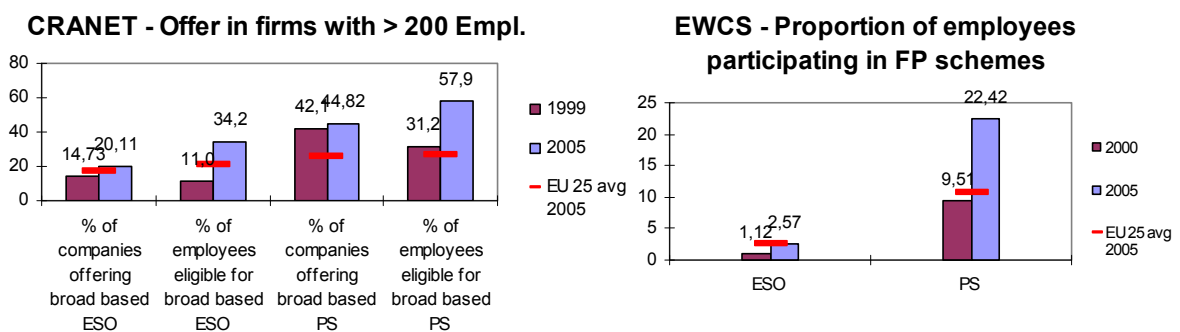


XIX. Netherlands

Employee financial participation schemes were introduced in the 1950s on behalf of expatriate executives from the United States. Many plans, especially share ownership and stock option plans, are still limited to top management. Savings plans combined with profit-sharing or employee share ownership plans, generally broad-based, have been implemented since the 1970s. The combination of profit-sharing and share ownership plans with savings plans is most common in the Netherlands and thus may be considered typical.

A long-term study of the development of employee financial participation from 1996-2001 found that the number of enterprises with employee financial participation schemes more than doubled during that time period, from four percent to nine percent. Although these figures include executive plans, a trend could be observed: executive plans had decreased in number, while broad-based plans had increased (Poutsma and Van den Tillaart, 1996; Stikkelbroeck, 2001). Profit-sharing plans showed only a five percent rise during the same period. The assumption was that this form of financial participation had peaked.



More recently, a study of employee financial participation in companies listed on the Amsterdam Stock Exchange showed that 62.5 per cent of AEX companies offered such plans (Beursken, 2007). Stock option plans, offered by 41.7 per cent of the AEX companies, were the most popular. These figures, however, also include executive plans. New nationwide statistics on various kinds of employee financial participation plans are currently being prepared by the Netherlands Participatie Instituut, but as of March 2009 they had not been published.

1. General Attitude

Employers' associations traditionally backed only the management model; recently, however, they have begun also to favour broad-based plans for reasons pertaining to employee motivation. Ordinarily there is no connection between share ownership and business form. An exception is the small family enterprise whose owners generally oppose employee share ownership because they fear loss of control. Trade unions, which generally have been opposed to employee financial participation, recently have declared their support for broad-based plans on condition that no substitution for regular remuneration will be required. In 2001, the trade unions began a discussion on whether profit-sharing and broad-based stock option plans should be included in collective bargaining agreements. This proposal, however, has not been accepted.

The government has given little support to employee financial participation of late, having concluded that such plans, especially the most prevalent limited to executives only, do not contribute to a more equitable distribution of wealth.

2. Legal and Fiscal Framework

When combined with savings plans profit-sharing or employee share ownership plans benefit specific tax incentives; for this reason this combination is the most typical form of employee financial participation. In 1994, legislation on deferred profit-sharing, cash-based profit-sharing and stock options was enacted.

a) Share Ownership

Share Ownership Plans – Although public companies (Namloze Venootschap) may transfer shares directly, limited companies (Besloten Venootschap) must utilise an intermediary because share transfer for them can be made only by means of a notarial deed. The intermediary chosen for this purpose is usually a foundation (Stichting Administratie Kantoor, SAK). It owns the employee shares, exercises voting rights and transfers depository receipts of shares to the employee shareholders. Other business forms can also be used as intermediaries. Tax incentives do not apply to share ownership not combined with a savings plan. Under a savings plan, an employee may save from his pre-tax salary a legally specified maximum amount (Euro 613 in 2008). However, if savings are converted into shares, the annual maximum allowance is doubled (Euro 1,226 in 2008).

Stock Option Plans – Stock option plans were originally limited to executives, but there has been an increase in the number of broad-based plans since the beginning of the 1990s. Options may be conditional (for example, subject to a vesting period or a performance-related proviso) or they may be unconditional (that is, tradable at grant). Specific

rules regarding the moment of taxation introduced in 2001¹⁵⁷ and respective tax incentives were recently abolished so that taxes are now to be paid at exercise only.

b) Profit-Sharing

Profit-sharing is found in both cash-based and share-based forms. Since 2003, tax incentives for profit-sharing plans depend on their being combined with a savings plan. The general rules governing savings plans and corresponding tax incentives, discussed under share ownership above, also apply to profit-sharing plans. Additionally, under plans which include at least 75 per cent of employees, with employee shares being held in the savings plan for four years, a 15-per-cent flat tax is paid at exit in lieu of personal income tax and social security contribution. Under certain circumstances, the four-year blocking period is waived (for example, if the employee buys a principal residence, starts a new business, or takes a sabbatical or educational leave of absence).

c) Participation in Decision-Making

There is no direct connection between participation in decision-making and employee financial participation. The latter plans are specifically enjoined from extending those participation rights already in force. Moreover, employee financial participation is generally not a part of collective agreements. Companies with a workers' council (compulsory in all firms with more than 100 employees) must obtain council approval for any amendments made in the 'system of remuneration'; broad-based employee financial participation plans are regarded as a part of this system. However, no approval of the workers' council is required in the case of 'discretionary plans', that is, plans restricted to management only.

¹⁵⁷ As of 2001, the employee could choose between one of two tax alternatives: unconditional options could be taxed at grant and conditional options at vesting, with no tax liability at the moment of exercise if held for more than three years, or tax could be imposed at exercise on the total capital gain.