Plenary sitting

A7-0465/2013

18.12.2013

REPORT

on financial participation of employees in companies' proceeds
(2013/2127(INI))

Committee on Employment and Social Affairs

Rapporteur: Phil Bennion

Rapporteur for the opinion (*):
Fabrizio Bertot, Committee on Economic and Monetary Affairs

(*) Associated committee - Rule 50 of the Rules of Procedure

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(*) Associated committee - Rule 50 of the Rules of Procedure

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on financial participation of employees in companies' proceeds (2013/2127(INI))

The European Parliament,

– having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 3(3) thereof,

– having regard to the Commission Communication of 3 March 2010 entitled 'Europe 2020: a strategy for smart, sustainable and inclusive growth' (COM(2010)2020),

– having regard to the Commission Communication of 12 December 2012 entitled 'Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies' (COM(2012)0740),

– having regard to the Commission Communication of 5 July 2002 on a framework for the promotion of employee financial participation (COM(2002)0364) and Parliament's resolution of 5 June 2003 thereon[1],

– having regard to the opinion of the European Economic and Social Committee (EESC) of 21 October 2010 on Employee financial participation in Europe[2],

– having regard to the study requested by Parliament's Committee on Employment and Social Affairs on 'Employee financial participation in companies' proceeds'[3], which was published in September 2012,

– having regard to the PEPPER IV Report, entitled 'Benchmarking of employee participation in profits and enterprise results in the member and candidate Countries of the European Union', which was published in October 2009 by the Free University of Berlin,

– having regard to the PEPPER III Report, entitled 'Promotion of employee participation in profits and enterprise results in the New Member and Candidate Countries of the European Union', which was published in June 2006 by the Free University of Berlin,

– having regard to the Commission's PEPPER II Report of 8 January 1997 entitled 'Promotion of participation by employed persons in profits and enterprise results (including equity participation) in Member States' (COM(1996)0697),

– having regard to the PEPPER I Report, entitled 'Promotion of employee participation in profits and enterprise results', which was published in March 1991 by the Commission and the European University Institute,

– having regard to the Commission's pilot project on the Promotion of employee ownership

[1] OJ C68 E, 18.3.2004, p. 429.
[2] OJ C 51, 17.2.2011 p. 1.
[3] IP/A/EMPL/ST/2011-02 – PE 475.098.

and participation[1],

– having regard to the Report of 18 December 2003 of the high-level group of independent experts on transnational obstacles to the growth of employee financial participation in transnational enterprises,

– having regard to the Commission Communication of 3 October 2012, entitled ‘Single Market Act II– Together for new growth’, (COM(2012)0573),

– having regard to the Commission Communication of 14 March 2006 ‘Implementing the Lisbon Community Programme for Growth and Jobs: Transfer of Businesses – Continuity through a new beginning’ (COM(2006)0117),

– having regard to its resolution of 15 January 2013 on information and consultation of workers, anticipation and management of restructuring[2],

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Economic and Monetary Affairs (A7-0465/2013),

A. whereas employee financial participation (EFP) schemes can offer direct financial benefits above and beyond agreed basic remuneration structures through:

   – sharing in ownership, which offers employees the right to enjoy the benefits of the company’s success whilst participating in the responsibility for and risks attached to strategic decisions;

   – sharing in profits, whether in the form of cash, shares or benefits, which can reward success or exceptional performance, supplement workers’ incomes and boost their spending power, with a possible direct economic spill-over into the local economy;

B. whereas employees face a double risk when the employer is affected by a crisis: on the one hand, the risk of losing their job and income and, on the other, the risk of losing capital invested in the company;

C. whereas there are three main EFP models for a company to choose from: profit sharing (cash-based, deferred or in shares), individual employee share ownership (employee shares or stock options) and employee stock ownership plans (ESOPs); whereas EFP can be in the form of shares or cash;

D. whereas the most appropriate EFP model will often depend on the size and status of the company, notably whether it is listed or unlisted;

E. whereas EFP, particularly in the form of ESOPs or partial ownership, can act as a shock absorber, allowing bonuses or other forms of supplementary pay or reward to be managed in trusts by third parties, spreading the investment risk among the company’s principal

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[1] MARKT/2013/019/F 2013/S 077-128533
[2] Texts adopted, P7_TA(2013)0005.

shareholders and ensuring that workers have a portfolio of saved shares;

F. whereas financial participation by employees in their undertaking entails a number of potential risks for workers; whereas financial participation should not be used to avoid compliance with labour law, or as a means of reducing acquired social and labour rights or applying pressure to increase labour market flexibility;

G. whereas if employees obtain from their company's owners a priority buy-out right, and are thus able to take over companies in financial difficulty, they may seek to safeguard their own jobs and this procedure may reduce uncertainty about their continued employment when there is the possibility of buyouts by other companies; whereas employee ownership may address company succession problems, as a company is often closed down or sold off for possible rationalisation or closure when succession is not possible; whereas this procedure may be helpful in particular for SMEs and micro enterprises in securing the continuation of sustainable commercial operations; whereas these advantages can only be secured in combination with the participation of workers;

H. whereas the ESOP is an example of an effective employee buy-out model for non-listed companies where an intermediate entity is used to acquire the shares on behalf of the employees; whereas employees are not exposed to additional risk as the acquisition is financed by a profit-share, or a loan which is repaid by profit-shares, which is additional to the employees' salaries;

I. whereas the Spanish *sociedades laborales* concept is a best-practice example of an EFP scheme for micro-enterprises; whereas it also allows the unemployed to choose to receive their unemployment benefits as a lump sum in order to start a new company or to recapitalise an existing one;

J. whereas EFP reduces short-termism, promotes sustainability and long-termism in strategic decision-making by managers and may increase employees' interest in long-term commitment and in seeking innovative solutions in the production process; whereas EFP can thus bring stability, development and growth while reducing risks of over-expansion leading to job losses; considers that these effects can be enhanced by stable and functioning of worker involvement institutions ;

K. whereas financial participation schemes encourage investment in training, as they increase the likelihood of companies retaining skilled workers in the long term;

L. whereas workers' financial participation in their company's proceeds and, where appropriate, the associated participation of workers in decision making, can contribute to improvements in employees' job satisfaction and overall performance and motivation; whereas it can also encourage employees to develop a sense of ownership and a better understanding of their company as well as enhance mutual respect between employers and employees;

M. whereas encouraging employees to develop a sense of ownership and responsibility increases their feeling of inclusion and the likelihood that their employers will engage with them and understand their concerns, perspectives and ideas;

N. whereas the establishment of EFPs can help to boost productivity, improve performance, support the alignment of employees' and shareholders' interests and attract and retain key personnel;

O. whereas employee participation in management through voting rights, the right to be present or other forms of governance can improve management and the flow of information and help employees to have a better understanding of the situation when their company faces challenges and a greater ability to access rewards when the company is doing well;

P. whereas in EFP models that use an intermediate entity, this entity can exercise voting rights or other forms of governance on behalf of employees, allowing for collective representation;

Q. whereas EFP schemes can play a significant role in additionally involving workers in information, consultation and decision-making processes during restructuring;

R. whereas EFP is affected by national taxation rules, and whereas it is not appropriate to develop a comprehensive 'one size fits all' model for EFP at EU level; whereas EFP must be carefully decided upon by the individual company and its workers, taking due account of the wider national and sectoral context; whereas a set of basic guidelines could achieve public confidence and help EFP deliver on its objectives;

S. whereas EFP may not be suitable for all companies or employees and therefore very careful consideration should be undertaken before undertaking such a scheme;

Obstacles to EFP uptake in the EU

1. Calls on the Member States to consider the transnational obstacles facing both companies offering schemes to employees in several Member States, and employees, for whom double taxation may represent an infringement of the right to freedom of movement;

2. Points out the differences between the Member States as regards compulsory social security contributions on income for financial participation;

3. Emphasises that in some cases it might be useful to bring about the gradual convergence of existing financial participation schemes and the related national legislation so as to enable employers in future to offer schemes in the same or a similar form in all Member States where they have employees;

4. Insists that the lack of information about existing financial participation schemes could be offset by increasing the quantity of information lending itself to comparison at international level, which would reduce costs for both larger companies and SMEs, enabling them to offer employee participation schemes that meet their particular needs;

5. Highlights the lack of national legislative measures favouring the development of EFP schemes; notes, in this connection, the differences between EU-15[1] and EU-13[2] countries

[1] ***Member States which joined the Union before 1995.***
[2] ***Member States which joined the Union after 1995.***

as regards their levels of participation in EFP schemes; recognises the link between the introduction of legislative measures at national level in favour of EFP schemes and the number of employees participating in such schemes;[1]

Taxation issues

6. Stresses that further transparency is needed in national employee ownership schemes and especially in calculating the effective tax burden across the EU-28 in order to prevent double taxation and discrimination;

7. Notes that a framework for a European model of employee ownership should not override national taxation rules;

8. Calls on the Member States to provide tax incentives, in line with best practice principles, when promoting employee ownership schemes;

9. Points out that precisely targeted tax incentives could increase employee financial ownership in various Member States and even add to economic growth;

10. Is of the view, therefore, that the Commission should present guidelines on the taxation of EFP;

Recommendations

11. Calls on the Commission and on Member States to consider appropriate measures to encourage companies, acting voluntarily, to develop and offer EFP schemes, open to all employees on a non-discriminatory basis, taking into account the specific situation of SMEs and micro-enterprises; calls on the Member States to step up exchanges of best practice in this regard;

12. Is of the view that Employee Financial Participation (EFP) can also be a form of bonus for the employee, through capital participation or specific bonds , depending on the financial product used and the type of company in question;

13. Believes that any measure relating to the financial participation of employees in company income should be sustainable in the long term and be based on the principles of voluntary participation, equality among workers and due diligence, especially for SMEs; emphasises the fact that, despite the EU's recognition of the utility of EFP schemes, this area is not a Union competence;

14. Calls on the Commission and on Member States to engage social partners, in accordance with national law and practices, employee ownership organisations and stakeholders more closely in dialogue between policy makers, employers and workers' representatives, at the respective levels while respecting the autonomy of social partners in collective bargaining, so that existing examples of best practice can be taken into account in the development of policies to facilitate the implementation of EFP by businesses;

15. Anticipates the results of the pilot project, notably the development of a Virtual EFP

[1] 'Employee financial participation in companies' proceeds' (PE 475.098), p. 36.

Centre and the CETREPS Effective Tax Rate Calculator; asks the Commission to offer ideas to Member States on participation mechanisms in light of this pilot project;

16. Views with interest a potential opt-in 29th regime as an optional single legal framework open to employers throughout the EU, which would respect areas of Member State competence on fiscal and labour law, in terms of:

    (a) a set of simple, elementary and basic supportive models developed from best-practice examples for each type and size of company,

    (b) a market-based approach where only companies finding the single regime useful would use it,

    (c) allowing differences in Member States' legal culture in that the national regimes continue to exist in parallel,

    (d) improving transparency and access to information to facilitate equal implementation in different Member States,

    (e) the applicability at national and/or EU level when needed and not being restricted to cross-border companies, taking into account tax issues as well as financial risk for employees;[1]

17. Believes that, an impact assessment on a 29th regime would help to assess possibilities of how to create a level playing field and to avoid hampering the internationalisation of enterprises;

18. Points out that employee ownership fosters much-needed social cohesion and serves as an important addition to sustainable corporate governance; stresses, nonetheless, the need to take precautions when promoting ownership schemes so as not to substitute wages with profit-sharing systems;

19. Asks the Commission and the relevant stakeholders, therefore, to continue to advocate adherence to the 'building-block approach';

20. Encourages the Commission to present an independent impact assessment on such a '29th regime' for EFP, anticipates the inclusion of information thereon in the Commission's interim report;

21. Calls on the Commission, following the publication of the independent impact assessment and in cooperation with employee ownership organisations, the Member States and, where appropriate, the social partners, to consider developing a set of basic guidelines for successful EFP schemes encompassing the following elements:

    (a) objective-led: companies should determine the objectives of an EFP scheme in order to select the model that is most appropriate for them and to have the best chance of achieving the desired outcome; before the introduction, EFP schemes should be subject to consultation by the workers or their representatives ; collective agreements

[1] 'Employee financial participation in companies' proceeds' (PE 475.098), p. 16.

must not be undermined by agreements on EFP schemes;

(b) flexible in operation and voluntary: EFP operates differently in different sectors, companies of different sizes and types, and different Member States; the decision to develop and implement an EFP scheme should therefore be made at company level in the light of existing national law and practice, and taking into account the company's financial situation;

(c) additional/complementary to contractual remuneration: any EFP model should be an addition to a worker’s basic pay and contractual rights, not a substitute for these rights;

(d) voluntary for employees: EFP is a means by which employees are offered a choice about how to benefit from a closer financial relationship with their employer; ultimately this has to be both optional for an individual worker to opt in and out of, but equally available to the whole workforce, including part-time workers, of a company on a non-discriminatory basis in order to achieve genuine inclusion;

(e) negotiated by social partners: where national practices and traditions include social partners at company level, EFP schemes should be negotiated by the relevant social partners, on a local ‘plant-by-plant’ or company-wide basis to be tailored to the specific conditions and circumstances of the company and its workforce; such schemes should not discriminate against employees for belonging to a trade union or on any other ground for discrimination listed in Article 10 TFEU;

(f) clear information: such information must be given to employees on the risks and rights attached to opting into an EFP scheme, including any vesting period: the decision to join an EFP scheme should be based on the informed consent of an employee, given in the full knowledge of their entitlements, obligations and the underlying risks as well as taxation effects when joining a scheme and the conditions which apply when they leave the company or the scheme under any circumstances;

(g) involvement in governance: an employer should, depending on the scheme, invite a worker or workers to become directly involved in the governance of a company; where this is the case, rights and responsibilities should be clearly and jointly defined;

(h) if sharing in ownership is the model agreed, collective ownership of shares – e.g. in a trust – is preferable; within this model, shares should be allocated in such a way that existing pay differences are not increased;

(i) it is imperative that insurance be taken out to protect worker participation from the insolvency of the undertaking;

(j) the impact on gender equality should always be considered when EFP schemes are agreed upon;

(k) transparency: information about the economic situation of the company concerned and information about the attached risks should be available to the workers concerned at all times;

22. Notes that, as indicated before the financial crisis, remuneration policies that encourage excessively risky behaviour by employees can undermine the sound and efficient management of credit institutions and investment funds and other undertakings in the financial sector;

23. Encourages social partners to continue working together to develop new opportunities and innovations for EFP at the relevant levels;

24. Believes that, in order to promote financial participation for the purpose of creating a new form of company financing and enabling employees to be more connected to the company that employs them, employers should be given the opportunity to offer employees share capital subscriptions or specific debt securities (bonds); takes the view that the capital subscriptions should be voluntary for the employees, acting either as individuals or as a group, as well as for the company;

25. Acknowledges that business succession, additional funding, staff retention and other problems characteristic of SMEs can be alleviated by employee share ownership plans; is of the opinion that employee ownership schemes in small and micro enterprises can be combined with labour market measures, such as unemployment benefits, and thus help to reinstate the unemployed;

26. Notes that there is a lack of information and education about possible employee ownership schemes, especially among SMEs; calls on the Commission and the Member States in this regard to better organise information campaigns and to encourage the cross-border transferability of best practice schemes among Member States.

27. Encourages Member States, in cooperation with social partners, employee ownership organisations and the Commission, to use existing single information portals – one stop shops – accessible to employers and employees, or to develop new ones, in order to explain the benefits and advantages as well as risks of EFP, the national incentives available and the different models which exist, with a view to allowing employers and workers to make informed judgements concerning EFP schemes and find the best option for agreements at company level and better assessing the options available to them and the challenges of entering into an EFP scheme; suggests that these single information portals should be attached to or included in existing competent bodies or authorities at national level;

28. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

The EU 2020 strategy on a smart, sustainable, and inclusive growth highlights the need for 'inclusive growth' which amongst other things empowers citizens through employment, investing in skills, fighting poverty and modernising labour markets and social protection.

Employee Financial Participation (EFP) offers a tangible means for developing these themes by involving workers more in the decision making of the companies they work for, helping to strengthen good governance, and ensuring a share of the financial benefits of a successful business.

Such involvement of workers in corporate governance can develop their opportunities to access meaningful lifelong learning within employment, as EFP often develops long term thinking - as workers become more involved with decision making and financial rewards they will develop longer lasting relationships with their employers, giving employers more incentive to invest in training opportunities for their workforce.

EFP can also strengthen SMEs, offering mechanisms for innovative financing as workers may wish to invest in shares of the company by which they are employed, capitalising expansion. Equally the development of long term investment by workers in their company can help provide stability and certainty which strengthen the SME, and in so doing makes jobs more secure.

Despite these benefits, participation in EFP varies between different sectors, company sizes, demographics of employees, and between member states.

Overall participation in EFP schemes is still relatively low, despite increases in interest in such schemes.

Particularly when compared with the USA, Europe lags behind, due to fragmented levels of tax support and lack of regulatory incentives and clear practical guidance on implementation which disproportionately affect SMEs.

This report aims to highlight the positive role which EFP schemes can play in developing participation of workers in the governance and financial success of the companies in which they work.

In particular, this report highlights a series of observations and recommendations on EFP, which may contribute to a voluntary framework to advise companies, employees, social partners and national authorities on how best to develop and facilitate EFP schemes.

Employee financial participation schemes present a number of models which provide opportunities for businesses and employees to work together for their own benefit and the benefit of wider society.

Different models serve different objectives, from direct employee involvement in corporate governance ensuring long term decisions are taken in the best interests of the workforce, to low risk performance and profitability bonuses and investment options which allow workers to enjoy financial benefits from the success of their companies.

EFP is highly conditional on national legal frameworks and conditions. Fiscal policies and taxation are key to the development and implementation of EFP schemes by companies in each member state, however questions of subsidiarity and continuing doubt over possible harmonisations of taxation make any substantive legislative action on these areas at EU level unlikely and inappropriate.

However there are a number of measures which could be taken at EU level to facilitate EFP take up in member states.

The EU could provide a ‘framework concept’ with general guidance on basic principles and best practice to help guide decision making at national and company level on EFP schemes.

There are also questions over how EFP schemes can operate effectively for transnational companies operating across more than one EU member state, particularly in the absence of common tax rules. The Commission could undertake research into possible methods to facilitate cross border EFP, through in particular a voluntary ‘29th regime’.

28.11.2013

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS (*)

for the Committee on Employment and Social Affairs

on the financial participation of employees in companies' proceeds
(2013/2127(INI))

Rapporteur (*): Fabrizio Bertot

(*) Associated committee – Rule 50 of the Rules of Procedure

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Believes that, in order to promote financial participation for the purpose of creating a new form of company financing and enabling employees to be more connected to the company that employs them, employers should be given the opportunity to offer employees share capital subscriptions or specific debt securities (bonds); takes the view that the capital subscriptions should be voluntary for the employees, acting either as individuals or as a group, as well as for the company;

2. Is of the view that Employee Financial Participation (EFP) can also be a form of bonus for the employee, through capital participation or specific bonds issued as a type of deferred compensation, depending on the financial product used and the type of company in question;

3. Stresses that further transparency is needed in national employee ownership schemes and especially in calculating the effective tax burden across the EU-28 in order to prevent double taxation and discrimination;

4. Points out the differences between the Member States as regards compulsory social security contributions on income for financial participation;

5. Notes also that tax differences in employee ownership schemes constitute barriers to workers' mobility and free movement of capital;

6. Reiterates in this regard the need to guarantee the mutual recognition of employee

ownership schemes as a first step towards a common European model;

7. Calls on the Commission to present a framework for a European model of employee ownership, to be developed as an alternative, optional instrument for the Member States, with the aim of deepening the Single Market, improving the cross-border activities of companies, especially SMEs, and protecting employees of subsidiary companies; notes that a European framework of this kind should serve only as a best practice option and be available for use by companies on a voluntary basis;

8. Notes that a framework for a European model of employee ownership should not override national taxation rules;

9. Calls on the Member States to provide tax incentives, in line with best practice principles, when promoting employee ownership schemes;

10. Points out that precisely targeted tax incentives could increase employee financial ownership in various Member States and even add to economic growth;

11. Believes that, in order to create a level playing field and not to hamper the internationalisation of enterprises, and to prevent double taxation and discrimination, the Commission should consider an optional, voluntary and overarching ‘29th regime’ to complement national taxation systems;

12. Is of the view, therefore, that the Commission should present guidelines on the taxation of EFP;

13. Notes that, as indicated before the financial crisis, remuneration policies that encourage excessively risky behaviour by employees can undermine the sound and efficient management of credit institutions and investment funds and other undertakings in the financial sector;

14. Points out that employee ownership fosters much-needed social cohesion and serves as an important addition to sustainable corporate governance; stresses, nonetheless, the need to take precautions when promoting ownership schemes so as not to substitute wages with profit-sharing systems;

15. Believes that any measure relating to the financial participation of employees in company income should be sustainable in the long term and be based on the principles of voluntary participation, equality among workers and due diligence, especially for SMEs; emphasises the fact that, despite the EU’s recognition of the utility of EFP schemes, this area is not a Union competence;

16. Acknowledges that business succession, additional funding, staff retention and other problems characteristic of SMEs, can be alleviated by employee share ownership plans; is of the opinion that employee ownership schemes in small and micro enterprises can be combined with labour market measures, such as unemployment benefits, and thus help to reinstate the unemployed;

17. Notes that there is a lack of information and education about possible employee ownership

schemes, especially among SMEs; calls on the Commission and the Member States in this regard to better organise information campaigns and to encourage the cross-border transferability of best practice schemes among Member States.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.11.2013
Result of final vote	+: 32 –: 3 0: 1
Members present for the final vote	Burkhard Balz, Jean-Paul Besset, Sharon Bowles, Udo Bullmann, George Sabin Cutaş, Rachida Dati, Derk Jan Eppink, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Liem Hoang Ngoc, Syed Kamall, Astrid Lulling, Ivana Maletić, Hans-Peter Martin, Arlene McCarthy, Sławomir Nitras, Ivari Padar, Anni Podimata, Antolín Sánchez Presedo, Theodor Dumitru Stolojan, Ivo Strejček, Sampo Terho, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool, Pablo Zalba Bidegain
Substitute(s) present for the final vote	Fabrizio Bertot, Philippe De Backer, Sari Essayah, Ashley Fox, Olle Ludvigsson, Nils Torvalds, Emilie Turunen, Oleg Valjalo

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	5.12.2013
Result of final vote	+: 32 –: 3 0: 0
Members present for the final vote	Regina Bastos, Edit Bauer, Heinz K. Becker, Phil Bennion, Pervenche Berès, Vilija Blinkevičiūtė, Alejandro Cercas, Ole Christensen, Minodora Cliveti, Emer Costello, Frédéric Daerden, Richard Falbr, Thomas Händel, Marian Harkin, Stephen Hughes, Ádám Kósa, Jean Lambert, Patrick Le Hyaric, Verónica Lope Fontagné, Olle Ludvigsson, Elisabeth Morin-Chartier, Csaba Őry, Siiri Oviir, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Gabriele Stauner, Jutta Steinruck, Traian Ungureanu, Inês Cristina Zuber
Substitute(s) present for the final vote	Georges Bach, Sergio Gutiérrez Prieto, Anthea McIntyre, Evelyn Regner, Csaba Sógor