

# THE NEW BELGIAN LAW ON EMPLOYEE PARTICIPATION

**Presentation in LJUBLJANA, 05.02.2002**

**by RIK CARPENTIER,**

**Counsellor - Belgian Minister for Small and Medium-sized Enterprises Rik DAEMS**

Till now, a general statutory framework to allow employees to participate in the capital or the profits of their company didn't exist in Belgium.

The regulation regarding stock options is in practice only accessible to executives, and during the previous term of office, it was impossible to get to a political consensus to elaborate a general regulation for all the company's employees, in spite of several bills.

In its Coalition agreement of July 1999, the new Belgian government announced that it would take several initiatives on that matter. Less than two years after, on the 29<sup>th</sup> of March 2001, the new law on employee participation was unanimously approved by the Parliament.

The Government and the Parliament are convinced that a system in which all the company's employees can participate in the capital and/or the profits contains a large number of advantages:

- Employee participation is an instrument of internal collaboration within the enterprise which has proven to contribute to a better position for the enterprise in terms of competition;
- Employee participation stimulates the common use and creation of knowledge;
- Participation leads to greater transparency regarding the enterprise's results, better internal democracy within the enterprise and finally better management.

The new Belgian law is based on the following general principals:

- The participation regulation has to be pursued on enterprise level; a decision to introduce the system can never be taken for the entire sector.
- Each enterprise decides voluntarily whether to participate or not.
- To guarantee the necessary flexibility, the interested enterprise can choose between several formulas, in relation to the needs and characteristics of each enterprise.
- The chosen formula has to show an obvious connection with the company's results.
- As well the decision to introduce the participation system as the introduction of a concrete participation regulation have to be the result of collective consultation between the employer and the employees.
- When an enterprise accepts a participation plan, it has to be open to all employees. Collective motivation is the objective; individual motivation can be reached through other regulations, like the existing system of stock options.

These general principals, and especially the principal that participation can not or shall not replace the salary and thus is an additional income for the employee, have to contribute so that a general political consensus on the bill can be reached.

As mentioned above, the enterprises have the choice between two possible participation formulas. Or they let their employees share in the profits, or in the capital.

In the first case, the employees annually receive an amount of cash, in proportion to the company's profits for that year. In the second case, they participate through stock options.

In both cases, the Government provided a fiscally and parafiscally advantageous treatment for these participation advantages. The Government wanted to fiscally stimulate the participation system even more because in that case, the employee would be willing to take a risk, to postpone his personal advantage in time and to contribute to build up the company's necessary risk capital.

In case of a withdrawal in cash of a profit participation, a social contribution of 13,07% is deducted – this way, a contribution on the additional income on top of the ordinary income is created to finance the social security – as well as an advance tax payment on moveable property of 25%. The profit is not taxed when it comes to personal taxation.

In the second case – the withdrawal of shares – an advance tax payment on moveable property of 15% levied.

So what does this mean in practice? There is a certain number of clear legal conditions linked to the realization of a so-called participation plan:

- The right of initiative to introduce a participation plan is reserved to the employer.
- The participation plan can only be introduced by means of a collective labour agreement on business level. In Belgium, a CLA is a collective agreement between the employer and the employee's trade union representatives in which the provisions on the subject of salary and the terms of employment are established. On this matter, a special CLA has to be concluded with just one purpose: the participation plan. In small and medium-sized enterprises, where there is no trade union representation, the participation plan will be introduced by way of a so-called accession charter, in which the employer offers each and every employee the opportunity to express his opinion on the plan and to whether he will participate or not.
- All the company's employees have to be able to participate.
- The total amount of the participation should not exceed 10% of the total gross amount of salary and 20% of that year's taxed profits.
- To avoid that the participation replaces a part of the salary or other existing advantages in kind, the presence of a CLA on salaries covering the same period is a vital condition.
- Along with the realization of a participation plan, the employer is obliged to define that the introduction of the employee participation will not provoke job losses within the enterprise. This has to be considered as a declaration of commitment.
- It is also important that the law stipulates that the CLA can determine the period of unavailability of the shares, being anything between two and five years.
- Theoretically speaking, the possibility (and not the obligation) exists to also create a cooperative participation partnership together with the employees owning the capital participation and choosing to accede to this partnership.

For SME (small and medium-sized enterprises), a third formula has been provided, besides the profit and capital participations. Merely these enterprises can opt for the investments savings plan system.

In this case, the profits which normally are directly assigned to the employees are immediately replaced at the company's disposal in the form of a loan for a period between minimum two and maximum five years. During this period, the involved employees receive a return on the invested amount, which can not be lower than the market rate of interest in force.

The intention of this third system is to offer the SME (which are more susceptible to limit the number of people who are in possession of shares to the executives) the possibility to motivate the employees by means of a profit participation and, at the same time, to continue to dispose of this capital for a certain amount of time so it can be invested into the company. The law prescribes in a limitative way which investments the SME is allowed to finance with these funds.

To conclude, it is obvious that the new law constitutes a great leap forward. It allows Belgium to get abreast with its disadvantages regarding employee participation compared to the countries.

The law clearly is an well-balanced compromise between flexibility and the necessity of rules and guarantees. In combination with the existing stock options system, the Belgian enterprises have been able since the 1<sup>st</sup> of January 2002 to offer both collective and individual stimuli for employees to participate in the company they work for.