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What the PACTE law changes for employee savings and participation?

FOCUS Bankers Markets and Investors



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Abstract: France has a one of the longest- and best-established employee financial participation system in the world with 3.5 million employee-owners, the largest number of employee-owners of any European country (EFES, 2019). It has also been the first country in 1967 to have compulsory profit-sharing schemes in firms employing 50 or more. The PACTE law (action plan for the growth and transformation of companies) has been promulgated in France in 2019. The PACTE law introduces new measures that support employee financial participation through profit-sharing, gainsharing and employee ownership and, second, employee participation in decision-making through labor representation in corporate governance and social dialogue. First, gainsharing and profit-sharing bonuses are promoted in small businesses by decreasing the social tax. Second, the law introduces developments relating to the representation of employee shareholders and employees, first in corporate governance and, second, in the supervisory boards of company savings funds (CSF). The objective of this paper is to present the new measures of the PACTE law that will affect the development of employee financial participation.

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JEL Codes: G50, J33, J54, M5

Introduction

On May 22, 2019, President Macron signed the action plan for the growth and transformation of companies (*La Loi relative à la croissance et à la transformation des entreprises*), hereafter the PACTE law². The so-called “action plan” covers a variety of issues, including: simplifying administrative procedures; regulation of investments and financial products; crypto currencies; and support for innovation, such as research into autonomous cars. Many academics and professionals have also debated companies’ missions or *raison d’être*. The PACTE law also brought about the controversial privatization of the Groupe ADP (formerly *Aéroports de Paris*) and reformed auditing requirements. However, these debates have obscured significant changes to France’s employee financial participation system, one of the longest- and best-established financial systems in the world. Developed towards the end of the 1950s by Charles de Gaulle—who often promoted it as a “third way” between communism and capitalism to reform society—the employee financial participation system was initially intended to develop two forms of employee participation: first, employee financial participation through profit-sharing, gainsharing and employee ownership and, second, employee participation in decision-making through representation in corporate governance and social dialogue. De Gaulle implemented most of this system during his presidency, though the latter aspect has remained a subject of debate for decades.

The PACTE law introduces new measures that support both aspects of this system. On the one hand, some new measures strengthen financial participation. Following Freeman et al (2010), the academic literature refers to these arrangements as “shared capitalism”, defined as: “employment relations where the pay or wealth of workers is directly tied to workplace or firm performance” (p. 1). On the other hand, employee and employee-owner representation in corporate governance is enacted, thus ending a long-lasting debate.

One element of so-called “shared capitalism” is employee savings schemes, collective savings schemes offered by employers that enable employees to develop a portfolio of securities. In exchange for tying up their money, which can be invested in employer’s stock, employees benefit from tax breaks. 324,000 French companies have an employee savings scheme, 319,000 of which employ fewer than 250 employees. According to the *Association Française de Gestion Financière* (AFG), at the end of June 2019, French employee savings schemes amounted to almost €140 billion in 10.26 million individual bank accounts. Employee savings schemes are a significant and popular way for retail investors to invest in risky assets; indeed, 55% of employee savings assets are invested in stocks. The main investment categories are company stocks or employee ownership, which account for 37% of overall employees’ savings. The number of companies offering at least one plan has

² Law number 2019-486 of May 22, 2019 on corporate growth and transformation.

doubled since 2006 and the value of deposits has doubled since 2008. In France, the pension system relies mainly on social security. But retirement employees' savings schemes (*plan d'épargne retraite collectif* or PERCO) were introduced by the 2003 pension reform. At the end of 2018, total pension fund savings accounted for around €17 billion. All such employee savings schemes are related because they are fueled by the same sources, namely profit-sharing bonuses (€3.9 billion in 2018), gainsharing bonuses (€5.2 billion), employer contributions (€3.2 billion) and employees' voluntary contribution (€2.9 billion).

This article focuses on the PACTE law's impact on employee savings schemes and corporate governance, specifically its aims to make "sharing" better value, develop employee savings and employee share ownership, and strengthen employee representation in corporate governance.

1. New measures to boost employees' financial participation

1.1 An overview of the French participation system

Over the second half of the twentieth century, France has developed and combined several systems of employee participation and gainsharing with three main goals:

- a) to give employees a share of firm profits;
- b) to promote employee savings through company savings plans (CSP or *Plan d'Épargne Entreprise* – PEE);
- c) to boost employee share ownership within the CSP framework.

Gainsharing and profit-sharing bonuses are the main sources of employee savings. These bonuses are deductible from corporate tax and are therefore attractive to employers; meanwhile, their income tax deductibility incentivizes employees to save this money, which they would otherwise have to include in their taxable income.

a) Gainsharing and profit-sharing schemes

Created in 1959, gainsharing schemes (*intéressement*) are intended to enable firms to give their employees a bonus based on annual financial and extra financial performance of the firm. The amount paid to employees can be deducted from the firm's taxable profit, though the company usually still has to pay a social tax of 20%. The PACTE law has cancelled this social tax for companies with fewer than 250 employees. The employee must also pay a social tax, amounting to 9.7%, and, if the amount is not invested in a CSP (see below), they must include the gross amount in their annual taxable income. A law of December 30, 2006 had previously extended the gainsharing bonus to multiannual projects managed by the company by dedicated teams. In 2017, 5 million employees

received gainsharing bonuses to the value of €9.144 billion.³ This figure corresponded to 4.6% of the wages of all nonagricultural companies that employ more than ten employees. Although gainsharing is common in large corporations, it unfortunately remains scarce in small businesses, with less than 10% of employees in small businesses benefitting from a gainsharing scheme. In firms employing ten members of staff or fewer—which represents 19% of French employment—only €226 million were paid out as gainsharing bonuses in 2017.

Introduced in 1967, profit-sharing schemes (*participation*) are compulsory in firms employing 50 or more employees in France, but they remain optional for companies with fewer than 50 members of staff. The minimum amount that can be granted to employees is calculated by a legally defined formula, though companies can choose to pay more.⁴ Any employee working in a company for more than three months can benefit from a profit-sharing bonus. The total amount of profit shared is spread among all the company's employees in France, either equally or proportionally to their salaries (to a maximum of about €120,000 in 2020), with the possibility of mixing the award conditions. The amount paid out to employees can be deducted from corporate taxable income, though it is subject to a social tax of 20%. As with gainsharing, the new PACTE law has lowered this rate for small companies (in this case, those with fewer than 50 employees). Again, employees must pay a 9.7% social tax and, if the amount is not invested in a CSP for five years, they must include the gross amount in their annual taxable income. The money saved becomes a deferred profit-sharing bonus. In 2017, 5 million employees received a total of €7.032 billion from profit-sharing bonuses. This figure corresponded to 3.6% of all wages in nonagricultural companies employing more than ten people. The optional system in firms with fewer than ten employees provided €66 million to their employees through profit-sharing bonuses.

b) The company savings plan

The company savings plan (CSP, or *plan d'épargne entreprise* – PEE) was developed in 1967. Until then, profit-sharing bonuses had to be invested either in securities issued by the employer or in a locked, fixed interest account.⁵ The CSP became the main savings scheme for profit-sharing and gainsharing bonuses. Employees can also make voluntary contributions to CSPs; these are often matched by the employer (see Figure 1).

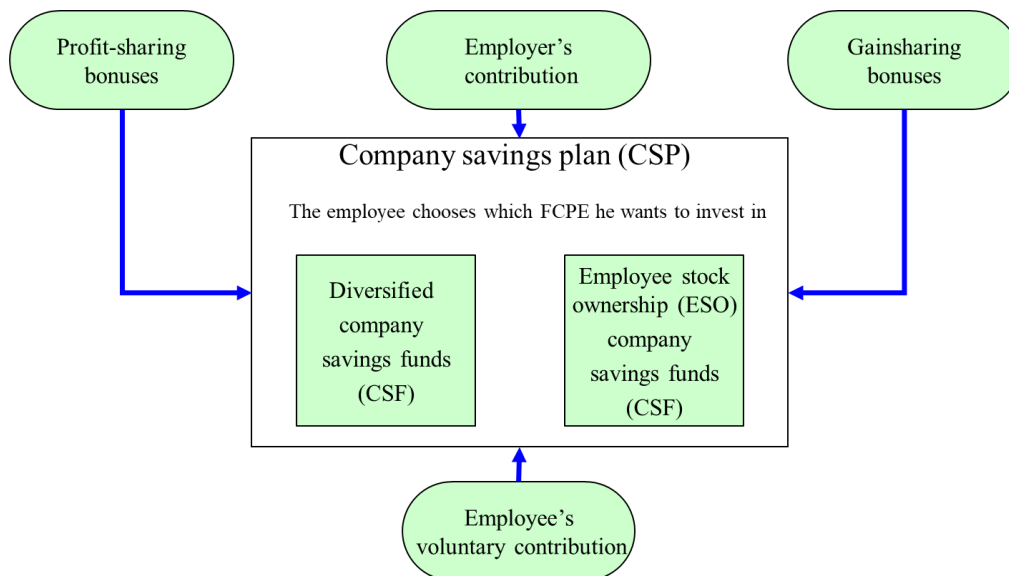
Figure 1: The company savings plan

³ Source: French ministry of labor statistical agency 2019-036 (August 2019)

⁴ The amount of profit-sharing bonuses is calculated by a legal formula (*réserve spéciale de participation* or RSP):

$$RSP = \frac{1}{2} (\text{net income} - 0.05 \times \text{Shareholders' equity}) \times \frac{\text{Wages}}{\text{Added value}}$$

⁵ From 2009, employees have been able to ask for a cash payment, which is then included in their taxable income.



The main advantage of the CSP is its tax exempt status. To benefit from this status, the money invested must remain in the scheme for five years. However, money can be withdrawn early for certain, legally specified reasons, such as: to buy a home, to set up a business, for a wedding, on death, or in the event of personal bankruptcy. When money is invested in a CSP, a social tax of 9.7% is payable on the amount invested (rate in 2020). Neither the company nor the employee are required to pay income tax or social charges on the bonuses granted. When money is withdrawn, a social tax must be paid on capital increase gains (17.2% in 2020), but no income tax is payable. The same conditions apply for any voluntary contributions by the employee.

A CSP must offer several kinds of funds with different risk levels (e.g., short-term monetary funds, obligations, or diversified assets). One or more investment option can be employee share ownership. The employee chooses the company savings funds (CSF or *fonds commun de placement entreprise* – FCPEs) they want to invest in, though they are able to transfer their assets from one CSF to another in some circumstances. The company can match employees' contributions up to 300% (within certain legal limits) and direct these matching contributions to certain CSF. Since employer's usually wants to stimulate employees' investment in their stocks, their matching contributions are often paid into company stocks: matching contributions of up to 300% can be made if they are invested in the company's stocks, whereas employers can only match contributions up to 100% for the other types of CSF. As of 2020, these contributions cannot exceed an annual tax ceiling of €5,924 (investment in company's shares). Employer contributions are not considered a taxable income for the employee, and a social tax of only 9.7% must be paid on the amount. Interest, dividends, and tax credits earned within the CSP also remain exempt from income tax if the money remains blocked five years.

c) *Employee share ownership*

There are 3.5 million employee-owners in France, the largest number of employee-owners of any European country according to the European Federation of Employee Share Ownership (EFES, 2019). Unlike other countries in which employee ownership is very popular, such as the United States, employee ownership in France is most common in large listed companies and the French government has played a significant role in its promotion.

French companies have offered shares to their employees since the nineteenth century, but privatization has been a major driver of employee share ownership (ESO). The French government boosted ESO by selling its shares in car manufacturer Renault and in several public banks and insurance companies to the companies' employees in 1970 and 1973. In 1973, a legal framework for ESO allowed companies to sell shares to their employees through employee stock purchase plans (ESPP) with a maximum discount of 10% (this later increased to 20%). The shares could be held directly by employees or within a CSP, and any investments made in CSPs could be matched by employers. Any discounts and employer contributions were not subject to tax for either the company or the subscribing employees. The 1987 wave of privatizations again boosted ESO. 10% of the privatized companies' equity was offered to employees and former employees at a 20% discount and a two-year "lock-in" period. Some additional attractive conditions were proposed: the granting of free shares after a one-year holding period, the payment of shares in several installments by employees over three years, and the matching of the employee contributions to the CSP by employers. The privatization of several banks and insurance and industrial companies led to the development of ESO in large listed companies such as Saint-Gobain, BNP Paribas, Société Générale and France Telecom (now Orange).

A next significant step in 2005 was the option for companies to award free shares to their employees within a limit of 10% of their shareholder's equity; the final acquisition could depend on the achievement of firm performances during the acquisition period (at least 2 years initially). In 2006, the so-called "Breton law" extended the tax benefits of the CSP to these free shares on the condition that all employees benefit from free shares. The usual CSP conditions apply to free shares—that is, they are "locked" for five years and are subject to social security charges. The relatively minor success of free shares between 2005 and 2018 can be explained by significant changes in the French taxation. The 2015 "Macron" law lowered taxes for both employees and companies; crucially, companies no longer had to pay the social tax (20%) at the time of granting the shares, but only after the final acquisition by the employee. Furthermore, the Macron law increased the ceiling of shareholder equity from 10% to 15% for small businesses. This ceiling rises to 30% if free shares are offered to all employees and if, for thresholds of over 10% or 15%, the difference in the number of shares awarded does not exceed a ratio of one to five between the employees.

ESO is not intended to fund the pension system, as with employee stock ownership plans (ESOP) in the United States. Indeed, company based pension schemes are no longer permitted to hold employer's stocks. Rather, ESO aims mainly to enable employees to participate in corporate governance and receive a share of the company's dividends, and, in some cases, ESO helps to protect the company against takeover bids. Indeed, fiscal rules have had a significant impact on the development of ESO. For instance, in 2009, the French government launched a social tax (*forfait social*) borne by companies on the payment of gainsharing bonuses, profit-sharing bonuses, and matching contributions. The initial tax rate of 2% increased gradually up to 20% in 2012, resulting in a decline of ESO. In 2017, the rate was lowered to 8% for small businesses (those employing fewer than 50 members of staff) to encourage them to launch gainsharing schemes or an optional profit-sharing bonus.

The term "employee-owner" also refers to former employees who still hold their shares and who can still invest in the company's stocks at a discount. Most employee shareholders work in large listed companies or in some large unlisted societies. Boosting ESO in small businesses was therefore a goal of PACTE law.

1.2 New measures to develop financial participation

In combination with the 2019 Social security financing Act, the PACTE law introduced several legal measures to boost employee savings and ESO.

First, gainsharing and profit-sharing bonuses have been promoted in small businesses. Since January 1, 2019, the 20% social tax on gainsharing bonuses has been lifted for firms that employ fewer than 250 people. Meanwhile, for companies employing fewer than 50 people—i.e., those in which profit-sharing is not mandatory—the 20% social tax is removed when they start a profit-sharing scheme. These measures are intended to encourage small businesses to launch gainsharing and profit-sharing schemes and/or to increase the amount paid to employees. Since several French social regulations are related to the size of the companies (such as the compulsory implementation of a profit-sharing scheme for companies with more than 50 employees), the PACTE law also aims to promote the growth of small businesses by relaxing the effect of these thresholds. For example, the exemptions for small companies are temporarily guaranteed for firms that are about to exceed the 50-employee threshold as a result of business growth. This measure seeks to avoid the possible negative effects of a "threshold jump" on businesses' human resources management strategies. In the case of a merger, acquisition, or spin-off, gainsharing schemes must remain in place in the new company or companies until their expiration date.

The PACTE law also provides strong new fiscal incentives to develop ESO. The 20% social tax is halved for employer's matching contributions that are invested in company stocks. Furthermore, firms can

now make discretionary contributions in company stocks to all their employees; before this, employers could only match individual employee's contributions. The employer's contribution must be "locked" for at least five years and, as of 2020, the annual maximum amount of such an investment is €822.

Another innovation of the PACTE law relates to free shares. The law's objective is to increase the legal ceiling of free shares, which is defined by the percentage of shareholder's equity that can be offered to employees (10%, 15% or 30%, depending on the size of the company). As mentioned, this percentage serves as a reference to determine the maximum amount of free shares that can be granted to employees. As of 2019, this ceiling will mechanically increase because the percentage will no longer include the shares that have become available for sale and those that have never been vested by employees. As a result, companies will have greater capacity to grant ESO.

In addition to these new measures, the French state committed to promoting ESO, as it has not been at the core of public policy for several years. For example, since 1986, in cases of privatization, the French state has a legal obligation of proposing 10% of the company's shares to its current and former employees. However, during recent years, unfavorable market or political conditions have prevented such moves from taking place. Furthermore, as a result of budgetary restrictions, the 2015 "Macron law" had canceled several measures that were favorable to ESO, for example, measures related to discounts on the stock price, the granting of free shares to reward longer holding periods, and favorable fiscal conditions for shares owned outside the CSP.

Although the PACTE law has not affected the partnership between state and the companies in which the state is a shareholder, but the law has extended the state's obligation. First, the obligation applies to sales realized out of the financial market. Second, it also applies to share sales of unlisted companies. Third, the state can grant to the employees a discount of 20% on share prices in the case of a privatization if it owns 50% of the shareholder equity. However, the discount can also be offered to the employees by the company itself. This third rule could potentially affect listed companies such as Groupe ADP (*Aéroports de Paris*), aerospace company Airbus, energy company EDF, and lottery operator FDJ.⁶ However, several restrictions have been introduced to the legal obligation, which will limit its effects. First, the state can propose that less than 10% of shares are sold to current and former employees if the employees are unable to contribute sufficient funds. Second, the obligation to offer shares to employees does not apply either if the state owns—or comes to own—less than 10% of the company's equity or if it is a very small company.

The PACTE law also brings in new measures to secure ESO and to boost employees' confidence. Several important measures concern the governance of companies and CSF, as explained below. Due

⁶ Source: <https://www.economie.gouv.fr/agence-participations-etat/Les-participations-publiques>

to the flexibility of their governance, several obligations for joint stock companies (*Société par actions simplifiée*) have been introduced. For example, if joint stock companies wish to introduce ESO, their statutes must not force employee shareholders to sell their shares, to keep them longer than the period mandated by the law, or to be submitted to a previous shareholders' agreement. Employees must also have access to professional advice to help them choose from the different funds available in the CSP or if they want to transfer their money within the CSP among the funds. The law does not specify how such assistance should be provided but, due to the cost implied, it will likely be automated.

Transaction and administrative costs of employee savings operations are not paid by the employees but by the employer, though this obligation does not apply to former employees (for instance, in the case of a stock purchase plan). In order to prevent prohibitive costs being charged to former employees, a ceiling has now been introduced to the expenses billed by financial operators. Finally, to ensure better transparency, employees will receive an annual statement of their CSP account, reporting both active and passive operations, such as dividends and the sale of subscription rights.

2. New measures to promote employee and employee shareholder participation in governance

The PACTE law introduces developments relating to the representation of employee shareholders and employees, first in corporate governance and, second, in the supervisory boards of company savings funds (CSF).

2.1. At the enterprise level

The PACTE law intervenes primarily at the level of corporate governance. Employee representation on boards of directors or supervisory boards⁷ has been the subject of debate for a long time in France. The potential of codetermination, which is currently followed in Germany,⁸ has been raised in France by Bacon (1949) and Bloch-Lainé (1963). The debate resurfaced in 1975, when a report submitted by Pierre Sudreau to the President of the Republic recommended “co-supervision”, which proposes that employees make up one third of supervisory boards. Finally, the Gallois (2012) and Notat and Sénard (2018) reports commissioned respectively by Presidents of the French Republic

⁷ Since 1966, France has allowed firms the freedom to choose between unitary and two-tier boards. For companies with a two-tier board, employees have seats at the supervisory board (Belot et al., 2014).

⁸ “Mitbestimmungsgesetz”, or codetermination, was enshrined in German law in 1976. It requires a third of the supervisory board to be made up of employee representatives for companies with between 500 and 2,000 employees. Beyond this threshold, half of the supervisory board must be made up of employees. For more detail, see Addison and Schnabel (2011) or Conchon (2011). For a historical perspective on German codetermination see Gomez and Wirtz (2018). The Biedenkopf commission, set up by Chancellor Schröder in 2005, confirmed the value of codetermination in a report submitted to Chancellor Merkel in 2006 (https://www.boeckler.de/pdf/bb_zusammenfassung_BiKo_franz.pdf).

François Hollande and Emmanuel Macron recommended that more employees be present on boards of directors. France is not an exception within Europe: 14 out of the 27 EU member states integrate employees into corporate governance⁹.

Until the PACTE law, employee representation existed in several forms, resulting from a number of laws introduced since the 1980s. Several arguments justify such representation (Hollandts and Aubert, 2019). Two arguments can both be linked to two competing theoretical currents in the corporate governance literature: the shareholder approach and the stakeholder approach. According to the first, governance bodies are intended to represent the shareholders. From this perspective, employees can be represented if they are shareholders of the company. According to the stakeholder approach, stakeholders must be present in governance bodies. Employees occupy an important place among the stakeholders, given their contribution to the value creation. These two approaches coexist in France. The so-called “Breton law” from 2006 enforces employee representation when employees hold more than 3% of the shareholder’s equity of a company trading on a regulated market.¹⁰ This provision remains with the PACTE law. Two further laws, from 2013 and 2015,¹¹ prioritize the stakeholder approach by emphasizing employee representation. The PACTE law confirms and extends these last two laws.

The PACTE law brings several changes. First, it reaffirms employee representation on boards of directors (or supervisory boards) by setting mandatory thresholds. For boards composed of less than eight members, one employee must be appointed. For more than eight members boards, at least two employees must sit. As such, the PACTE law reaffirms the partnership viewpoint of governance, which is to say that employees’ status as stakeholders alone necessitates their representation. Second, whereas only listed companies were submitted to these obligations, the PACTE law extends it to every companies employing more than 1,000 employees in France and 5,000 employees abroad and in France. However, these new developments do not remove the obligation of employee shareholder representation if employees hold more than 3% of the capital. This second employee ownership representation now also applies under the same conditions as the first (i.e., to companies with more than 1,000 employees in France or 5,000 in France and abroad); previously, it had also only applied to listed companies.

These two representation obligations of employees and employee shareholders can be combined. For example, a company employing more than 1,000 employees in France, 3% of which is owned by the employees and whose board of directors has more than eight members will thus have to have two employee board members: one representative of the employees and one representative of the

⁹ <https://www.usinenouvelle.com/editorial/la-codetermination-une-pratique-repandue-en-europe.N677479>.

¹⁰ Law number 2006-1770 of December 31, 2006 for the development of participation and employee ownership.

¹¹ Law number 2013-504 of June 14, 2013 and law number 2015-994 of August 17, 2015.

employee shareholders. The different possible scenarios are presented in table 1. The PACTE law also doubles the hours of compulsory training that employees board members must complete to 40 hours. These provisions will apply from January 1, 2021.

	Board of directors or supervisory board < 8 members	Board of directors or supervisory board > 8 members
Employee ownership > 3% of shares	Case 1 1 employee owner	Case 3 1 employee owner 1 employee
Employee ownership < 3% of shares	Case 2 1 employee	Case 4 2 employees

Table 1: Rules regarding board representation of employees and employee owners according to the PACTE law, applicable to companies with more than 1,000 employees in France or 5,000 in France and abroad

2.2. Company savings funds

The governance of company savings funds (CSF or *fonds commun de placement entreprise* – FCPE) has also changed with the PACTE law. As mentioned, this type of fund is unique to France. When an employee receives his gainsharing or profit-sharing bonuses, he can choose to receive these sums immediately or save them in the CSP. If invested in the CSP or the retirement savings plan (*Plan d’épargne retraite* or *PER* newly created by the PACTE law in 2019), the money is “locked” for five years. The CSP works in a similar way to the so called US 401k¹² pension plans, which allow employees to choose between several mutual funds. With the CSP, employees have to choose between different CSF.

The study of savings behavior in this context gave rise to the first works in behavioral finance (Thaler and Sunstein, 2009; Thaler, 2015; for France see Aubert and Rapp, 2010 and Aubert et al, 2018). Notably, this research has shown that employees’ choices can be determined by heuristics (that is to say, by certain decision rules). These heuristics cause employees to not save, to take too much or not enough risk by concentrating their savings on a single asset, to not change the composition of their portfolio, or to select the default option. This research resulted in the work of the Nobel Prize winner Richard Thaler, who promoted the concept of “nudge” e.g. the theory that positive behaviors can be encouraged by social reinforcements and suggestions. Thaler’s work has highlighted the need to support employees’ choices and has given rise to managed management formulas proposed by the plans administrators. Thaler himself has also developed a “managed management offer” based on the conclusions of his work (namely the “Save More Tomorrow” or “SMarT” plan, Thaler and

¹² Section 401k plans of the US internal revenue code are company sponsored defined contribution plans where the employees .

Benartzi, 2004). With the PACTE law, “managed management” is now the default investment option i.e. if employees do not make any investment choice. Before that, the default choice used to be the money market fund providing a very low interest.

The choices of employees therefore determine the composition of their employee savings. Among the choices offered, two main categories can be identified: ESO funds and diversified funds. Diversified funds correspond to the categories of funds offered to the general public by financial institutions: solidarity or formula-funds, French, European and international stocks and bonds. ESO funds are invested in employer’s shares. Employees therefore do not directly own the shares.

The financial, administrative and accounting management, and the operation of the CSF, as well as the methods for informing employees, are entrusted to a supervisory board chaired by a unitholder i.e. an employee. At least half of the members of the CSF supervisory board must be employees. The other members of the CSF supervisory board represent the company. For diversified CSF, employee members are appointed or elected by union organizations or the works council. From January 1, 2021, the PACTE law will introduce several new features in this area. For ESO funds, all employee representatives of the supervisory boards must be elected directly by the employees. In the event of a takeover bid on the company, the supervisory board decides to tender the securities hold by the CSF to the offer. Until now, the board members appointed by the company could participate in the vote. In other words, the company itself could decide or not to contribute the shares belonging to its employees to the takeover bid on itself. This participation to the vote could then result in a conflict of interest. From now on, company representatives at the CSF’s supervisory boards will no longer participate in the vote on this decision, but they will always participate in the discussions prior to the vote. A final innovation introduced by the PACTE law in this area concerns training: the members of the CSF supervisory board representing unitholders benefit from a minimum of three days’ economic, financial and legal training.

Conclusion

PACTE law is not a revolution, but it is nevertheless an important reform. It dealt with both employee and pension savings. In terms of employee savings, the French government aimed to boost ESO and employee purchasing power, while on the side of pension savings, the law offers an attractive alternative to life insurance contracts in “euros”; both are fueled by gainsharing and profit-sharing, which are strengthened by the law. Both plans allow savers to use their savings to purchase a home,¹³ which also helps them prepare for retirement by avoiding rental costs.

¹³ This possibility is allowed for in the frameworks of company collective pension plans and individual pension plans; however, it is not permitted in compulsory company pension plans.

However, employee and pension savings schemes have different rules because they have different goals. Pension savings aim to provide income during retirement so, in order to protect employees' assets, pension savings can only be very partially invested in employers' stocks. Employee savings, on the other hand, have several possible goals corresponding to different life events. In addition, employee savings can also be held after retirement, for example to cope with dependence costs. Unlike pension savings, employee savings may be invested in ESO funds within the CSP.

In terms of governance, the new provisions of the PACTE law take into account existing debates on employee savings and employee ownership in the academic literature. At company level, the law first makes a clearer distinction between directors representing employees and directors representing employee shareholders by setting minimum thresholds. The 3% employee ownership threshold makes it possible to distinguish between the two categories of directors. As such, the French model still does not choose between a stakeholder and a shareholder vision of employee representation (Hollandts and Aubert, 2019). When employees hold more than 3% of the shareholders' equity and in large companies with larger boards, the two categories of employee directors are on an equal footing (see Case 3 in Table 1). Although minimum thresholds are set by law, it is possible for companies to have more employee directors. For example, a larger employee ownership likely justifies a larger proportion of employee representation. As such, the law leaves it to businesses to choose between the different governance models.

As for the supervisory boards of the CSF, we believe that the PACTE law is even clearer. The procedures for appointing supervisory boards, for example, are well distinguished: unitholders of ESO funds elect their representatives amongst themselves, and the trade unions are no longer directly involved. However, trade unions remain involved for diversified CSF. The mandatory training of employee representatives and the voting rules in the event of a takeover bid respond to complaints against employee share ownership. First, the training responds to reservations about employees' ability to act within governance bodies, such as the CSF supervisory board (Gomez and Hollandts, 2015). Second, the law now prevents members that represent the company from voting on the contribution of securities to a takeover bid. This move responds a frequent criticism of employee ownership in academic research that it can function as an anti-takeover weapon capable of defeating market discipline by maintaining poor performing top management teams in their position (Aubert et al, 2014). Before PACTE, the participation of the company representatives in the takeover vote put them in a position to be both judge and jury. The PACTE law thus answers criticisms leveled at employee ownership.

References

- Addison, J. T., & Schnabel, C. (2011). Worker directors: A german product that did not export?. *Industrial Relations: A Journal of Economy and Society*, 50(2), 354-374.
- Aubert, N., & Rapp, T. (2010). Employee's investment behaviors in a company based savings plan. *Finance*, 31(1), 5-32.
- Aubert, N., Garnotel, G., Lapied, A., & Rousseau, P. (2014). Employee ownership: A theoretical and empirical investigation of management entrenchment vs. reward management. *Economic Modelling*, 40, 423-434.
- Aubert, N., Kammoun, N., & Bekrar, Y. (2018). Financial decisions of the financially literate. *Finance*, 39(2), 43-91.
- Bacon P., 1949, La Réforme de l'entreprise capitaliste, SERP.
- Belot, F., Ginglinger, E., Slovin, M. B., & Sushka, M. E. (2014). Freedom of choice between unitary and two-tier boards: An empirical analysis. *Journal of Financial Economics*, 112(3), 364-385.
- Bloch-Lainé F., 1963, Pour une Réforme de l'entreprise, Le Seuil.
- Conchon, A. (2011). Board-level employee representation rights in Europe: Facts and trends. Brussels: Etui.
- Kruse, D. L., Freeman, R. B., & Blasi, J. R. (Eds.). (2010). *Shared capitalism at work: Employee ownership, profit and gain sharing, and broad-based stock options*. University of Chicago Press.
- Gallois, L. (2012). *Pacte pour la compétitivité de l'industrie française*. Rapport au Premier ministre, 5(11), 2012.
- Gomez, P. Y., & Hollandts, X. (2015). La représentation des salariés aux conseils d'administration: enjeux, obstacles et préconisations. *Revue de droit du travail*, (7), 451-457.
- Gomez, P. Y., & Wirtz, P. (2018). Successfully mobilizing for employee board representation. *Journal of Management History*.
- Hollandts, X., & Aubert, N. (2019). La gouvernance salariale: contribution de la représentation des salariés à la gouvernance d'entreprise. *Finance Contrôle Stratégie*, (22-1).
- Notat, N., & Sénard, J. D. (2018). *L'entreprise, objet d'intérêt collectif*. Rapport aux Ministres de la transition écologique et solidaire, de la justice, de l'économie et des finances du travail.
- Thaler, R. H., & Benartzi, S. (2004). Save more tomorrow™: Using behavioral economics to increase employee saving. *Journal of political Economy*, 112(S1), S164-S187.
- Thaler, R. H., & Sunstein, C. R. (2009). *Nudge: Improving decisions about health, wealth, and happiness*. Penguin. Thaler, R. H. (2015) *Misbehaving: The making of behavioral economics*. New York: WW Norton.