

# The Financial Participation in Portugal

Nevertheless, the members states are, since a long time ago, stimulated by the communitarian instances to create legislative conditions and others favorable to the development of forms of financial participation of the workers, the developments have been not very significant in Portugal.

## **- The Participation in the Capital -**

In fact, the Privatization Law (law No 11/90 of 5 April) establishes this matter within the Portuguese legal system, however this law is only applied to the company's target of an ownership re privatization procedure or the right of exploring the production means and other nationalized means after 25 of April 1974 (article 1 of the above referred diploma).

This diploma establishes, according article 12 - nº 1, that «...the workers of the company, as well as the ones who have kept a labor relation during more than three years ... have the right to, nevertheless the chosen way for re privatization, the acquisition or preferential subscription of shares»; in this procedure the workers benefit of more advantageous conditions than the public in general (article 12 nº 2).

Usually this benefit reflects itself in the possibility of acquisition at a lower price than the one practiced in the stock market, being assured a certain part of the capital to privatize.

The problem is that this diploma has consecrated a period of indisponability of selling, but it does not establish the duration of such period, during which the worker who bought shares cannot sell them (article 12 nº 3 and 4).

It has been also attributed in what concerns IRS a fiscal benefit (reduction of the assessment matter) for the owners of those shares.

There has been a positive adhesion of the workers to the privatization's process of their companies that resulted that a relevant part of the companies' capital is taken by the workers and small subscribers in general. Such did not mean, however, a higher intervention of those in the daily life of the company.

Trying to strengthen the capacity of intervention of these workers in the company, and in order to overcome the above referred criticizes the Government tried to get the same intervention by creating instruments that allowed workers to participate in the company decisions. It was, then, created a mechanism that allowed to concentrate the shares acquired within the privatization's processes into a Fund, which resulted in the Government Law nº 234/91 of 27 June, and like this to participate at the General Assemblies and to have right to vote, and like this to be able to have something to say regarding the decisions and the life of the company.

The workers of the join stock companies, result of the privatization of the stated owned companies, were able to constitute funds of securities investment (with shares acquired in the privatization's process or after). This rule was applied to the workers of the join stock

companies result of the privatization of the exclusively state owned companies or other nationalized companies that do not have assume a legal frame of state owned company.

The Funds gather shares issued by such companies and that have been acquired or subscribed in the privatization process or after by the workers.

In order to achieve this goal the workers had to present a request during the legal process of privatization; this process was initiated with the publishing of the frame law of privatizations and it ends when the State has, at least, 20% of those shares.

This Fund would be administrated by a gestor company.

This instrument was not practically used for the workers and/or their representatives. In fact, the good performance of the stock market in the 90s and the suspicious of the workers on the future of the value of their shares led them to look for the immediate realization of the added values, by selling their shares.

We would like to point out a recent example, on this category, that deserves a special remark having in consideration the multinational in analyse - Siemens, as well by the process that lead to the introduction of the referred mechanism.

The European Works Council of SIEMENS, reached an agreement by which shares were distributed its members and in order to avoid the prejudices that could result from the different taxes policies, the shares were kept in the U.K during of the period of indisponibility; by the end of such period the workers were able to sell their shares. In fact, these shares had a significant added value which lead that many workers had sell their shares with significant earnings.

It has to be stressed that this has been very well accepted by the workers and there is, actually, an attempt of getting some more shares distributed.

On the negative side we have to refer the case of Philips where it has been announced that shares would be distributed to the workers but such never happened.

### **- Profit sharing -**

The profit sharing is present in a significant number of big companies and, in special, in certain sectors of activity, having appeared, in the majority of the cases, via unilateral decision of the Company - being seen, mainly, as an additional form of remuneration aiming not only to strengthen the motivation of the workers, and like this the productivity of the company, as well to attribute an additional remuneration to a group of considered strategic workers for the company. These amounts do not have the inherent cost usually related to the wages.

Within the sectors covered by SIMA we can point out some companies, and just as an example, that are applying such instrument:

- HUF, Citroen, General Cables, Epcos, Mitsubishi; Amtrol Alfa; in some times Tap (national air carrier); EPAL; Tabaqueira; Petrogal; Brisa; and its admitted the possibility at Nexans.

At the Mitsubishi company, and having in attention the gains of the company, it distributes, in the end of each year, a month wage to the workers. This happens some years from now.

We will present, next, in a more detailed way the case of the PSA group (Citroen and Peugeot):

The bonus of comparticipation in the gains of the company started, in a initial way, to distributed to the collaborators of the French companies of the PSA Group, in a second phase, in 2000, it has been extended to the European companies of the group, refereed to the previous years' activity. In 2003 , and concerning the activity in 2002, it has been enlarged to the companies world-wide. This bonus, usually, is paid every year, in June, and the value paid in 2003 corresponded to 50% of the monthly wage. Of course that this depends on the profits of each year, but it has to be pointed out that such has being increasing every year.

How is regulated this matter in the Portuguese legislation?

This matter is intimately connected to the retribution concept so that it can be determinate the execution form of it.

The actual law that regulates this matter is the Governmental regulation nº 49408 of 24 of November 1969, namely article 89º that establishes that is not considered as retribution the gain sharing but only if to the worker is assured, by contract, a retribution that has to be a regular, variable or mix, and adequate to the work carried through (Note: this text has been transposed into the Labor Code, article 262º). Once gain sharing is not considered as a remuneration it is not subjected to the contributions for social security services.

This diploma also foresees in its article 88º «Bonus» that does not consider as a retribution the extraordinary bonus given by the employer as a reward for the good services given by the worker.

Note: this is not applied to the bonus referred in article 89º as a result of the individual contract nor to the bonus that by its regular and permanent character, should according the custom and usage be considered part of the retribution.

What is established in the Labor Code (Law 99/2003, of 27 of August \*), in this matter, is not very far from what is already established in the present legislation though the article's text consecrating this matter be more clarifying (article 261º). It still does not consider as retribution the bonus or extraordinary payments given by the employer as a reward for the good results obtained by the company; as well as the payments of fact related to the performance or professional merit, as well as the workers' assiduity, whose payments, during the referred periods, are not previously guaranteed.

The correction present in the actual article 89º has been transposed into the Labor Code (article 261º nº 3).

\* This legal diploma - Law 99/2003 of 27th August - already approved will go into force, in Portugal, on the 1st of December 2003, revoking the previous legal rule.

### **Retirement/Pension Complements**

We have to point out that this reality is already present in Portugal though in a sporadic way, and in the companies covered by the present project it is also possible to find this reality, namely in companies such as Citroen and HUF.

This matter is regulated by the Decree Law N°396/86, of 25 of November, that established the constitution and functioning of the retirement funds. This legal instrument has been revoked by the regulation n° 415/95, of 25 of October; that creates a distinction between open and closed funds. This Decree Law has been replaced by the Decree Law n° 475/99, of 9 of November.

Just some notes regarding to what is established by the regime applied at the Bombardier company and within the PSA Group (Citroen and Peugeot): in the first one the retirement complement is given to all the personnel with 10 working years before retirement. It has been created in 1992, the company was yet Sorefame and the fund is actually being managed by «BPI Pensions». In what concerns the second case, it is a benefit initiated in 2003. It was get because were accomplished quality objectives such as cars with higher quality and the certification of the company by the rule ISO 14001, referring to the Environment System. It has been created an insurance with a value corresponding to 5,2% of the annual wage of the each worker.

### **Treatment at fiscal level**

While that the profit sharing is, at fiscal level, considered as income of the work, the remaining forms of participation in the capital are considered capital incomes and, therefore, taxed as such, existing, however, slight differences either if we are referring to dividends or of the shares selling and eventual added values.

## **Dimension of the Financial Participation**

Like is referred in the Communication of the European Commission there is, within the European Union, a multiplicity of forms of the financial participation of the workers and a strong heterogeneity in what concerns the weight of each one in each member state and, within the country, for sectors of activity.

In Portugal, these forms are not very generalized and they are applied mainly in the big companies, many of them are former stated owned companies that were privatized from 1990 on.

Portugal, in recent studies, appears as one of the members sates with a minor presence of systems of financial participation of the workers, either profit sharing or participation in the capital.

In what concerns to the profit sharing, only 25% of the studied companies' units (i.e., companies with more than 200 workers) have systems of profit sharing, against a communitarian average of 45%. Just one remark, just Denmark and Italy present inferior values (15%).

In what concerns the participation in the capital, Portugal occupies the last position with only 5% of the studied companies to have a system of participation in the capital, against a communitarian average of 31 %.

In what concerns the ratio of workers covered by these systems of financial participation, in the total of the workers of the company, there are two distinct situations. If, on the one hand, and regarding the profit sharing the ratio relatively high and slightly superior to the communitarian average (67% and 63%, respectively), on the other hand and in what respects to the participation in the capital the ratio of workers is below of the communitarian average, being respectively of 40% and 52%.

These numbers are, however, still far of assuring the central principle i.e., the Universality of the system.

## Role of the Collective Bargaining

In what concerns to the financial participation of the workers, the collective bargaining, whatever the level of its intervention - sector or enterprise level - it has had a very limited role, circumscribed to the profit sharing.

One of the reasons for this situation has been, mainly, the lack of bargaining will show by the employers' entities, particularly it what concerns the adoption of mechanisms of universal application to their workers, i.e., covering all the workers of the company.

The potential benefits and advantages pointed out to a higher involvement of the workers via the financial participation will only be reached if, simultaneously, be guaranteed effective forms of participation, consultation and information of the workers and their representatives in the life of the companies, matter on which the generality of the employers' organizations and companies refused to negotiate.

A global evaluation of the collective bargaining, over the past years, on the matter of profit sharing has allowed to withdraw four great conclusions:

- The lack of clauses on financial participation negotiated and included in the several instruments of collective regulation of work (ICRW), either at sectorial level (collective agreements) or at company level (company agreement);
- The negotiation of these mechanisms is focussed, in the majority of the cases, in the Company Agreements (usually of big companies);
- The clauses detected in these ICRW fall upon almost exclusively on the profit sharing;
- Finally, some of the intervention and even negotiation of the trade unions on these matters ends by not being included in the Company Agreement, remaining only in the Minutes or

Protocol associated to the process of collective bargaining, therefore, not having the same legal validity.

There are, still, other cases where the sharing is established conventionally, and we can give as examples the following:

- ✧ **AE (company agreement) of Borealis:** it establishes a principle that attributes a bonus according the results, this bonus is changeable and it is defined by the company;
- ✧ **AE (company agreement) of General Cable CEL CAT:** it establishes a bonus of income on the basis of the creation of wealth and productivity;

In 1968 has been negotiated a company agreements that included a clause by which the enterprise attributed to its workers an amount to be negotiated by the collective bargaining and paid in the course of the April month, in the case of the company generates profits.

At that time the company had Portuguese an English capitals however, with the entrance of the company to the stock market it has been required to renegotiate the clause, which is actually in force (clause No 110 of the CA). The bonus is attributed if there are profits and if the Administration Board, in general assembly, purposes the attribution of dividends. In this case the workers could receive from 0,50 to 1.75 of the wage received at 31 of December of the year respecting to the profits. Until nowadays in more than 80 % of the years, profits have been distributed to the workers. Today the enterprise has only USA capital, is no more at the Portuguese stock market and it is needed to adapt the clause to be confined to the actual situation, such will occur by the occasion of the next negotiation, besides has been get as the previous years. Presently the company is managed by Spanish people and is part of the Iberian group. The attribution of a bonus has being applied at the company for more than 30 years and it is considered as a benefit to the workers.

- ✧ The banking and insurance sectors are, no doubts, the sectors where these systems are more present. However, only in the Agreement with group BCP it can be found a clause indicating, expressly, the existence of a bonus of this nature, having the company the autonomy to define the criteria of its attribution.

In synthesis, it can be stated that the profit sharing has been determined unilaterally by the companies, it has created discrimination between workers / groups of workers reinforcing the individualization of the work relations and, therefore, it has been applied with disregard of trade unions.

## **THE SOCIAL PARTNERS AND THE FINANCIAL PARTICIPATION**

This project, as by all the participants have been recognised, is indeed a pioneer in the national scene and in what concerns the study and development of the financial participation.

Like this, all the social partners are expecting in what concerns this issue. Many of them do not have yet an official position about the matter while others do not reflect on this yet. This

frame work is particularly emphasised in what concerns the employers' associations, We have to refer, due to principle issues, there is also a negative orientation on the part of the trade union structures connected with the trade union confederation, CGTP IN.

Having in mind the work developed on this matter we think that exists, in Portugal, a very high percentage not in favour of the financial participation, due to the experiences of the past that were not succeed or the wanted effects were not reached, and even because such was not concretised. Adding to that there is the fact of existing an orientation that seeks, at all the levels, that all the forms of compensation must be given through the monthly remuneration or accessory forms.

We think that that this scene is changing to what can contributes the development of similar works like the one here developed.

There are recent cases of application of financial participation very well succeeded like the cases of Citroen, Amtrol Alfa, Huf and Siemens that leads the remain workers to start thinking on financial participation as an option.

There are cases, also, where the application of the financial participation in moments of particular difficulty, were very well succeeded and that are, in a certain way, producing effects in other companies, though the adhesion to this instrument is not generalised.

We are observing, in Portugal, and assuming special importance due to the fact of existing few cases of financial participation, to the introduction of this reality by the action of the European Works Councils, showing that these ones, in some cases, are going further than just information and consultation. Due to this reality, and in the countries like Portugal where there is not a tradition on this matter, it is needed a reflection on this issue, which reinforces also the necessity of guidelines.

A fact that should be refereed and that will have, undoubtedly, repercussion at national level is the fact of SIMA, that covers all sectors of industry in Portugal, has presented is its bargaining proposals to 2004, with clauses of financial participation; such fact is very important for the assumption of decisions on this matter.

This trade union assumes that position in the development of the debate held in the present project, being this assumption, in a clear way, highly important to this matter. SIMA reports that it is necessary to continue debating this matter because there are advantages that can be explored in this context. A ponderate attention to the financial participation existing cases will allow us to withdraw the necessary conclusions.