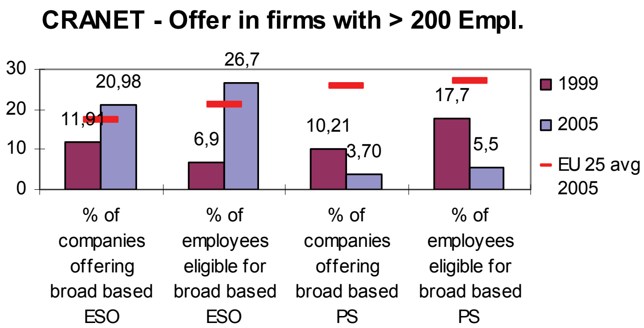
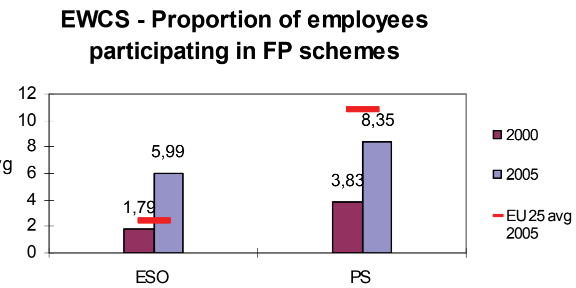
Part 2

Country Profiles

I. Belgium

Some forms of employee financial participation began to emerge at the end of the 19th century; the number of plans, however, remained very small, especially between 1945 and 1990. The Belgian government introduced its first incentives for employee share ownership in King's Arrest 'Monory-De Clerq' on 9 March 1982. These provisions were primarily intended to support the stock exchange in the wake of a financial crisis; among them was employee share ownership, submitted in a proposal by the Liberal Party. Still applicable, these provisions have proved efficient. Additional incentives were introduced in 1991 by the Law on Equity Capital Incentives. The Law on Incentives for Stock Options of 26 March 1999 and the Law on Promotion of Employee Financial Participation of 22 May 2001 followed. The latter laws introduced tax incentives for profit-sharing and employee share ownership schemes; however, the number of plans continues to be relatively small.[79]





[79] According to EFES from 2001 to 2007, only four share plans and around 40 cash plans were set up.

Approximately 10 per cent of large, primarily multinational companies in the financial sector had employee share ownership plans in 1999 (Priewe and Havinghorst, 1999). Stock option plans have become relatively widespread. Over 40 per cent of enterprises with more than 50 employees offered stock option plans in 2002 (PriceWaterhouse-Coopers, 2002). Many of these, however, are limited to management.

1. General Attitude

Especially since the end of the 1990s, the government has supported employee financial participation, regarding it as a pillar of the social security system. However, legislative proposals have been introduced into Parliament from the beginning of the 1970s. These were mainly sponsored by the Liberal Party, although until 1999 the Socialist Party blocked all such proposals. At the end of the 1990s, the government announced a new employee financial participation promotion campaign intended to spread financial participation to 25 per cent of all employees. The employers' associations (for example, Federation of the Belgian Enterprises, National Federation of Small Firms and Traders) had given support to employee financial participation even earlier, seeking to influence the government through campaigns in the mass media which were obviously successful. The employers' associations, however, mainly favour financial participation only for executives and higher management. The trade unions (especially the largest, the Christian Unions (CSC/ACV) and the Socialist Unions (FGTB/ABVV)) generally oppose any form of employee financial participation on the grounds that employees are powerless to influence competitiveness or profitability. To a certain extent, they do support employee share ownership plans not financed from the wages or salaries of employees.

2. Legal and Fiscal Framework

The Law on Promotion of Employee Participation of 22 May 2001 regulates the procedure for establishing employee financial participation plans, especially cash-based and share-based profit-sharing. Terms and conditions prescribed by law (for example, rules for calculating length of employment, duration, mandatory or non-mandatory participation of employees, and blocking period) must be introduced by a collective agreement or, in companies without union representation, by a collective agreement or an act of accession.[80] For group level plans, it is sufficient that the company which first proposed the plan within the group concludes the collective agreement and the other companies consult with their employee representatives. Moreover, the bodies representing employees must

80 Terms and conditions not prescribed by law can be introduced by the employer company upon consultation with the workers' council; in companies without a workers' council, with the committee for prevention and protection at work; in companies without such a committee, with the union delegation, and in companies without union representation, with all individual employees.

be informed of how the plan relates to the company's employment development and employment policies before the plan is introduced. Plans must include all employees, with the possible exception of employees with less than one year of service; different classes of employees may be treated differently under the plan if this is the industry-wide collective agreement or a Royal decree. Plans are generally voluntary, unless the collective agreement or the act of accession provide otherwise. The size of the plan is limited by a double ceiling: the total annual amount of transfers under the plan cannot exceed 10 per cent of the payroll and 20 per cent of the annual profit after taxes.

a) Share Ownership

Companies are allowed to acquire own shares up to 20 per cent of the equity capital for distribution amongst their own employees without decision of the general assembly (Art. 620 para. 1 (2), 609 para. 1 (3) Law on companies - CL). Shares acquired in this manner are not transferable for the period of five years (Art. 609 para. 1 (4) CL). Furthermore Art. 329 para. 2 (1) CL allows companies to advance funds, make loans, and provide security, with a view to acquisition of the company's shares by employees of the company within the limits of the value of distributable reserves, unless the company's net assets do not fall below level of issued share capital. A discount is limited to 20 per cent of the share price (Art. 609 para. 1 (3) CL).

Employees may be granted shares, share certificates or stock options under an employee share ownership plan. If the shares are held two to five years, the special tax of 15 per cent on the benefit (if shares are transferred free or at a discount) applies. The blocking period terminates earlier if the employee is dismissed, resigns for serious cause, retires or dies, or if the plan shares are publicly offered, if control of the company has been changed by the transaction, or if the employee is transferred to a non-affiliated company under the collective agreement 32bis. Shares sold during the blocking period are subject to an additional punitive tax of 23.29 per cent. Stock option plans are governed by a special law.

Share ownership plans – If restricted stock is granted free, the benefit can be taxed at grant or, if ownership is transferred later,[81] at vesting. The tax base is the market value of publicly traded stock. If ownership is transferred later, the tax base is reduced to the market value less 20/120 (that is, 16.7 per cent) to compensate for market risk. On common stock granted free or at a discount, the taxable benefit corresponds to the fair market value of quoted shares or so-called net asset value[82] of non-quoted shares. For quoted shares the tax base can be reduced to 100/120 (that is 83.33 per cent) under certain conditions.[83] The employer company can deduct the discount from the tax base of the corporate income tax if the stock is purchased and sold by a foreign company which charges the discount back to a Belgian company. If a Belgian company purchases and sells the stock,

81 A criterion of a later ownership transfer is that no dividends are paid to the employee during the blocking period.

82 The net asset value defined as the amount of company net equity and reserves divided by the total number of shares.

83 For example, if the company grants a 'substantial' number of discounted shares and the purchase of the shares on the stock market may be expected to result in a drop in price or a two-year blocking period applies.

the deduction is subject to debate: if the discount is regarded as capital loss, it is not deductible, but if it is regarded as personnel costs, it can be deductible. However, it is probable that the tax authorities will generally favour the more restrictive option.

Stock option plans – Stock option plans to which tax incentives apply are governed by the Law on Incentives for Stock Options of 26 May 1999. This law applies to stock options granted as of 1 January 1999. Stock options are taxed at grant. If the employee does not notify the tax authority within 60 days after grant, the option is considered refused.[84] Since employee stock options are usually not tradable, the tax base is generally a lump sum value equal to 15 per cent of the underlying stock value at grant plus one percent for each year or part of the year beyond the initial five years from grant to expiration. The following conditions apply: The tax base can be reduced by half (that is, to 7.5 per cent plus 0.5 per cent for each year or part of the year) if options cannot be exercised until three years from the date of issue; the exercise period does not extend beyond the tenth year following the year of issue; the options are transferable only upon death of the employee; the underlying shares are of the employer company, its parent or grandparent company; no guarantee was issued by the employer company or an affiliated company against fall in value of the underlying share after its grant; the strike price was determined at the time of offer. No compulsory social security contributions are to be paid on the lump sum benefit. Stock option plans and the prospectus must be approved by the Bank and Finance Commission prior to the introduction.

b) Profit-Sharing

Profit-sharing plans are usually cash-based. For small enterprises, defined in the Company Code, the so-called investments savings plan was introduced by the Law on Promotion of Employee Participation of 22 May 2001. Under these, an employee immediately loans his share of the annual profit to the company; the loan must be repaid within two to five years with interest. Tax incentives and pre-conditions for interruption of the blocking period for these plans are the same as for share ownership plans. All profit-sharing plans are subject to special tax rates on the attributed profit share minus the general rate of the social security contribution: 15 per cent for investment savings plans and 25 per cent for other profit-sharing plans. The employer company cannot deduct the profit attributed to employees from its corporate income tax base.

c) Participation in Decision-Making

Participation in decision-making has no connection with financial participation; financial participation plans are specifically forbidden to extend existing decision-making rights. However, the plan can only be introduced when a collective agreement or an act of accession and consultation with employees' representatives is prescribed for the remaining part of the plan so that terms and conditions are negotiated with employees' representatives; thus some elements of participation in decision-making may be included in the financial participation plan.

84 Until 24 December 2002 it was considered as acceptance of the stock option.