

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 193 final

Brussels, 5 May 1992

Amended proposal for a

COUNCIL RECOMMENDATION

concerning the promotion of
employee participation in profits and enterprise results (including
equity participation)

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

Amended proposal for a Council Recommendation concerning the promotion of employee participation in profits and enterprise results (including equity participation)

EXPLANATORY MEMORANDUM

The European Parliament and the Economic and Social Committee have delivered opinions on the proposal for a Council Recommendation concerning the promotion of employee participation in profits and enterprise results (including equity participation) - COM(91) 259.

The amended proposal, which the Commission now submits to the Council under Article 149(3) of the EEC Treaty, takes account of Parliament's amendments adopted on 9 April 1992 and the Economic and Social Committee's opinion adopted on 27 February 1992. A number of technical improvements have been added in the interests of clarity and consistency.

Section II

Paragraph 2

Parliament wished to indicate that schemes with certain characteristics deserve particular support, for example those which suit the needs of small and medium-sized enterprises.

Paragraph 2, new subparagraph

The Economic and Social Committee asked the Commission to include wording recommending Member States to encourage the issue of voting rather than non-voting shares to employees. Parliament, against the background of some recent financial scandals, stressed the importance of preventing misuse of shares owned by employees, when these are held in a fund or trust.

Section III

Paragraph 10

A number of modifications were proposed with regard to the working party to be set up by the Commission. In addition a clearer formulation of its objectives was asked for.

Parliament wants the social partners to be represented on this working party and also added a fourth type of scheme to the non-exhaustive list of schemes with which the working party would deal.

Annex

Paragraph 7

The Economic and Social Committee is in favour of the inclusion of some kind of "health warning" in all offers made to employees under financial participation schemes. Parliament adopted an amended text for paragraph 7 which makes a clearer distinction between risks to income and capital and which sets out separate possibilities for containment of these risks.



Amended proposal for a Council Recommendation concerning the promotion of employee participation in profits and enterprise results (including equity participation)

ORIGINAL TEXT	PROPOSED AMENDMENTS
Proposal for a Council Recommendation concerning the promotion of employee participation in profits and enterprise results (including equity participation)	<u>Amended Proposal</u> for a Council Recommendation concerning the promotion of employee participation in profits and enterprise results (including equity participation)
THE COUNCIL OF THE EUROPEAN COMMUNITIES	Unchanged
Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,	Unchanged
Having regard to the proposal from the Commission ⁽¹⁾ ,	Unchanged
Having regard to the opinion of the European Parliament ⁽²⁾ ,	Unchanged
Having regard to the opinion of the Economic and Social Committee ⁽³⁾ ,	Unchanged
Whereas in its Communication concerning the Action Programme relating to the implementation of the Community Charter of the Fundamental Social Rights of Workers the Commission announced its intention to present a Community instrument on equity sharing and financial participation by workers;	Unchanged

(1) O.J. C-245 of 20.09.1991

(2) Adopted on 09.04.1992

(3) Adopted on 27.02.1992

Whereas a report on the promotion of employee participation in profits and enterprise results in the Member States of the European Community has been prepared and whereas this report has established that there is a great variety in the types of scheme encountered in the Community, including cash payments, share-based and deferred profit-sharing schemes and various types of particular employee share-ownership schemes;

Unchanged

Whereas encouragement at Community level of schemes of financial participation by employees is to be seen as a means of achieving a better distribution of the wealth generated by enterprises, while encouraging a greater involvement of employees in the progress of their companies;

Unchanged

Whereas while the body of empirical research about the effects of such schemes in practice does not yet provide overwhelming evidence of strong overall advantages, there are sufficient indications that such schemes contribute to a number of positive effects, including improvements in employee motivation and productivity and in the competitiveness of enterprises;

Unchanged

Whereas it is appropriate to promote a larger diffusion of financial participation schemes within the European Community, without seeking an active harmonization or a reduction in the existing wide range of available schemes;

Unchanged

Whereas, because it is not feasible for employees to participate in the equity of some businesses and enterprises, there is a need to develop models for participation outside the business;

Whereas, while in some cases shares issued to employees are of a type that do not carry votes, it is desirable to reduce or eliminate restrictions on employee shareholders' voting rights;

Whereas, when employees' shares are held in a fund or trust, there is a need to prevent any misuse of the shares;

Whereas the ultimate success of this Community initiative will to a large extent depend on the active interest and involvement of the social partners themselves;

Unchanged

Whereas in the context of the completion of the internal market it is necessary to study the possibilities for the development of transnational formulae for employee participation in profits and enterprise results;

Unchanged

Whereas the present action appears necessary to attain, in the course of the operation of the common market, one of the objectives of the Community,

Unchanged

Recalls that with regard to pay Community Law prohibits discrimination on the grounds of sex⁽⁴⁾ or nationality;

(4) In particular:

Article 119 of the Treaty EEC;

Directive 75/117/EEC on equal pay for men and women;

Directive 76/207/EEC on equal treatment between men and women with regard to access to employment;

Directive 79/7/79 on equal treatment between men and women with regard to social security.

I. HEREBY INVITES THE MEMBER STATES: Unchanged

To acknowledge the potential benefits of a wider use of a broad variety of schemes to increase the participation by employees in profits and enterprise results either by means of profit-sharing, or through employee share-ownership or by a combination of both. Unchanged

II. HEREBY RECOMMENDS THE MEMBER STATES: Unchanged

1. To ensure that legal structures are adequate to allow the introduction of the forms of financial participation referred to in this Recommendation; Unchanged

2. To consider the possibility of according incentives such as fiscal or other financial advantages to encourage the introduction of certain schemes;

To consider the possibility of according incentives such as fiscal or other financial advantages to encourage the introduction of certain schemes; in this connection particular attention could be given to support for schemes with one or more of the following characteristics:

- schemes which will facilitate a more equitable distribution of income and wealth;
- schemes which encourage employees to obtain and retain a stake in the company in which they work and which enhance the involvement of employees in company decisions;
- schemes which create conditions for indirect participation in capital, in particular in cases where business and enterprise-related participation is not possible;
- schemes which suit the needs of small and medium-sized enterprises;
- schemes which include both part-time and full-time employees;

2.b To encourage the issue of voting rather than non-voting shares to employees and to ensure that where employees' shares are held in a fund or trust, any misuse of the shares is prevented;

3. To encourage the use of such schemes by facilitating the supply of adequate information to all relevant parties;

To encourage the use of such schemes by facilitating the supply of adequate information to all relevant parties. Including the European Commission;

4. To take account of experiences acquired elsewhere in the European Community when considering giving preferential treatment to particular types of financial participation schemes;

Unchanged

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|---|--|
| 5. To ensure that the social partners have the opportunity to choose from a sufficiently wide range of options on the basis of consultations between employers and employees or their representatives; | To ensure that the social partners have the opportunity to choose from a wide range of options on the basis of consultations between employers and employees or their representatives; |
| 6. To ensure that this choice can be made at a level which, taking account of the national practice in this regard, is as close as possible to the employee and to the enterprise ; | Unchanged |
| 7. To encourage consideration of the key issues set out in the Annex when new financial participation schemes are being prepared or when existing schemes are being reviewed; | Unchanged |
| 8. To examine, after a period of three years following the adoption of this Recommendation, the data available at a national level on the development of financial participation by employees and to communicate the results to the Commission; | Unchanged |
| 9. To enhance social partners' awareness of the above matters. | Unchanged |

III. TAKES NOTE OF THE
COMMISSION'S INTENTION

Unchanged

10. To set up a working party to examine possibilities for the creation at a Community level of formulae of financial participation schemes by employees, in order to improve the opportunities for the application under comparable conditions throughout the Community of such schemes; these would include the following three types:

- a) a profit-sharing scheme;
- b) an employee share ownership scheme;
- c) a stock options scheme.

To set up a working party, on which the social partners will be represented, to study the practical problems and obstacles facing enterprises at the present time if they wish to extend access to a financial participation scheme to their employees in another Member State under comparable conditions or if they wish to set up a similar scheme for them. In order to make such extension across the Community easier the Working Party will examine ways of simplifying the procedures which have to be followed by incoming enterprises or employees in order to qualify for any form of benefit or preferential treatment accorded to indigenous enterprises or employees in respect of financial participation schemes; this examination would in particular, but not exclusively, deal with the following types of scheme:

- a) profit-sharing;
- b) employee share ownership schemes;
- c) stock option schemes;
- d) investment wage schemes.

11. To submit a report to the Council on the application of this Recommendation within four years of its adoption on the basis of the information supplied to it by the Member States.

To submit a report to the Council and the European Parliament on the application of this Recommendation within four years of its adoption on the basis of the information supplied to it by the Member States.

Done at Brussels,
For the Council
The President

Unchanged

ANNEX

Key issues to be considered when new financial participation schemes are being prepared or when existing schemes are being reviewed

Unchanged

1. Regularity: schemes benefit from application on a regular basis and from awarding any "bonus" at least once a year or over shorter periods.

Unchanged

2. Pre-determined formula: the formula setting employee benefits should be determined unequivocally before the beginning of each reference period.

Pre-determined formula: the formula setting employee benefits should be determined unequivocally and explained to the employees concerned before the beginning of each reference period.

3. No substitute for wage negotiations: the existence of financial participation schemes is not to be considered a substitute for normal negotiations dealing with wages and other conditions of employment.

Maintaining wage negotiations: the existence of financial participation schemes should not stand in the way of normal negotiations dealing with wages and conditions of employment or of setting wages and working conditions through such negotiations.

4. Voluntary participation: both enterprises and individual employees should be able to choose whether or not they want to apply for or participate in schemes.

Voluntary participation: both enterprises and individual employees should be able to choose whether or not they want to apply for or participate in schemes; schemes should be introduced on the basis of agreement between employers and employees or their representatives.

5. Calculation of employee benefits: bonuses should not be fixed in advance but variable and linked to enterprise performance (expressed in terms of profits or some other enterprise indicator) over a certain period of time, according to a previously agreed formula; this formula should also specify unequivocally the indicator of enterprise performance to be used.

Unchanged

6. Amounts: in order to produce the expected motivational effects the average size of bonuses should on the one hand be significant in relation to the fixed part of employees' wages, while on the other hand a ceiling (in amounts or in percentages) might be advisable in order to avoid wide fluctuations in total income.

Unchanged

7. Risks: apart from some income variability inherent to schemes, employees may incur additional risks when they acquire risk-bearing securities (e.g. shares or bonds); when these risks are heavily concentrated (e.g. issued by the employing firm) and large in relation to the employee's total assets the possibility of some form of insurance against too heavy losses in the value of these assets merits careful examination.

Risks: employees should be warned about the risks possibly attached to financial participation schemes; a distinction can be made between risks to income (arising from reductions in profit-related pay or in dividends) and risks to capital (linked to fluctuations in the value of shares or bonds or other types of security). Risks to income can be contained by the introduction of ceilings. When employees' financial participation takes the form of capital investments which are hardly diversified or not diversified at all (e.g. risk-bearing securities issued by the employer or other participatory securities) careful consideration should be given to the possibility of providing for mechanisms to protect against the risk of too heavy losses in the value of such assets.

8. Beneficiaries: beneficiaries are primarily employees, i.e. wage-earners covered by employment contracts; as far as possible access to schemes should be open to all employees of the enterprise. More generally, workers in the same objective situation should have equal rights with regard to access to participation schemes.

Unchanged

9. Enterprise type: schemes can be applied by both privately-owned firms and public enterprises, as long as suitable indicators of enterprise results or profits are, or can be, made available. Unchanged
10. Enterprise size: small and medium-sized firms should have adequate opportunities to apply financial participation schemes; in particular it is important to ensure that administrative obligations are reasonable and minimum financial requirements, if needed at all, are not too high; in larger enterprises, especially multi-national companies, it may be useful to link all or part of employee benefits to the performance of separate profit units, rather than to overall enterprise results. Unchanged
11. Complexity: schemes of a complex nature are to be avoided, as the results are likely to be better if the scheme can be easily understood by all employees; Unchanged
12. Information and training: for the success of any type of scheme a substantial effort will be required to supply adequate information and training, if necessary, to all employees concerned. Information and training: for the success of any type of scheme a substantial effort will be required to supply adequate information and training to all employees concerned.

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DOCUMENTS

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