

Expanded abstract

Employee participation in corporate governance. Special consideration given to the French model

Objectives

The main objective of the work is to analyze the various modalities and levels of employee participation in companies that have emerged in European countries, and which are currently regaining special interest in the political and social spheres as well as in scientific literature. The study specifically focuses on proposals to stimulate labor participation in the administration and/or management of the company.

Specific objectives include: highlighting the importance of financial or economic participation; analyzing the French experience, as it is considered a good example of the concern for promoting the participation of employees in the management and governance of companies; emphasizing the value of the French model in fostering business democratization; examining the new momentum received by employee share ownership with the PACTE Law 2019 (Loi n° 2019-486); and demonstrating that the trajectory through French law serves as a reference model for the industrial and economic democratization of the company.

Design

The text is structured into five main sections. The Introduction presents the topic of labor participation and its long trajectory. Growing interest in participatory models is highlighted, influenced by stakeholder theory and the realization of democratic principles within the company.

In describing participation models in the European context, the text distinguishes:

- Representative participation -or indirect participation- which describes models of participation through representation in direction, management, or governance, highlighting the German co-determination experience as pioneering and paradigmatic.
- Economic participation -or direct participation- which focuses on participation through ownership (economic or financial participation).
- Analysis of the French Experience. The analysis of the French experience details the instruments of participation, describing mechanisms for the mandatory presence of workers on the boards of directors (conseils de administration) and supervisory boards (conseils de surveillance). To promote participation in capital, the historical schemes for participation in results (Intéressement and Participation) are detailed, as well as actionnariat salarié (employee share ownership) as an instrument to channel staff access to capital. The French experience also highlights the PACTE Law 2019 and subsequent laws.

Methodology

The work concludes with reflections on Spanish regulations and some conclusions and an assessment, reiterating that the French model is a reference for democratization that contrasts with the situation experienced in Spain.

The text employs a legal and comparative analysis approach to explore the phenomenon of labor participation in corporate governance, focusing on the French case.

Key methodological elements include:

- Conceptual Analysis: Defining the three major modalities of participation (in ownership, in management/direction, and in economic results), distinguishing between representative participation and economic participation.
- Review of the European context: Existing participation models in the European sphere are reviewed, using the German co-determination model as a historical reference and the framework of European Law.
- Case Study (France): The core of the work is the detailed study of French legislation and the evolution of participation mechanisms, including an analysis of specific legal instruments.
- Empirical evidence: Data from monitoring reports and surveys are used to evaluate the impact and implementation of measures, especially employee share ownership and the presence of employee directors in large companies.

Results

France is a pioneer in promoting financial participation, although with varied results depending on the size of the company. There is a high rate of share participation in large companies (listed and non-listed). The PACTE Law set the objective that, by 2030, 10% of the capital of French companies should be held by their employees, and it facilitated mechanisms for accessing capital. A 2022 study showed that the number of SMEs implementing employee share ownership doubled since 2015 (reaching 9% of surveyed SMEs), reporting positive effects on employee loyalty, motivation, and involvement.

Despite legislative momentum, share participation remains less developed in SMEs. A 2022 survey revealed that only 6% of managers had implemented this figure, and 57% had only heard of the concept. Managers cited the loss of confidentiality and administrative complexity as fears. The doctrinal finding persists that there is no direct relationship between participation in capital and participation in management, as staff usually acquire shares with a purely economic objective.

Recent reforms seek to generalize value sharing, extending participation to smaller companies. Starting in January 2025, experimentally, companies with 11 to 49 workers that obtain a net taxable profit equal to or greater than 1% of their turnover for three consecutive fiscal years must establish a value-sharing mechanism (participation, incentives, savings plan, or distribution bonus). This measure seeks to extend the culture of profit sharing to small and medium-sized enterprises.

A fundamental result of the PACTE Law was the addition to Article 1833 of the Civil Code, applicable to all types of companies, which establishes that the company must be managed in its social interest, taking into consideration the social and environmental challenges of its activity. This implies a redefinition of the company's role in society.

Limitations to Research

The text identifies several limitations and gaps in the information and research regarding worker participation, especially when evaluating the implementation and effectiveness of models in France and other European countries.

Monitoring reports on the PACTE Law in France have identified significant data gaps, limiting the ability to fully evaluate the impact of the reforms. Data is missing for unlisted companies and SMEs.

There is a lack of data concerning directors representing employee shareholders (ARSA) on the boards of directors, as most available analyses focus on large listed companies. Academic literature concludes that more research is needed, particularly in unlisted companies.

The provisions of the PACTE Law are unknown regarding how they affect SMEs. A 2022 survey showed that only 57% of managers had heard of employee share ownership.

Implications and Practical Conclusions

The work offers important practical implications, conclusions about the European participation model, and an original value centered on the analysis of the French reforms.

The work draws practical conclusions by contrasting the French experience -which seeks to link financial participation with decision-making- with the situation in other countries, particularly Spain.

Key conclusions regarding Spain and intervention:

- There is a need to promote democratization in Spain. The trajectory of French Law highlights the long way Spanish legislation still has to go to comply with the constitutional mandate of Article 129.2 C.E. regarding the effective promotion of participation in the company and access to ownership.
- In contrast to French dynamism, participation in corporate governance in Spain is stagnant. The Spanish model leans toward participation "from the outside" and is reduced to rights of information and consultation (Art. 64 ET). It is concluded that the right to consultation has limited effectiveness and that corporate power retains its managerial capacity intact.
- The value of legal imposition is demonstrated by the French experience, where mechanisms for worker representation on governing bodies were unsuccessful when they were optional, leading the legislator to opt for the mandatory imposition of their presence in 2013. This suggests a practical conclusion about the necessity of active legal intervention to achieve participation in company governance.

Holistic Approach and Governance:

- Worker participation must be seen as a “great challenge for work and unionism in the 21st century”. Corporate democracy is complex and cannot be reduced to provisions focused on a single regulatory aspect.
- A practical implication is the need to insist on the role that Good Governance Codes can play in fostering democracy and participation, allowing for participation formulas involving all stakeholders. Although these codes usually follow a shareholder model, they must advance toward plural approaches.
- Practical conclusions of recent French legislation include the experimental obligation for SMEs (11 to 49 workers) to establish a value-sharing mechanism if they obtain significant profits for three consecutive fiscal years.

Original Value

The original value of the work resides mainly in its comparative analysis and its focus on the French legal model as a contemporary reference for fostering business democratization. This value is underscored by both its mechanisms for employee representation on governing bodies (indirect participation) and by the promotion of employee share ownership (participation in capital or *actionnariat salarié*).

Furthermore, the work provides a detailed analysis of the new momentum labor participation has received through the PACTE Law of 2019 and subsequent laws (such as LOI n° 2023-1107 of 2023). This is crucial for understanding current regulatory trends in Europe.

The work highlights the redefinition of the Corporate Role (Stakeholder Theory), manifested in the PACTE Law by introducing the notion that the company must be managed in its social interest, taking into consideration the social and environmental challenges of its activity. This change, applicable to all types of companies in France, reflects the influence of stakeholder theory and transcends the exclusive primacy of the profit motive, implying a redefinition of the company's role in society.