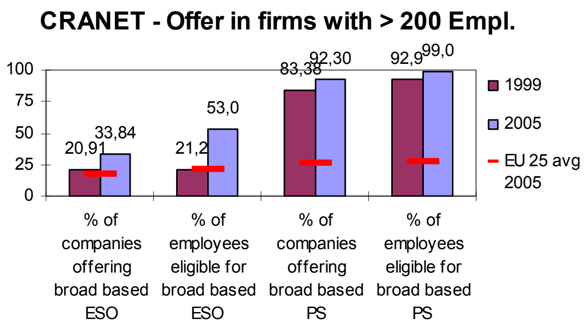
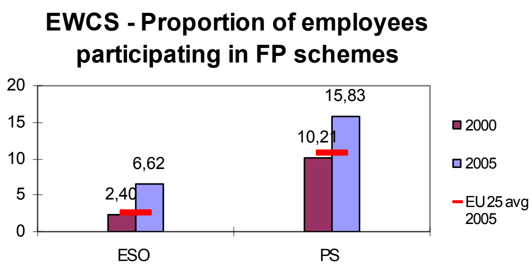
XI. France

France has a relatively long tradition of employee financial participation, especially different forms of profit-sharing and collective savings plans. The first profit-sharing plans (so-called intéressement) were introduced in 1959, but they did not become wide-spread until substantial tax incentives were introduced and restrictions abolished in 1986. A second type of profit-sharing plans (participation) introduced in 1967 were compulsory for all companies with more than 100 employees, a number reduced to 50 employees in 1986. Additionally in 1967, tax incentives were introduced for profit-sharing and the first short-term savings plans (Plan d'Epargne d'Enterprise (PEE)) were adopted. Important improvements were enacted in 1994 for all types of plans. The most recent employee financial participation plan is the long-term savings plan (Plan d'Epargne-Retraite Collectif (PERCO) introduced as Plan Partenarial d'Epargne Salarial Volontaire (PPESV) in 2001 and renamed in 2003) designed to facilitate voluntary savings for retirement. Stock option plans were first introduced only for listed domestic companies in 1970 and extended to unlisted and foreign companies in 1987. Although the taxation of these plans became more favourable in 1996, they are still prevailingly used by executives and seldom broad-based.





Currently, four basic plans are the most common: voluntary profit-sharing (intéressement), compulsory profit-sharing (participation), short-term savings plans (Plan d'Epargne d'Enterprise (PEE)) and long-term savings plans (Plan d'Epargne Retraite Collectif (PERCO)). Whereas 'participation' is compulsory for all companies with 50 or more employees, the other plans are voluntary. All these plans are traditionally classified as profit-sharing plans, although 'intéressement' can be linked to indicators other than profit or to non-financial indicators and savings plans are more a financial vehicle for profit-sharing than genuine profit-sharing plans. The traditional classification is followed here but with the above reservations. Shares can be transferred to employees directly for free or at a discount, but distinctive share ownership plans are seldom. Employee share ownership generally emerges from profit-sharing plans when profit shares, employee earnings or employers' matching amounts are invested in company shares. For this reason, statistical data are only available for profit-sharing plans (which have to be registered with the Ministry of Labour) and not for employee share ownership.

According to the data of the Association Francaise de Gestion (AFG), two-thirds of large companies operated profit-sharing plans with 10.3 million beneficiaries in 2006. In this year, the total amount of funds allocated in profit-sharing plans was Euro 12.9 billion, of which Euro 5.8 billion were held in 'participation' profit-sharing plans, Euro 2.5 billion in 'intéressement' profit-sharing plans, Euro 2.9 billion were voluntary payments of employees, and Euro 1.7 billion were matching payments by the employing company to PEE and PERCO. The cumulative value of assets (including funds invested in 2006, value of the remaining assets and capital gains from these assets) was Euro 82.4 billion, which is 19 per cent more than 2005. In 2006, 52 per cent of assets from funds were invested in company shares, so it seems that employee share ownership is increasing, although the share of employees in most companies is still less than 3 per cent.

1. General Attitude

Successive governments have been developing employee financial participation schemes for the last 40 years. Legislation had to become more complex in order to prevent discrimination of lower-ranking employees in relation to management, on the one hand, and to prevent employee abuse of these schemes to avoid taxes, on the other hand. The main political goals are more equal distribution of wealth through participation in enterprise results, enhancing purchase power and solving social security problems, especially pensions.

The employers' associations support voluntary plans as these allow more flexibility in the planning of labour costs; they strongly oppose compulsory schemes, although they are compelled to implement them. Employers also support the development of savings plans and advocate the view that these should be closely connected to pension plans and even replace them. The trade unions generally support all schemes that do not lead to a reduction of cash pay. If employee assets are to be invested, the trade unions advocate diversification on the grounds of less risk rather than investment in the employer company's shares. They oppose using the savings plans to reduce or replace pensions.

2. Legal and Fiscal Framework

The major employee financial participation plans 'intéressement' profit-sharing, 'participation' profit-sharing, short term savings plans (Plan d'Epargne d'Enterprise (PEE)) and long-term savings plans (Plan d'Epargne-Retraite Collectif (PERCO))[119] were introduced by various laws (that is, Law on Profit-Sharing of 1959, Law on Compulsory Profit-Sharing of 1967, Law on Employee Savings Plans of 1967) which have been amended many times, most recently by the Law of 31 December 2006 and the Law of 4 December

119 This plan evolved from the Plan Partenarial d'Epargne Salarial Volontaire (PPESV) and may be set up as an inter-enterprise (PERCOI) or branch (PERCOB) plan.

2008. Irrespective of the type of plan, an employee starting to work for the company must be informed of the plans in operation and the pre-conditions of participation. Company training of employees on financial participation issues is linked to tax incentives. The tax relief for the employer company is Euro 75 for one hour training of the employee, but not more than Euro 5,000 per company for two years.

As confirmed by the 2006 amendment, plans have to be approved by the Ministry of Labour prior to introduction. If the state authority submits no objections within four months of submission of the agreement by the employer company, the plan is deemed approved. However, this provision does not protect the employer company, should the competent state authority contest the plan implementation.

a) Share Ownership

As explained above, no special share ownership plans are common; share ownership is generally acquired by means of profit-sharing plans. However, it is possible to transfer free shares to employees; since 2006 such transfers are without a holding period and with a vesting period of four years. In short term savings plans it is possible to offer employees to subscribe to a capital increasing at a subscription price with up to 20 per cent discount of the fair market value using their savings and company matching contributions. In privatisation, 5 per cent of shares are reserved for employees and can be offered at a discount of up to 20 per cent of fair market value.

b) Profit-Sharing

As explained above, all major plans are broadly regarded as profit-sharing plans. An employee may participate in different types of plans at the same time if several plans are offered by the company. The combination of different plans is advantageous from the viewpoint of taxation and, therefore, quite common. Profit-sharing accumulations can be transferred to PEE or PERCO as well as - for profit-sharing only - to a special blocked account in the companies' accountancy. Since 2006, it is prescribed by law that the company must introduce PEE if it operates a profit-sharing plan (participation) and must introduce PERCO if it has been operating PEE for more than five years.

'Participation' profit-sharing plans are compulsory; the other three plans are voluntary. Profit-sharing, both 'intéressement' and 'participation', as well as PERCO can be introduced only on the basis of an agreement with employee representatives, whereas PEE may also be based on a unilateral decision of the employer company. All plans must be broad-based (that is, apply to all employees, with the exception of those with less than three months of service). A blocking period of five years (profit-sharing, PEE) or until retirement (PERCO) is compulsory and linked to substantial tax incentives, which generally include exemption from personal income tax and social security contributions and imposition of special social contributions of 7.6 per cent for both employees and the employer company and on returns of 10 per cent. The blocking period expires under certain personal circumstances of employees (death, disability, cessation of employment, insolvency, marriage, birth of a third child, divorce while keeping custody of at least one child, purchase of a principal residence, founding or acquisition of an enterprise by the employee).

Invested employee earnings and matching amounts of the employer company must be, and employee profit shares can be, transferred to mutual funds (FCPE), usually managed by assets management firms, that is branches of banks or insurance companies which invest the assets in shares or bonds of the employer company or of several different companies. FCPEs are usually at enterprise level (whereas special rules apply to SMEs), they may be either diversified or non-diversified and while the company must offer the former the latter is optional. If the employer company is not listed, the FCPE is obliged to invest one-third of assets in marketable shares or bonds, unless the company buys back 10 per cent of its own shares or all assets belong to employees planning to participate in a leveraged buyout. After the blocking period expires, the accumulated assets are paid out as a lump sum (all plans) or an annuity (only PEE and PERCO).

Table 7. Composition of the Diversified FCPE

(Limitations for certain types of assets / issuers in per cent of total value of the FCPE)

maximum 33 per cent (0 per cent for multi-non-listed SME fund) qualified assets of enterprise / group that grant their employees contributions in order to acquire shares in the FCPE	minimum 66 per cent (100 per cent for multi-non-listed SME fund) other qualified assets / investments: – maximum 5 per cent of each issuer / investment fund – maximum 10 per cent of diversified investment fund investing in employer company

Table 8. Composition of the Non-Diversified FCPE

(Limitations for certain types of assets / issuers in per cent of total value of the FCPE)

minimum 33 per cent up to 100 per cent (maximum 66 per cent for non-listed SME fund) qualified assets of enterprise / group that grant their employees contributions in order to acquire shares in the FCPE	maximum 66 per cent (minimum 33 per cent for non-listed SME fund) other qualified assets / investments maximum 5 per cent of each issuer / investment fund

In the following, individual plans are presented:

Compulsory Profit-Sharing (participation) is compulsory in all companies with 50 or more employees, while voluntary in smaller companies. However, not all such companies have introduced profit-sharing plans in practice, especially if they cannot pay the minimum amount of profit share due to plan participants according to the compulsory formula given the financial results. The compulsory formula for the special profit-sharing reserve is as follows: 0.5 x (net profit – 5 per cent of share capital) x total wage bill/value added. In addition, an additional bonus (the so-called 'working dividend') can be paid according to the general rules of the company's profit-sharing plan if profits are substantially higher than expected. The maximum annual amount per employee is equivalent to 75 per cent of the annual ceiling for the calculation of social contributions, for example, for 2009 Euro 25,731. The plan can be introduced on the basis of an agreement with the trade unions or with the workers' council or with the approval of a two-thirds majority of employees. Since 2006, profit-sharing became a compulsory part of collective agreements of the economic sectors which then may be applied to individual companies on a voluntary basis. Since the 2008 amendment each year employees may opt to have their profit share paid out for the current year. If they do not, their profit share is automatically deferred and, during the blocking period, transferred either to a special blocked account in the accountancy of the company (CCB) or to a mutual fund (FCPE). If deferred, the benefit is exempted from personal income tax and regular social security contributions; a 2 per cent social tax for employers and a flat social contribution of 7.5 per cent plus 0.5 per cent (total 8 per cent) on 97 per cent of the employees contributions apply instead. The interest or returns are subject to a special social contribution of 10 per cent and, if paid out during the blocking period, income tax (if the interest or returns are accumulated, they are exempt from income taxation).

Voluntary Profit-Sharing (intéressement) is voluntary and its formula is free. It can be linked to indicators other than profit, such as reduction of losses, fewer work injuries or other performance-related indicators, but it is usually based on financial indicators. The maximum amount is the same as for the profit-sharing plan. It is introduced by a three-year agreement with the trade unions or the workers' council, which is not automatically renewable, or on the basis of approval by two-thirds of all employees. The amount normally is paid out to the employee immediately and is then exempt from social security contributions (except the special flat social contribution of 7.5 per cent), but subject to full personal income tax. However, if the profit share is invested for more than five years in a company savings plan (PEE) or until retirement in a long-term savings plans (PERCO) income tax exemption applies and the fiscal treatment is as described above.

Savings plans (PEE, PERCO) are voluntary and their formula is free. The holding period is five years for PEE and until retirement for PERCO. An employee can transfer part of his earnings and/or his profit share up to a ceiling of the total amount of 25 per cent of his gross earnings to the savings plan. The company is entitled (but not obliged) to match the employee contribution with an amount up to three times higher. The maximum matching amount (abondement) was originally expressed in absolute figures, but, since 2006, it is expressed as a proportion of the annual social security ceiling. The maximum matching amount is higher for the investment in company shares than for diversified investment, and higher for PERCO (approximately Euro 6,000) than for PEE (approximately Euro 3,000) and may reach up to approximately Euro 9,000 cumulative. The matching amount is generally exempted from personal income tax and social security contributions, but is subject to a special social contribution of 7.5 per cent. However, the amount of the matching contribution exceeding the ceiling for PEE in PERCO is subject to an 8.2 per cent flat tax, and the amount exceeding the ceiling for PERCO is subject to full personal income tax and social security contributions for the employee and the employer company. As above the tax on interest and returns is a flat tax of 10 per cent. After the blocking period expires, the amount may remain in the PEE/PERCO with the same fiscal advantages, can be paid as a lump sum or an annuity or invested elsewhere, for example. In large companies, leveraged savings plans are frequent; furthermore employees can use an interest free bank loan in order to purchase up to ten times more shares than with their own earnings against a share in capital gains.

c) Participation in Decision-Making

Most major employee financial participation plans can be introduced only on the basis of an agreement with the trade unions or the workers' council, so that employee representatives generally participate in negotiations on the design of the plans. In addition, the workers' council is usually consulted before the agreement is signed and informed of the implementation of profit-sharing plans, both 'intéressement' and 'participation'. For savings plans, a special supervisory body elected by the workers' council must be consulted and informed. Mutual funds are managed by a supervisory board consisting of one-half employee representatives, elected by the workers' council for two years, and one-half employer representatives. If the assets are invested in company shares, the chairman must be an employee representative. In practice, this body is inefficient, since the management decisions are taken at face value by the bank or insurance company and generally accepted by the supervisory board. If employees own more than 3 per cent of the equity capital of a listed company, they must have at least one representative on the company board who must be elected. The mandate of the representative ends upon cessation of employment. All companies have to amend their statutes accordingly at the first extraordinary meeting after the publication of the law. However, this provision does not play a major role in practice, since employees have a larger share in a very small number of companies.