Nieto Rojas, P. (2010): Employee financial participation in Spain. In: Garibaldo, F. y Telljohan, V. (eds.). *The ambivalent character of participation. New tendencies in worker participation in Europe*. Frankfurt: Peter Lang, pp. 355-367.

EMPLOYEE FINANCIAL PARTICIPATION IN SPAIN

Patricia Nieto Rojas

Ph.D. candidate in Labor Law
Universidad Carlos III de Madrid.
patricia.nieto@uc3m.es

Summary:

I. Introduction. Financial participation of employees in the European Union.
II. Spanish framework: objectives and development
III. Corporate governance policy framework and financial participation
IV. Conclusions
V. References

Abstract:

Several studies have shown the link between employee ownership on the one hand, and HRM practices on the other (POUSTMA, E; KAARSEMAKER, E, 2006: 686). However, there is no strong empirical argument regarding the reasons for the relationship between employee ownership and voice participation in workplace decision making. It is expected, therefore, that firms using financial participation will also be found to have a range of HRM features in place, such as higher-than average training expenditure, comprehensive performance appraisal systems, etc (EUROFOUND, 2007: 8),

The current level of employee financial participation in Spain is one of the lowest in the EU-27; however the last ten years have seen new developments. The following research demonstrates how the regulatory framework has influenced the interaction between the HRM system and employee ownership due to the lack of specific legislation for the representation of worker-owners. This legislation, unlike that for trade unions, would enable employee-owners to exercise influence over decision making or gain access to information.

Employee financial participation plays no role in collective bargaining and trade unions accept financial participation models only in the form of additional benefits over and above normal remuneration.

I. Introduction. Financial participation of employees in the European Union.

With the conviction that the competitiveness of European companies demands a framework of employment quality which promotes the creation of value for their workers, European administrations insist on the need to support new forms of corporate employee participation. In this context, COM (2002) 364, within a framework for employee financial participation, refers to the potential of this type of participation in attaining the objectives established at the Lisbon Summit, that is, to ensure that by 2010 the European economy is “the most innovative knowledge-economy of the world.” The European Union (EU) also maintains that its employees’ financial participation must be considered as an optimal means of reaching a better distribution of wealth, taking into account the positive effects on the productivity and motivation of the implied workers, and therefore it urges the Member States to promote its development by adopting the following measures: a) creation of networks that facilitate the exchange of information between the interested parties; b) sensitization of social interlocutors, and c) promotion of a favorable fiscal framework for the adoption of these formulas

However, there are still significant differences in the development of these mechanisms among the different member states. On one hand, the countries with a long history of promoting these systems, especially France, have developed a complex normative that recognizes new forms of employee corporate participation (EUROFOUND, 2007: 10-20). On the other hand, in Spain employee financial participation has not been a target for relevant legislative pronouncements in labor or in private law despite the fact that Article 129.2 of the Spanish Constitution rules that public administrations should promote different forms of employee corporate participation and facilitate employees' access to productive means of ownership.

The reduced legislative attention that these formulas have received in the Spanish model has been pointed out in all the communitarian reports. For example, a study coordinated by Professor E. POUSTSMA in 2001 concludes with worrisome data: 84% of the Spanish companies surveyed did not have any financial participation policies. Of the rest, only 6% had implanted a component of profit participation as opposed to 8% that had supported this type of ownership participation. As a recent report elaborated by the EUROFOUND shows, this tendency persists in Spain, whereas share ownership shows a considerably lower incidence – around half of all other countries (EUROFOUND, 2007: 26), unlike what happens in Ireland and France, which show the highest degree of share ownership even after other variables are controlled for: the odds ratio of participating financially in these countries is three times higher than in the rest.

Despite the above, it is true that in recent years we have observed the emergence of certain polices that facilitate employee financial participation in Spain's most relevant companies, basically by developing benefits linked to the companies' performance or by employee participation policies such as free or discounted shares, bonds that can be upgraded into stock option plans or warrants. The objective of this presentation is to analyze the reasons that determine this renewed interest, its development, and especially what its function is; that is, if these mechanisms can be considered exclusively new compensation formulas or whether, on the contrary, their appearance may respond to a broad objective, such as the incorporation of a new way of managing human resources, which is more integral and oriented to corporate social responsibility.

The growing importance of human capital to guarantee corporate competitiveness has facilitated, in a more general context, the development of increasingly intense forms of cooperation between a company and its employees. Among these policies, we must talk about the mechanisms that financially link the employees with the company for which they work. Once the communitarian theses have been surpassed, the employees' financial participation appears as a sort of voluntary collaboration that does not respond to the logic of the abandonment of the established economic system where the employee becomes an owner of production means, thus subverting the established order, but rather to criteria nearer to efficient human resources management (MERCADER, J.R., 1996: 210).

Ever since 1984 when WEITZMAN presented his share economy model, it has been demonstrated that the implantation of financial participation policies is a measure whose development is recommendable for economic reasons since it can play an excellent role in the attainment of microeconomic objectives, basically through its incentives in the productivity of employees, especially in the mechanisms that link workers' wages with company benefits (ROBINSON, A; WILSON, 2006: 44). We cannot ignore the fact that one of the main challenges companies face is the so-called "agency problem" which can be concisely defined as the difficulty in motivating an agent (employee) to act in the name of someone else (company), knowing that their retribution is going to be totally disconnected from the obtained results. With the aim of diminishing these negative effects, following the notion that if "the agents (workers) behave in agreement with the desire of the interested party, it is necessary for them to reach an agreement that makes them take some responsibility for the result of their activities and, therefore, to support a greater risk than if that need did not exist." (MCCONELLL, C; BRUE, S; MACPHERSON, D. 2007: 211).

Production changes and the overcoming of a model of industrial economy where egalitarian wage structures prevailed have given way to models that value the individual's contribution to the organization. Today, monetary compensation is structured as a management tool with a strategic function; therefore, companies must devise policies that act as an incentive to enter or remain in a certain company. Historically, salary structures were designed to serve the entire organization regardless of each worker's contribution to the company. But this model is no longer valid in today's labor market where corporate competitiveness is directly related to the creation of value by employees. Egalitarian systems have been relegated to workers with less negotiation power who cannot agree on individualized wage policies. With the aim of obtaining and retaining the best employees, companies can establish two strategies in the design of their payroll policies (PÉREZ INFANTE, J, 2003: 70):

a) To establish efficiency wages, that is, to pay higher than the market's standard wages and therefore offer salaries with a rent component that surpass the minimum wage.

b) To introduce variable incentives that link workers' salaries with the companies' benefits, reaching certain goals or reaching a determined level of profits. Among these new compensation policies we find:

1. Systems linked to the attainment of corporate goals that can be granted directly, conditional on the attainment of positive results, or on the fulfillment of collective objectives (gain sharing). This last formula is calculated based on a group's performance level, and the incentive is distributed among its members independent of their individual performance, as it is only granted when the group surpasses a predetermined goal.

2. The other large block of compensation formulas which facilitates financial participation are those that allow an integration of the employees in a company's capital by means of: a) distributing stock options among the company's employees, which may be free or available at a reduced cost; b) granting bonds that can be upgraded into stock options, which can be defined as a negotiable value represented by a title or annotation which gives its owner the possibility of being a shareholder; c) conceding the option to exercise those options, which

can be defined as a financial agreement by which a company recognizes its employees' right to buy its own stock options at a fixed cost and within a time frame which is normally established at the time the offer is made.

The implantation of these initiatives also facilitates greater compensation flexibility as long as employees link part of their salaries to the results obtained when the system they are using is a distribution of benefits or enables cash salaries to be replaced with salaries in which the employees are paid with stock options or shares of the company. Moreover, these methods may help to mould attitudes towards the company and its profits; performance-related pay and reward systems, together with control over results and goals (measured to company profits, productivity and so on) make up a central core of instruments of economic control within the new managerial thinking (EDLING, C; SANDBERG, A., 2003: 159).

II. Spanish framework. Objetives and development

Once we have identified the main tendencies of employees' economic participation, it should be asked what the real extent of these policies or formulas is in Spain. As already noted, the development of these mechanisms is still at an early stage and, accordingly, their presence in collective bargaining is not very generalized. However, we must point out that the *Acuerdo Interconfederal para la Negociación Colectiva* –a pact made by the unions and most representative chambers of commerce with the aim of defining the directives, recommendations, and criteria that are to be observed in collective bargaining negotiated in any sector or branch of activity – recommends that collective agreements define the compensation structure and, where appropriate, drive the implantation of mechanisms of financial participation. With this in mind, the definition of variable concepts should take into account the following: criteria of objectivity and clarity to be considered when implementing them; the delimitation of variable compensation percentages versus total compensation; the employee representatives' right to access to information and to participation in the company, and the realities specific to each company or productive sector.

This thesis is also maintained in the criteria for collective bargaining approved by the unions. For instance, *Comisiones Obreras* considers it a high priority to include clauses that link workers' compensation with the results obtained, understanding that "companies which year after year accumulate profuse benefits must pave the way to return policies, where part of the benefits generated go back to the workers to increase their spending power." This position contrasts with the one maintained in the criteria of collective negotiation approved by the principle Spanish employers' association, CEOE, which makes no reference to this matter.

Regardless of the programmatic declaration on the inclusion of financial participation formulas found in the *Acuerdo Interconfederal para la Negociación Colectiva*, these systems are still an exception in Spanish business practice. One of the reasons for this divergence is that the implementation of these systems is normally initiated unilaterally by the company and not as the result of a collective agreement. Nevertheless, some compensation agreements are now incorporating formulas such as the ones described above. Such is the case of the Group EROSKI in which a three-part employee participation model is anticipated: capital, results, and management. The cooperative tradition of this company explains the origin of this patrimonial integration. This experience, implemented in 1998 and unprecedented in Spain, transfers the will of its employees as owners of the company to an anonymous society. On the other hand, and especially notable, is the DANONE agreement which includes a pact on profit participation to make the employees participate in the company's direction. This is based on the following premise: "when wealth and prosperity are created within the company, it is right and desirable that the personnel who have contributed to them annually receive part of the generated wealth growth."

Finally, the most significant experience of employee patrimonial integration in Spanish companies took place when INDITEX joined the stock market, a moment in which a process of distribution of free shares among its employees was promoted. This release facilitated the integration in the shared capital of around 20,000 workers and represented 0.7% of the company's capital. The only criterion used in the distribution was the number of years of employment with the group, so that all the employees who were active on December 31, 2000 and would be so four months prior to entering the stock market received 50 options per year served, with a maximum of 1000. In other companies, such as the case of OERLIKON, the right of their employees to buy stock options is conventionally granted after the first year that employees work in the company.

As can be seen, all of the above experiences relate to mid-sized and large companies, with good labor conditions and whose human resources strategy is based on the integration of the employees in the companies' actions. We must not forget that with this type of financial participation structure, the aim is to interest the employees in the company's direction. Companies seek to motivate their employees with the same formulas used with their shareholders: the greater the profits a company obtains, the greater its employees' compensation will be, especially when this occurs through stock options, which enable the creation of a longer and more solid link between the company and the employee, who becomes part of the corporate dynamic just like any other stockholder.

This analysis was guided by the proposition that financial participation and other HRM measures have a reciprocal relationship. If employees are to accept performance-enhancing initiatives from management, such as performance appraisals, it can be argued that they should receive a pay-off from any improvements in performance that might result. The analysis of the data on financial participation of employees in the European Union coordinated by EUROFOUND shows that, indeed, employee training and performance appraisal schemes are associated with the presence of share ownership schemes. This supports the notion that companies try to protect human capital development through the combined use of training, appraisal and share ownership schemes. The results also show that there is a correlation between profit sharing schemes and individual performance-related pay measures (EUROFOUND, 2007: 10). These methods could be regarded as ways of securing workers` commitment to the company's overall goals, and could therefore be viewed as part of the attempt to gain ideological control. According to this hypothesis, schemes of financial participation function better where these are combined with institutions of employee participation in decision making and, that employee share-ownership plans (ESOPs), in particular are most likely to flourish in a participatory environment.

In the same way, these mechanisms have a valuable function in the selection of determined employees and are a key instrument to retain the most qualified employees. Companies seek to retain qualified employees in order to eliminate high turnaround costs, and this is one reason why the promotion of these formulas can be decisive. This function is very graphic in stock option plans, the exercise of which is conditional on the preset term to the point that an employee will not be able to leave the company if he/she wants to exercise his or her option.

However, in Spain the real incidence of these formulas, still in the establishment and consolidation phase, is limited: the number of affected companies is reduced; the fact that employee stock option ownership is so small in big companies does not allow them to have a direct influence on the company's direction; and the inexistence of an adequate policy for stockholding employees unlike, for instance, in France's legal system, have obscured the advantages linked to these participative structures (ALFARO, J. 1995: 135). Following this thesis, the economic integration of employees has been used more for the fulfillment of other aims more related to social stability than to real promotion of the participation of employees in the corporate structure. Thus, these mechanisms have made the following possible:

a) Guarantee of social peace: It has been demonstrated that companies which implement policies of financial participation display lower levels of social conflict and fewer strikes (VAQUERIZO. A, 2004: 515).

b) As a management tool with the aim of making employees a more receptive group that will adapt to organizational changes, following the logic that if they financially participate in the company, they must be more flexible in terms of the changes that may arise (VELASCO SAN PEDRO, L, 1999: 44).

c) Finally, if the formula adopted is the granting of stock options, this mechanism can serve to reduce a stock option excess or to "park options in friendly hands." Employees' traditional resistance to changes can be a useful tool for securing a high number of stock options that will not be used in mergers, public offers or other similar operations

However, we cannot admit a reduccionist interpretation of the employees' financial participation that unconditionally establishes the convenience or inconvenience of these mechanisms. These formulas must be understood in a more general evolutionary process of a company's power relationships; this way, in contrast to the traditional conflictive tone, we must now try to promote integrative aspects for the sake of the corporate competitiveness that a globalized economy demands. The existence of opposing interests between employees and entrepreneurs is intended to be diminished. In the new socio-labor model, the ideas of collaboration and cooperation gain terrain over previous notions of conflict, antagonism, and confrontation.

This new work organization, where productivity is elevated as a central value of the system, is a challenge for the unions, since many of these instruments are implemented directly by the company with no prior agreement or consultation with the employees' representatives. It is true that the increase of these schemes does not suppose a significant displacement of the indirect participation mechanisms as long as these new formulas coexist, without too many difficulties, with collective mechanisms of employee representation. Nevertheless, the unions are in a complex situation. Their role, if not completely accessory, may be reduced, as long as the strategies of employees' financial participation are not a collective result but a unilateral decision of the company. Human resources' homogeneity is one of the principal challenges the unions face now that corporate decisions are linked to a global context (BAYLOS, A. 2005: 242).

Thus, in large companies which have developed financial participation mechanisms, this decision has not been decided based on one specific country, nor is it the result of national legislation or a particular collective agreement, but rather is the corporation's response to a multinational compensation strategy. Such is the case of MICROSOFT, whose employee shareholding participation plans have been widely studied as a paradigm of employee loyalty techniques. This company considers as its zone of influence regions that surpass national limits and, consequently, include several countries; this reflects the fact that the most important management decisions are located in the group's direction, not in the national branches.

III. Corporate governance policy framework

At this point, we must evaluate to what extent these participatory initiatives respond to their own logic. That is, whether they are the result of a new, less hierarchic, more democratic concept of the company where employees financially integrate themselves in the company as a response to a socio-corporate responsibility policy; or whether, on the contrary, they merely form a new group of compensation formulas which are more flexible and better adapted to a company's economic situation. The interest in corporate governance policy within the logic of voluntary integration of the social and environmental aspects of its commercial operations and their relationship with its interlocutors on the part of the companies has undergone significant growth in the last two decades. But these policies should also be seen as a way to make our societies more competitive and better prepared to face the challenges of globalization. With regard to our study, employees' financial integration in the company for which they work, whether by participating in its profits or by means of stock options, appears in the "Green Paper - Promoting a European framework for Corporate Social Responsibility", COM(2001) 366, as a practice that facilitates the hiring and retention of key employees.

Although the EC´s interest in CSR remains high for state intervention, there is no consensus over the future shaping of a mandatory law in this space. Spanish legislation covers many issues such as working conditions, health and safety, equality, that many people could consider implicit or minium CSR. In addition, the Spanish Government has created the State Council on Corporate Social Responsibility as a collegiate, advisory and consultative body at the service of the Government, of a quadripartite and joint nature, in charge of strengthening and promoting Corporate Social Responsibility policies [RD 221/2008].

The objectives of the Council shall be as follows: a) to constitute a forum for debate on Corporate Social Responsibility between the most representative Employers' and Trade Union Organisations, Public Administrations and other organisations and institutions with an acknowledged representative role in the field of Corporate Social Responsibility, in order that it may serve as a framework of reference for the development of Corporate Social Responsibility in Spain: b) to promote initiatives regarding Corporate Social Responsibility and in the context of its advisory and consultative functions, to propose measures in this regard to the Government, paying special attention to the unique characteristics of SMEs.

A considerable number of European companies include CSR-related initiatives in their corporate mission. The implementation and strategic integration of CSR by enterprises should be further improved and the role of employees, their representatives and their trade unions in the development and implementation of CSR practices should be further enhanced.

Regardless financial participation can also play an important role in the creation of corporate value through improvements in terms of employee effectiveness, commitment, and flexibility. Accordingly, the internal dimension of corporate commitment is seen in the consideration of the employees as stakeholders whose financial integration not only fulfills an economic objective, but also responds to an ethical objective of the company with and for its employees. This concept of business management which integrates not only the shareholders but also applies to other stakeholders (clients, providers, employees) results in a strategic direction with dimensions that go beyond economic results and include social and environmental aspects, trying to balance all the interests involved in the company –as in a coalition– even while admitting that these interests may at times be opposed (LANDA, J. P., 2006: 28).

This pluralistic model of the company comes from the idea that it is not only the shareholders who support risks; employees also participate in a company's overall situation and we have analyzed the possibility of introducing the stakeholder model in firms that promotes the development of more intense formulas for employees' corporate integration, such as giving stakeholders decision-making rights. Productivity growth and management effectiveness demand the implementation of participation mechanisms for all risk takers and all who contribute specific resources for these goals.

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises (OECD, 2004: 21). This point of view contrasts with the classic theory of property rights, obviously against sharing the profit among the employees since, in pure business logic, it starts from the base that the social interest in corporations must be represented by the shareholders' interest, and that the value creation must consequently be focused towards these and not towards other stakeholders. In adittion, in the capitalist firms irrespective of size or ownership structure, the formal decision-making rights lie with the owners or shareholders (JANSSON, E. 2005: 1).

The need to create value for the shareholder requires, therefore, a calculation of the financial results not by their intrinsic value but by the remuneration the shareholders hope to receive. This option has far-reaching consequences in labor relations. Since they lack the power of intervention in shareholders' decisions, employees will not be able to participate in matters that affect them directly. For this reason, any strategy that aims to facilitate greater cooperation in the company's decision making process must start with its integration in the corporate structure (MORIN, M.L, 2005: 11).

While it is true that the financial integration of employees makes a long-term investment policy possible, as opposed to market investors who are focused on short-term results, it is not so easy to affirm that employees' financial participation is in fact an advancement in the recognition of mechanisms that facilitate greater cooperation of employees and management. The corporate motivations to articulate these formulas respond to diverse goals from obtaining a more cohesive group to improving productivity or propitiating a compensation strategy linked to the company's real situation. The new needs imposed by the market and the transformations in labor relations systems are factors which must be considered when analyzing the evolution of these financial participation mechanisms. Today, companies need an ample margin of flexibility for their immediate adaptation to changes, and their competitiveness will clearly be influenced by their capacity to create value for the people who comprise them. In this context, the design of a compensation policy is clearly a differentiating corporate element. Compensation has gone from being a tool of financial return to being a management tool. From this perspective, new compensation formulas directed towards linking a productive agent with the owner of the production have appeared.

Therefore, the implementation of these mechanisms fulfills two basic functions. First of all, it links employee wages to the results obtained, allowing a greater adjustment between the company's real situation and employee compensation. Second, it allows the integration of the different interests existing in an organization to fortify this collaboration and increase its implementation. Consequently, financial participation should not be seen as a gift from the company. It is the employees' financial entailment with their company that contributes to increased productivity, thus, the other shareholders also benefit from this agreement.

IV. Conclusions.

One conclusion we can infer from the capacity of these formulas to propitiate greater participation of employees in corporate management is that this power is still not significant in Spanish companies. These mechanisms are usually introduced as a tool of variable contribution which plays a major role in attracting and retaining talent, and not so much for these formulas' potential to generate an attitude of employee co-responsibility in corporate decisions. Among the reasons that may explain this divergence are: a) the reduced number of shares owned by employees, and b) the nonexistence of specific participation mechanisms to grant shareholding employees access to corporate organisms. The employees' financial integration in companies does not respond to the logic of the established economic system by which employees become owners of mass productions. Its emergence responds to criteria closer to efficient human resource management.

Another factor that explains its reduced development in Spain is the insufficient legislative support for these formulas. In 2002, the Socialist Parliamentary Group presented a law proposing to regulate employees' right to information, counseling, and corporate participation; Article 10 established the right to participate in a company's financial profits, materialization of which was linked to the attainment of general goals set in a participation agreement. However, this initiative was not approved in the end and has not been reintroduced in the two successive legislatures under the Socialist Group Government.

VI. References

- AAVV. *Models of employee participation in a changing global environment. Diversity and interaction*. Hampshire: Ashgate, 2001.

- BAYLOS GRAU, A. Códigos de conducta y buenas prácticas de las empresas en materia laboral. El problema de su exigibilidad jurídica. En. AAVV. LILLO, E (Dir.). *Aspectos económicos de la jurisdicción social*. Madrid: CGPJ; Generalitat Valenciana, 2005.

- EUROFOUND, *Financial participation of employees in European Union: Much ado about nothing?* Luxembourg, Office for Official Publications of the European Communities 2007.
    - *Employee financial participation in the European Union* Luxembourg, Office for Official Publications of the European Communities, 2005.

- EUROPEAN COMMISSION, *On a framework for the promotion of employee financial participation*, COM (2002) 364 final, Brussels, 2002.
    - *Promoting a European framework for corporate social responsibility,* COM (2001) 366 final, Brussels, 2001.

- JANSSON, E., "The Stakeholder Model: The Influence of the Ownership and Governance Structures", *Journal of Business Ethic*, nº 56, 2005, vol. 1. pp. 1-13.

- GOLD, M. (Ed). *New frontiers of democratic participation at work.* Hampshire: Ashgate, 2003.

- LANDA ZAPIRAÍN, J.P. (coord.). *Nuevas formas de participación de los trabajadores y gobierno de la empresa.* Albacete: Bomarzo, 2004.

- MCCONELLL, C; BRUE, S; MACPHERSON, D., *Economía Laboral,* Madrid: McGraw-Hill, 2007

- MERCADER UGUINA, J. R. *Modernas tendencias en la ordenación salarial*. Navarra: Aranzadi, 1996.

- MORIN, M. L. El derecho del trabajo ante los nuevos modos de organización de la empresa. En. *Revista Internacional del trabajo*, vol. 124, 2005, nº 1, pp. 5-30.

- PÉREZ INFANTE, J. I. La estructura de la negociación colectiva y los salarios en España. En. *Revista Ministerio de Trabajo y Asuntos Sociales,* n º 46, 2003, pp. 41-97.

- POUSTMA, E; KAARSEMAKER, E. The Fit of Employee Ownership with Other Human Resource Management Practices: Theoretical and Empirical Suggestions Regarding the Existence of an Ownership High-Performance Work System, *Economic and Industrial Democracy,* 2006, Vol. 27(4), pp. 669–685.

- POUSTMA, E. *Recent trends in employee financial participation in the European Union,* Luxemburg: Eurofound, 2001.

- ROBINSON, A; WILSON, N. Employee financial participation and productivity: an empirical reappraisal. *British Journal of Industrial Relations*, Vol. 44 (1), March 2006, pp. 33-50.

- VAQUERIZO ALONSO, A. (2003). *Asistencia financiera para la adquisición de acciones propias*. Madrid: Civitas; UAM, 2003.

- VELASCO SAN PEDRO, L., La adquisición de acciones propias: problemas de política jurídica y tendencias legistlativas, *Revista de Derecho de Sociedades*, nº 11, 1999.

- WEITZMAN, M. *The share economy. Conquering stagflation*. Harvard: Harvard University Press, 1984.