7g. "29TH REGIME ON EMPLOYEE FINANCIAL PARTICIPATION (EFP)"

– DEFINING BEST PRACTISE FOR EFP SCHEMES ACROSS EUROPE

The EP resolution on EFP of 14 January 2014[1] suggests an entirely new approach based on the so-called "29th Regime". As an optional European EFP regime would be **conceived as a "2nd regime" in each Member State,** thus offering employers and employees **a choice between two alternative EFP schemes,** one originating in national legislation and the other in European legislation.

No „race to the bottom", no "cherry-picking"

The "29th regime" would **not require compromise on the lowest common denominator**, thus **preventing the lowering of standards**. It offers a choice between two entire instruments, either the national or the supranational regime "cherry-picking" is avoided.

As a **compilation of „best practise"-rules from the EU-29** for the main forms of EFP, as a rule, it offers a **higher level of protection to employees** in comparison to the existing national rules. It can be expected that foremost progressive employers with a good work environment will tend to make use of this instrument.

Eliminating barriers to the Single Market

An optional European concept for EFP also would create increased co-operation among Member States, especially through the mutual recognition of schemes. By **eliminating barriers to the Single Market**, e.g., legal risks and costs arising from differences in national legal models, it could make the EU economy more competitive:

- It would allow employers to **operate an EFP scheme throughout the EU on the basis of a single legal regulation**. Among firms implementing these schemes, employees would be assured of full portability across the EU.
- It would **leave the decision on its application to the market** and would, therefore, only be chosen where interested parties considered it to be an advantage.
- The **individual legal culture of each Member State would be left intact**, making it more politically acceptable.
- Implemented by EU regulations, companies could **utilise it even in purely domestic situations**; this is of primary importance, especially in SMEs, since these plans could later easily be extended across borders as the firm grows and expands.

National tax and labour law are left untouched

An optional instrument covering only private law issues the "29th Regime on EFP" cannot cover problems of tax law, it does not apply to labour law or employment contract law in force in the Member States. Of course, it **could contain an "opt-out" clause**.

The 29th Regime on EFP is established by means of EU Regulation in order to avoid any national discrepancies due to transposition work. However, it **applies only to contractual arrangements between private parties**, i.e., EFP schemes (similar to EU Insurance Contract).

Contents of a 29th Regime on EFP

Among the issues defined in the "28th regime" are for example:

- **Range of application:** *What type of firms*: Ltd, JSC, etc. / *Eligibility:* e.g., 1-year waiting period; non-discriminatory, i.e., also part-time employees (e.g., minimum of 500 hours worked per year).
- **Mechanism**: *PS* – pre-defined formula; broad-based; deferred; *ESO* – blocking period; financial assistance; voting rights; *ESOP* – holding company; blocking period; voting rights.
- **Employer contribution**: *Discretionary*; but possible ceiling, e.g., 25 per cent of payroll; matching contribution possible, etc.
- **Vesting**: conditions of forfeiture; vesting period, etc.
- **Distribution (form/timing)**: For each scheme *PS / ESO / ESOPs* – retirement, death, termination; payments in five annual instalments; repurchase obligation;
- **Investments**: Catalogue of (authorised) instruments; diversified vs. non-diversified.

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[1] 2013/2127(INI) - 18/12/2013 (http://www.europarl.europa.eu/oeil/popups/summary.do?id=1329782&t=d&l=en) Own-Initiative Report on financial participation of employees in companies' proceeds.

Providing transparency for fiscal treatment and taxation

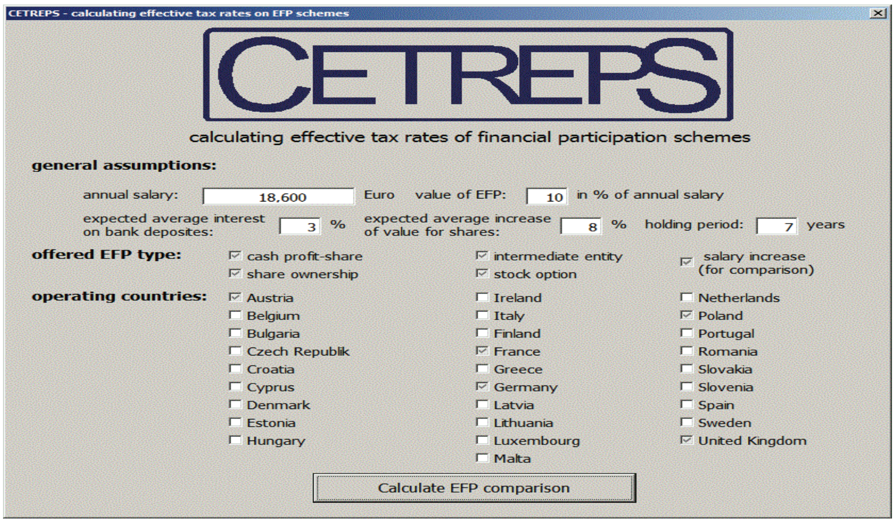
In the area of tax incentives, it is crucial to **avoid double taxation and discrimination**. A calculator for effective tax rates should accompany the “29th regime on EFP” as a soft tool.[2] Up-to-date information on **general taxation, social security contributions and specific tax incentives** relevant for different EFP schemes from all 28 EU Member States are used to calculate effective rates **for different taxes, personal status and situations**. This is allows to quantify the tax burden and gives a representative comparison of tax systems and of specific tax incentives.

CETREPS – ELIMINATING BARRIERS TO THE SINGLE MARKET

CETREPS provides **enterprises at the firm level** with information needed to decide whether or not to introduce an EFP scheme. Calculating the different fiscal burden (taxes & social security contributions) for their employees facilitates plan communication.

CETREPS provides **governments** with information to simulate (1) the fiscal impact of tax incentives for EFP -> contributes to regulatory impact analysis and (2) fiscal effect of recognition of an EFP scheme -> facilitates mutual recognition

I. A USER FRIENDLY CONCEPT: THE FRONT END

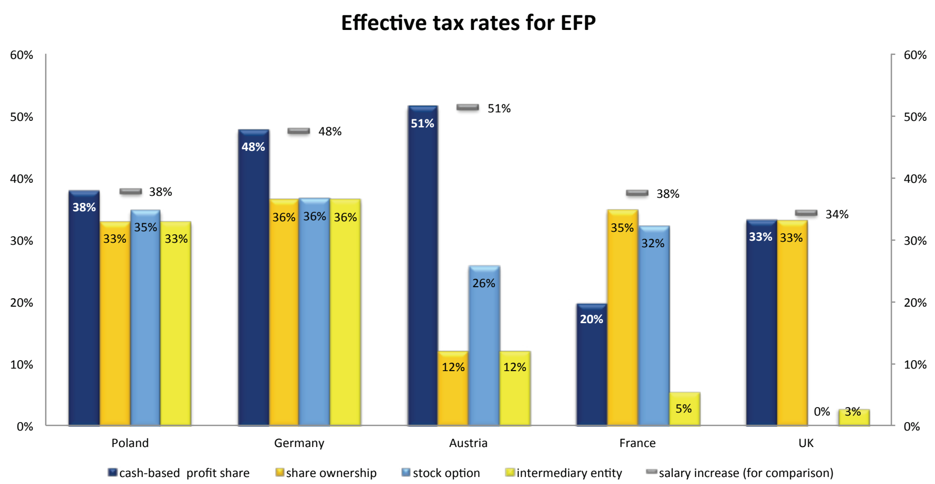


The user mask of CETREPS (Front End) allows inserting a set of parameters modelling the economic and other circumstances of the planned EFP scheme(s).

This regards esp. the employee’s situation (average annual salary), the value of EFP granted (as a percentage of salary), general assumptions (average interest rate, increase in value of shares, holding period), countries of operation.

II. SAMPLE OUTPUT: THE RESULTING OVERVIEW

The result is a comparative overview of the effective tax burden on different EFP schemes (incl. social security contributions and other levies - here for 2010) in per cent of the final benefit across the EU. Any other scenario as the one described here can be calculated.



To deliver comparable data, simplifications are inevitable; such the comparative overview represents an approximation. The calculator can, of course, be extended to other areas, e.g., pension schemes.

Instead of buying expensive expertise just to assess the feasibility of the introduction of an EFP scheme, European SMEs receive a quick and up to date EU overview online. Once the decision to introduce an EFP scheme is made – using the underlying database – their consultants and accountants can calculate the exact values for the chosen EFP scheme.

[2] This dynamic tool developed under the CETREPS project launched at Viadrina in 2010, is currently being tested. CETREPS (Calculating Effective Tax Rates for Employee Participation Schemes).