ELIMINATING OBSTACLES TO EMPLOYEE SHARE OWNERSHIP DEVELOPMENT IN EUROPE

POSITION PAPER

In groups of companies, the objective of employee share ownership is to provide employees with the opportunity to participate in their company's capital under favourable conditions. This allows them to benefit from the value created, foster a sense of belonging to the company regardless of their location, and enhance their involvement, including those who are geographically distant from the headquarters. Employee share ownership therefore plays an important role in motivating and uniting employees within the group. However, this objective can only be fully achieved if all employees have access to the share ownership plan and receive equivalent treatment.

However, the legal, tax and social security regimes applicable to benefits granted by the company vary greatly from one country to another, preventing homogeneous treatment of employees. This variability hinders employees' understanding and acceptance of these schemes. While the challenges companies face also extend to the implementation of share ownership plans globally, a rapid solution at the European level would be a useful first step towards building a social Europe and improving the effectiveness of the implemented schemes.

As a first step, companies sought to limit the subject to share ownership plans with or without capital increases reserved for employees, excluding stock options or other financial participation schemes.

I. Main Difficulties Highlighted by Companies

- **Difference in Qualification of Benefits:** The discount on subscription price and the contribution (employer's contribution to employee savings) are treated as salary in some member states, leading to immediate tax and social security contributions. In contrast, other member states exempt the discount and the contribution, provided a blocking period is respected and within a capped amount.

- **Different Treatment of Savings Income:** This varies from specific exemption schemes (with or without caps) like in France, ordinary law exemptions of capital gains like in Belgium, or taxation (at differing rates) due to lack of specific treatment.

- **Disparity in Share Blocking Periods:** These can vary from 0 to 10 years, creating significant treatment distortions depending on the country of residence.

- **Disparity in Early Release Cases:** Some member states allow deviation from the blocking period and grant tax and social security benefits in various events such as marriage, death, etc., while others do not provide such provisions.

- **Difficulties Related to Employee Mobility:** The tax treatment applicable upon entering a savings scheme can be challenged if the employee's tax residence changes. This can lead to double taxation or, in some cases, double exemption. Except for rare exceptions, international treaties do not address these situations, significantly hindering employee mobility.

- **Lack of Uniformity in Eligible Employee Definitions:** For instance, some member states do not require a minimum length of service to access the scheme, while others do, with varying required durations.

- **Difference in Subscription Ceilings:** This leads to treatment distortions among beneficiaries depending on their country of residence. This is often misinterpreted within the same group.

- **Variety of Shareholder Representation Rules:** This also complicates the management of these plans.

These discrepancies cause numerous difficulties in implementing employee share ownership schemes within a group, whether at European or global level. Even when they can be overcome, these disparities are poorly understood by the employees and place group management at odds with their employees and representative organisations. This often results in a much lower participation rate than would have been achieved if employees felt they were treated equally regardless of their country of residence.

II. Recommended Solutions

In addition to the technical challenges associated with the implementation of employee share ownership plans and the high costs of studies and consulting services linked to the disparities mentioned above, companies are primarily concerned with upholding one of the founding principles of employee share ownership: **equity among all employees, regardless of their place of residence in Europe**. To ensure this principle, all employees in the same group should have access to the same employee share ownership schemes and be treated equivalently.

It would probably be overly ambitious to create a supranational employee share ownership system that harmonises all rules, including tax and social security. Such a project, which would require significant time, would likely fail.

However, as a first step, it is recommended that mutual recognition mechanisms be encouraged and that minimal harmonisation of certain essential rules for companies be ensured. A project of this nature would respond to the needs of companies seeking to implement employee share ownership plans in Europe more quickly and easily.

– Recognition of the Possibility to Grant a Discount on the Subscription Price

It should be clarified at the European level that companies can grant a discount (or rebate) on the subscription price of shares within a maximum range, for example 30%, and distribute free shares or subscription warrants.

Furthermore, the issue of how to calculate the discount needs resolution. When a discount on the subscription price is possible, the calculation method and reference period vary by country. In France, for listed securities, the subscription price cannot exceed the average quoted price over the 20 trading days preceding the board decision setting the subscription opening date, nor be less than 20% below this average. It could be proposed that the discount calculation rules are those of the regulatory or market authority of the company's registered office issuing the shares unless the shareholders' meeting decides otherwise.

- **Employer Participation in Employee Savings Effort**

  Some member states have implemented tax and social security exemption schemes for employers' supplementary payments, subject to certain limits, when employees subscribe to capital increases. Some member states do not recognise this participation (treating it as salary for tax and social security purposes), while others refer to it as a bonus or a contribution. Although it is a fiscal measure and thus requires unanimity, the Commission could usefully recommend that member states establish a minimum exemption threshold, allowing employers to participate in the employee savings effort under financially acceptable conditions for the company.

- **Definition of Eligible Employees**

  It is recommended that a certain degree of homogeneity be sought in the definition of eligible employees for the share ownership plan. The issuing parent company could impose conditions such as recognising the length of service or minimum presence criteria for benefiting from the scheme or allowing retirees who hold FCPE shares to participate. Such conditions would be viewed as valid by other states.

- **Definition of Companies Included in the Share Ownership Plan Scope**

  It should be proposed that these operations be conducted within a group of companies included in the same consolidation scope. Member states could consider expanding the group definition to other companies, such as those with at least 10% capital linkage. However, this would be a minimum requirement, with the issuing company determining which companies benefit from it.

- **Duration of Share Blocking**

  Establishing a minimum blocking period for shares serves several purposes. Firstly, it allows for the creation of a stable core of employee shareholders. Secondly, it enables employees to achieve better performance of their shares during periods of high market volatility. It is recommended that this period be a minimum of 3 years.

A **swift initiative by the Commission** to facilitate employees' access to a share ownership plan would help overcome the difficulties companies currently face when implementing these plans. This would be an important step towards developing share ownership in Europe.

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