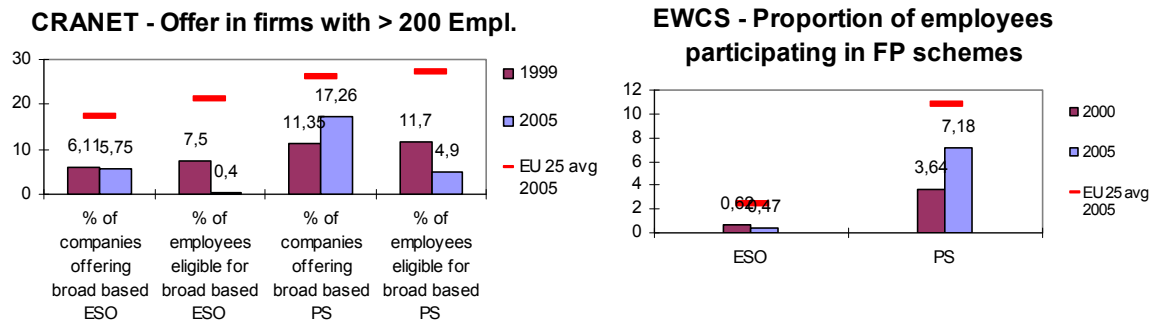


X. Spain

Employee financial participation in Spain typically takes two forms: ‘Workers’ Companies’ (Sociedades Laborales), which combine employee share ownership with decision-making rights, and profit-sharing. In recent years the number of Workers’ Companies and of their employees (approximately 20,000 enterprises in 2007, employing 125,000 workers) have shown steady growth at higher rates (see CONFESAL, 2006, p. 6) than conventional companies, indicating the success of this form of financial participation. Profit-sharing plans are mainly cash-based. According to a Ministry of Labour and Social Affairs survey in 2006, 18.8 per cent of private sector employees participate in some kind of profit-sharing in their workplace.¹¹⁵ There are relatively few employee share ownership and stock option plans; these are mainly found in large multinational companies and often limited to the executives. Tax incentives for share purchase plans, however, introduced in 2003, could encourage employee share ownership to spread.



1. General Attitude

Under the Spanish Constitution, the government is obliged to take an active role in facilitating access of employees to ownership of productive assets. Both major political parties the right wing PP and the left wing PSOE are in favour of the concept of Workers’ Companies (Sociedades Laborales). The present government supported employee financial participation with tax incentives for Workers’ Companies and employee share ownership schemes. The employer associations are careful not to promote plans limited to executives only, as in the past stock options adversely affected the financial markets, caused political friction and left a negative image generally. Nevertheless, they do not actively support

¹¹⁵ The overall figure for Spanish employees, including management and co-operatives is 23.7 per cent. Genuine profit-sharing plans and performance-related pay not connected to financial indicators are not clearly differentiated, so that it is not clear whether this data reflects the incidence of profit-sharing correctly.

broad-based plans. Trade unions accept financial participation plans only if they are on top of regular wages. Associations which lobby to protect the advantages gained by companies practicing financial participation exist on both the regional and company level (for example, MCC, Confesal, CEPES, Federaciones de Cooperativas). In 2008 (responding to a proposal by Confesal), a modification of the Law on Workers' Companies to eliminate some restrictive prerequisites, thereby making this type of company more like a normal company with standard labour relations, is under consideration.

2. Legal and Fiscal Framework

Workers' companies are governed by the Law on Workers' Companies of 1986, substantially amended in 1997. There is no special regulation pertaining to profit-sharing.

a) Share Ownership

Workers' Companies constitute the typically Spanish form of employee share ownership. In addition, some listed companies implement stock option plans (although often for executives only), whereas in non-listed companies share purchase plans are practised. Most recently tax incentives for employee share ownership and stock option plans with regard to income tax liability were introduced by the Law on Stock Ownership Incentives 46/02 of 18 December 2002, effective 1 January 2003.

Workers' Companies (Sociedades Laborales) can be founded as a workers' company or become a workers' company by changing their corporate form. Since 1997, there are two forms: Sociedad Anónima Laboral (SAL) with minimum equity capital of Euro 60,000 and Sociedad Limitada Laboral (SLL) with minimum equity capital of Euro 3,000. The majority of shares must be held by the employees, but individual employees may not hold more than one-third of the capital. The articles of association must contain regulations on transfer of shares when an employee shareholder leaves the company. Each workers' company must establish a special fund for the compensation of losses amounting to 20 per cent of its profits (compulsory 10 per cent for normal companies and additional 10 per cent for workers' companies). The remaining 80 per cent of the profits can be distributed between the members of the workers' company or attributed to a voluntary reserve to increase the company's own capital and thus the value of its shares. If the compensation fund amounts to 25 per cent of annual profits the company benefits from a 99 per cent tax exemption from capital transfer tax (this affects primarily acquisitions of real estate by the workers' company). Persons that wish to join a workers' company have the possibility to receive the unemployment security payments they are entitled to as a single flat payment (instead of monthly payments for the duration of unemployment) conditional on contributing the sums to the capital of the workers' company. Furthermore, workers' companies are exempted from: (1) taxes in connection with company formation and capital increases (additional to a tax credit of 99 per cent of taxes connected with transfer of shares to employees); (2) notarial deeds on transfers to the company as well as notarial deeds on bond debts and debenture bonds. These incentives only apply to the setting up of the workers' company (that is, they do not affect personal income tax liabil-

ity, etc.). The Law on Workers' Companies details special labour regulations (for example, on allocation of working time between employee shareholders and other employees). The federal Labour Ministry and municipalities exercise control over the workers' co-operatives.

Share Ownership Plans (Share Purchase Plans) have enjoyed tax incentives under certain conditions since 1996 which were specified in law RD 214/1999 and extended in 2003. Shares are excluded from income tax assessment under the following conditions: (1) the market value of the benefit at the time of acquisition does not exceed Euro 12,000 p.a., (2) shares are offered within the framework of a regular compensation plan (but not necessarily of a broad-based plan), (3) each employee and his family members own not more than 5 per cent of the equity capital and (4) the shares are blocked for 3 years, tax incentives apply. Shares given to employees under these circumstances will not be considered as payments in kind.¹¹⁶ No tax incentives apply to dividends, but at sale of shares a flat tax of 15 per cent instead of the personal income tax is imposed on the employee. Furthermore, for New Company Limited Partnership (SLNE) a mechanism providing an incentive for employee savings in order to acquire shares or holdings in the employing company, a 'company savings account' was introduced in 2003.¹¹⁷

Stock Option Plans are also linked to tax incentives as of 2003. If the vesting period does not exceed two years and options are not granted annually, a 40 per cent personal income tax allowance (limited by the annual medium wage determined by law multiplied by the number of years before vesting) applies. If the shares cannot be sold within three years after the option grant and the plan includes all employees on equal terms, the amount of the tax allowance and the ceiling are doubled. Approximately 40 listed companies operated stock option plans in 2003.¹¹⁸

b) Profit-Sharing

Since the 1994 reform of the Labour Market Law 11/1994 mentions the use of bonuses connected to the results and situation of the enterprise. Both cash-based and share-based profit-sharing plans are found, but cash-based profit-sharing prevails. In many cases, profit-sharing plans contain financial indicators as well as performance-related indicators, so that they cannot be considered as genuine profit-sharing plans. Some share-based plans ('performance shares') are linked to financial indicators, such as BPA, RTA, etc. Stock appreciation rights, that is, payment in cash or transfer of shares connected to the increase in the share value at the end of a determined period, are sometimes granted, but rarely.

¹¹⁶ However, it should be made clear that such a distinction refers to taxation only. In labour law terms, shares are payments in kind and, therefore, their value cannot amount to more than 30 per cent of the wage. Payments in kind have an exceptional character and their establishment is only admissible if there is a law, a collective agreement or a pact between the parties authorising it; it can never be unilaterally imposed by the employer. See Poutsma (2001), p. 82.

¹¹⁷ By Decree Law 2/2003 from April 25 regarding economic reform measures; however, this mechanism has not yet been extended to Workers' Companies as postulated by CONFESAL in 2006.

¹¹⁸ EU Report on Stock Option Plans (European Commission, 2003c). Note that these figures include executive plans.

c) Participation in Decision-Making

Employee share ownership in Workers' Companies is directly linked to participation in decision-making. The board of directors cannot decide on liquidation, capital increase or reduction or board composition without general assembly consent. Each member of the workers' company has the right to be a candidate for election to the governing bodies of the company. In other plans, there is no direct connection between participation in decision-making and employee financial participation; in particular, financial participation plans cannot extend the existing rights pertaining to participation in decision-making.