

The Workers' Financial Participation

- The Concept -

In the sense of what has been defended, already in the course of the first project, we think that the definition of the concept of **Workers' Financial Participation** needs to have a clarification, and it is also necessary a precision of the concept, because and despite the countless works and studies that this reality has been target off, still today it continues not existing a precision of its definition or in the determination of the realities that this covers.

There are many realities and opinions to consider as form of w. financial participation as, for instance, the exclusion of the mere immediate profit sharing or the gainsharing, forms that will be, in a first analysis, the models better accept amongst the partners. Or even just considering the participation in the capital as financial participation with the particularity that only such will be considered as financial participation when resulting of that earnings' investment in the company itself.

There are, certainly, these two categories of participation in the capital and in the gains/profits, that reflect their own particularities and the distinction of those realities and specifics is reflected during this work.

Still retaking the understanding above presented it has been, by some partners, vehement supported that gainsharing is not considered as true financial participation, what deserves, from our side, a more detailed analysis.

The argument that the immediate profit sharing or the gainsharing are not true modalities of financial participation is based in the fact that in these forms there is not an investment in the capital of the company. For the supporters of such thesis, financial participation will occur only when occurs an investment in the capital of the company, a true involvement of the workers in the risk of the company. We think, however, that this conception is too restrictive and it is only orientated towards one aspect of the financial participation. The financial participation is something more, it goes beyond that and by accepting, for mere supposition, this understanding, it would mean the exclusion of a great part of the existing reality of financial participation in Europe.

It has to be added, still, the fact that, on the part of who defends that financial participation exists only in the case of participation in the capital, there is a confusion between the concept of financial participation and the concept of "going into partnership" with the workers.

By accepting such hypothesis we would be, as already stressed out, restricting the extent of application of the workers' financial participation. This because such would make unfeasible the application of this reality to other society forms than the join stock companies. And facing the different companies' universe of the different member states, these are not the ones that prevail in such universe.

This theory contains, still, other gaps, because the workers' financial participation contains in certain objectives. Those objectives are present in both forms of financial participation. They are, therefore, common goals, objectives, regardless the type of company in issue.

Finally, if we stick to the concept and aim of the financial participation - to associate the workers to the profits or results of the company - it will demonstrate that such purpose is reached, either through gains' sharing and the participation in the capital.

There are, in fact, differences between both realities, namely the risk and involvement levels are different, but it is not for the fact of existing larger involvement in one forma than in then other, that the objectives are necessarily different. The risk level cannot be considered as a qualifying element of a reality as belonging to a wider range. In fact, such is the understanding sustained by the European Commission itself that recommends that the forms of financial participation should contain an excessive risk for the employees. It is necessary to make the distinction, but such cannot lead to selective or too restrictive interpretations.

- The Financial Participation Vs. Collective Bargaining - New instruments

This emerged as one of the most sensitive issues and also more problematic ones in the course of this work having in mind the potentialities and contradictions that can appear.

The voluntary basis is condition for the development of the financial participation. Only some of the parts questioned the principles, in just some minor points. It appears, therefore, as a point of an eventual agreement's platform. However, this is a reality very related with the creation of general instruments in this matter, and in this sense have appeared, effectively, several concern demonstrations.

It is understanding of the project's experts that the basis of the conception, application and development in the different forms of workers' financial participation, has to be voluntary, under penalty of not producing the intended effects or guaranteeing the advantages that are usually associated with it.

It will be in this perspective that this situation can collide, intrinsically, with the use of more generic forms that have a more obligatory nature, through the collective bargaining instruments.

Referring to the Portuguese case, concerning the creation and the development of forms of financial participation, these have had their pillars through the collective bargaining. Very recently, and already after the accomplishment of the first project, the company TAP (Portuguese Company of Aviation) created, and included, a profit sharing clause, applicable to certain group of workers, in its company agreement.

As it is known, in Portugal, there are four levels of collective bargaining: at national level, sectorial level, group of companies' level and company level.

It seems to us, in fact, opinion shared practically unanimously, that the consecration or inclusion of a workers' financial participation clause at sectorial level will be extremely difficult, not only in its consecration but also in its application. We would like, however, to except, in this frame, the case of the retirement complements, because if they are considered as a form of the workers' financial participation, we have to refer the Belgian case that, through sectorial retirement complements obtained an enormous success in its application.

As it has been referred already, and in what concerns the Portuguese case, there are proposals at sectorial level towards the introduction of workers' financial participation forms, but they have not been developed, this due to a complete opposition of the employers, that refuse to negotiate the proposals and their inclusion in a collective agreement at sectorial level.

For such reason, we considered the collective bargaining instruments, non sectorial ones in a first approach, as a vehicle for the financial participation development. Giving, like this, special prominence for its introduction and development through the company agreements. However, always safeguarding the voluntary basis of its application and acceptance, under which the workers cannot accept any scheme or abandoning it without any sanction for it.

Before the potential of application of financial participation forms through collective bargaining, more concretely, through company agreements, it has to be given special attention to the accomplishment of a general picture composed by certain requirements, what we will call «minimum requirements»:

- 👉 Workers' information and consultation;
- 👉 Introduction and application on a voluntary basis;
- 👉 Possibility of all the workers to participate in it (including those with temporary contractual bond);
- 👉 Calculated risk for the workers involved in the scheme;
- 👉 Transparency of the information transmitted.

It was, by many of the participants, raised the need of existing a support for the implementation and application of this reality, once there is a difficulty in obtaining a legal instrument in this matter. In this picture, the collective bargaining emerged as the preferential instrument. Only as an example, it is a policy also of the Portuguese Government, to privilege the introduction of the workers' financial participation within the collective bargaining.

There are, however, two difficulties before the possibility of introduction of the workers' financial participation through the collective bargaining:

- 👉 There are countries where the process of collective bargaining is not sufficiently developed, which, consequently, influences negatively the introduction of financial participation in this way;
- 👉 On the other hand, frequently the collective bargaining is too related with wage issues and other money aspects, what hinders the discussion of other matters than not those.

In case of impasse in the collective bargaining how will be adapted, then, the financial participation?

- It can, in a certain way, influence the exercise of the right to go on strike. It influences, but not restrain it;

- It allows that, despite the impasse, there are some gain for the parts, though these earnings are independent of the wage;
- It can be a bargaining element before the results of the wage negotiation, though all does not accept this role.

... And other Instruments

In this picture we can highlight, with great importance and in certain aspects, the development of instruments such as:

- ☞ Codes of Conduct;
- ☞ Frame Work Agreements;
- ☞ International Frame Work Agreements International.

The existing difference between the first instrument and the second is based, in our understanding, on a semantic reason, without existing a real distinction among them, it will be for that reason, and in a way to facilitate the presentation, that these two instruments will be included in the same category, in the present analysis.

Frequently, the parts do not intend something as formal as a collective bargaining instrument, which has a process of its own. We have to add also that a collective bargaining instrument is wider than the frame work agreement beside that those have their own mechanisms.

There is a larger flexibility through these instruments.

That is the reason why we think that is very important, not only nationally, but also internationally, the codes of conduct, for times designated as framework agreements, they are instruments with good possibility to develop the workers' financial participation. It always will raise issues on the legitimacy of representation of the workers' representative structures. Effectively, these have been raised both at European and in international level, through the European and international structures.

In this point, deserves a special prominence the role of the European works councils, whose development we will refer in the chapter **«The Financial Participation and the EWCs - European Works Councils»**.

For organisation reasons, we think that it should be given priority to the collective bargaining instruments as instruments, par excellence, for introduction of financial participation schemes.

- The Financial Participation Vs. Dislocations / Transfers of Companies -

This idea doesn't appear as a mere academic hypothesis or just as a mere supposition, because during the several years of work in the social area always has been known that the financial participation, sporadically or not, was used in crisis situations, even going beyond what has been denominated as minimum requirements. There are, even, many cases where it has been turned to schemes very close to financial participation. For instance, in the eighties in Finland, in the decade of 80 / 90 in Malta and, still, more remotely it was in origin of financial participation plan (gainsharing) which was designated as Scanlon Plan. The Scanlon that emerged in the middle of the thirties, appeared when Joseph Scanlon, to the date president of the local union of the steel, elaborated a plan based on the participation in the earnings to save the company in which he worked.

One of the objectives of this project, and now in a more systematised way, is to analyse the possibility of financial participation as a flexibilisation element, as a production increment element. And the answer to this aim is a positive one. It can, for sure, be a generating element of flexibilisation and increase of the production, it will not be the answer to the crisis situation that Europe is facing nowadays, but it can be part of that answer. It is also pointed out as a contribute factor for the maintenance of the companies.

We think that this work is, in a certain way, the starting point of this approach, which should be target of a deeper debate and analysis.

It has been accepted by most of the interveners that, and due to the introduction and application of financial participation schemes, the workers increase their productivity by the fact of feeling part of the company. That is the reason why the maintenance of such schemes, will lead, necessarily, to a feeling of belonging to the company and why we have supported the stimulation of the workers' financial participation, as an independent aspect of the wage issues.

There are, however, cases where the financial participation was, also, used as a way to prevent the companies' closure productive units or theirs dislocation.

Within this process we have tried to present something more that support this statement, and in that sense we present, now, the case of **Tullis Russel's company**:

Tullis Russell was founded in 1809 and for the first 176 years it was a family owned company. There are two divisions in the Tullis Russell Group: the paper making company based in Markinch, Scotland and the coating company with sites at Hanley, Bollington and Ansan Korea. There are also small sales offices in the USA, France, Germany and Holland. The group manufactures and coats high quality printing grades and specialist papers. Competing in international markets, Tullis Russell has to perform to the highest standards to achieve its profits, which were £3.6m (pre-tax) in 2004. Sales in 2004 were approx. £140m of which over 50% was exported. Each company has additionally its own profit related pay scheme, which pays 15.7% of profits.

Why employee ownership?

In 1985, there was only one family member – David Erdal – still working in the firm. Most of the fourth generation Russell family had their own business interests and were keen to sell

their shares, but they wanted the company to stay independent. The family always had a strong sense of community and cared about the employees, so transferring ownership to the employees was consistent with these views – although it was not a give-away. At first the transfer of ownership moved slowly. The process was speeded up in June 1994, when the family shareholders accepted an offer of a mixture of convertible loan stock, preference shares and nonvoting shares. Immediately after the employee buyout employee share holding increased to 43%. It is now 72.5%. The buyout was effectively completed in 2002 when the last of the family loan stock was redeemed, with the exception of £150k's worth, which has been retained by a few individuals.

It was former group chairman David Erdal's belief and one which is supported by Fred Bowden, chairman & chief executive, that this form of ownership offers particular advantages in enabling all employees to share in the success of the company, ensuring greater commitment and participation. But ownership on its own is not sufficient and there are other factors, which are needed to support it.

It has, presently 850 employees and 98% are shareholders.

Representation

The share council is a mainly elected group representing the employees as shareholders in all the issues related with the shareholders. There is one share councillor for every 100 employees. At present there are 13 elected share councillors. From this number, four trustees are elected by the share council to run the employee trusts, four trustees are appointed by management and one independent trustee is appointed by agreement of all. The council meets quarterly for discussion and, also during the year, it meets every half-year with the Administration, non-executive directors, though they do not take place simultaneously.

The share council influences or has influence the Board's decisions, because they face the Administration board as the major institutional shareholders.

Trade unions represent the majority of the employees at the Markinch plant while in the other companies there are workers' councils.

The trade unions are involved in the collective bargaining covering issues such as the wages, vacation, working time, absenteeism and others. These areas are deliberately kept apart from the activities of the share council. The trade unions have regular meetings with the board to discuss the problems.

In 1995, the group board appointed a subcommittee of share councillors and directors to look at the best way of representing employees as shareholders for the next five years. They also examined current communication and training methods. The recommendations of this subcommittee were fully discussed with all the representative groups in the company before they submitted their final report to the group board. The main recommendations of the report – to strengthen the role of the share council, improve communication and embark on a training programme involving all employees – were put into effect. A key part was the need to train all employees in aspects of business so that they could fully accept the responsibilities of being shareholders. The subcommittee was re-formed in September 1999 with a remit to review the performance of the existing share council against the stated original objectives and to put forward a further plan for the representation of employees as

shareholders, covering the period 2000 to 2005. No major changes to the original proposals were made, but the subcommittee recommended that the share council's role be redefined to ensure that it became more proactive in promoting company performance and stakeholders interests.

The difference between trade unions and the share council is based in the fact that the first ones discuss matters such as wages, complaints and the share council discuss issues a long term, such as the business perspectives, which effect in the share value, wealth distribution.

The share council has to be consulted in issues such as the company's development and the group strategy; the group performance; the board work, for instance in what concerns remuneration; the accompaniment of the workers' financial participation schemes; nomination of the non executive directors; the wage policy of the directors; the dividends policy; wealth share and all the issues related to the business decision (independence of the company, issues that may affect the value of the shares, strategic changes of the company or the group, acquisitions and investments that affect more than 5% of the group asset, etc.).

Training

In 1996, a steering group of employees sat down with a professional training company to work out a way of teaching everyone in the group how to have a greater understanding of the financial results and in particular how their own performance would impact on the bottom line. They came up with a practical exercise called the TR Business Game and every employee in the group has taken part in the game. It became very competitive and a prize was awarded to the team at each company who achieved best overall performance: i.e. made the most profit, earned the most shares and made their value rise the most. Phase 2 of the business game was introduced in October 1997 with an emphasis on accurate forecasting of stock and the importance of cash management. Work is currently underway on the design of a new business game.

Communication

A group wide internal communication strategy was implemented at the end of 1996. The quarterly in-house magazine, TRQ, published since 1929 was redesigned and re-launched. TRQ includes a letter page called "Points of View" that guarantees to print any letter received from an employee, including anonymous letters. "Points of View" ensures that every question is aired in public and most importantly, the replies are written by management and published along with the original letter.

Communication is a key task for managers, supervisors and team leaders and a new approach was developed following a series of communication workshops. Improvements have been made to the monthly team briefing and notice boards and information centres have been introduced to the production and engineering areas. The effectiveness of the strategy is measured by face-to-face employee attitude surveys that are carried out every two years.

The annual general meeting of the company is held in July. An intensive communication programme of face-to-face briefings supports it for employees who are unable to attend the AGM. Presenters include group board directors, MDs and share councillors. The programme includes company presentations and the opportunity for questions. All employees receive an invitation to attend the AGM and an Employee Financial Review, which includes the share council annual report. The statutory report and accounts are available to all employees. A

question card for the AGM and road shows is also included in the mailing. Written questions can be signed or anonymous or passed to a share councillor to read out at the meeting. Feedback exercises are organised after the AGM and road shows to assess the effectiveness of these events. The information is gathered either by using focus groups of non-management employees or questionnaires.

Attitudes

Employee ownership does not change attitudes quickly or easily. In the early days there was a lot of suspicion and some non-management employees asked, "What's the catch?" Some refused to take the shares. The suspicion continued for a few years but gradually turned into a realisation that it might be a good thing after all. Now most people think it is a good thing. Managers have had to make big changes and change their style, too. Some found this very hard and some left the company. Changing management attitudes also takes time. They can feel very insecure if the ownership of the company moves to the people who report to them, rather than to outside people. It is most important that good quality managers are recruited and retained. Good managers get the support of employees for good decisions and it is clear that the most successful companies are those where the managers, wherever possible, involve employees in the decision-making in their own areas. This not only improves the quality of the decisions but it greatly increases the enthusiasm and commitment of employees. Employees too, have to change attitudes and take responsibility for some of these changes. Employee ownership then reinforces this whole cycle. Since 1998, there have been joint working groups of share councillors and senior managers who examine ways in which they can work more closely together to make employee ownership more meaningful to the employees, and for employees themselves to contribute more in decision making and the success of their own particular areas.

It could be added that communication works and it has been improved. There is true discussion on the business issues between the share council and the board. It has to be stressed out also that the mechanisms for the share are well defined.

In order to improve what exists already can be pointed out the involvement and the participation of all in the business in order to make the representatives structures more integrated.

Performance

Ownership on its own doesn't change the company performance. But when you combine it with involvement and participation and good communication, you start to see a difference. The first indications of this came from the American General Accounting Office Study, back in 1987 and there are now other studies that support this.

Has there been an improvement in performance at Tullis Russell since the introduction of employee share ownership? Judge for yourselves. In 1992 the tonnes of paper produced per employee at Glenrothes, the paper making company site, was 82 tonnes per employee. In 1999/2000 it was 175 tonnes. It would be too simple to say that employee share ownership did this on its own, but we believe that it helped.

The new all employee share scheme has been renamed, now is entitled Share Incentive Plan

At an Extraordinary General Meeting of the Tullis Russell Group held on 26th September 2000, employee shareholders voted overwhelmingly for the introduction of a new all employee share scheme and an improved system of redemption of loan stock and preference shares.

The Tullis Russell group board and the share council designed the new scheme. It is similar to the scheme already in existence, but has some additional benefits:

- Equal distribution of shares
- The TR Group operates in very competitive manufacturing environments and it has continued to prosper whilst many other paper companies have struggled or closed. Employee Ownership has undoubtedly helped TR, as the ownership structure has encouraged the sharing of information on performance, the markets, competition etc. thus helping Tullis Russell to make the necessary changes to meet the more difficult market trading environment.
- Reduction in the qualifying period to receive free shares
- An attractive saving scheme to buy shares

Despite the fact that this case is a positive one, we are, certainly, aware that this case has particularities. It is an evidence, constituting a concrete example, that the workers' financial participation applied didn't allow the closure of a company. To this positive case has to added the remaining cases in Finland and in Malta, as already mentioned opportunely. They are elucidating cases on the what, initially, appeared as a mere academic hypothesis, and to what many raised plenty of objections.

We would like, still, to present a case that happened, in Portugal, with the company SCBO (Philips' Group) intending to carry out a collective redundancy, with serious probabilities of closure such productive unit in Portugal, due to the decrease of the sales in televisions, in favour of the LCD and plasmas' TVs. The company, carrying through the information and consultation process, previous to the collective redundancy, informed of its pretension and the reasons for it. As an answer and to assure the maintenance of the company in Portugal it was proposed, for one of the trade unions' structures, and to be discussed in the phase of consultation of the referred process, the hypothesis of implementing a system of the workers' financial participation. This in order to compete with lower prices, through the increment of productivity, during the necessary period of time to find new businesses, replacing the ones that were lost. It has to be noticed that, until the date of the elaboration of the present book, it was not still presented any answer to this proposal. It is, also, of noticing that any consultation process has begun.

Let us analyse now, and in order to systematise the result and the work developed in this chapter, the hypothesis to use schemes of workers' financial participation in risk situations, companies' closures and/or companies' dislocation.

Note: Before the possibility of occurrence any of the mentioned cases, we stress the indispensable character of developing processes of workers' information and consultation, foreseen presently by the Directive 2002/14/CE, so that can exist, on the part of the workers'

representative structures, a follow-up of the development of the company's situation as well as an involvement in it.

Even before focussing on the casuistical analysis of the several hypotheses, we have to verify which, and in a generic way, can be framed in this possibility:

- ★ Total closure of the company based on non-economic reasons;
- ★ Closure, total or partial, for economic reasons (the Price of the labour or production; productivity);
- ★ Partial transfer of the production for economical reasons, based on the policy of searching for cheaper production costs in another location.

We think that a closure motivated by non economic reasons should not be analysed within the present context, nor it should not be subject of analysis within the workers' financial participation.

We are full aware that the cases of companies' closures are the one of most difficult analysis and resolution. This analysis presents characteristics specific according the sector. This because it is known that the dislocation of a metallurgical company is, significantly, more difficult than the transfer of a company of the electric and electronic sector (this sector has particularly affected in Portugal). Without a doubt that it should not be pointed out the company's dimension and also the social partners' involvement level and the way workers' information and consultation is carried through.

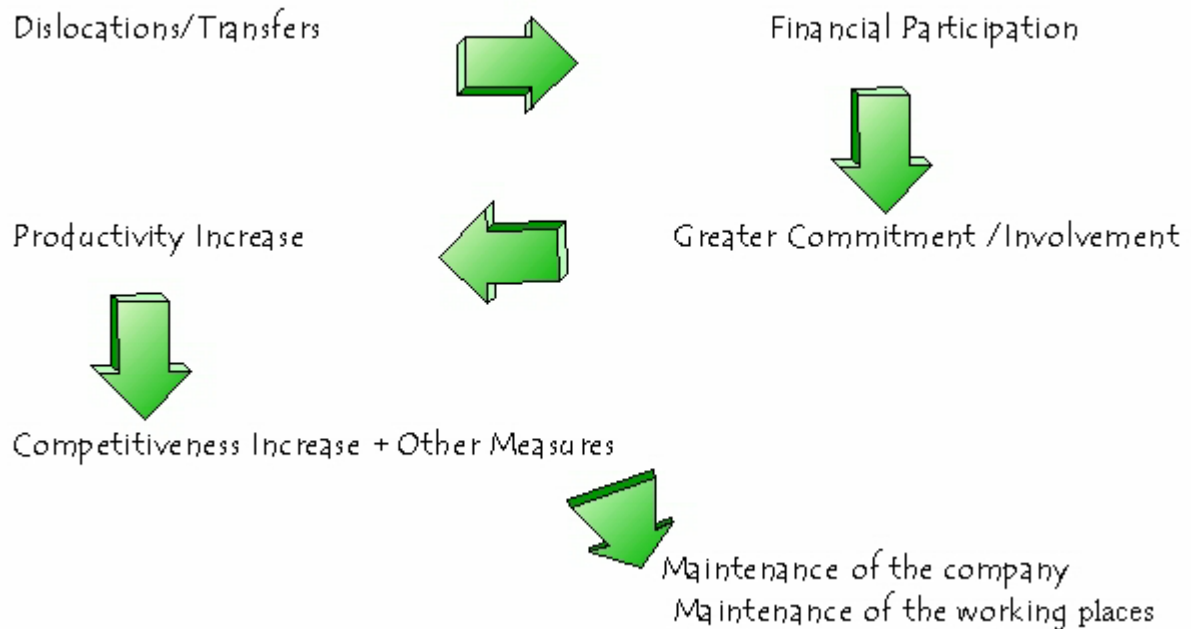
However, the company Tullis Russel has demonstrated that such is possible. And if in these the answer lies in the increment of productivity and in the increase of the competitive capacity, the use of instruments of participation financial, applied in a correct way, could be the answer.

The employees' participation is very important in obtaining the employees' commitment for the success of the companies where they work. It contributes to the prosperity of all, particularly where the managers encourage the employees' participation. In order to obtain success, it should be combined with a genuine and intensive communication and a program of consultations. It should exist, also, mechanisms to encourage the involvement and participation, and the reward system should allow the ones that create wealth to share it through shares, gratification, dividends, etc., or a combination of any of these.

In our opinion, and having in mind the concept of financial participation, in the form of gainsharing, that is linked to a concrete objective, this one will be the one to be faster applied and with better results.

This process can, still, be the answer to a conjecture situation. It is known that, presently, the markets, especially those interconnected to the sector automobile, face problems of the situation. Before such scenery, financial participation can be applied in a drop period in a way to reduce the production costs and to turn a product again competitive.

We cannot forget that the application of schemes of financial participation, in these scenarios, is not dissociated of the application of other measures, namely the case of flexibilisation of the working time.



Will this situation be a definitive answer? As far this point concerns we will remit for the analysis that is presented, following.

- The Financial Participation as an answer at low social levels -

It won't be, for sure, the financial participation the definitive answer for situations that reflect low social conditions, but it can be part of that answer. We cannot illude ourselves. There are situations in where the social rights have reached very low levels and whose combat turns to be difficult and that the European social model would not be combined with those. However, it is possible an answer «... *that passes through the introduction and development of schemes of the workers' financial participation*».

This sentence was presented by one of the interveners in the course of the presentations that took place within the present project and it is quite illustrative of this reality.

The partners think that, in this frame, and in a first analysis, that exists an advantage for the countries members of the E.U. and that it occurs due to its geographical location. This will be real for many of the member states, though not for all. Such will allow a reduction of the costs and the necessary time for the transport of the orders.

So, the establishment of financial participation schemes will allow the introduction of a payment variant. Note: it was accepted by all the fact that the **financial participation is not part of the wage**, it will a flexibilisation element that can stimulate the production. Regarding this point there is some discord because for some of the interveners the

productivity, in Europe, is already one of the highest and that difficulty can be increased, at least in a global analysis, while for other such is possible. This in certain member states and in certain companies.

Unquestionably, the issue of the wage increase continues to be a priority objective for the majority of the social partners, but they do not neglect the introduction of payment variants once safeguarded the wages.

This way we can conclude, and based in the most controversial and discussed subjects in this project, the following:

- The application and/or the introduction of schemes of financial participation is possible, since their results/dividends are not integral part of the retribution, but considered as a variant of payment that introduces some flexibility;
- The financial participation can increase the productivity, in a real way, in certain states or in certain companies, and it can appear as an answer at European level;
- The participation financial "tout cours" cannot be enough. In that case it will be necessary to ally other measures that implemented jointly will lead to an atmosphere propitiate to the economic and social development of a company.

- The Financial Participation and the EWC - European Works Councils -

This is, in our understanding, the fundamental point for the promotion and the development of the financial participation to the European scale. This is a point that, until presently, has not deserved, an appropriate development, but that could, through a single act, contribute to enlarge the geographic target of the application of the workers' financial participation.

In Portugal, the few cases that exist, and with larger success, in this frame, emerged through act developed by the EWCs of multinational companies, such as Siemens and PSA.

Frequently related with the matter of the financial participation introduction, through the EWCs, is the problem related with taxation that, despite seeming so, in a first analysis, they are not an impeditive factor to the development of the possibility to implement the workers' financial participation.

We think that, and with view to the establishment of schemes of financial participation, the EWCs are, effectively, a privileged area to do so, therefore they gather a group of specific conditions that allow an easier introduction:

- The EWC integrates a group of companies belonging to a certain group, what determines and assumes similar objectives and work forms;
- It could overcome eventual impediments to the approach and introduction of schemes of financial participation caused by the national Administrations, that don't have, sometimes, initiative or predisposition for the application of forms like these ones. Proof of that are the different behaviours assumed by the companies, when approached individually, before the possibility of introduction of these schemes;

- A EWC gathers different national perspectives, diverting the national representatives' action to a wider scope, for the global interest;
- It exists communication easiness and unity in the object of the action.

However, some obstacles can emerge:

- These matters are not object, nor were, of the program of activities of the mentioned trade union structures, and in this sense it could be noticed a lack of preparation within these matters;
- The impact not always can be the desired one because, frequently, the workers' representatives, in the EWC, don't communicate, they don't inform, their remaining colleagues on the decisions and the subjects raised within the EWC;
- It could be also pointed out some difficulties inherent to the functioning of the EWC;
- The conjugation of the directive 2002/14/CE on the workers' information and consultation and the decisions that will be taken within the EWC, sometimes, does work in the best way possible;
- It still exists another aspect, a more structural one, and that has been target of some work, directly also by the project's promoter, that concerns to a larger divulgation of what are the EWCs, their real capacities and expectations. As for the potentialities of these instruments, different experiences exist. While some demonstrate a total ignorance of this reality, other face the EWCs as true bargaining weapons, capable to solve problems.

Note: the target matters of the EWCs are, effectively, the information and consultation on transnational matters, but will these organisms have just this task? The constitution and regulation of an EWC is made through the conclusion of agreements or by the application of the subsidiary rules of the Directive 94/45/CE. Once the Directive itself makes possible, to the involved parts (Administrations and the workers' representatives), the conclusion of agreements, these must contain the will of the parts. It is there that wider scopes can be included. Making possible, in that way, that other subjects can be discussed and agreed within the EWCs.

Having in mind that, and in what concerns the multinational companies, the EWCs will be the privileged vehicle for the implementation of schemes of the workers' financial participation.

It is urgent, however, to fill in the presented difficulties.

*- The Financial Participation Vs. SE - European Company / SCS - European
Co-operative Society
And the
Directive on the Workers' Involvement -*

We would like to stress that, result of this approach, and in what concerns this point in concrete, it is noticed an elevated level of ignorance. It was, in fact, this the reason why the experts evaluate as very useful to introduce, in this chapter, some notions on what is being treated, potentialities and the reasons that were in the basis of its institution.

It has to be added another note, because in this chapter will be made reference to the SE as to the SCS jointly, this because both realities don't present, in operation terms, substantial differences, and much less in the area target of our work: the workers' financial participation.

By analysing the SE and the SCS, and connecting both realities with Directive on the workers' involvement, those realities seem to be, without a doubt, the privileged field for the introduction and popularisation of the workers' financial participation.

The workers' involvement, in the SE and in SCS, reaches another level. To the information and consultation adds another involvement form - the workers' Participation.

When incorporating this form of the workers' involvement, can be overcome one of the obstacles, frequently pointed out, for the introduction and development of financial participation forms. That is, the apprehension felt on the part of the workers in adhering to participation schemes is strictly linked to the form of controlling the income / profit generated by the company and its distribution. By making possible to a representative's of the workers to be present in the Administrations, those will be able to, through their representative, to accompany the whole process. This form - participation - it could be added workers' information and consultation (minimum request to apply financial participation) and we will obtain the conditions propitiate to the implementation of the workers' financial participation.

It still have to be added the fact that one of the objectives of the SE is the elimination of the existent fiscal barriers from member state to member state, standardising the taxes level. And the tax burden is, frequently, pointed out as one of the obstacles for the introduction of schemes of financial participation, a little bit in the sense of what already has been offered regarding the group of minimum requirements, its standardisation will emphasise its application wider financial participation schemes.

In what it concerns the reality of the European Company this can, without a doubt, be the great motor, within the companies that will adopt this reality, for the development of the financial participation. In community terms the SE and the SCS are the most developed ways to constitute companies and that, allied to you form of the workers' involvement, also very developed, they will get a wider range of for a larger reach on the workers' financial participation schemes.

Just as an example it can be pointed out what many consider as the first attempt to institutionalise the European Company - the ARCELOR case constituted by countries as Spain, Luxembourg and France. It appeared, in a first moment, as an attempt and a process

quite developed for the institutionalisation of the reality of financial participation, but without results. The failure of such initiative is connected with the tax reform at community level, that despite quite desired, was not yet reached.

- Primary Model to the progression of the workers' financial participation -
MINIMUM LIST

Before moving forward, we would like to detach the importance, for the development of the financial participation and even for the development of this list of minimum's, of the **TRAINING** and **INFORMATION**. The application of schemes of financial participation, attractive for both parts is not enough. It is necessary something more.

For the success of the application of schemes of financial participation, not only as for the results, as well for the workers' adhesion, it is essential the perception that it is necessary to do something in order to annul the fears connected to the financial participation. For such fact, we think that an involvement of all is essential. It is in this context that the Directives appear: 2002/14/CE and 94/45/CE, having as a common denominator the workers' information and consultation.

It is necessary real workers' **INFORMATION** and **CONSULTATION**, the workers that will participate in a financial participation's scheme. This so that, since the beginning, does not exist distrust. It is urgent, as such, information and consultation, still in a previous phase to the decision taken by the company to apply financial participation, that is, still in an embryonic phase. To this it has to be added, and having in mind what is stipulated by the community and national diplomas on workers' information and consultation, that it should be present since an initial phase to its consecration with the practical application. In case of non accomplishment of what is stipulated, such will mean that it won't bring an advantage as it will mean a violation of what is foreseen by the mentioned diplomas.

It ought, during the period of application of the scheme, to occur information and consultation in a periodic way, not only to full fill what is stipulated by law, but also to be faced as a dissuasive form of eventual distrusts that might exist, on the part of the workers, towards the values presented by the company, as it was already underlined in the previous point. In this point we would like to underline the Portuguese case where most of the companies present negative results, being far too much evident that such situation is extremely suspicious and leads to the rejection of any system of financial participation.

An explanation of the reasons for the introduction of schemes of the workers' financial participation must take place, and also on the aims, targets among other relevant issues. This in order to create a constant motivation on the part of the workers, not only the ones that are directly involved as well as those that might adhere, creating goals to reach.

Based in the obtained results it was, strongly, emphasised the need of the direct workers' participation in the Administration of the companies, in an accompaniment role. These pretensions rose, immediately, some questions more or less controversial related with the national processes of participation (as already referred the workers' Participation is obligatory for the SE and SCS). According some opinions we could be following a German regime of Co-determination, which doesn't exist in the whole European Union. To that adds the

dichotomy of roles between the Commissions of Workers and the trade union structures, functions, rights and role, whose scene is not also uniform within the European Union.

Having this in mind, and assisting to the reluctance that was clearly manifested by some of the participants and to the impediments that a direct participation may implicate, it was sought a commitment. First of all, we underlined that in the cases of an SE and/or SCS and according with some national and company stipulations, cases of the workers' participation are foreseen. For such fact such pretension is not improper at all and, in what concerns to the grounds, it seems us quite justified.

Going a little bit beyond what was foreseen, the solution would mean the enlargement of the aim to other situations.

It is not intended, in this case, a participation right, to the similarity of what happens with the co-determination system or participation in the administrations, but a form that allows to the workers, through an entity (nature to be defined), the accompaniment of the whole process, constituted by the workers' representative entities, or for the workers directly and individually considered.

We would like to remain that in Ireland there is a Commission that accompanies the application of the different schemes of financial participation and that, to the date, it has been demonstrating efficient results. Another option would be, although the interveners were not clear in the possibility of acceptance of the same, and a little bit like what happens in the Belgian case for the administration of the pensions funds, the introduction of a scheme that allows a sharing of competences in the administration of a fund to create and whose control would be responsibility of the workers' representative structures.

Very important, and so the participants called it, it will be the creation of an international **CERTIFICATION** in terms of financial participation.

This certification would be, or by many is seen like that, as a guaranty to confirm that a certain scheme of financial participation incorporates, respecting it, a set of principles that are evaluated as minimum's (simplicity, safety, information, etc.).

A norm, at European level, recognised by all will be, for certain, welcomed once it would certify the existence of guaranties regarding the application of the financial participation. Very close of this suggestion it appears, still, the possibility of creation of a plan, of a model, which is being carried out through another project, a little bit also searching for the possibility of guaranty of recognition.

The association, in any way, of the financial participation to the wage was excluded by all, that is, in a clear way was it accepted that the obtained results of the financial participation are not integral part of the wage.

INCOME OF THE FINANCIAL PARTICIPATION = / = WAGE

There is, however, a subject related with this one. The possibility appears to match salary increases with financial participation, that is, to consider a decrease of the wage increases and on the other hand, part of the monetary compensation would be obtained through financial participation. The annual increase would be determined by a conjugation

between the salary increase and the results of the financial participation. This hypothesis created a strong discussion and also a strong opposition on the part of the trade union structures. They support that the wages, at European level, still present great discrepancies so that this possibility can be materialised. However, this position was not unanimous, because other structures and realities showed the contrary. After a strong debate, and even having in mind some initial reticence, it was reached the opinion that possibility the what was presented can be a reality since, for the effect, be present and accomplished the so called "minimum requirements".

In what it concerns the inclusion of terms that determinate that the obtained income should be invested in the company itself, was rejected integrally by the participants. It has to be added, still, that from a legal point of view, such may raise some doubts. This because it is foreseen by law, the prohibition from the employer to impel the workers to acquire products of its own company.

An accepted point was the issue of the application of schemes of financial participation on a **VOLUNTARY BASIS**. This point didn't raise any objection of the involved parts. Though there were safeguarded the doubts, already previously discussed, on the role of the collective bargaining as for the instruments through which the financial participation will be applicable.

Another subject that has generated, also, some points concerns the **OPENING OF THE SCHEMES TO THE ALL THE WORKERS**. This subject is inherent to the application process itself and to the development of the financial participation, as well to the success of such measures, once it can create generate situations of unfairness.

In fact, it was questioned again something that previously had already raised doubts. Such is connected with the fact that the application of financial participation, widespread, may create situations where it is not possible to correspond the worker's effective productivity, individually considered, with the profit /gain or variation of the share value.

- On this subject it was not possible to obtain a consensual answer, although the tendency has been in the sense to open the possibility, to all the workers, to participate in financial participation schemes.

Note: there is a connected issue on the possibility to apply financial participation to certain categories or workers' classes. This option was accepted by the generality of the involved ones as possible, although it should not be given prevalence or exclusiveness to the workers that occupy superior positions, Directors or Administrators.

Another point is linked with to existence of **GUARANTIES**, and it is necessary to provide the schemes of financial participation, like already exists in certain cases, with guaranties that the funds, or results of the financial participation, won't be affected by supervening changes of the company.

It is essential the separation of the schemes of financial participation from the sphere of the company. Note: similar safeguard terms already exist in certain schemes and such is, for sure, stimulating of the development of the schemes.

TRANSPARENCY and **SIMPLICITY** are other essential aspects. This in order to make possible a full perception of the schemes, so that both parts know, at once, how and what way it will be developed the scheme, what are the benefits for both parts. Like that the financial participation will be assumed as something that is common to both parts. Or else there are cases where a worker that participates in a pension funds, created by the company. This fund is managed by an insurance company, but oddly all of the years managed this fund to appear with a different number and this suffered alterations without of the knowledge of the worker.

It was still concluded as necessary the distinction or the creation of a safeguard procedure for the worker's shareholders of the company that obtain their shares through a financial participation scheme, to which should not apply the general procedure of the shares.

REGULARITY - the regular character raises some doubts about effectiveness, namely in productivity terms and increase of the competitiveness associated to effective incentives, of the schemes of financial participation. That is the reason why it is suggested that those incentives are associated the certain objectives, concrete ones, otherwise they can be considered as certain. Being able to, eventually, produce effect, but needing, later, to incentivate (common interests, reinforcement of the interlink).

PROBATION PERIOD - this is, without a doubt, one of the points that presents us major doubts, namely on how the interlink will be made with the opening of the schemes to all the workers of the company. How situations of temporary work and short-term contracts will be combined, because this is the present reality within the employment market in Europe. There are even sectors where the presented numbers, about 20% of the workforce have a temporary labour contract, justify our concern.

These probation periods will have to be stipulated having in mind the reality of each company and respective sector. Certainly, that it won't make any sense the application of a probation period of, for instance, one year, when the worker only has a 6 months contract. So, such, automatically, will exclude him of the possibility to adhere to that financial participation scheme containing such clause.

Regarding the issue of the temporary worker, that is working at the company, but that doesn't belong to it, suggests us some questions. Because these are, with their work, contributing for the profit and increase of the productivity and competitiveness of the company where they are inserted, but and if they don't have the possibility to adhere to the scheme of financial participation of the company where work, will generate, for sure, some unfairness.

Connected with this subject is another one related to the fact of existing a recommendation, from the European Commission, in the sense that should exist an orientation in order to allow the same treatment for all the workers.

MERGERS and **CONTRACTS TRANSFERS** and the maintenance of the application of the schemes of financial participation - the Directive 2001/23/CE also establishes, for these cases, specify rules allied to the requirement already approached in due time - the workers' Information.

FISCAL TREATMENT - the subjects of fiscal nature are pointed as the great obstacle for the application of financial participation schemes and their proliferation. The fiscal treatment differs from member state to member state. Just as an example, the income obtained result of the application of any scheme of financial participation, in one member state won't be taxed, while in another one such will happen once in that state that will be considered an added value. This fiscal treatment difference creates obstacles to the implementation of the financial participation, because in some member states such won't have the expected adhesion.

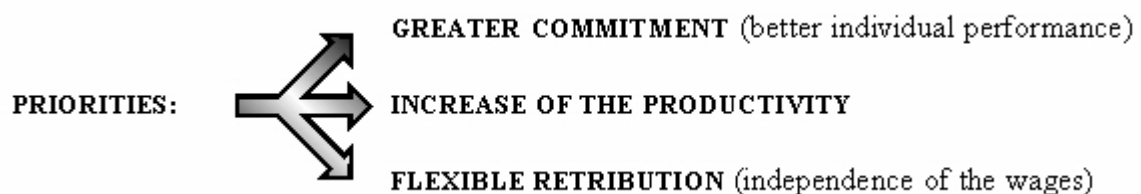
It is urgent, therefore, a harmonisation in this frame picture. While this harmonisation doesn't emerge, there are ways to overcome these obstacles, example of what we state we can point out the case of Siemens and of the PSA group.

- Model -

In order to determinate the model of the workers' financial participation, that can be the development and implementation impulse of the financial participation, it is necessary to have in mind several aspects, namely, what are the goals to achieve with the application of a form of financial participation, the easiness of application, among other, this to create a wider model.

- TO CREATE AN INTERESTING AND APPEALING MODEL FOR EMPLOYERS AND WORKERS!

As it is verified from the exposed, one of the first obstacles to overcome in the implementation of the workers' financial participation is the lack of trust that its implementation can raise, for that reason we propose: **A SIMPLE MODEL, EASY TO UNDERSTAND** and with workers' **INFORMATION** and **CONSULTATION**.



The worker should have access to any form of financial participation, **WITHOUT ADDITIONAL COSTS**.

Having in mind these characteristics it seems to us, in an initial phase, that the gainsharing system is the model that better can give answer to these primary requirements (with the special note that just a reduced number of interveners opted for the participation in the capital). It will be, in this case, the model to adopt for the cases where it is sought the development of the financial participation in a company. On the other hand, and in what concerns the multinational companies or transnational plans, we think that is more appropriate to present some complementary notes.

This model is the one that best answers to the demands above presented, therefore it allows its application to all the company forms, whatever the company' dimension. It does make

possible the access to the application of financial participation to the ones that are not quoted in the stock market.

This model still eliminates the problem, frequently rose, of the workers' acquired rights. This because on the other hand, for the worker, it is directly related to pre-established goals (and duly foreseen in the plan). Once reached that specific goal, the reason for financial participation no longer exists. Of course that can be established new goals. Once this is not a reiterated practice, that cannot be considered as an acquired right, on the part of the worker.

In what concerns the participation in the capital, namely with shares' distribution, gratuitously to the workers, it could, in certain cases, come closer to a case of gains' sharing, because these share are allocated as a reward to achieving an objective. In this case the worker is free to sell them, or not. If he chooses to sell them, the result then will be considered as the proportionate compensation given by the company. Such situation, besides the inherent obstacles to the participation in the capital, already expressed and presented in clearer way in the Guide for the Workers' Financial Participation, it can still lead to situations where those shares are alienated to third persons and whose participation is not wanted.

It has to be added the fact that, and having in mind the actual crisis period that the European crosses, shares are not seen as an attractive thing. For such reason the workers will demonstrate some fear when getting the shares. One thing is sure, fortunately, exist cases of success with companies in true development where the adhesion to these schemes will be greater.

It should, and in order to allow a better framing of the chosen model, be stressed some considerations on this model:

GAINSHARING should be understood as the reward to the workers for an exceptional performance, according with a predetermined objective, based on the share of the earnings. A single, or several objectives, can be chosen in areas such as the quality, cost, etc.

The key word is the exceptional performance towards predetermined objectives.

OBJECTIVES - should be concretised case by case. The objectives of any schemes should be properly identified and communicated, in order to allow its verification. This in order, also, to allow all the workers to identify how they can be involved.

IDENTIFIED POSITIVE ASPECTS:

- ☒ Improve the performance (individual or collective);
- ☒ Introduce a flexible element in the payment;
- ☒ Encourage the workers' involvement;
- ☒ Reward the performance;
- ☒ Encourage the workers actively collaborate in the resolution of problems;
- ☒ Can improve the relationship between the workers and the Administration;
- ☒ Among others that could emerge, case by case.

POTENTIAL DISADVANTAGES:

- ☒ Difficulty in the determination of the individual contribution;
- ☒ Too complicated schemes with multi factors can hinder the understanding of these ones;
- ☒ In case of the initial objectives are low it could be extremely difficult, to the employer, to propose new challenges;
- ☒ It is necessary a continuous incentive, in order to avoid the discouragement of the workers;
- ☒ It is necessary periodic renewal and revaluation of the objectives during the application of the scheme.

Problems related with the operation of the scheme:

- ⊕ Unrealistic objectives or difficult to achieve;
- ⊕ Lack of infrastructures;
- ⊕ Implementation of monitoring measures;
- ⊕ Increase of the costs for the companies - increase of the administrative responsibilities + costs with training;
- ⊕ Maintenance of earnings generated in the past years;
- ⊕ Continuation of the workers' incentive;
- ⊕ Reaching the proposed goals.

How will be the gain fixed and, later, distributed?

To determinate the gain must exist criteria, objectives and pre defined in order to check if it was created wealth and the amount of such gain. Usually such it is checked by taking into account the global performance of the company. In this case the scheme must have monitoring forms to assure, to the involved workers, the accomplishment of the taken measures as well as gain of the company.

There are, basically, two options to divide the gains amongst the workers:

- ◆ Earnings divided in equal terms amongst all the workers;
- ◆ Earnings shared according the work effectively carried out by each worker.

Usually, the chosen form lies down in the equal share for all the workers although, for some, such is considered unfair, because there are situations where some work arduously and the others don't and, in the end, they all receive for equal, contradicting, like this, the principle that all contribute, all share.

- Concrete Examples -

Among the countries, and partners, involved in this work on the workers' financial participation, we can verify that the majority presents some unawareness regarding the potentialities and diversity of systems of the workers' financial participation. The largest experience felt in the area of the workers' financial participation is related to privatisation experiences that took place, more or less recently. Historical times where shares / participation's were distributed to the workers of the companies, in very advantageous conditions.

In most of the cases the shares and/or participation's allocated to the workers were, immediately, sold by them, only few kept the shares.

There are, effectively, some exceptions, namely in what concerns the continuation and development of this reality, here we detach the case of Slovenia.

On the other hand, there are examples where the reality of the workers' financial participation is completely unknown, as it is the case of Turkey and still other unsuccessful cases that, in a certain way, have conditioned the development of this reality, as it is the case of Malta.

In what concerns the Portuguese case, since the accomplishment of the last project, there is a case that marks, definitely, the reality of the financial participation in Portugal: the multinational company Bombardier instituted a retirement complement for their workers, in the eighties (to that date still company Sorefame) and which scheme suffered some changes in the nineties, when this company started to integrate the group Adtranz and later the multinational Bombardier. This company, in the end of the year of 2004, announced its closure in Portugal, without even considering in accomplishing the payment of the retirement complements. Questioned, for the workers, in order to proceed to the payment of the money invested in the retirement plan, the company based in the fact that those complements would just be due if the workers began their retirement in a different situation than the one they were facing - the closure of the company, refused that pretension.

On that occasion, several jurists (including the experts of the present project) analysed the subject and concluded that, and having in mind the elaborated contract of attribution of the retirement complements, there were no possibility to sue the company. Note: from the knowledge that the authors possess, just a single worker has legally sued the company, although, and until the present date, there is any decision.

This is, without a doubt, a case to keep, negatively. The workers contributed, invested, for some years, waiting, in the end, to receive what was saved. However, and because the scheme did not foresee all of the hypotheses, the workers didn't see their effort compensated.

This is a clear example on how the things should not be done.

If it was mentioned a case whose ending was negative, we would like to present the case of the company Siemens that illustrates the success application of the financial participation. Siemens made possible, to their workers, to purchase shares of the company with special conditions. This initiative had an enormous success, not only in terms of the obtained results, but also regarding the workers' adhesion. With the special note that this initiative took form within the EWC of the group and it appears in the continuation of the policy of gain's distribution carried through by the company since several years.

Another example is connected with the PSA group that, also by its EWC, instituted a retirement saving plan for their workers. Despite being welcome, in the beginning, the measure, now, causes some doubts regarding the destination of the money and on what are the possibilities to set off the fund, among other issues. It doesn't exist, on the part of the company, information on these and other subjects. The information is incipient and insufficient.

Note: there are also some changes concerning the Company Agreement of CEL CAT-General Cables that foresees the hypothesis of financial participation, through the distribution of profits to the workers of the company. This change is connected to the changes of the sharing criteria and distribution of profits.

They still exist other examples on introduction of financial participation through the collective bargaining via, as it is the case of TAP (Portuguese Flight company) that has consecrated in its Company Agreement the possibility to distribute profits to certain professions.

It should, also, be mentioned that, though in a very incipient phase, the possibility of financial participation in a company of the group Volkswagen - Auto Europe, despite the fact that there are not yet still defined the final scheme to apply and develop.

The focused examples are centred in the great companies, however they are many other cases of small and medium companies (that constitute the majority of the companies in Portugal, they represent 250 000 companies) where schemes of gainsharing are applied among the workers, although in a simplified way and associated to productivity criteria.