the limitations placed on the number of issues upon which participants could be balloted, and the fact that no ballot of ESOP participants was required prior to the refinancing in 2003.

Conflict of interest

An element not in favour of employee participation is highlighted always by Paul⁸ and regards the choice of the Trust-appointed members onto the board: it seems to be a sort of “inversed” conflict of interest, which does not regard the fact that trade unionists may tent to push workers’ interests even when they act as managers. Paul’s critic regards a kind of not typical behaviour of trade unions towards their own stakeholders’ values, those of workers collectively represented.

In 2003, he had already found strange the appointment of a stockbroker beside the trade union man onto the board of directors, instead of another trade union person, “arguably at odds with employee representation”. Sweeney argues that on the one hand, trade union representatives can be forceful, persuasive and good managers, when required, on the other hand, a second trade union man could have better supported the first one, especially in highly probably cases of conflict with the majority. But what has been even more serious in Paul’s view was the appointment of a senior manager, A. Magee, as a third Trust man onto the board: “A stockbroker and a senior company manager were strange choices, which fly in the face of the objective of direct employee participation at board level. The whole concept of employee participation is to gain influence and, if shareholding is sufficient, also to seek representation at board level. Any technical expertise can anyway be purchased by the ESOT (following the establishment act). Magee had a reputation of working well with trade unions and for supporting employee financial participation, but, as a senior manager, he was not a trade union representative. In fact, he had been given a 2 million bonus which would be in conflict with trade union objectives of equity and fairness”.

As an answer to these concerns, S. Cody addresses the “classic” risk of *conflict of interest*. If it might normally arise from the fact that ESOT nominated managers are actually appointed by trade unions, in this case it is contrasted by the fact that ESOT-appointed board members are *not* trade unionists either. The division of roles has always been clear and the trade union has always tried to fight its battles against the whole board when necessary, without expecting that the Trust-appointed managers fight at their place. The trade union dominated ESOT does not expect directors to oppose the company policy on trade unions’ behalf. The fact that the board members are trade union friendly, however, is more than proved, and only adds more skills to the personal, specific ones, but is not supposed to make them act as militant trade unionists in a place which is not made for industrial relation confrontation and not led by managers against managers, anyway.

Specifically asked to comment the different situation in AerLingus, where trade unionists are appointed as ESOT members on the board, Cody let intend that the size of the employee participation and the board in the two companies are different.

Actually, in the other company, the board is composed of 15 people, only two of whom are appointed by an ESOT holding 15% of the company – and in addition, in AerLingus the pressures are much heavier than in Eircom, both from the financial point of view, which might bring to an even worst setting of working conditions, and from the one of the continuous risk of hostile take-overs by unwelcome stakeholder as Ryanair. It is arguable that in that case, the presence of 2 senior, expert and authoritative trade unionists as managers is more necessary, also because counterbalanced by the huge presence of other 13 managers representing other stakeholders. Cody also underlined, with regard to the circumstance that the two board managers are non executive, that the Eircom board is a small one, “therefore there is not a black and white distinction between executive and non executive directors, in practice”). In such a small environment, where distinctions are not clear, the presence of trade unionists board members might have increased the chances of the raising of conflict of interest between the role of trade unionist and the one of manager of the company.

⁸ in his book “Selling out, privatization in Ireland”, 2004, Tasc at New Island, Dublin



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Another point which contrasts with employee participation underlined again by Sweeney, and possibly raising conflict situations, is the fact that participants to the ESOP, as for the way it was established at the time, can be not only current employees but also retired and former ones. They are entitled to keep the shares for 15 years after having quit the company. It is estimated that only 50% of the ESOT members are still employed by Eircom, the remainder having left the company on voluntary severance programmes over the past seven years. This circumstance preserved the ESOT from the problem to buy back the shares of leaving employees (Cody). However, this has led to the unusual situation where many trade union members own part of the company, while some of the newer managers and employees have no shares. As for Sweeney, the fact that most of the participants to the ESOP have left the company, makes them not be employees anymore, so that “the whole purpose of employee financial participation is undermined. The former employee shareholders care only about their shares and can be as short-terminist as Wall Street venture capitalists. They no longer see the shares in the same way as employees do. While this rule was brought to introduce flexibility, it undermined a crucial reason for ESOTs. In this case, moreover, the company did not even make any profits yet paid out large dividends, which was against the long term interest of the employees”.

However, O'Connor and Browne confirm that workers do not actually feel this contrast. Shareholders come and speak to the members of the ESOT, they feel important, they feel they run the business. O'Connor and Browne also refer that the dividends workers' get for the shares managed by the ESOT are the most tangible sign of the presence of a participative structure. Anyway, all workers would also say that ESOT or not ESOT, there will always be a union, taking care of their conditions of employment. But all workers also know that there is a direct line with the board of directors in hard times, and this is because of the ESOP, and the power trade unions have thanks to the collective management of workers' company shares. A feeling of general security has been ensured when the trade union took directly over a real important financial responsibility.

Managing conflict

The authority that trade unions have in the company, following the role they play through the ESOT, allowed them to establish a series of joint councils (all trade unions meeting management) for pay negotiations, working hours... discussing working conditions in the broader sense independently from the ESOP.

The “must”, following Cody's comments, is that the ESOT and the trade unions involved in the employee participated financial scheme do not interfere with collective bargaining procedures. This would be against the interest of workers, who have to receive a negotiated salary independently from the revenues they get from the shares they own. O'Connor and Browne confirmed the absolute separation of collective bargaining and ESOP participation related conditions.

Moreover, letting trade unions' influence through the ESOT interfere with collective bargaining procedure would undermine the good management of the company: “In a competitive market it is not possible to do that: an ESOT grants influence, certain corporate governance rights but it should not give an industrial relation advance”. “When unions exercise their power coming from the collective management of shareholding through an ESOT to obtain more favourable working conditions, pay raise and bargaining advantages, this might damage the company. In addition to that, Cody adds “If this is not clear, it will always be possible to end up in *conflict of interest* within the board, which is not profitable for the company and in the end for the whole workforce. The approach of the trade union is that the trade union people appointed to the board have to know the company and the workers but first of all they must have strong financial and other specific skills”. Their job on the board is not to be negotiators on behalf of the union, but to make sure that the company works well, is profitable. However, they know the way the trade union thinks: they are not a shop-steward, they are not a spokesman for workers, but they know workers need and trade unions needs in their interest.

Cody admits that working conditions in both companies (AerLingus and Eircom) have got worst over the years, but because they both operate in a very competitive market, especially when considering that the previous status of state owned companies made them operate in a situation of *quasi-* monopoly. However, “the influence that the ESOTs have had in the years has been positive, and has played off in workers' favour”.

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With regards to influence of the ESOP on the wages, at the time in which the ESOP was created, with the agreement of the government and the unions in Eircom , also the national social partnership agreement “Partnership 2000” was in force, and inspired the negotiations for the privatization and the establishment of the ESOP. The conditions that have been negotiated under “Partnership 2000” for the participants of ESOT are in the sense of giving the boost to employee participation, as government, social partners and other stakeholders wanted in “Partnership 2000”, also through enhancing financial participation. Therefore, in the 1998 ESOP explanatory brochure, it is clearly written: “If you participate in the ESOP, there will be immediate changes to your pay and pension contribution arrangements. For most people who sign a contract of participation, there will be an increase in pay of approximately 4.8% representing agreed Partnership 2000 pay rises. There will also be Partnership 2000 arrears backdated to November 1997 and November 1998 for those entitled to them. Members of the main Superannuation Scheme will also begin to contribute a 4.8% pension contribution. The pension contribution will later increase from 4.8% to 5.3% to coincide with the next Partnership 2000 pay increase in 1999. Participants already making a pension contribution of 5% or 5.3% will continue to do so. All pension contributions will be aligned at 5.3% from the next Partnership 2000 pay increase in 1999. Pension contributions are deducted before tax and PRSI. As the law stands, and provided you comply with the appropriate tax rules, you should have no Irish income tax to pay on any shares that you receive”.

The position set out in this guide reflects current law as at 4 December 1998.

Anyway, the increase in pay and pension contribution is realized through the ESOP, for explicit will of the social partners in the national Social partnership Agreement Partnership 2000.

Up to now, monetary distributions have been around 3 quarter of a million, around 75.000euro per person, in about 8 years. Jimmy Browne, ESOT Trustee: “Eircom is performing very bad, but the ESOP is doing very well... we know how to deal”.

COMPANY CASE: ENEL

The Company

Enel is Italy's largest power company and Europe's second listed utility by installed capacity. It produces and sells electricity and gas across Europe, North and Latin America. Further to the acquisition of the Spanish utility Endesa, together with partner Acciona, Enel has now a presence in 22 countries with approximately 83,000 MW of generating capacity (on 30th September 2008) and serves more than 52 million power and gas customers. (<http://www.enel.com/en/>).

Enel is today a key player in the global energy sector with leading positions in many markets. The Group has generation capacity of about 95 GW in Europe, the Americas and in Russia and with nearly 60 million customers. Thanks to the position it has achieved in its reference markets Enel is able to generate significant returns for its shareholders even in this difficult economic climate, with:

- A good balance of regulated and unregulated businesses;
- Technological and geographical diversification focused on reducing risk profile; and
- A significant presence in renewables and innovation.

In 2007, ENEL was employing 70,500 workers, about 15,000 more than the previous year. It is justified by the international expansion of the group. In 2006, trade union density was 70%.

The Italian Economy Ministry holds 21.1% of the company directly and another 10.1% indirectly through state-run lender Cassa Depositi e Prestiti, leaving a free-float of some 68.8%. Thanks to its Code of Ethics, Sustainability Report, its environmental protection policy and the adoption of international best practices for transparency and corporate governance, Enel's shareholders include leading international investment funds, insurance companies and pension funds, ethical funds, along with Italian retail investors.

Company Performances

Acquisition of Acciona and a control position in Endesa Sa has been finalized.

Costs of these operations have been held using financial leverage. Enel considers financial stability an absolute priority. To achieve this goal several actions have been initiated to consolidate Enel's financial structure through a reduction of net consolidated debt to 45 billion euros by 2010 and to 41 billion euros by 2013 as well as a net debt/EBITDA ratio lower than 3 and 2.5 respectively. A stable A rating will be secured. These actions will enable Enel to preserve its global strategic positioning and to maintain all the necessary attributes to resume strong organic growth once the current recession will be over. Enel asked the Shareholders' Assembly to approve an offer options to all shareholders for a value up to **8 billion euros** to be executed within this year to support the international growth already undertaken thus achieving the goal of strengthening the Group's financial structure.

The Ministry of Economy and Finance in its role of company's shareholder informed Enel its intention to subscribe to the rights issue and syndicate of banks (Banca IMI, dalla JP Morgan e da Mediobanca) has already been established to underwrite the issue.



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Enel will also propose a new dividend policy, starting in 2009, based on a pay-out ratio equal to 60% of the net income instead of a fixed rate dividend.

Governance Mechanisms

Company's capital is formed by ordinary shares carrying the same voting rights in both ordinary and extraordinary general assemblies (GA). ENEL shares are listed on the Italian Stock Exchange. Since 2007, ENEL opted for delisting from New York Stock Exchange. According to the corporate governance report 2008, the company decision of delisting was due to the low volumes of traded shares and the costly financial and administrative burdens. Following the delisting, obligations imposed by Sarbanes-Oxley Act are not longer applicable to ENEL. By the way ENEL decided to continue to abide by the American legislation at least for that measures concerning the internal control of the governance.

Today, none of the ENEL shareholders retains more than 2% of the shares. Except the Italian State that through its Minister of Finance (directly or indirectly) holds 31,14% of the shares. It means that the Italian Ministry of Finance exercises a dominant influence on the company as well as the Italian government declares not to interfere with the ENEL management.

The Italian government enjoys some privileges overcoming the normal powers of shareholders. Thanks to its financial stake in the company, it can oppose the acquisition of significant shareholdings (that is to say, amounting to or exceeding 3% of Enel's share capital) by parties to whom the aforesaid limit to share ownership applies; can oppose agreements (*patti parasociali*) between shareholders (as foreseen in the Unified Financial Act) if they concern more than 5% of the ENEL's share capital; veto of the adoption of resolutions liable to have a major impact on the Company (by which is understood resolutions to wind up, transfer, merge, or split up the Company or to move its headquarters abroad or change its corporate purpose, as well as those aimed at abolishing or changing the content of the "special powers"); can nominate one director without voting right in the board of directors.

In all these cases, grounds for the opposition must be given and the opposition may be expressed only in cases in which the Ministry considers the transaction to be in actual fact detrimental to vital national interests.

The ENEL constitution forbids any investor but the State to own more than 3% of the capital. In case of votes expressed in the GA exceeding the 3% will not be considered.

This limit cannot impede a take-over bid when the bidder achieve to control at least 75% of the ENEL's capital and attached voting rights.

The Italian legislation provides measures to facilitate the exercise of voting rights of shareholders. Specific rules apply to the proxy voting in the framework of associations of shareholders including employee-shareholders. According the law, shareholders can appoint proxy holders the legal representatives of the association they are member of. Proxies must include clear instruction of vote for each or some of the item on the agenda. The association of shareholder, when exercising voting rights deriving from proxy holding, can express different votes according to the instruction they have received from each single shareholder/member.

All that is nowadays relevant to ENEL as in 2008 the company has registered the foundation of A.DI.G.E. an ENEL employee shareholder association.



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Employee Shareownership

The setting up of an employee shareholder association is the result of a long-standing policy of involvement of employees in the company capital. Employee share ownership has been triggered during the privatisation process when, in different *tranche*, shares have been offered to the financial market and stocks have been reserved to the employees.

The fourth privatisation phase called “Enel 4” also provided several incentives for retail shareholders. Those who have kept their shares uninterrupted for at least 12 months from the date of payment would have been awarded with 5 extra shares (the aforesaid bonus shares) for each 100 purchased, while “Enel shareholders” who satisfy certain requirements - connected with their participation in “Enel 1” and “Enel 3” – would have been granted 7 shares for every packet of 100 shares. For Enel employees who have kept – or, for the preceding tranches, have kept – their shares uninterrupted for twelve months from the payment date, an incentive in the amount of 5% is provided for. The numbers regarding precisely this category of shareholders provide further confirmation of the success of “Enel 4”: 12,293 Enel people subscribed Company shares. 11,253,000 shares were requested and assigned, 79,558,710 euro is the total value of the shares purchased. Of the latter, 57.47% were acquired by investing part of the TFR (retirement bonus), with an average of 1.8 lots of 500 shares per person. The percentages regarding the institutional float are calculated as of February 2006.

In principle employees are supposed to represent, all together, 0.2% of the total share capital.

It has to be said that the ENEL capital is widely spread worldwide (more than 1 million share holders) and institutional or big investor are normally below 2% of shareholding. If we examine the composition of this portion of the share capital, we see that only 22.5% is in the hands of Italian institutional investors, while 25.6% belongs to British institutional investors and an additional 22.6% to institutional investors in the United States. Thus large-scale, broad-based Anglo-Saxon capital, which is considered the most professionally managed, now owns a significant percentage of Enel’s share capital. Institutional investors also include funds specialized in investing in companies that are recognized as sustainable and socially responsible. At the end of 2006, there were 47 of these special funds among Enel’s shareholders and they held 342 million shares, amounting to 16.8% of the share capital owned by mutual funds.

The idea that employees could be influential seems to be well founded.

The issue of new shares is one of the first challenges the Association has to deal with.

A first consideration is that the Association of employees plays its fundamental role, orientating the decisions of the shareholders. A.DI.G.E. provides specific comments to make the company situation readable to the eyes of the employee shareholders. In this way, A.DI.G.E. tries to keep employees involved and wishful to participate in the company life.

Subscription of new shares is analysed overall for its financial implication, giving explanation on the profitability of the operation. For instance, the capital will increase of 8 billion Euro in 2009. Is it convenient to buy new issued shares? Current shareholders can exercise an option on the new emission. The company knows that in any case, if options are not exercised, it can count on some institutional investors.

A.DI.G.E. explains to the employees that the situation in ENEL, as described by the general director, Mr. Conti, cannot actually be considered as favourable as it is stated. It could be considered for instance that the acquisition of Endesa has over-exposed the company whose total debts are too risky considering the



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instability of the financial market.

The course of the shares has not been favourable and today workers that took part to the share ownership plans are indeed losing money.

On the other hand –A.DI.G.E. says - ENEL has paid dividends making profitability of the shares closer to the best performances of other low-risk investments (bank savings). The policy unveiled by the company commits the latter to distribute a high rate of profits (even if performances are not far from one recorded in similar companies).

Considering the profitability of the investment and the rose future of the company, exercising the option could result profitable for the employees. Share values and profitability should be convenient even to offset losses gathered in recent years by current shareholders.

A second consideration is that the capital increase, if subscribed by institutional investor, will reduce the weight of the employee rate in the total capital of the company. The efforts that employees and unions are putting forward to organise employees could be penalised if employee would not show any interest in increasing their quota in the company capital.

Trade Union Situation

Three representative confederations are considered highly representative in the Italian ENEL operations. It emerges from the last elections of employee representation bodies RSU. 28.644 employees cast their vote representing 81,7% of 35.000 having right. Flai-Cisl got 11.254 votes (40,1%) and 405 reps; Filcem-Cgil got 11.147 (39,7%), and 440 reps; Uilcem-Uil got 4.395 votes (15,7%) and 186 delegates; Ugl, Cisl, RdB, Cobas, Orsa-Savt collecting only 1.266 votes (4,5%) and 26 delegates. CGIL-CISL-UIL represent thus 95% of ENEL's employees.

Enel group and these three dominant unions have signed a profit-sharing agreement in force in the period 2008 - 2011. It concerns 40.000 employees. Main contents:

Wage increase paid in four year will be about +31,5% and will be linked to the economic performances of the company plus incentives to maximise productivity/quality. Wage items are the following:

Total amount of the wage increase will be 480 Euro. Timing of payment will be the following:

- 130 Euro in 2008
- 90 Euro in 2009
- 90 Euro in 2010
- 170 Euro in 2011

It shows an attitude at company level to complement the national collective agreement with the main aim to restore the purchasing power of salaries.

Flai is promoter of the association of ENEL's employee-shareholders named A.Di.G.E. Flai saw employee share ownership as a field of action since the first stage of company's privatisation (indeed the first public speech of the General Secretary of the electric workers in favour of employee share ownership dates back 1957!).



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Allocation of shares during the privatisation process has always given privileges to employees even thanks to trade union framework agreements.

On a very first stage, such framework agreements had the main purpose of awarding employees. Once a relevant number of employees of ENEL become shareholders, FLAEI- CISL started exploring ways to get the most from a wide employee share ownership.

So, today, the objective of A.Di.G.E. is not only to provide services to those who carry ENEL's shares but to create conditions for a more participative system/open governance within ENEL.

Three reasons why trade unions must have the ambition to be more influent on the company governance:

- ENEL is a strategic company for national interests. Energy production and distribution is a key factor of competitiveness of companies but it is also a factor of well/being for citizens. It means that its governance cannot avoid taking into account different relevant interests of stakeholders.
- ENEL has a governance system that gives State a dominant position. It shows the political potential consequences of company decisions as well as strategic choices of the company may be influenced by political priorities. ENEL investments in production and distribution of energy are integrating part of the energetic policy of the Country. Being one of the most important players worldwide on the energy market, ENEL decisions and strategies can also have large effects on policies of other countries and on the life of their citizens (e.g. Nuclear power, and hydro/electric investments). On the way around, being the State the biggest share holder, it has an interest in the capacity of the company to produce cash-flow and distribute dividends.
- Dividends represent a relevant income for the public financing especially in a Country like Italy whose public debt is extremely high.

Just to give an example of this paradox, during the last GA, minority shareholders showed surprise because of the company decision to distribute high dividends, reducing reserves in the balance sheet. It was not considered 'wise' by some minority shareholders in the light of the high leverage rate that company is suffering after relevant acquisitions.

Industrial relations are based on two level of collective bargaining. The national collective agreement of the sector is integrated with a company-based collective agreement. Collective agreements are a suitable instrument to regulate both working conditions and large part of industrial relations. On the other hand, unions complain a lack of influence on the strategic decisions of the company. Information is scarce and normally arrives when decisions are already endorsed. That is why FLAEI feels the need to enhance its capacity to be part of the decision/making process. Employee share ownership and the Association A.Di.G.E. can be a modern conception of employee involvement compatible with the Italian TU traditions.

Consensus building.

In the view of CISL, A.Di.G.E. is an instrument for participation starting from the property side. ENEL is a public company listed in the stock exchange, so there are clear rules on the functioning of the GA and employees have to stick with that rules. But ENEL is also an atypical case in the sense that the Ministry of Finance (with its statutory special powers) and *Cassa di deposito e prestiti* make the Italian government dominant in the company even if it does not appear evident in the governance machinery. That is to say that existing



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rules and constraints to the exercise of voting rights make very difficult for employee associations to be really influent in the GA. As consequence of it, the association becomes less attractive for those who have to get the membership. Flaei would rather have special rules giving the right to the employee/share holder association to be represented in the company board in derogation of the ordinary rules of the GA. It could go together with the enhancement of the employee share ownership. And this leads to the following point.

FILCEM CGIL, the second most relevant union, on the other side is not supporting A.Di.G.E. It should not be considered an ideological opposition. FILCEM, deviating from the dominant orientation in CGIL, have already declared to be open to forms of employee involvement in the company board. But is should not go through the capital ownership. FILCEM is convinced that, with current rules, it is impossible to get enough power as shareholder to appoint employee representatives in the board (ENEL counts more than one million shareholders!). They would rather opt for the recognition of a right of employees to elect members in the board as relevant stakeholder.

On top of that, the international dimension of the company should be better evaluated in the light of future forms of employee involvement. An EWC has been recently set up and it will feed ambitions of participation of Italian trade unions and will introduce cross-border elements in traditionally Country-based industrial relations.

Managing conflict

Employee financial participation opens new routes to collective bargaining. Italian employees of ENEL already enjoy a profit-sharing schemes and satisfactory long/standing collective agreements. FLAEI is keen to develop mechanisms able to match profit-sharing schemes with granting of shares. It would have the double effect to gain tax benefits and to encourage a more advanced collective bargaining culture.

This approach is still opposed by some unions like FILCEM CGIL.

Sharing risks

Of course, sharing risks cannot be seen as a goal in itself. It should go together with a higher ambition to influence the company governance. It also means to bring certain values in the company governance like the respect of environmental issues, independency (or counterbalance) of the governmental influence, and a stronger attention to users and consumers. In this sense, ENEL is quite active in the field of CSR. The weak side of it is the little involvement of stakeholders and accountability of the actions taken in the field of CSR.





C.E. VS/2009/0303

Employee financial participation for corporate governance and social dialogue

SindNova



Governance

Study cases

Company	John Lewis Partnership IsBank Banca Popolare Milano Handelsbanken Dexia Total Aerlingus Kardemir Tullis Russell Saf Tehnika Eircom Enel
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Country	Spain Belgium France Germany
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COUNTRY CASE: SPAIN

Spain is normally considered a Country with a little experience in Employee financial participation. That is because studies normally constrain their investigation field to certain groups or companies as public limited companies or to certain instruments as carrying shares or options on shares.

Such an approach would neglect the 20,279 (in 2005) companies co-owned by employees registered in the group of public limited companies or limited liabilities partnership companies in Spain. In such kind of companies employees own the largest part of the capital carrying shares or participation quotes in the company capital.

The Spanish law entitles this kind of companies with an *ad hoc* legal status “*Spanish Public Limited Workforce Owned Company (SAPO Sociedad Anónima Laboral)*” or “*Workforce Owned Limited Liability Partnership (SLPO Sociedad de Responsabilidad Limitada Laboral)*”.

On the contrary of the normal beliefs, in Spain, statistics show that employee participation to the company capital is a well-known experience in the legislation, in the economy, in the industrial relation field.

SAPO and SLPO have specific governance rules and benefit from special tax regimes. They represent a rate of GDP ranging from 3 to 4%, employing 125,000 people. They are about 4% of the total of registered companies in Spain with more than one employee.

Spanish workforce owned companies are associated in CONFESAL. Confesal has built fruitful relationships with the trade union confederations. Framework agreements have established an highly participative system of industrial relations based on partnership and spirit of cooperation.

What is relevant to the Spanish experience is that all the employees of SAPO and SLPO have tangible inclusion in the company governance thanks to the spirit of the business and the legislation ruling the business.

Legislation intervenes in several part of the company life: such as the right to preferential acquisition, preferential rights in capital increases, reserve funds which may not be shared out and which allow shareholders to join and to leave, restrictions on the number of non-shareholder employees, restrictions on how many company shares can be held by non-employees and by individually assessed shareholders, etc.

It gives identity to the company governance making the workforce owned company an unique experience in the European scenario. In other countries, employee ownership exists in small and medium enterprises but not in such structured and systemic way.

The law imposes the following constraints to the company governance strongly influencing the structure and the behaviour of the property but, also, conditioning the management:

- the majority of company capital should be owned by employee shareholders as a whole who personally and directly render paid service within the company and who are on long term contracts for indefinite periods.
- establishing a limit to the maximum amount that any one shareholder may own, normally 33%;
- the existence of two types of shares or holding dependant on whether or not the owners thereof are company employees;
- preferential right of acquisition for transference of worker type shares or holdings;
- setting up a special reserve fund for the purpose of making good any losses incurred.

These all are key points which, along with tax benefits, contribute to promoting and developing this type of company. Companies must fulfil the above listed conditions to maintain their status of workforce owned companies. Losing its classification they can be forced to pay back any tax benefits received. So, managers are always keen to preserve and maintain all conditions giving them the possibility to benefit of the specific legal status. It has an influence on the way these companies work and the role they play in the Spanish economy.



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Just to give an example, between 1991 and 1996, the number of companies picked up as a result of the fall in GDP which had a negative effect on employment. We can observe the fact that *workforce owned companies* work on an opposite cycle, as an instrument for job creation when the economy is unfavourable overall. The numbers increased to 1994 and then decreased again in 1995 when GDP picked up.

Spanish Public Limited Workforce Owned companies (SAL) are small on average and *Workforce Owned Limited Liability Partnerships* (SLL) can be considered to be micro companies. The average size of these companies is seen to be increasing in that while fewer companies are being incorporated they actually create more jobs and existing companies, as they grow, provide an increasing number of jobs.

According to CONFSEAL, workforce owned companies must be considered for the following advantages:

- This is a regulation which consolidates for the future the already proven success of a modern model for company ownership by employees, integrated with the most innovative and advanced trends of participative and democratic company ownership and management based on recommendations and directives issued by the European Union.
- The studied balance between tax incentives, quite unconnected with the idea of state aid, creates a viable favourable application of tax in exchange for profit re-investment countermeasures and giving up part of those profits for the purpose of achieving company aims intended to facilitate employees on indefinite period contracts becoming shareholders.
- The regulation enhances the stable and non-opportunistic nature of *workforce owned companies* (in crisis situations), providing further objective elements to prevent inappropriate use of this business model.
- A mechanism providing an incentive for employee savings is included by means of a “company savings account”¹, used to acquire shares or holdings in the company for which they work.

SPANISH WORKFORCE OWNED COMPANIES IN THE MATRIX

Consensus building

Employees must always safeguard the majority of the company capital. Even if the legislation does not make it clear if employees have to keep a dominant position in the property or they must carry 50%+1 of the shares of the company. Employees who enjoy a full participation in the company governance are the full employed ones with long-term no-end contracts. It means that fixed-term contracts are not admitted to the membership. Thanks to a favourable legislation, workers with fixed term are more than 35% of the workforce, where the average of the country is 33%. According to the company statute employees will decide management and will monitor and control all company decisions.

Managing conflict

Confesal has established framework agreements with the two main Spanish trade union confederations UGT and CCOO. Such common rules have two basic aims: on one hand they want to establish the best environment to develop sustainable and peaceful industrial relations, on the other hand, they engage union to collaborate in the promotion of business model. Namely both employers and unions are aware that competitiveness and long term profitability of the business is related to the capacities and skills that employees can spend in their participation activity. “Being part of the company board”, “assessment of company decisions” and “control on company results”. Employees can only do that if fully supported and properly trained. Social partners also consider this model of business something to be promoted outside Spain therefore they take mutual engagements to achieve

¹ Already used for New Company Limited Partnerships (*Sociedad Limitada Nueva Empresa*), and introduced by Decree-Law 2/2003, dated 25 April, regarding economy reform measures.



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it. Employee financial participation has created conditions for highly stable industrial relations and a strong spirit of cooperation between employer and trade unions.

Sharing risks

According to the governance rules, employee involvement in the company capital has strong implications in the destination of rates of company resources. In order to keep the category of SAPO or SLPO, companies must plan and implement plans allowing the shift of the shares between those who leave the company and those who arrive in the company. Experience shows that it is not an easy task for management. Often employees are adverse to risk and must be educated to that. Other times, shares are simply not available and it make difficult to associate those employees who wish so. Concerning the reduction of risks we have already seen how this model of company has an anti-cycle attitude, this is the proof of the fact that company activity is less sensible to the market stimulus. Their business is normally eradicated in the territory and well connected to the real economy. That is why all consider those companies a way to create employment and most of all a way to re-employ workers who have lost their jobs betting on the self-employment and start up of new businesses. In this sense, sharing risks is counter balanced in a micro dimension, having more less speculative and more sustainable companies which are profitable in the long term. It means that they are sometimes lower performing compared with other competitors but they anyway guarantee profits and stability of jobs during negative economic cycles. In macro terms, such companies are socially worthy as they become an instruments to absorb unemployed people or allows the creation of domestic capital.

CONFESAL considers that this model of business has no expressed its full potential yet. That is why is pushing forward a project of law to modernise the framework legislation for workforce owned companies.

Demands from CONFESAL are strictly connected to the recent trends of the EU legislation concerning limited companies.



COUNTRY CASE: BELGIUM

Structure des organisations syndicales

Il existe en Belgique trois grandes organisations syndicales : la Confédération des Syndicats Chrétiens (CSC/ACV), la Fédération Générale des Travailleurs de Belgique (FGTB/ABVV) et la Confédération Générale des Syndicats libéraux de Belgique (CGLSB/ACLVB). Ces trois organisations sont qualifiées de représentatives. Elles peuvent dès lors signer des accords et présenter des candidats aux élections du conseil d'entreprise. Le taux de syndicalisation était de 55,4% en 2002.

L'une des caractéristiques des relations industrielles en Belgique réside dans la répartition entre les deux communautés linguistiques, francophone et néerlandophone. La législation du travail est définie au niveau national mais cette répartition linguistique a un impact sur les relations syndicales. La FGTB et la CSC ont adopté un mode d'organisation qui regroupe les travailleurs selon le statut professionnel : elles possèdent des centrales distinctes pour affilier les ouvriers, les employés, et les agents des services publics. La CGLSB possède une centrale distincte pour les travailleurs des services publics, de l'enseignement libre et de l'aviation civile.

La FGTB compte ainsi 7 centrales professionnelles : la Centrale générale (CG), la Centrale de l'industrie du métal de Belgique, la Centrale alimentation, HORECA et services, des services publics, du textile, vêtements et diamant, des ouvriers du transport. Elle regroupe par ailleurs 17 fédérations régionales interprofessionnelles. Elle compte au total 1,368 821 membres (2007).

La CSC compte 9 centrales professionnelles : la CNE (cadres et employés), Alimentation et services (ouvriers), Bâtiment et industrie, Métal, Energie et Chimie, Textile, services publics, Transports et communications, Enseignement. Elle compte aussi 22 fédérations régionales interprofessionnelles. La CSC rassemble au total 1,601 278 affiliés (2007).

La CGLSB compte pour sa part 251 512 affiliés (2007)

Structure des organisations patronales

La Fédération des entreprises de Belgique (FEB) est la principale organisation patronale. Elle est la seule organisation patronale interprofessionnelle dont le champ d'action couvre l'ensemble des entreprises du secteur privé marchand au niveau du pays. La FEB n'affilie pas directement des entreprises mais des organisations sectorielles d'employeurs. Les intérêts des entreprises sont représentés par l'intermédiaire de 31 fédérations sectorielles qui sont ses membres effectifs et auxquelles s'affilient les entreprises. La FEB affirme représenter au total plus de 30.000 entreprises dont 25.000 PME ce qui correspondrait en termes d'emplois à 1,5 millions de travailleurs.

Elle est l'interlocuteur des syndicats de travailleurs et du gouvernement fédéral dans la concertation sociale. Elle siège, au même titre que les organisations d'agriculteurs, au Groupe des dix qui rassemble les interlocuteurs sociaux au plus haut niveau lors des négociations qui s'ouvrent tous les deux ans pour la signature d'accords interprofessionnels. Comme interlocuteurs des syndicats, elle siège dans de nombreux organes paritaires (Conseil central de l'économie, conseil national du travail).

Il existe également des associations patronales sectorielles dont les puissantes AGORIA (fédération des industries technologiques) qui couvre 13 secteurs et la FEDIS (Fédération belge des entreprises de distribution) qui regroupe 12 associations représentatives du commerce indépendant et intégré. On peut également citer : l'Association Belge des Banques, l'Association Belge du secteur financier, l'Union professionnelle du crédit,...

Au niveau des organisations des classes moyennes, 8 organisations nationales interprofessionnelles sont reconnues. Parmi les plus importantes figurent UNIZO (d'implantation flamande) et UCM (Union des classes moyennes)



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Information basique sur les relations industrielles

Cadre des négociations collectives

La négociation collective est très structurée en Belgique avec un niveau central couvrant l'ensemble de l'économie, un niveau industriel couvrant les secteurs spécifiques industriels et au niveau de l'entreprise. Dans chaque cas, le niveau inférieur ne peut se prononcer que sur des améliorations sur ce qui a été négocié à un niveau supérieur. L'Etat joue potentiellement un rôle majeur dans la négociation collective. Une loi de 1996 l'autorise à lier la hausse des salaires aux prévisions salariales des pays voisins, DE, NL et Fr afin de maintenir la compétitivité du pays. Les négociations au niveau national prennent place dans le contexte d'un rapport technique officiel détaillant ces prévisions et le gouvernement a le pouvoir d'intervenir si les organisations syndicales essaient de dépasser la limite.

Les acteurs impliqués dans les négociations collectives

Les négociations au niveau national et au niveau sectoriel sont menées par les organisations syndicales représentatives et les fédérations d'employeurs au sein d'organes paritaires, le Conseil National du Travail d'une part, et les commissions paritaires d'autre part.

Le Conseil national du travail est un organe **paritaire national** et **interprofessionnel** compétent dans les **matières sociales**. Depuis 1968, le Conseil peut aussi conclure des **conventions collectives de travail (CCT)** à portée nationale et interprofessionnelle. Ces conventions sont généralement rendues obligatoires par arrêté royal.

Au niveau de l'entreprise, les délégations syndicales accompagnent les organisations syndicales locales dans les négociations avec les employeurs individuels. Cependant, les accords ne sont validés qu'après avoir été signés par un représentant officiel de l'organisation en dehors du lieu de travail.

Le cycle normal des négociations est de deux ans au niveau national. Elles sont suivies par les négociations sectorielles.

Au niveau national, les négociations entre les parties couvrent une large variété de champs qui va au-delà du salaire et des conditions de travail : mesures pour créer de l'emploi, formation, garde d'enfants. Les taux de salaire, exception faite du salaire minimum sont en principe négociés au niveau sectoriel et au niveau de l'entreprise. Néanmoins le cadre pour les augmentations salariales est déterminé au niveau national.

Les salaires en Belgique sont indexés en fonction de la hausse des prix. Le mécanisme d'indexation varie néanmoins selon le secteur, selon la convention collective applicable. La Belgique dispose par ailleurs d'un salaire minimum au niveau national, fixé tous les deux ans par un accord professionnel négocié par les organisations syndicales et les fédérations d'employeurs au niveau national.

La participation des travailleurs

Représentation des travailleurs dans les organes de décision

Il n'existe pas de système de représentation dans les organes de gestion des entreprises privées en Belgique. Certaines entreprises publiques assurent néanmoins une représentation des travailleurs dans les organes de gestion. C'est le cas de la compagnie de service public de transport flamand « De Lijn ».

Représentation des travailleurs sur le lieu de travail : le conseil d'entreprise et la délégation syndicale

En Belgique la représentation des travailleurs sur le lieu de travail est assurée par le conseil d'entreprise, représentant l'ensemble du personnel et la délégation syndicale représentant les travailleurs affiliés. Ces deux organes ont des rôles différents mais en général, ce sont les délégations syndicales qui jouent un rôle central, spécialement en cas de conflit avec l'employeur. Chacun de ces organes est régi par des dispositions légales, la loi de 1948 pour le conseil d'entreprise, un accord national de 1971 pour ce qui est des délégations syndicales.



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La loi du 20 septembre 1948 portant organisation de l'économie prévoit l'institution de conseils d'entreprise dans toutes les entreprises qui occupent 100 travailleurs et son renouvellement dans toutes les entreprises qui occupent 50 travailleurs. Le conseil d'entreprise est en premier lieu un organe de consultation entre l'employeur et les représentants des travailleurs. En tant qu'organe bipartite, il est composé d'une part du chef d'entreprise et de ses délégués désignés par lui et d'autre part, des représentants des travailleurs, élus tous les quatre ans par les travailleurs de l'entreprise sur base de listes de candidats présentés par les organisations représentatives de travailleurs et des cadres.

Le conseil d'entreprise est avant tout un organe de consultation entre employeur et travailleurs. Ses missions peuvent toutefois être classées en quatre grandes rubriques : des missions d'information économique et financière, d'information en matière d'emploi, des missions consultatives, des missions actives (élaborer et modifier le règlement de travail, de gérer les œuvres sociales instituées dans l'entreprise pour le bien-être du personnel, à moins que celles-ci ne soient laissées à la gestion autonome des travailleurs), des missions de contrôle ou de surveillance (l'application de dispositions légales ou réglementaires que l'application de dispositions résultant des conventions collectives ou du règlement de travail ou encore aux mesures collectives d'ordre social prises unilatéralement par l'employeur).

L'employeur doit consulter le conseil d'entreprise en cas de fusion, de fermeture, de transfert d'activités, de licenciement collectif, de plans de formation, introduction de nouvelles technologies et sur tout autre développement pouvant avoir des répercussions sur l'emploi.

Le Conseil d'entreprise dispose d'un pouvoir de décision limité incluant le changement ou l'introduction de nouvelles normes de travail, critère de licenciement et de réengagement, vacances annuelles, gestion des avantages sociaux (fonds de pension, sports, cantines), choix de l'auditeur.

Le seuil de travailleurs requis pour disposer d'une délégation syndicale varie selon la convention collective applicable au secteur : pas de seuil, 10, 50 ou 75 travailleurs. Elle est composée de syndicalistes issus de diverses organisations syndicales représentés selon leur relative importance dans l'entreprise. Le rôle de la délégation est de négocier de nouvelles conventions et de s'assurer du respect de celles qui existent. Elle règle les conflits entre la direction et le personnel sur une base individuelle et collective.

La participation financière

Contrairement à ses voisins européens, la Belgique ne disposait pas jusqu'à peu d'un cadre juridique spécifiquement consacré à la participation financière. Par le passé, les pouvoirs publics ont pris quelques initiatives législatives afin de permettre certaines formes limitées de participation mais une grande incertitude subsistait quant au traitement qui devait être appliqué. Les causes profondes du retard accusé par la Belgique sont multiples : elles tiennent pour une large part à la présence relativement faible de sociétés de grande taille à actionnariat ouvert ainsi qu'à l'état des marchés financiers qui malgré un regain de dynamisme ont enregistré peu d'innovations dans le domaine du financement des entreprises. L'une des raisons du vide juridique qui a longtemps persisté réside aussi dans le blocage politique qui pendant de nombreuses années a mis un frein à toute reconnaissance légale de la participation. Il a fallu attendre 2001 pour voir adopter la loi sur relative aux régimes de participation des travailleurs au capital et aux bénéfices des sociétés.

Les formules de participation financière pratiquées par les entreprises en Belgique sont diverses et sont gouvernées par une jurisprudence contrastée et par quelques législations éparses. Ces systèmes existaient avant la loi de 2001 consacrant la participation des travailleurs au capital et aux bénéfices de la société. Ils sont toujours d'actualité.

La participation aux bénéfices

Outre les primes et boni individuels, certaines sociétés ont instauré, de leur propre initiative, des systèmes collectifs d'attribution à tout ou partie de leur personnel d'une part des bénéfices de l'entreprise.

L'acquisition spontanée d'actions par les travailleurs Monory bis



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Le travailleur qui acquiert des actions ou parts de la société résidente qui l'emploie ou dont la société employeur est, au sens de la législation comptable, considérée – de manière irréfragable – comme une filiale ou une sous-filiale, bénéficie d'un régime fiscal avantageux, pour autant que l'acquisition se fasse via une libération en numéraire.

Le travailleur souscripteur d'actions ou parts aura droit à une réduction d'impôt des personnes physiques. Le travailleur aura ainsi droit à un bonus fiscal correspondant au montant de l'investissement, plafonné à 600 euros, par exercice d'imposition, par personne physique, multiplié par le « taux moyen spécial amélioré d'imposition » du travailleur. Cette réduction d'impôt n'est toutefois accordée que si certaines conditions sont réunies :

- le contribuable doit percevoir, de la part de la société dont il acquiert les actions ou parts, des rémunérations de travailleur ;
- le travailleur devra avoir souscrit en numéraire des titres représentatifs du capital d'une société résidente. Le montant pris en compte pour la réduction d'impôt sera le montant effectivement libéré au cours de la période imposable, éventuellement augmenté des frais accessoires, du coût d'acquisition éventuel des droits de souscription et de l'avantage imposable qui découle pour le salarié d'une souscription à prix réduit ;
- l'avantage ne pourra par ailleurs pas être cumulé, pour le même exercice d'imposition, avec celui organisé dans le cadre de l'épargne-pension ;
- le travailleur devra conserver les titres pendant cinq ans et fournir, pendant les cinq périodes imposables, la preuve qu'il est encore en possession des actions ou parts.

Le régime particulier de l'acquisition spontanée d'actions par les travailleurs dont les traits viennent d'être énoncés a comme avantage de conduire à une optimisation fiscale via la réduction d'impôts et de comporter par ailleurs un aspect entrepreneurial intéressant.

Par contre, l'existence d'un plafond limité pouvant bénéficier de cette réduction d'impôts, le blocage des actions pendant cinq ans ou encore le fait que le financement doit être fait à partir du salaire net (après impôts et charges sociales) du travailleur constituent divers inconvénients inhérents au régime décrit qu'il convient de prendre en considération.

Plan d'options sur actions ou Stock options plan

Une société peut décider de mettre en place un procédé d'intéressement qui consiste à attribuer, à certains membres de son personnel, une option d'achat d'actions, aussi appelée *stock option*. Cette option leur confère la faculté d'acquérir ou de souscrire, à un prix fixé, un certain nombre d'actions de la société employeur, étant entendu que cette faculté doit être exercée dans un certain délai. Deux situations sont dès lors envisageables : soit, à l'expiration du délai précité, la valeur de l'action a augmenté par rapport au prix fixé, le travailleur a alors tout intérêt à exercer son option, soit la valeur de l'action n'a pas augmenté, voire a diminué et le travailleur n'a pas intérêt à lever son option.

La loi du 26 mars 1999 relative au plan d'action belge pour l'emploi 1998 et portant des dispositions diverses a clarifié le sort fiscal des *stock options*. Les bénéficiaires de *stock options* seront taxés au moment de l'attribution de l'option, sur une base forfaitaire valorisant l'avantage de toute nature constitué par cette attribution. En contrepartie, le gain obtenu lors de la revente des actions n'est pas taxé.

Les aléas financiers qu'encourent les salariés sont limités. Ils perçoivent en effet un avantage dont ils ne connaissent pas la valeur, mais ils ne lèveront l'option que si le cours de l'action devient supérieur au prix fixé lors de l'attribution de l'option. Après la levée de l'option, les titres acquis pourront par ailleurs être revendus pour encaisser aussitôt la plus-value. Par contre, l'imposition des « *stock options* » lors de leur attribution aux travailleurs constitue l'inconvénient majeur de ce mécanisme, dans la mesure où à ce moment, le travailleur n'est nullement assuré qu'il bénéficiera, à l'expiration du délai au terme duquel il peut lever l'option, d'un quelconque avantage financier. En effet, si à l'issue de ce délai, le cours de l'action est inférieur au prix d'exercice de l'option, le salarié n'aura aucun intérêt à l'exercer, mais il aura néanmoins été taxé sur la valeur de cette option.

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Souscription d'actions avec décote

Elle offre la possibilité aux sociétés anonymes et aux sociétés en commandite par actions de procéder à une augmentation de capital par l'émission d'actions avec droit de vote destinées, en tout ou en partie, aux membres de leur personnel ou au personnel de leurs filiales. Différentes conditions devront néanmoins être respectées :

- une telle émission d'actions réservée aux membres du personnel n'est concevable que dans les sociétés ayant fait preuve, par le passé, d'une certaine rentabilité : au cours des trois exercices précédant l'opération, les sociétés concernées devront, à tout le moins, avoir distribué des dividendes à deux reprises.
- Le montant total de l'augmentation de capital au profit du personnel réalisée pendant un exercice social déterminé et les quatre exercices antérieurs ne peut excéder 20% du capital social, compte tenu de l'augmentation envisagée ;
- l'opération doit par ailleurs s'accompagner de mesures d'information spécifiques destinées aux salariés ;
- l'opération doit s'effectuer au profit de l'ensemble du personnel, mais la souscription est tout à fait facultative dans le chef des travailleurs ;
- les actions souscrites sont obligatoirement nominatives et ce pour faciliter le contrôle du respect de la condition d'incessibilité ;
- les actions souscrites sont en effet également incessibles pendant une période de cinq ans ;
- le délai accordé aux travailleurs pour exercer leur droit devra également être déterminé sans que celui-ci puisse être inférieur à trente jours, ni supérieur à trois mois, à dater de l'ouverture de la souscription. Le délai pour la libération des titres émis ne pourra, quant à lui, être supérieur à trois ans à compter de l'expiration du délai accordé aux membres du personnel pour l'exercice de leurs droits.

En guise de compensation de l'incessibilité des titres souscrits pendant une période de cinq ans, une décote de maximum 20% du prix justifié par les rapports prévus par l'article 596 du Code des sociétés pourra être accordée.

La souscription d'actions avec décote émises dans le cadre d'une augmentation de capital a pour avantage de bénéficier d'un régime fiscal et social tout à fait avantageux. L'aspect entrepreneurial d'une telle technique n'est pas négligeable.

Par contre, parmi les inconvénients qu'elle compte, l'on peut citer notamment l'effet faible de motivation du personnel, l'absence de lien avec la gestion des performances individuelles, sa faible flexibilité, la dilution qu'elle entraîne, le blocage des titres acquis pendant cinq ans.

Acquisition par une société de ses propres titres en vue de les distribuer aux membres du personnel

La société qui souhaite que les membres de son personnel détiennent une participation dans son capital peut procéder à l'acquisition d'actions ou de parts bénéficiaires propres déjà émises, en respectant le prescrit des articles 620 et suivants ou 321 et suivants du Code des sociétés, selon qu'il s'agit d'une société anonyme ou d'une société privée à responsabilité limitée.

Ces dispositions réglementent néanmoins strictement ce type d'opération, en prévoyant un certain nombre de règles de formes et de procédures auxquelles doit satisfaire un rachat d'actions propres.

Les articles 620 et suivants prévoient certaines exceptions quand l'acquisition de ses propres actions par une société anonyme a lieu dans la perspective de promouvoir la participation des travailleurs au capital de la société.

L'autorisation préalable de l'assemblée générale n'est alors en effet pas requise et le conseil d'administration peut exceptionnellement prendre seul la décision d'acquiescer les actions de la société, toutes les autres conditions devant bien évidemment être respectées . Pour l'aliénation des actions ainsi acquises le conseil d'administration bénéficiera aussi de cette exception.

Les titres devront être distribués aux travailleurs dans les douze mois de leur acquisition⁷⁴, à défaut, ils seront nuls.



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L'acquisition de titres propres par une société en vue de les distribuer aux membres de son personnel présente l'avantage de favoriser la fidélisation et la motivation de ceux-ci.

La possibilité de différenciation qu'offre cette technique ainsi que le régime fiscal dont elle bénéficie constituent encore d'autres points positifs.

Les règles de formes et de procédures strictes posées par le Code des sociétés ainsi que le régime social incertain peuvent par contre être inconvénient.

Les Plans De Participation Au Capital Et Aux Benefices Dans Le Cadre De La Loi De 2001

Objectif de la législation

La loi du 22 mai 2001 relative aux régimes de participation des travailleurs au capital et aux bénéfices des sociétés a constitué une innovation importante dans le domaine de la participation financière. Elle a créé en Belgique un climat favorable à la participation en mettant fin aux incertitudes existantes en la matière et a canalisé le développement de la participation en la soumettant à un régime juridique spécifique qui se trouve à la croisée de différentes branches du droit : social, fiscal, commercial et financier. Elle tente d'articuler les deux logiques ambivalentes - salariale et patrimoniale- qui imprègnent cette matière.

Elle vise donc à encourager et à encadrer les dispositifs de participation financière. Elle ne supprime pas pour autant les systèmes de participation existants. Néanmoins pour bénéficier des incitants fiscaux offerts par le législateur, ces derniers devront respecter les conditions légales. L'objectif de cette loi est de rendre plus attrayante la participation financière des travailleurs, par le biais de certains avantages, afin de stimuler leur motivation et partant, les performances et d'augmenter ainsi la productivité et la compétitivité des entreprises nationales.

Aspects régulés

Formes de participation

Le plan de participation peut prendre la forme d'une participation aux bénéfices ou d'une participation au capital. Dans le premier cas, il s'agit d'une participation attribuée en espèces qui est fonction du bénéfice de l'exercice comptable. Dans le second cas, il s'agit d'une participation liée au bénéfice comptable mais attribuée en actions ou parts assorties d'un droit de vote et émises ou à émettre par la société concernée. La loi impose par ailleurs une période de blocage des titres, d'une durée variant entre **2 et 5 ans**, selon les prévisions de la convention collective de travail, en prévoyant toutefois différents cas dans lesquels l'indisponibilité des actions ou parts prend fin (licenciement, mise à la retraite, décès, ...).

Pour assurer le respect de cette condition d'indisponibilité, les titres nominatifs font l'objet d'une inscription spéciale dans le registre des associés de la société émettrice et, éventuellement, sur le certificat représentatif des titres nominatifs. Les actions au porteur seront, quant à elle, déposées sur un compte-titre bloqué ouvert au nom du travailleur auprès d'un établissement de crédit ou d'une société de bourse.

Conditions de mise en œuvre du plan

La mise en place du plan au niveau de l'entreprise ou du groupe se fera obligatoirement par une convention collective spécifique.

Le montant total des allocations qui découlent d'un plan de participation ne peut dépasser 10% de la masse salariale brute totale de l'entreprise et 20% du bénéfice après impôts. Le premier plafond vise à limiter l'ampleur de la participation par rapport aux rémunérations, le second tient compte de la préoccupation des actionnaires de ne plus avoir à consentir une trop grande part du bénéfice lorsque celui-ci est peu élevé.

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Le plan doit obligatoirement s'accompagner d'une convention collective sur le plan interprofessionnel, sectoriel ou au niveau de l'entreprise relative aux salaires pour la même période de référence pour éviter que la participation ne se substitue à la rémunération ou à une de ses composante.

La participation doit présenter une dimension collective et ne peut être envisagé comme un instrument de motivation individuelle. Tous les travailleurs doivent avoir la possibilité de participer sans discrimination. Seule une ancienneté d'un an peut être imposée.

Les avantages qui découlent du plan de participation sont en principe identiques pour tous les travailleurs, la loi prévoit toutefois la possibilité de déroger à ce principe par la conclusion d'une convention collective de travail, qui déterminera les critères objectifs qui servent à déterminer les clés de répartition pouvant être appliquées aux divers travailleurs concernés.

La mise en place de ce plan est **une décision qui appartient à l'employeur**, ce dernier n'ayant aucune obligation à cet égard. L'initiative de l'employeur est toutefois soumise à une obligation d'information du conseil d'entreprise ou à défaut, du comité de prévention et de protection au travail ou à défaut, de la délégation syndicale. Cette information doit porter sur la relation existant entre le plan de participation, l'évolution de l'emploi et la politique de l'entreprise en la matière. L'employeur exposera notamment les raisons qui motivent le choix de la forme de participation, l'objectif poursuivi par le plan, etc.

Dès que la proposition a été formulée, une phase de concertation entre l'employeur et les travailleurs commence.

Les PME ont la possibilité de mettre sur pied un régime spécifique de participation aux bénéfices dénommé plan d'épargne d'investissement. Il s'agit d'une forme d'implication participative des travailleurs sous la forme d'un prêt à moyen terme, sans impact sur la structure de l'actionnariat. La préoccupation première est d'éviter la dilution de l'actionnariat que la participation au capital engendre et donc l'affaiblissement potentiel du pouvoir de l'actionnaire de contrôle. Les travailleurs adhérents perçoivent annuellement une part des bénéfices engrangés qu'ils seront tenus de mettre à la disposition de l'entreprise dans le cadre d'un prêt non subordonné à taux d'intérêt fixé dans le plan de participation

Régime fiscal et parafiscal

Le régime fiscal et parafiscal de la participation est un régime sui generis qui se distingue tant de celui applicable aux salaires que de celui applicable aux revenus mobiliers. Les sommes issues de la participation sont traitées comme un avantage de type nouveau qui participe à la fois de l'avantage rémunérateur et du partage entre les travailleurs du fruit des fonds investis dans l'entreprise. L'obtention de l'avantage est soumise à la retenue d'un prélèvement libératoire et forfaitaire à la source. Les travailleurs perçoivent donc un revenu net, la perception de la taxe étant laissée aux soins de l'employeur qui en est responsable vis-à-vis du fisc. Le prélèvement est moins élevé dans le cas d'une participation en capital. Si le travailleur perçoit l'avantage sous forme d'actions, il ne paie pas de cotisation sociale et il sera soumis à une taxe forfaitaire de 15 %.

Si le travailleur perçoit l'avantage en espèces, l'employeur doit retenir une cotisation de 13,07 % et une taxe de 25 % sera appliquée sur le solde.

Afin de compenser le déficit de la sécurité sociale qui pourrait résulter d'un tel régime, le législateur a prévu l'affectation d'une partie du produit de l'imposition des participations au financement d'institutions gérant différents régimes de sécurité sociale.

Pratiques

Comparée aux autres pays européens, l'actionnariat salarié est sous développé en Belgique et est caractérisé par un faible taux de démocratisation. La législation s'est révélée être inefficace est perçue comme un obstacle majeur pour la mise en place de plans étendus d'actionnariat salarié.



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Les salariés détenaient en 2008, 2,18% du capital des entreprises, ce qui place la Belgique en dessous de la moyenne européenne (2,63%). Seules 74% des grandes entreprises belges disposaient d'un actionnariat salarié. 30% de ces entreprises ont adopté un plan étendu couvrant tous les travailleurs. La Belgique semble aussi privilégier les « *stock options* ». 79% des grandes entreprises belges ont mis en place ce type de plan contre 64,6 % pour la moyenne européenne. La Belgique a donc une proportion peu élevée d'actionnaires parmi les travailleurs : 20% comparé à la moyenne européenne de 28,2 %. Quant aux entreprises au sein desquelles il existe un actionnariat salarié qualifié de significatif, la proportion n'est que de 42% des grandes entreprises.

En conclusion, les grandes entreprises ont donc fait davantage usage des stock options que d'autres plans d'actionnariat, et beaucoup moins des plans étendus d'actionnariat salariés prévus par la loi de 2001 (European Federation of Employee Share Ownership, 2009).

Attitude des partenaires sociaux

Pour les syndicats, la participation financière n'est pas une priorité. La CSC et la FGTB se sont fermement opposés à l'octroi d'incitants fiscaux et parafiscaux au profit des formules de participation. Pour dénoncer les effets pervers de ces formules, ils ont avancés différents arguments d'ordre économique et normatif : flexibilisation de la masse salariale, précarisation, promotion d'un système dual de rémunération, affaiblissement de la solidarité collective, déperdition pour la sécurité sociale. Ils ont néanmoins participé à l'élaboration de la loi de 2001 estimant que si système légal il y avait, ce dernier devait au moins contenir certaines dispositions permettant d'éviter les dérives du système : respect des structure de concertation officielles, recours à une convention collective de travail, accès pour tous les travailleurs, octroi des mêmes avantages à tous les travailleurs. La CGSLB, syndicat libéral, s'est néanmoins distinguée en se montrant plus favorable à la participation financière.

Du côté des employeurs, la FEB a accueilli avec satisfaction la volonté gouvernementale d'instaurer un cadre légal incitatif.

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COUNTRY CASE: FRANCE

Structure des organisations syndicales

En France, l'estimation du nombre de salariés adhérents à une organisation syndicale s'appuie sur les déclarations des syndicats. C'est pourquoi il est difficile de connaître le nombre réel d'adhérents à un syndicat de salariés, car rares sont les syndicats français qui affichent de façon transparente l'évolution numérique de leur clientèle. Le nombre de salariés syndiqués ne représente aujourd'hui plus que la moitié de celui des années quatre-vingt et un tiers de celui des années cinquante. Actuellement, le taux de syndicalisation se situe vers 8%.

Les organisations syndicales suivantes bénéficient d'une présomption simple de représentativité au niveau national interprofessionnel : Confédération générale du travail (CGT), Force Ouvrière (CGT-FO dite FO), Confédération française démocratique du travail (CFDT), Confédération française des travailleurs chrétiens (CFTC), Confédération française de l'encadrement - Confédération générale des cadres (CFE-CGC).

La **Confédération Française Démocratique du Travail (CFDT)** est une confédération interprofessionnelle de syndicats de salariés français, la première par le nombre d'adhérents (plus de 800 000), la seconde par son audience électorale. Elle fait partie des cinq confédérations de syndicats de salariés considérées comme représentatives par l'État. La CFDT comprend quelque 1300 syndicats de base. Ce nombre est en constante évolution en fonction des fusions réalisées, des nouvelles adhésions et des désaffiliations. Les syndicats de base sont regroupés en 22 Unions Régionales Interprofessionnelles et 15 Fédérations nationales professionnelles. La CFDT compte aussi deux unions confédérales : la CFDT Cadres et l'Union Confédérale des Retraités (UCR). Une union fédérale représente les 3 fonctions publiques : l'Union des fédérations des fonctions publiques et assimilés (UFFA)

Avec 34,00 % des voix aux dernières élections prud'homales (décembre 2008), la **Confédération Générale du Travail (CGT)** est la première organisation syndicale de France en audience, mais deuxième derrière la CFDT en termes d'adhérents revendiqués (873 000). La CGT comprend 22 000 syndicats ou sections de base, regroupés en 33 fédérations professionnelles, dont les plus importantes sont celles des cheminots, de la métallurgie, des Mines-Energie, des PTT, de la Santé, et des Transports. La CGT compte aussi deux unions, des ingénieurs, cadres et techniciens (UGICT) et des retraités (UCR), ainsi qu'un Comité national de lutte et de défense des chômeurs.

Force ouvrière (FO) est une confédération syndicale française, créée en 1947. Elle est la troisième en importance, derrière la CGT et la CFDT. Force ouvrière est le nom usuel de la « Confédération générale du travail-Force ouvrière (CGT-FO) », qui témoigne de ses origines. Force ouvrière revendique 15 000 implantations syndicales réparties sur tout le territoire, dans tous les secteurs d'activité avec 33 Fédérations nationales et regroupés au sein de la Confédération Force Ouvrière.

La, **Confédération française des travailleurs chrétiens (CFTC)**, est un syndicat de salariés français se référant à la morale sociale chrétienne. La CFTC est divisée en 22 unions régionales, 100 départementales et 249 unions locales. Elle compte 1 145 syndicats regroupés en 14 fédérations professionnelles (commerce-services-forces de vente, enseignement privé, métallurgie, collectivités territoriales, transports, télécoms, banques...). Avec 132 000 adhérents, la CFTC a réalisé un score de 8,94% aux élections prud'homales de décembre 2008.

La **Confédération française de l'encadrement - Confédération générale des cadres (CFE-CGC, couramment CGC)** est un syndicat des cadres, de techniciens, agents de maîtrise, forces de vente, d'ingénieurs et à ceux qui ont vocation à le devenir (salariés dont les fonctions comportent responsabilité, initiative et/ou commandement). La Confédération est organisée en 24 Unions Régionales, 99 Unions Départementales et 50 Organisations Professionnelles. À la fin 2006, la CFE-CGC revendiquait 177 000 adhérents. La Confédération est organisée en 24 Unions Régionales, 99 Unions Départementales et 50 Organisations Professionnelles. À la fin 2006, la CFE-CGC revendiquait 177 000 adhérents.

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Structure des organisations patronales

Le Mouvement des entreprises de France (MEDEF) est une organisation patronale représentant les dirigeants des entreprises françaises. Il a été créé le 27 octobre 1998, date à laquelle il a remplacé le Conseil national du patronat français. Son but est de représenter les entrepreneurs français auprès de l'État et des organisations syndicales. Il s'agit de l'organisation d'entrepreneurs de France la plus importante et la plus influente.

Cette organisation s'exprime au nom de 750 000 entreprises (des plus petites aux plus grandes) et dans des secteurs aussi variés que l'industrie, le commerce, les services et sur l'ensemble du territoire français.

Au niveau européen, le MEDEF est membre de *BusinessEurope*. Sur le plan international il est membre du conseil d'administration de l'Organisation internationale du travail (OIT).

Le MEDEF a une organisation sur plusieurs niveaux : MEDEF national, MEDEF international (avec plusieurs organisations par zones, intelligence économique, soutien des entreprises à l'exportation...), MEDEF territorial (réseau de proximité composé de 155 MEDEF territoriaux répartis dans les départements, régions, DOM-TOM,...), Réseau métier : 85 fédérations professionnelles adhérentes.

Information basique sur les relations industrielles

Cadre des négociations collectives

La négociation collective prend place à trois niveaux : au niveau national, au niveau du secteur et au niveau de l'entreprise.

Les accords conclus au niveau national couvrent l'économie dans son ensemble et souvent suivis par l'adoption de législation.

Le niveau du secteur est le plus important en terme de travailleurs couverts et au regard des partenaires sociaux. Cers derniers sont tenus de négocier les taux de salaires annuellement et sur la classification des emplois tous les 5 ans.

Au niveau de l'entreprise, il y a également une obligation pour l'employeur de négocier tous les ans sur les salaires, le temps de travail, l'épargne salariale et les conditions de travail. Il n'y a néanmoins pas obligation d'atteindre un accord signé.

Les acteurs impliqués dans les négociations collectives

Les négociations sont menées par les organisations syndicales et patronales ou par les employeurs à titre individuel.

Les accords nationaux peuvent être signés par les représentants des organisations syndicales, des cinq grandes confédérations nationales. Leurs fédérations sectorielles disposent des mêmes pouvoirs au niveau sectoriel. Au niveau de l'entreprise, les accords sont en principe conclus par les délégations syndicales uniquement. En l'absence de délégation syndicale dans l'entreprise, les travailleurs peuvent être mandatés par leur organisation syndicale pour négocier sur des thématiques précises. Les accords obtenus doivent alors être acceptés par la majorité des travailleurs.

Au niveau national, les accords peuvent être bloqués en cas d'objection de trois des cinq confédérations. Au niveau sectoriel, il existe deux possibilités de blocage. Les accords collectifs adoptés doivent être signés par les syndicats représentant la majorité des travailleurs du secteur sur base des dernières élections aux conseils d'entreprises. Les accords peuvent également être bloqués si une majorité de syndicats du secteur s'y opposent.

Au niveau de l'entreprise, on suit les règles mises au point dans les accords sectoriels. Pour être valable, un accord collectif doit être signé par un ou plusieurs syndicats ayant obtenu une majorité de votes lors des élections

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aux conseils d'entreprise ou lors des élections des délégués syndicaux. A défaut de majorité des syndicats, les accords doivent emporter la majorité des travailleurs.

Une fois signés, les termes de l'accord lient tous les employeurs membres de la fédération patronale qui a signé l'accord et s'appliquent à tous les travailleurs. Le gouvernement étend souvent les termes de l'accord à tous les employeurs.

Les négociations au niveau national pour l'ensemble de l'économie portent sur des thématiques larges incluant la sécurité sociale et les relations industrielles. Les négociations au niveau des secteurs et des entreprises portent sur les salaires, la structure des salaires, le temps de travail, les conditions de travail (salaires, organisation du travail). Au niveau de l'entreprise, les négociations couvrent aussi l'égalité des chances et les mesures en faveur des travailleurs handicapés.

La participation des travailleurs

La représentation des travailleurs sur le lieu de travail : information consultation, comité d'entreprise

Le Code du travail prévoit la constitution d'un comité d'entreprise dans les entreprises employant au moins cinquante salariés. Dans les entreprises employant moins de cinquante salariés, des comités d'entreprise peuvent être créés par convention ou accord collectif de travail.

Le comité d'entreprise a pour objet d'assurer une expression collective des salariés, permettant la prise en compte permanente de leurs intérêts dans les décisions relatives à la gestion et à l'évolution économique et financière de l'entreprise, à l'organisation du travail, à la formation professionnelle et aux techniques de production. Il est doté de nombreuses prérogatives tant en matière sociale que dans le domaine économique. Le comité d'entreprise doit ainsi être obligatoirement informé et consulté sur les questions intéressant l'organisation, la gestion et la marche générale de l'entreprise et, notamment, la durée du travail, les conditions d'emploi, de travail et de formation professionnelle du personnel. Il est aussi consulté, pour avis dans de nombreux autres domaines.

Partagées entre le Code du travail et le Code de commerce, les prérogatives du comité d'entreprise se sont ainsi, considérablement élargies au fil des années, qu'il s'agisse du droit d'information et de communication, « ordinaire » ou occasionnel, lié à des situations de crise, qu'il s'agisse du droit de participer aux séances du conseil d'administration ou de surveillance ou d'assister à l'assemblée générale par l'intermédiaire de délégués, du droit de demander la convocation d'une assemblée générale, de faire inscrire une question à l'ordre du jour, du droit d'être consulté...

Pour autant ces prérogatives ne suffisent pas à faire du salarié un véritable participant à la vie de la société. Ces prérogatives n'appartiennent en rien au salarié pris individuellement, elles ne s'exercent que collectivement, via l'institution représentative du personnel. Le comité d'entreprise ne participe jamais à la décision elle-même ; il ne réalise pas une collaboration du capital et du travail mais reste un organe de contrôle de la gestion de l'entreprise, contrôle qui s'exerce dans les limites de sa mission générale telle que définie par le Code du travail (à savoir la prise en compte des intérêts des salariés dans les décisions relatives à la gestion de l'entreprise). En effet, le choix d'assurer la participation des travailleurs à la gestion des entreprises par l'intermédiaire d'une participation médiatisée, au sein d'une instance distincte des organes de la société, le comité d'entreprise, s'écarte nécessairement d'un objectif général de participation de tout travailleur à la gestion. Seule une minorité de salariés qui peuvent se trouver associés à la gestion de l'entreprise puisque les entreprises remplissant les conditions d'effectif pour la mise en place d'un comité d'entreprise sont les moins nombreuses.

Représentation des travailleurs aux conseils d'administration ou aux organes de surveillance : les administrateurs élus par les salariés

Le préambule de la constitution française de 1946 dispose que : « tout travailleur participe, par l'intermédiaire de ses délégués, à la gestion des entreprises ». Cette participation véritable et effective de salariés à la vie de l'entreprise fut concrétisée tout d'abord, par l'entrée d'administrateurs élus par les salariés dans le conseil

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d'administration ou de surveillance des sociétés par actions prévue pour les entreprises du secteur privé par l'ordonnance du 21 octobre 1986.

L'article L225-27 du Code de commerce permet aux sociétés anonymes de stipuler dans leurs statuts que leur conseil d'administration comprend des administrateurs élus par les salariés. La même faculté est ouverte pour le conseil de surveillance des sociétés à directoire.

Le nombre des administrateurs salariés ne peut être supérieur à quatre, ou cinq dans les sociétés cotées. *L'article L225-27* fixe ainsi à quatre le nombre maximum des administrateurs élus par les salariés, sauf dans les sociétés dont les actions sont « admises à la cote officielle d'une bourse de valeur », ce nombre étant porté à cinq. Depuis *la loi du 2 juillet 1996 de modernisation des activités financières*, aujourd'hui codifiée dans le Code monétaire et financier, le nombre maximum des administrateurs élus par les salariés est porté à cinq dans les sociétés dont les actions sont « admises aux négociations sur un marché réglementé ».

Lorsque le nombre des administrateurs élus par les salariés est égal ou supérieur à deux, les ingénieurs, cadres et assimilés ont un siège au moins. Les administrateurs élus par les salariés ne sont pas pris en compte pour la détermination du nombre minimal ou du nombre maximal d'administrateurs composant par ailleurs le conseil d'administration ou le conseil de surveillance.

En principe, ils ont les mêmes droits et les mêmes obligations que les autres membres des organes sociaux. Ces administrateurs élus par les salariés exercent les mêmes pouvoirs que les autres membres du conseil d'administration ou de surveillance. En particulier, ils participent à la nomination du président du conseil d'administration ou des membres du directoire. Demeurant minoritaires, ils ne peuvent peser effectivement sur les décisions que dans les cas où leur vote est nécessaire à la formation d'une décision dans l'organe social auquel ils appartiennent.

LA PARTICIPATION FINANCIERE

La participation des salariés aux résultats de l'entreprise

➤ *Les mécanismes de cette participation : la participation et l'intéressement*

La participation permet de faire participer chaque salarié aux résultats de son entreprise, en redistribuant une partie des bénéfices réalisés selon des modalités prévues par accord collectif. La participation reconnaît aux salariés un véritable droit sur ces bénéfices. Cependant, les sommes versées ne sont pas immédiatement disponibles. Elles sont bloquées pendant un certain temps en vue de financer des investissements productifs.

Les sommes distribuées au titre de la participation bénéficient d'avantages fiscaux et sociaux pour les entreprises qui les versent et pour les salariés qui les reçoivent.

La mise en place de la participation est obligatoire dans les entreprises employant au moins 50 salariés. Toute entreprise d'au moins 50 salariés dégageant un résultat suffisant doit mettre en place un système de participation, quelle que soit la nature de son activité ou sa forme juridique, sous réserve des dispositions particulières s'appliquant aux entreprises du secteur public. Cette condition d'effectif est remplie dès lors que l'entreprise a employé au moins 50 salariés, au cours de l'exercice considéré, pendant au moins 6 mois consécutifs ou non.

Les entreprises employant moins de 50 salariés peuvent appliquer volontairement la participation, dans les mêmes conditions, mais en bénéficiant d'avantages particuliers.

Bien qu'ayant conclu un accord de participation, une entreprise peut ne pas dégager de Réserve spéciale de participation (RSP) au cours d'un exercice donné. Il en est ainsi lorsque, au cours de cet exercice, l'entreprise n'a pas fait de bénéfices mais également lorsque le bénéfice net de l'exercice est inférieur à 5% des capitaux propres de l'entreprise. Les droits à participation sont bloqués pendant 5 ans, hors cas de déblocage anticipé. Les salariés

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ont la possibilité d'affecter individuellement leurs droits à participation à une des formules de plan d'épargne d'entreprise (PEE, PEI, Perco).

Pendant la période d'indisponibilité, les droits à participation sont affectés par l'accord à un ou plusieurs des modes de placement.

L'intéressement permet à toute entreprise qui le souhaite, dès lors qu'elle satisfait à ses obligations en matière de représentation du personnel, d'instituer un intéressement collectif des salariés présentant un caractère aléatoire et résultant d'une formule de calcul liée aux résultats ou aux performances de l'entreprise.

La mise en place de l'intéressement est facultative. Toute entreprise qui satisfait à ses obligations en matière de représentation du personnel peut mettre en place un système d'intéressement, quels que soient son effectif, la nature de son activité ou sa forme juridique. Tous les salariés de l'entreprise ont vocation à en bénéficier. Toutefois, une durée minimum d'ancienneté dans l'entreprise, qui ne doit pas excéder 6 mois, peut être prévue par l'accord. Aucune catégorie de salariés (employés, ouvriers) ni aucune unité de travail ne peut être exclue du champ d'application de l'intéressement. Cependant, il est possible de prévoir des critères et des modalités de calcul et de répartition de l'intéressement variables selon les établissements et les unités de travail.

L'intéressement ne peut être mis en place dans les entreprises que par un accord collectif.

Pour ouvrir droit aux exonérations, les accords doivent instituer un intéressement collectif des salariés présentant un caractère aléatoire et résultant d'une formule de calcul liée aux résultats ou aux performances de l'entreprise.

L'intéressement, en raison de son caractère aléatoire et collectif, ne peut se substituer à aucun des éléments du salaire individuel. Les salariés bénéficiaires disposent librement et immédiatement de l'intéressement qui leur revient. Les sommes attribuées au titre de l'intéressement peuvent être affectées à un plan d'épargne d'entreprise si les salariés décident individuellement de le faire pour tout ou partie des sommes qui leur ont été attribuées. Ces sommes se trouvent alors bloquées pendant 5 ans mais bénéficient d'une exonération fiscale et des autres avantages liés au plan d'épargne d'entreprise.

Les sommes versées au titre de l'intéressement bénéficient d'exonérations fiscales et sociales tant pour les entreprises que pour les salariés :

- pour l'entreprise : l'intéressement constitue une charge intégralement déductible du résultat imposable et n'est pas soumis à la taxe sur les salaires ni aux charges sociales
 - pour les salariés : l'intéressement est fiscalement considéré comme un revenu imposable mais n'est pas assujéti aux cotisations sociales (à l'exclusion de la contribution sociale généralisée et de la contribution pour le remboursement de la dette sociale). En cas de placement dans un plan d'épargne d'entreprise, le salarié bénéficie d'une exonération d'impôt sur le revenu, dans la limite d'un montant égal à la moitié du plafond moyen retenu pour le calcul des cotisations de sécurité sociale. Il bénéficie, en outre, des autres avantages fiscaux propres au plan d'épargne d'entreprise.
- *Les structures d'accueil des fonds provenant de cette participation : les plans d'épargne d'entreprise et les fonds communs de placements*

Les plans d'épargne d'entreprise (PEE) ont pour but d'offrir aux salariés la possibilité de constituer un portefeuille de valeurs mobilières. L'entreprise doit prendre en charge ses frais de fonctionnement. Ils peuvent être alimentés par la participation, l'intéressement et les versements volontaires du salarié, mais l'ensemble de ses versements volontaires annuels ne peut excéder le quart de sa rémunération annuelle brute.

L'entreprise peut « compléter » l'intéressement et les versements volontaires (mais pas la participation) par un abondement. Celui-ci ne peut être supérieur à 3 fois le versement effectué par le salarié. Les fonds recueillis par le PEE sont bloqués pendant un minimum de 5 ans (sauf cas de débloques anticipés identiques à ceux reconnus pour la participation).

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Les sommes collectées par les PEE peuvent être investies en titres de SICAV, en titres de l'entreprise, mais, dans la majorité des cas, elles le sont en parts de Fonds Communs Placements d'Entreprise (diversifié ou investi en titres de l'entreprise). La mise en place d'un PEE permet aux entreprises et aux salariés de bénéficier d'un certain nombre d'avantages fiscaux et sociaux :

- pour l'entreprise, l'abondement est exonéré de cotisations sociales, des taxes sur les salaires et déductible de l'assiette de l'impôt sur les sociétés ;
- pour le salarié, les sommes versées sur le PEE sont exonérées d'impôt sur le revenu (à l'exception des versements volontaires) et de cotisations sociales. Les produits des sommes versées sur le PEE sont exonérés d'impôt sur le revenu s'ils sont réinvestis.

Les plans d'épargne interentreprises (PEI) permettent à plusieurs entreprises de se regrouper pour instituer un plan d'épargne. Les PEI sont soumis, sauf exceptions, au régime des PEE. Leur objectif est de faciliter l'accès aux dispositifs d'épargne salariale, notamment pour les petites et moyennes entreprises. Ces plans peuvent être mis en place à un niveau géographique donné ou au niveau professionnel.

Dans les plans d'épargne retraite collectifs (PERCO), les fonds sont bloqués jusqu'au départ en retraite avec sortie en rente viagère, l'accord collectif pouvant, néanmoins, prévoir une sortie en capital ou en capital fractionné. Les avantages fiscaux et sociaux sont les mêmes que pour le PEE, excepté pour la fiscalité à la sortie.

L'épargne recueillie par le plan d'épargne d'entreprise peut être investie dans des valeurs mobilières émises par l'entreprise ou par une entreprise du même groupe ; il peut s'agir aussi de parts de fonds commun de placement.

Le fonds commun de placement, qui n'a pas la personnalité morale, est une copropriété de valeurs mobilières dont les parts sont émises et rachetées à la demande des porteurs à la valeur liquidative majorée ou diminuée, selon le cas, des frais et commissions. Il est doté d'un conseil de surveillance et doit désigner un dépositaire, qui reçoit et conserve les fonds collectés, et d'une société de gestion, qui décide des placements sous le contrôle du conseil de surveillance. Ce conseil examine notamment la gestion financière administrative et comptable du fonds.

On distingue deux types de fonds :

- **les fonds d'actionnariat salarié** sont définis comme des fonds dont l'actif est composé d'au moins un tiers de titres de l'entreprise. La gestion de ces fonds doit appartenir à un conseil de surveillance composé soit exclusivement de représentants des salariés porteurs de parts élus sur la base du nombre de parts, soit de salariés représentant les porteurs de parts - élus sur la base du nombre de parts ou bien désignés par les organisations syndicales ou le comité d'entreprise - et, pour moitié au plus, de représentants de l'entreprise. Lorsque la composition du conseil est exclusivement salariale, le conseil de surveillance exerce les droits de vote attachés aux titres émis par l'entreprise et rend compte de ses votes, en les motivant, aux porteurs de parts. En revanche, si la composition est mixte, le règlement du fonds prévoit que le conseil de surveillance exerce les droits de vote attachés aux titres émis par l'entreprise, mais il peut stipuler que les droits de vote relatifs à ces titres soient exercés individuellement par les porteurs de parts. Dans ce cas, le conseil doit mettre à la disposition des porteurs les informations économiques et financières qu'il détient sur l'entreprise ;
- **Les fonds diversifiés** sont composés d'un tiers de titres de l'entreprise au plus. Leur conseil de surveillance est constitué de représentants des salariés porteurs de parts - soit élus, soit choisis par le comité d'entreprise ou les syndicats -, et pour moitié, au plus, de représentants de l'entreprise. Les droits de vote attachés aux valeurs comprises dans le fonds sont exercés par le conseil de surveillance, mais le règlement peut prévoir qu'ils le soient par la société de gestion qui représente le fonds à l'égard des tiers.

La participation des salariés au capital de l'entreprise

Pour promouvoir un véritable actionariat salarié, l'entreprise peut avoir recours à deux mécanismes particuliers, à savoir les augmentations de capital réservées aux salariés et les plans d'options sur actions.

Les augmentations de capital réservées aux salariés

Lors de chaque décision d'augmentation de capital, l'assemblée générale des actionnaires est désormais tenue de se prononcer sur un projet de résolution tendant à réaliser une augmentation de capital réservée aux adhérents d'un plan d'épargne d'entreprise. Ce projet de résolution en faveur des salariés doit être proposé sous peine de nullité de la décision d'augmentation du capital. L'obligation de consulter les actionnaires concerne toutes les sociétés par actions, qu'elles soient ou non déjà dotées d'un plan d'épargne d'entreprise. Dans les sociétés non dotées d'un plan d'épargne d'entreprise, si l'assemblée décide le principe d'une augmentation de capital réservée aux salariés, il conviendra, préalablement à la mise en œuvre de cette décision, de mettre en place ce plan d'épargne.

A côté de cette obligation permanente, existe une obligation périodique. Ainsi, lorsque le rapport présenté par les organes de gestion de la société à l'assemblée générale ordinaire annuelle des actionnaires établit que les actions détenues par les salariés de la société ou de celles qui lui sont liées représentent moins de 3 % du capital social, une assemblée générale extraordinaire doit être convoquée tous les trois ans pour se prononcer sur un projet de résolution tendant à réaliser une augmentation de capital réservée aux adhérents d'un plan d'épargne d'entreprise. La consultation doit être renouvelée tous les trois ans aussi longtemps que la participation des salariés dans le capital social reste inférieure à 3 %.

Les plans d'options sur actions

Le principe est le suivant : après autorisation de l'assemblée générale extraordinaire, le conseil d'administration (ou le directoire) offre à tout ou partie des dirigeants ou du personnel salarié de la société le droit de souscrire ou d'acheter des actions à un prix déterminé qui ne peut pas être modifié pendant la durée de l'option. Les bénéficiaires, qui ne peuvent pas céder ce droit, ont un certain délai pour l'exercer. Ainsi en cas de hausse de l'action, ils peuvent souscrire ou acquérir des titres à un prix inférieur à leur valeur du moment.

La société peut accorder, soit des options d'achat, soit des options de souscription d'actions.

Pour les bénéficiaires des options, les deux formules sont équivalentes. Toutes deux leur permettent, s'ils le désirent, d'obtenir des actions de la société moyennant un prix fixé à l'avance.

Le prix de souscription est fixé au jour où l'option est consentie, selon des modalités fixées par l'assemblée générale extraordinaire. Ce prix ne peut être modifié pendant la durée de l'option. Un abattement peut être consenti sur le prix de l'action. En effet, pour les options de souscription, lorsque la société est cotée, le prix de souscription ne peut être inférieur à 80 % des cours cotés aux vingt séances de bourse précédant l'ouverture de l'option. Si la société n'est pas cotée, l'assemblée générale fixera librement le prix de souscription. S'il s'agit d'achat d'actions, le prix de l'action ne pourra être inférieur à 80 % des cours moyens d'achat des actions par la société.

Pour les « stock -options », les actions obtenues à la suite de la levée des options ne font l'objet d'aucune indisponibilité. Le salarié actionnaire est pleinement salarié d'un côté, pleinement actionnaire de l'autre. Il dispose de toutes les prérogatives patrimoniales reconnues à l'actionnaire notamment le droit de disposer des titres.

Renforcement corrélatif des droits sociaux de l'actionnaire salarié

L'article 217 de la loi de modernisation sociale rend obligatoire la nomination, par l'assemblée générale des actionnaires, d'un ou plusieurs représentants des salariés-actionnaires au sein des conseils d'administration ou des conseils de surveillance des sociétés dont les salariés détiennent plus de 3 % du capital. Cependant, le décret d'application devant fixer les conditions de cette nomination ne fut jamais publié. Il a fallu attendre la loi du 30 décembre 2006 pour que les choses évoluent. Celle-ci stipule que, dans les sociétés cotées où les salariés détiennent plus de 3 % du capital, un ou plusieurs administrateurs doivent être élus par l'assemblée générale des actionnaires, sur proposition des actionnaires, dans des conditions fixées par les statuts. Si elles ne le sont pas, ceux-ci doivent être modifiés par assemblée générale extraordinaire, dans un délai de dix-huit mois. Ces administrateurs doivent être élus parmi les salariés actionnaires ou, le cas échéant, parmi les salariés membres du conseil de surveillance d'un FCPE détenant des actions de la société.

Cette disposition complète l'article 29 de la loi Fabius. Celui-ci précise que si, selon le rapport présenté à l'assemblée générale par le conseil d'administration ou le directoire, les actions détenues par le personnel de la société représentent moins de 3 % du capital, une assemblée générale doit être convoquée, tous les trois ans, pour se prononcer sur un projet de résolution tendant à réaliser une augmentation de capital. La complémentarité de ces deux articles montre la volonté du législateur de rapprocher le statut de salarié et celui d'actionnaire. La logique est la suivante : lorsque les salariés détiennent moins de 3 % du capital, la question de ce seuil doit être à nouveau évoquée à intervalles réguliers, parce que l'actionnariat est le seul moyen choisi par les pouvoirs publics pour faire participer les salariés aux instances décisionnelles de leur entreprise.

La participation financière en pratique

Fin 2006, 56,3 % des salariés du secteur marchand non agricole sont couverts par au moins un dispositif d'épargne salariale. Les quatre cinquièmes d'entre eux ont effectivement perçu une prime de participation ou d'intéressement ou ont bénéficié d'un abondement à leurs versements volontaires sur un plan d'épargne entreprise (PEE) ou sur un plan d'épargne retraite collectif (PERCO)

44,1 % des salariés travaillent en 2006 dans une entreprise où un accord de participation a été conclu, contre 42,8 % l'année précédente ; 34,6 % des salariés sont désormais couverts par un accord d'intéressement et 36,3 % ont accès à un PEE, contre, respectivement, 33,8 % et 35,3 % en 2005.

Les grandes entreprises combinent les dispositifs, alors que le PEE est souvent le seul dispositif présent dans les plus petites. Malgré cette diffusion accrue de l'épargne salariale, c'est toujours dans les entreprises proposant les salaires les plus élevés et dans celles employant le plus grand nombre de personnes que les dispositifs sont les plus fréquents. 92 % des salariés des entreprises de 500 salariés ou plus sont couverts par au moins un dispositif d'épargne salariale. Ils sont encore plus de 76 % dans les entreprises de 50 à 499 salariés, mais seulement 12,9 % dans les entreprises de moins de 50 salariés.

L'accès aux dispositifs d'épargne salariale augmente nettement avec la taille de l'entreprise. La taille de l'entreprise influe aussi sur le type de dispositifs auxquels ont accès les salariés. La participation est le dispositif le plus répandu dans les entreprises d'au moins 50 salariés, car elles ont l'obligation légale de mettre en place ce dispositif. Ainsi, 57,5 % des salariés des entreprises de 50 à 99 salariés sont couverts par un accord de participation et plus de sept salariés sur dix le sont dans les entreprises d'au moins 100 salariés.

L'épargne salariale se développe dans tous les secteurs, mais cette pratique reste plus répandue dans certaines activités comme les banques et les assurances, ou bien pour certains services aux entreprises, comme le conseil ou les activités informatiques. Dans ces secteurs, l'épargne salariale ne se limite pas aux grandes entreprises, elle vient en complément de salaires par ailleurs plus élevés que la moyenne. L'épargne salariale est aussi très implantée dans l'industrie, en particulier l'énergie, l'automobile, les industries des biens d'équipement et des biens intermédiaires, secteurs qui comptent beaucoup de grandes entreprises. Elle l'est moins dans la construction ou dans le secteur des services aux particuliers où sont implantées beaucoup plus de PME.

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COUNTRY CASE: GERMANY

Trade Unions:

Structure and information

In Germany more than 85% of union members belong to one of the unions affiliated to the DGB (6,5 million members), while the other 15% mainly belong to a trade union of civil servants (DBB), to the German white-collar workers union (DAG) and to a smaller Christian trade union federation (CGB). Today only one fifth of employees are trade union members, and in the last fifteen years DGB has lost 40% of its members, in part as a consequence of the fall in manufacturing employment. The German Confederation of trade unions (DGB) is an umbrella organization, traditionally organized on an industrial basis; from a political point of view, DGB emphasises is neutrality, but the overall position is generally close to SPD. Some individual affiliated unions have considerable autonomy and influence, often with greater resources than the confederation itself. Today the main affiliated members are IG Metall for metal workers, Ver.di for services and IG BCE for energy and chemical workers: both Ver.di and IG BCE are recent mergers, established by the unification of smaller unions. One of the main DGB's responsibilities is to reach agreements on the demarcation of the industries represented by its member unions, in order to avoid competition within an industry or company; the confederation essentially covers a coordination role, managing the dialogue with governmental institutions.

Employer side

a) Structure

On the employer side, associations are traditionally divided between trade and employer associations. BDA is the only employers' confederation and is structured by industries and regions, mirroring the union's structure. The confederation is open to employers in all industries.

b) Competences

BDA is fully focused on collective bargaining, while economic, business, and political interests are covered by BDI, Federation of German Manufacturing and various service sector organisations. In some industries employers have formed special organisations dedicated to collective bargaining (as in metalworking) but in other industries there are hybrid structures for both industrial organization and collective bargaining. In 2001, the employer associations covered 63% of employees, compared to 72% 10 years earlier. A particular challenge has been the development in East Germany, where many companies left the employer associations and prefer to bargain at the company level.

Basic info in industrial relations

a) Actors entitled with collective bargaining from trade union side

Collective bargaining is normally the affiliates' responsibility, while Works Councils are not legally able to negotiate collective agreements.

WCs can, however, reach agreements with individual employers on issues not covered by collective agreements, as well as how the terms of the collective agreement will be applied in practice. This has become increasingly important in the last years, as collective agreements now give greater flexibility to local negotiators through "opening clauses", which allow them to reach deals which take account of the particular circumstances of their employer: this is part of the traditional German cooperative approach.



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b) Collective bargaining structure

Collective agreements regulate a wide range of issues including pay, working conditions, working time, and training. The dominant level of collective bargaining is still primarily the industry level between affiliated trade unions and employers' organisations. The bargaining is conducted on the national or, as in metalworking, on the regional level and wage bargaining centralisation is greater than the EU average. The legal background is based on the concept of autonomy of the social partners and independence from the state: the basic German law intervenes only to reconcile the social partners in case of conflict, creating an order for the labour market and guaranteeing employees' protection. Formally, the agreements are binding only for members of the negotiating parties but, as a result of the principle of equal treatment, employers usually apply the contracts to all workers within a company. As a consequence, agreements at company level with individual employers are not widespread (8% in Western Germany, 11% in Eastern) but an increasing number of individual employers, particularly in former East Germany, is staying out of or leaving the employers' federations in order to pay wages lower than those set in collective agreements.

c) Participation system: Codetermination

The Codetermination Law guarantees employees direct participation in the regulation of working conditions, economic planning and decision making. Codetermination takes place on two levels: the establishment and the company. Codetermination and participation in the establishment involves above all the exertion of influence by the Works Council in all matters which raise questions for employees about their place of work (e.g. short-time working or overtime, pay principles, piece rates or premium payments, new technologies or methods of working). Whilst establishment level co-determination is basically applicable in all Federal German companies founded on the basis of private civil law (the requirement for setting up a Works Council is that the establishment employs at least five employees), the right of co-determination in company matters exists only in larger firms (>500 employees), which are legally running as joint stock companies.

Company level co-determination provides participation rights in questions concerning economic planning and decision making: it takes place in supervisory boards. The supervisory board covers its role monitoring the management operations and activities, appointing the members of the board of management and possesses rights of information and audit. It also has the right to approve important business decisions.

Information and Consultation rights: Works Councils

Information and consultation rights are ensured in Germany by the presence of Works Councils; employer and WC should meet together once a month and the employer have to provide comprehensive information in good time to enable it to carry out its duties. Works councils exist to ensure that some of the key decisions are not taken by the employer alone but involve representatives of the workforce. The precise rights of the Works Council vary from area to area: rights are strongest in the social area, organisation of hours, holidays, methods of payment and so on, and weakest in the area of economic issues.

In summary, the law provides the Works Councils with two main types of rights: participation rights, where the Works Council must be informed and consulted about specific issues and can also make proposals to the employer; and co-determination rights, where decisions cannot be taken against the wishes of the works council.

Financial Participation

The German model is traditionally focused on employee saving plans, promoting asset accumulation, contributing to the long-term financial security, especially of those with low income. Moreover, the system is characterized by the hybrid form of employees loans to companies, that is a variant of profit sharing perceived as a form of employee savings in productive capital.



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In Germany financial participation tends to be viewed as capital participation, separated from participation in profit sharing schemes and stock options. The legal framework provides a tax-free government saving premium and a preferential tax treatment on employer payments to employee investments. In spite of this, the active promotion of financial participation and legislative regulation of the schemes are limited, but a new comprehensive act on financial participation is expected in 2009.

The survey realized by the German Institute of Economic and Social Research shows:

- A strong and evident connection between financial participation and the size of the establishment.
- In 36% of establishment with 20 or more employees some form of profit-related schemes did exist in 2008. In 90% of those cases, the benefit is a profit sharing annual bonus, and in 54% of cases it is addressed to all employees of the establishment.
- Significant differences exist according to the economic sector to which the company belongs (60% in financial sector, less than 15% in construction sector)
- Significant differences still exist between Western and Eastern Germany.
- The main distinctiveness is that about 95% of employees in Western Germany receive asset accumulation from their employers but these schemes cannot be included into the “Pepper” definition of financial participation, as these are not dependant on company success.

Employee Share Ownership Schemes

a) Information and data:

- The German model is traditionally more focused on employee savings plans than on employee share ownership programmes. Because of the German system of corporate government via consensus, employee financial participation programmes are mainly anchored in wage settlements.
- The significance of ESOS in Germany is rather low. Employee share ownership is found in 8% of establishment with more than 20 employees (WSI, 2008), but only 2% of all the workplaces. However, a high proportion of employees in these companies participate in the scheme and the total average corresponds to 4% of employees. Only 1,67% of the total capital is held by employees (compared to 2,63% in EU27).
- In the case of ESOS the linear correlation to the establishment size is not evident. Only 75% of large companies have some ESOS compared to 85% of the European average (and only 37% of large companies have a significant scheme).
- ESOS take most often the form of shares or share options (60%)
- As for financial participation in profits, ESOS are most widespread in the financial sector.
- Even if ESOS are generally introduced through a company guideline, in 40% of the cases takes the form of the work agreement.
- Adherence to multi-employer agreement reduces the likelihood of a financial participation scheme being introduced.

b) Legislation:

Employee savings placed in productive capital attract preferential government premiums and tax concessions since 1999, when the German system of financial participation has been modified to favour Employee Share Ownership schemes.



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Law on asset participation and Income Tax Law provide a preferential tax-treatment on employer payments for employee investments, a tax exemption for employee direct participation in companies' shares (with a specific threshold) and a special tax-free savings premium for low-income workers. These capital formation payments are governed by industry collective agreements.

The Law on Corporate Control and Transparency of 1998 legally introduced and liberalised stock options in Germany: these schemes fall under remit of Works Council codetermination rights and have been developed under the form of broad-based schemes.

c) Social partners attitude:

Trade Unions

DGB gradually moved from traditional scepticism to the acceptance of financial participation schemes as a new form of employees saving schemes. Anyway, trade unions lay down as conditions the broad-based aspect of financial participation and the regulation under collective agreements, excluding unreasonable risks for employees and wage substitution through financial participation and ESOS.

Works councils

WCs show an ambivalent view regarding such schemes: they agree that employee share ownership is appropriate to contribute to positive business development but at the same time agree that these schemes bear risks for employees, and the majority believes that ESOS primarily serves the company.

Employer organizations

Employers organizations actively support for financial participation schemes. The Cologne Institute for Economic Researches confirmed that companies have implemented financial participation schemes mainly in an attempt to boost employee effort, creativity and willingness to adapt. Moreover, financial participation is a device to recruit and retain employees.

BDA argues that financial participation should enhance employees' identification and commitment and is a useful tool for wealth redistribution at enterprise level. The confederation has long argued that financial participation shouldn't be incorporated into sectoral labour arrangements.

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